

REPORT

OF THE

COMMISSION OF INQUIRY
INTO POLICE CONDUCT

TE KŌMIHANA TIROTIRO WHANONGA PIRIHIMANA



VOLUME 1



March 2007

COMMISSION OF INQUIRY INTO POLICE CONDUCT

Te Kōmihana Tirotiro Whanonga Pirihimana

Commissioners

from 18 February 2004 to 2 May 2005

Honourable James Bruce Robertson, *Chairperson*

Dame Margaret Clara Bazley DNZM

from 2 May 2005

Dame Margaret Clara Bazley DNZM

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**Commission of Inquiry into Police Conduct
Te Kōmihana Tiro tiro Whanonga Pirihimana**

26 March 2007

To His Excellency, The Honourable Anand Satyanand, Governor-General

Your Excellency

Letter of transmittal

Pursuant to the terms of the Order in Council dated 18 February 2004 and as amended by Order in Council dated 2 May 2005, given under the hand of Her Excellency, The Honourable Dame Silvia Cartwright, PCNZM, DBE, the then Governor-General of New Zealand, I now humbly submit my report for Your Excellency's consideration.

I have The Honour to be
Your Excellency's most obedient servant

A handwritten signature in black ink, reading "Margaret Bazley".

Dame Margaret Bazley, DNZM
Commissioner

ACKNOWLEDGMENTS

This report is the result of a long process of review and the analysis of an extensive amount of information. It reflects the hard work and commitment of those involved in the inquiry process. In particular I would like to acknowledge the work of key commission staff and advisers – my legal adviser, Mr Douglas White QC; counsel assisting, Ms Mary Scholtens QC and Mr Kieran Raftery; the Commission's executive officer, Ms Rebecca Boyack; and commission staff and advisers, Ms Emma Jeffs, Dr John Sinclair, and Mr Robert Buchanan.

I also acknowledge the contribution made by counsel and representatives of the parties who worked hard to ensure that I had the full range of information I required during the inquiry

I would also like to acknowledge the input of the Honourable Bruce Robertson and the very sound legal foundation for the inquiry that he established prior to his appointment to the Court of Appeal in May 2005.

I would like to particularly record my appreciation of the commitment of Commission staff and their dedication in seeing the inquiry through to its completion. The staff worked hard to assist me carry out the inquiry and to ensure the Commission could complete its tasks in the required time frames.

I would also like to acknowledge and thank those submitters who came forward to the Commission with information about their experiences of making complaints to the police. I am very aware of the impact that this experience had on those people and their courage in coming forward to assist the Commission.

I was also impressed with the quality of the people who appeared before me as police witnesses and independent experts and would like to thank them for their contribution to my inquiry.

Dame Margaret Bazley, DNZM

Commissioner



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– COMMISSIONER’S OVERVIEW –

I have formed a number of clear impressions based on the extensive evidence presented to me during the inquiry.

First, I saw evidence of some disgraceful conduct by police officers and associates over the period from 1979, involving the exploitation of vulnerable people. There were also incidents of officers attempting to protect alleged perpetrators. These incidents, which occurred mainly in the 1980s, include evidence of officers condoning or turning a blind eye to sexual activity of an inappropriate nature; a wall of silence from colleagues protecting those officers complained about; negative, stereotyped views of complainants; and a culture of scepticism in dealing with complaints of sexual assault. However, there was no evidence of any concerted attempt across the organisation as a whole to cover up unacceptable behaviour.

Second, New Zealand is fortunate to have a police force in which this kind of misconduct is a relatively rare occurrence. However, the risk that misconduct, particularly sexual misconduct, poses to public confidence in the police is a significant one. New Zealand Police should give high priority to ensuring that this risk is minimised, and that when misconduct does occur, it is dealt with professionally, expeditiously, and in a manner that gives both complainants and the general public no reason for concern. In my view police management lacks the policies, procedures, and practices necessary for effectively dealing with such misconduct, and for removing the officers concerned.

Third, I was disturbed to learn that the police do not have any code of conduct or guidelines that provide sworn police officers with clear guidance on what constitutes appropriate behaviour, in particular appropriate sexual behaviour. It is very clear to me that in order to maintain public trust and credibility police officers need to adhere to high standards of ethical behaviour, both on and off duty, and police management needs to be vigilant in maintaining a culture that supports these standards. This is particularly the case with respect to sexual behaviour, and to any suggestion that an officer is using his or her position of authority to secure sexual favours. Some types of sexual behaviour, although they may not constitute sexual assault, are nevertheless inappropriate for police officers.

Fourth, it is my view that, at the present time, the public can have confidence in the calibre of police investigations into allegations of sexual assault by police officers and police associates. Although the evidence the Commission has seen highlights some failings in the past, the policies and procedures surrounding how such allegations are investigated have improved markedly over the past 25 years. Nevertheless, further improvements are needed, in particular to address the proliferation of policies and procedures, and also the issues around the effective implementation of the Adult Sexual Assault Investigation Policy.

In the light of these conclusions, it is clear to me that the police cannot rest on their laurels. Large numbers of complaints are a serious threat to any organisation, and the number of complaints against police officers that have been seen to justify some sort of action is, in my view, significant enough for the Commissioner of Police to be alert to the potential risk to the reputation of New Zealand Police. The good work done by many investigating officers, particularly in the past 15 years, has been placed in jeopardy by systemic flaws that need attention from both police management and Government legislators. Some matters need urgent attention. Examples follow:

- The current police disciplinary system for sworn staff is cumbersome, time-consuming, and outdated. It needs to be replaced with a modern approach to managing misconduct and poor performance, based upon a code of conduct, applying standard employment law and best practice human resource management principles. In spite of the recent withdrawal of a Government bill that would have done just that, I urge the Government to consider immediate action to revoke the current regulations dealing with discipline in order to enable a more sensible and efficient system to come into force as soon as possible.
- The formal policies and procedures governing police investigations of sexual assault need to be consolidated in a single, accessible document, as do the various policies and procedures concerning investigations of allegations against police staff and police associates.
- The Adult Sexual Assault Investigation Policy needs to be supported with adequate resources for training and for the provision of appropriate facilities.
- The police need to improve their performance management systems. They need to establish a national early warning system that highlights officers who may be at risk of inappropriate behaviour.

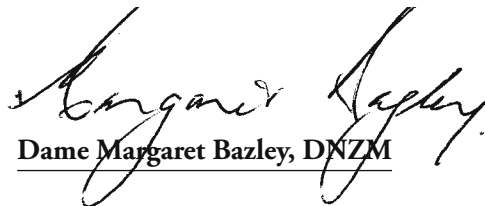
As a result of the evidence presented to me during the inquiry I have made numerous recommendations for change.

At the same time, the existence of this Commission has also encouraged the police to embark on many new initiatives themselves, particularly as I raised my concerns with them during the inquiry. For instance when the Commission began, the police had no clear policy framework in place, there was no code of conduct for sworn members (and there still is no code in place), and they had little in the way of standards for personal behaviour.

Although I am pleased that the police have seen the Commission as a catalyst for making changes in these areas, I am concerned that the police impetus for change may not be sustained once the Commission of Inquiry into Police Conduct is discharged. For this reason I believe that it is very important that an independent agency with the appropriate authority be tasked with monitoring and reporting on the implementation of my recommendations as adopted by Government, and also with the progress on the police projects and initiatives generally. Many of the projects that the police have embarked on will involve making long-term changes to culture and systems. They are not changes that can be implemented in a short period of time; likewise with the recommendations arising from my report. Independent monitoring of and reporting on police progress in making

these changes will thus, in my view, be critical to ensure that the momentum established through this Commission is sustained.

Provided that the recommendations in my report are systematically implemented, I believe that the New Zealand public can continue to have full confidence in a police force of which they can be justifiably proud.



Dame Margaret Bazley, DNZM

Postscript of March 2007

Events that occurred after this report was completed, but before it went to press, have prompted me to make two further points that are of some importance.

First, the recent acquittals of one current and two former police officers on historical sexual assault charges have resulted in public debate about the ability of the justice system to deal with alleged offending by members of the police. I am conscious that some of the examples of past practice mentioned in this report may result in similar debate.

I would be very concerned if an unintended consequence of such debate was to deter victims from reporting serious violent offending, such as rape, committed by members of the police. It is absolutely critical for the prospects of successful prosecution of offending such as rape that the complaint is received as soon as possible after the offence is committed.

I acknowledge the very real hurdles that victims of any sexual offending are confronted with in approaching the police to complain. A key message of this report is that the police must take active steps to facilitate victims coming forward, especially when an alleged offender is a member of the police. But having completed this inquiry I am satisfied that the police now have processes in place that encourage a supportive, independent, and thorough investigation of such complaints, overseen by the Police Complaints Authority. I encourage victims to use these processes.

Second, the terms of reference for this inquiry, as amended in May 2005, precluded any inquiry into, or report on, allegations that were for the time being the subject of investigation by the police or any current or pending criminal proceedings. A number of police files that were submitted to the Commission fell into this category. These were put "on hold". The completion of some of the investigations during the period when the Commission was preparing its report removed the restriction on inquiry into, or reporting on, those cases. Although it was too late to hear evidence on the individual cases, the Commission was able to consider completed investigation files as part of its wider review of the Operation Loft files.

I am therefore aware of the allegations they contained and I believe the matters raised by those allegations are addressed by the recommendations in this report.



– EXECUTIVE SUMMARY –

The Commission of Inquiry into Police Conduct was established in February 2004 to carry out a full, independent investigation into the way in which New Zealand Police had dealt with allegations of sexual assault against members of the police and associates of the police. This followed the publication of allegations made independently by two women, Ms Louise Nicholas and Ms Judith Garrett, suggesting that police officers might have deliberately undermined or mishandled investigations into complaints of sexual assault that had been made against other officers.

The terms of reference, in summary, directed the Commission to inquire into and report upon

- standards and procedures established by the police as a matter of internal police policy for the investigation of complaints alleging sexual assault by members of the police or by associates of the police or by both
- the practice of police in the investigation of complaints alleging sexual assault by members of the police or by associates of the police or by both
- the adequacy of any investigations that had been carried out by the police on behalf of the Police Complaints Authority and that had concerned complaints alleging sexual assault by members of the police or by associates of the police or by both
- standards and codes of conduct in relation to personal behaviour for members of the police
- any other matters considered relevant to the inquiry.

The Commission was instructed not to comment on the guilt or innocence of individuals involved in the alleged offences.

Subsequently, in May 2005, important changes were made to the Commission and its brief as a result of the Commission's concerns not to jeopardise ongoing police inquiries that covered similar ground. The Commission was directed to focus on how the police responded in general to allegations of sexual assault against police members or associates, and whether people making allegations were treated appropriately, but not to take into account matters under police investigation or prosecution. This effectively prevented the Commission from inquiring into Ms Nicholas's or Ms Garrett's allegations. The Commission was also specifically prohibited from giving names or particulars that might identify any person involved in an allegation of misconduct (either complainant or alleged offender).

Standards and procedures for complaint investigations

The report describes the standards and procedures established by the police over the past quarter of a century relating to internal investigations and to the investigation of complaints alleging sexual assault by members of the police or police associates. These standards and procedures have

improved markedly and steadily over the years and appear now to reflect good practice (in contrast to their rudimentary stage of development in 1979, the starting point in the period of interest to this inquiry).

In assessing these standards and procedures for their adequacy and their communication to staff, the Commission made the following observations during the inquiry:

- The standards and procedures are to be found in, or originate from, a wide range of legislation, regulations, general instructions, directives, policy documents, manuals, and other documents. The volume and the complexity of standards and procedures hamper their communication to police staff. There appears to be no system for confirming that staff have read and understood important policy instructions.
- There is no stand-alone document that sets out how an inquiry into allegations of sexual assault against a police officer should be conducted.
- Development of policy on such internal investigations has been ad hoc.
- There is a lack of standards and procedures relating to investigation of complaints against associates of the police, including a lack of guidance on identifying and managing conflicts of interest in dealing with police associates.
- There is some confusion over whether or how promptly the Commissioner of Police is to be notified when complaints of serious misconduct are received.
- There are some discrepancies between the Manual of Best Practice as it relates to sexual offending and the Adult Sexual Assault Investigation Policy. These result in an unnecessarily unwieldy and fragmented approach.
- The Adult Sexual Assault Investigation Policy does not appear to have been adequately supported by training and the provision of appropriate facilities. Police described the policy as “aspirational”. This has both inhibited and prevented the mandatory aspects of the policy and its requirements concerning the competence of investigators from being adequately implemented.
- There are few nationally mandated training packages; the extent and content of most staff training is decided at the police district level. Consistency in the delivery of police services requires a more coordinated and strategic view of training requirements and priorities.
- Information on the rights of the public to make a complaint against a member of the police and their rights as complainants does not appear to be easily accessible or well publicised.

Numbers of complaints reviewed

I consider the clearest method of determining the number of complaints that I have reviewed is to count both the number of complainants and the number of police officers or police associates complained about.

Viewed this way I have reviewed 313 complaints of sexual assault against 222 police officers between 1979 and 2005. Of these, 141 were regarded as containing sufficient evidence on which to lay criminal charges or undertake some sort of disciplinary action. I also reviewed 61 allegations against 43 associates of the police, of which 39 resulted in charges or warnings.

It is important not to draw conclusions from the numbers of complaints involving police officers, without recognising that policing by nature can generate large numbers of complaints. However, I am concerned both about the number of complaints and the number that were seen to justify some sort of action being taken by way of criminal charges or disciplinary action. Although not all of these allegations were proven, I am concerned about the effect they would have had on the organisation. I am aware from my time as chief executive of large Government organisations that certain behaviours by staff members (even a tiny proportion of staff) are a serious threat to an organisation. This is especially the case where staff deal with members of the public in situations where they are vulnerable, and where the integrity of the members, and the perceptions of that integrity, are paramount to delivering a professional service, as in the case of New Zealand Police.

I also note that reaching agreement with the police about the exact numbers of complaints before the Commission proved a difficult and time-consuming exercise. This raised an issue for the police as well as for the Commission. The figures the police keep for management and best practice purposes need to reflect an accurate picture of numbers, and be as exact and discriminating as possible.

Police practice in complaint investigations

The Commission examined the information contained in police files relating to over 370 complaints of sexual assault made against both police officers and police associates covering the period 1979 to 2005, including those of 10 submitters who came forward with complaints. The quality of investigation of complaints against police officers over that period has improved considerably:

- Standards and procedures have been updated and improved.
- Skill levels of investigating officers have improved, as more is understood about sexual assault and its impact on victims.
- Relationships between the police and professional support groups have improved.

However, there are matters still needing attention:

- Over the entire period of interest to this inquiry, the files revealed a range of difficulties some complainants have had in laying a complaint. There is a need for greater effort in educating the public about the complaints process and their right to complain and how to go about it.
- There is a need for understanding of standards and procedures by front-line staff, including the need for independence of the investigator from the member being investigated.
- There is a need for more consistent Government funding of support groups, so as to provide an adequate national service of support for complainants. This vital work is not appropriately left entirely to the police.
- Further thought needs to be given by both police and support agencies how best to communicate to complainants the progress of an investigation and the reasons why, at the end of an investigation, a decision may be taken not to lay charges.

Requirements for compliance with standards and procedures

General oversight of compliance with standards and procedures is achieved through the chain of command.

The Commission found as follows:

- The mechanisms used by the police to ensure that practice in investigating allegations of sexual assault by police officers complies with the relevant standards and procedures vary across police districts.
- District and area commanders appear to have significant discretion as to how they operate and whether they implement national policies or develop and use their own preferred procedures.
- There is no systematic means for district initiatives and best practice to be shared and, where appropriate, nationalised. This results in a lack of consistency across the country in key areas, such as the practices used to supervise smaller and rural stations and internal investigative practices.
- Policies and directives are issued to districts without any obvious mechanisms for ensuring that they are understood and consistently followed by front-line staff.
- Extensive information is collected in relation to the behaviour of individual officers, but it is not well integrated and analysed on a consistent basis.

Investigations carried out on behalf of the Police Complaints Authority

The Police Complaints Authority (PCA) is an independent body that receives complaints against members of the police. The Commission was directed to inquire into the adequacy of any investigations that had been carried out by the police on behalf of the PCA and that concerned complaints alleging sexual assault by members of the police. The secrecy provisions in the Police Complaints Authority Act 1988 (PCA Act) and the PCA's limited resources mean that the PCA focuses primarily on reviewing investigations carried out by the police.

Considerable delays in the PCA processes (which may result from lack of resources or the need for relevant court proceedings to be completed first), and the relative lack of resources invested in publicising the PCA and communicating with complainants, create scope for confusion and disappointment amongst complainants. Thus, although the Commission's view is that the PCA system should continue in its present form, certain actions are recommended:

- review of the current secrecy provisions of the PCA Act to ensure that they do not inappropriately prevent PCA involvement in matters that may result in disciplinary action or criminal charges, and to ensure that the Act encourages a reasonable level of communication with complainants on the progress of complaints
- improvement of the accessibility of the PCA to those who may wish to make a complaint, including enabling complainants who are not confident in writing to make their complaints orally (with appropriate authentication)
- clarification of the requirement for the police to notify the PCA of complaints received "as soon as practicable" to mean no later than five working days after receipt of the complaint, and improved monitoring of compliance with that requirement
- appointment of members from outside the legal profession to the Authority to provide a broader range of perspectives and to strengthen the community's perception of the independence of the PCA.

Police disciplinary action

Where allegations of sexual misconduct by police are found to have substance they are dealt with either through a criminal prosecution (and, where appropriate, internal police disciplinary processes) or, where the matter is not considered to warrant criminal charges, through internal police disciplinary processes alone. The disciplinary process for non-sworn staff is based upon a code of conduct and conforms to standard public sector practices. However, there is no code of conduct for sworn members of New Zealand Police. The process for serious disciplinary matters involving sworn staff is a complex and cumbersome tribunal process that resembles in many respects a criminal trial.

The Commission's view is that this regime is outdated, does not serve the interests of complainants well, and stands in the way of good employment practice. There are seven major concerns:

- The cost and complexity of the system take up unnecessary police resources, and can cause long delays. This may lead to a reluctance for management to initiate formal disciplinary proceedings.
- Time limits on bringing charges, and the need to await the outcome of criminal proceedings, can mean that a high degree of care is needed in formulating disciplinary charges to ensure that the disciplinary action can continue, where appropriate, notwithstanding an acquittal of criminal offending.
- In serious cases the tribunal applies a high standard of proof (which many assume to be the equivalent of the criminal standard of beyond reasonable doubt). The formal and procedurally complex setting of the tribunal may dissuade police from pursuing disciplinary action in cases where the evidence does not meet this high standard.
- In many cases, particularly those involving complaints of sexual misconduct, disciplinary action can be initiated only when a complainant is prepared to be identified and, if necessary, give formal evidence at a disciplinary hearing. The formality of the process means that complainants may be reluctant to make this commitment.
- The balance of protection is overly weighted in favour of the individual police officer and imposes obligations on the police that extend beyond the requirements of natural justice.
- The disciplinary regime is kept separate from the police performance management system, hindering good human resources practice. The recent establishment of a single management structure for discipline and performance management is a good start, but full integration will take time.
- In the past, police officers have been allowed to disengage (to retire from the police because of medical or psychological unfitness) while disciplinary action was pending, creating for some complainants a perception that justice has been avoided.

The Police Association made submissions to the Commission in favour of continuing the existing regime, arguing that a formal process and a high standard of proof are appropriate given that an officer's career is at stake. The Commission does not agree, and considers that standard employment law procedures can ensure fair disciplinary processes.

The police stressed that there are a range of disciplinary options that do not require the tribunal's involvement, and that performance issues can be addressed as part of routine supervision. However,

the police also accepted that the current disciplinary framework is cumbersome and anachronistic, and that employment-based mechanisms for dealing with issues of performance are an essential reform.

The Commission's view is that the disciplinary regime for sworn staff should be abolished as soon as possible in favour of a standard employment regime. The Commission believes that such a change could be introduced without the passage of new legislation by revoking the regulations that set out offences and establish the disciplinary tribunal.

Codes of conduct

The new disciplinary regime recommended by the Commission should be based on enforceable codes of conduct for all members of police. Although non-sworn members of the police are subject to a code of conduct, there is currently no code of conduct in place for sworn police officers. A draft code of conduct for sworn members was prepared in 2002. Its promulgation was awaiting the passing of the Police Amendment Bill (No 2). However, the Minister of Police withdrew that bill in March 2006 and announced a comprehensive review of the Police Act 1958.

Introducing a code of conduct for sworn police officers would bring the police into line with other State sector employees. The code of conduct should be the basis for identifying and addressing behaviour that does not meet expected standards. Subsequently, the existing code of conduct for non-sworn staff should be brought into line with the new code.

Standards of conduct in relation to members of the public

There is no formal guidance for police officers in respect of their sexual conduct towards people with whom they come into contact in their professional capacity. This is not appropriate given the position of authority police officers hold in society and the vulnerable position of many of those with whom they deal. There is a need for standards and policies, to be integrated into the code of conduct, which should

- specify actions and types of behaviour of a sexual nature that are inappropriate or unprofessional
- prohibit members of police from entering any relationship of a sexual nature with a person over whom they are in a position of authority or where there is a power differential
- provide guidance to members and their supervisors about how to handle concerns about a possible or developing relationship that may be inappropriate
- emphasise the ethical dimensions of sexual conduct, including the need for police officers to avoid bringing the police into disrepute through their private activities.

Initiatives to improve standards of personal behaviour

The Commission received information about several police measures to describe and to promote expected standards of behaviour. These included the values listed in corporate accountability documents and the competency framework, the Sexual Harassment Policy, recruit training material, the ethics training programme, and the establishment of ethics committees in some police districts. The Commission commends these initiatives, although has some concern about their apparent ad hoc nature, and in any event notes that they do not compensate for the lack of a code of conduct for sworn staff.

One area of particular concern is the lack of an early warning system for inappropriate behaviour within the police. It was clear from the files that some officers who committed serious offences or serious misconduct had been engaging in low-level misconduct for years beforehand. Although the police gather and collate a variety of data concerning the performance of individual staff members, no national system has been developed to provide early warning of officers whose behaviour indicates that they are at risk of more serious misconduct. Implementation of a national early warning system is a key initiative, which should be nationally mandated.

Sexual harassment policy and procedures

Up until the mid to late 1990s it appears a work environment existed in the police that enabled a few male officers to sexually harass women officers and staff. However, police management took strong and decisive action in the mid-1990s to establish policies, practices, and staff training to detect and monitor staff who sexually harass police members. The New Zealand Police Sexual Harassment Policy is nationally mandated and consistent across the country. This helps to ensure that the policy is effective.

Nevertheless, there should be continued monitoring to ensure that the level of safety now achieved is maintained and enhanced.

Misuse of email and Internet by police

The report also discusses the behaviour of members of the police in terms of their misuse of email and Internet, a matter that arose during the course of the Commission's work and that was the subject of a separate review by the police. The Commission offers these comments:

- New Zealand Police should ask all police staff to sign an acknowledgment that they have read and agreed to an acceptable use policy for Internet and email, as well as acknowledging that they have read and understood any changes to police computer use policies.
- Directions from senior management on the appropriate use of police computer systems need to avoid any wording that implies there is an element of individual discretion in considering what is appropriate.

New Zealand Police management should also be receiving regular reports on staff Internet use as part of the early warning system they are in the process of developing.

How police address inappropriate behaviour

Performance issues, as opposed to matters requiring disciplinary charges, are currently managed within the police performance appraisal system. The appraisal process involves an assessment of an employee's performance against the competency framework, in addition to an assessment of their performance against the functional requirements of their position.

The Commission saw instances where individuals had been able to stay in the police despite repeated allegations of misconduct or concerns about their performance. The risk of this occurring and affecting New Zealand Police's integrity needs careful management. There is a need for all supervisors and managers to receive regular training on how to provide feedback to their staff, and a need also to review performance improvement plans to ensure that they are effective and that they are regularly monitored and acted upon.

Police attitudes to investigations

The Commission heard evidence from international experts on features of police culture that may adversely affect the effective and impartial investigation of complaints against police. Such organisational traits include strong bonding amongst colleagues, a male-oriented culture, attitudes towards the use of alcohol, and dual standards with respect to on-duty and off-duty behaviours.

The police files reviewed showed that the development of an appropriate culture that does not tolerate sexual misconduct or sexual harassment is an ongoing process. The examples of negative attitudes in New Zealand Police come primarily from the 1980s, although isolated incidents suggest that the attitudes continued into the 1990s and beyond. The major areas of concern were

- attitudes that reflected stereotyped views of complainants and raised general doubts as to whether police officers may have been prejudiced in their approach to complaints
- evidence of a culture of scepticism in dealing with complainants of sexual assault
- evidence of other officers condoning or turning a blind eye to sexual activity of an inappropriate nature by police officers and their associates
- evidence that when senior police officers came to investigate complaints they were confronted with a wall of silence from the colleagues of the officers against whom complaints had been made.

The officers called by the police as witnesses were unanimous in their belief that the current culture of the organisation is a very positive one. There was also evidence from the files of some very thorough investigations into the complaints received. However, the Commission was not in a position to undertake its own survey of attitudes and opinions across the police as a whole.

Disclosure of wrongdoing

Features of police culture can make it difficult for police officers to report allegations against colleagues. The Commission considers that the police should actively promote a single stand-alone policy of “report and be protected” for all disclosures of wrongdoing, designed to ensure that staff feel safe coming forward to report a concern.

It is important not only that standards and policies encourage members who know of allegations to report the allegation to an appropriate senior member of police but also that managers and supervisors create a culture where people are willing to stand up and challenge unethical or criminal behaviour, and are supported in doing so. Cases where misconduct went unchallenged for months or years undoubtedly had a dampening effect upon the morale of female and male officers. An effective whistle-blower mechanism is an essential component in a culture of openness.

The future

The Commission’s report gives a series of “snapshots” of police standards and practices over a 25-year period. Much of the Commission’s focus was necessarily on historical matters. The pictures are not always pretty – especially when measured by today’s standards. But the Commission’s report also notes the significant improvements in standards and practices over the period.

Improvements have also taken place over the three-year period of the Commission’s own existence. During the life of the Commission, and often in response to its work, New Zealand Police has

established numerous reviews and special projects, many of which complement the work of this inquiry. Some examples are

- a governance project, examining how specific functions are governed within the police and the options for community input into police governance
- a culture review looking at ways to minimise improper behaviour
- the Integrity Project designed to ensure that the police remain free of corruption, and examining the conduct and oversight of internal investigations.

Other issues are being addressed as part of the review of the Police Act announced in March 2006.

If well implemented, these initiatives will result in significant further improvements to police standards and practices. The Commission has prepared its report and tailored its own recommendations with this in mind.

There is a need for New Zealand Police to work with other agencies in the public sector to achieve the desired reforms to the police organisation. The Commission is aware of the operational independence of the Commissioner of Police, but suggests that the State Services Commission would be well placed to provide advice and guidance to the police on several of the recent police initiatives, and that when it comes to legislative change it will be vital to involve the Ministry of Justice to remove any inference that the police are driving a process that may affect the nature and extent of their powers.

The Commission also concluded that it would be beneficial for the police to strengthen community involvement in service delivery and local policing issues. This could be achieved by strengthening dialogue at a local level with the wider New Zealand community about the quality of police service delivery.

Finally, the risk with a long-running inquiry such as this is that the picture of “current” standards and practices obtained through evidence early in the Commission’s existence will be out of date, and overtaken by events, by the time the Commission produces its report. Yet in another sense the longevity of this type of commission of inquiry is one of its strengths because it provides a stimulus for reform and an opportunity for the police to develop and test new initiatives while the Commission is still running.

This makes the Commission’s report, and its snapshots of current and past practice, very important and relevant for the future development of police standards and practices. The historical examples used in this report involved real people, on whom the events in question have sometimes had a lasting impact. The examples provide valuable lessons from the past, which should not be forgotten, and insights and benchmarks for the future.

It is also very important that the changes recommended by this Commission and the various police initiatives already under way proceed in a considered and orderly way, and that they are carried through to implementation. The start has been encouraging, but the work is not yet complete and in some areas has barely begun. The Commission therefore strongly recommends that the full range of initiatives and projects be rationalised and appropriately planned and that for the next 10 years the Office of the Auditor-General independently monitor police progress on finalising these

initiatives as well as the recommendations of this Commission, and report regularly to Parliament on police progress.

The Commission of Inquiry into Police Conduct has made **60 recommendations** as a result of its inquiry.



– RECOMMENDATIONS –

Police policies and procedures

- R1** New Zealand Police should review and consolidate the numerous policies, instructions, and directives related to investigating complaints of misconduct against police officers, as well as those relating to the investigation of sexual assault allegations.
- R2** New Zealand Police should ensure that general instructions are automatically updated when a change is made to an existing policy.
- R3** New Zealand Police should develop a set of policy principles regarding what instructions need to be nationally consistent and where regional flexibility should be allowed.
- R4** An enhanced policy capability should be developed within the Office of the Commissioner to provide policy analysis based on sound data, drawing upon the experience of front-line staff and upon research from New Zealand and beyond.

Police policies and procedures for complaints

- R5** New Zealand Police should develop an explicit policy on notifying the Commissioner of Police when there is a serious complaint made against a police officer. This policy and its associated procedures should specify who is to notify the police commissioner and within what time frames.
- R6** New Zealand Police should ensure that members of the public are able to access with relative ease information on the complaints process and on their rights if they do make a complaint against a member of the police.
- R7** New Zealand Police should undertake periodic surveys to determine public awareness of the processes for making a complaint against a member of the police or a police associate.
- R8** New Zealand Police should develop its database recording the numbers of complaints against police officers to allow identification of the exact number of complaints and the exact number of complainants for any one officer.

Adult Sexual Assault Investigation Policy

- R9** New Zealand Police should review the implementation of the Adult Sexual Assault Investigation Policy to ensure that the training and resources necessary for its effective implementation are available and seek dedicated funding from the Government and Parliament if necessary.
- R10** New Zealand Police should incorporate the Adult Sexual Assault Investigation Policy in the “Sexual Offences” section of the New Zealand Police Manual of Best Practice for consistency and ease of reference.

Communication of policies and training

- R11** New Zealand Police should strengthen its communication and training practices by developing a system for confirming that officers have read and understood policies and instructions that affect how they carry out their duties and any changes thereto.
- R12** New Zealand Police should strengthen its communication and training practices to ensure the technical competencies of officers are updated in line with new policies and instructions.
- R13** Bearing in mind the mobility of the workforce, New Zealand Police should conduct a review of what training should be mandatory at a national level and what should be left to the discretion of districts.

Consistency and transparency in complaint processes

- R14** New Zealand Police should ensure that the practice of providing investigating officers with a reminder of the standards for complaint investigation is applied consistently throughout the country.
- R15** New Zealand Police should improve the process of communicating with complainants about the investigation of their complaint, particularly if there is a decision not to prosecute. Complainants and their support people should be given
- realistic expectations at the start of an investigation about when key milestones are likely to be met
 - the opportunity to comment on the choice of investigator
 - regular updates on progress, and advance notice if the investigation is likely to be delayed for any reason
 - assistance in understanding the reasons for any decision not to prosecute.

Independence of investigations

R16 New Zealand Police should develop a consistent practice of identifying any independence issues at the outset of an investigation of a complaint involving a police officer or a police associate, to ensure there is a high degree of transparency and consistency. The practice should be supported by an explicit policy on the need for independence in such an investigation. In respect of the handling of conflicts of interest, the policy should, among other things,

- identify types and degrees of association
- define a conflict of interest
- provide guidelines and procedures to assist police officers identify and adequately manage conflicts of interest (including in cases where cost or the need for prompt investigation counts against the appointment of an investigator from another section or district)
- ensure that the risk of a conflict of interest involving investigation staff is considered at the outset of any investigation involving a police officer or police associate.

R17 New Zealand Police should expand the content of its ethics training programme to include identifying and managing conflicts of interest, particularly in respect of complaints involving police officers or police associates.

Support for sexual assault investigations

R18 New Zealand Police should ensure that training for the Adult Sexual Assault Investigation Policy is fully implemented across the country, so that the skills of officers involved in sexual assault investigations continue to increase and complainants receive a consistent level of service.

R19 New Zealand Police should initiate cooperative action with the relevant Government agencies to seek more consistent Government funding for the support groups involved in assisting the investigation of sexual assault complaints by assisting and supporting complainants.

Management assurance

R20 In relation to investigations of sexual assault complaints against police officers or police associates, New Zealand Police should have in place systems that

- verify that actual police practices in investigating complaints comply with the relevant standards and procedures

- ensure the consistency of such practice across the country, for instance in the supervision of smaller and rural stations
- identify the required remedial action where practice fails to comply with relevant standards
- monitor police officers' knowledge and understanding of the relevant standards and procedures.

Handling of complaints by the Police Complaints Authority

- R21** The Police Complaints Authority should improve its accessibility to people who may wish to make a complaint, for instance, by publicising its newly established website and by wider distribution of its information pamphlet.
- R22** The Police Complaints Authority should, in conjunction with the police, the Ministry of Justice, and other relevant agencies, develop a communications strategy to increase the general awareness of the Police Complaints Authority and its work.
- R23** The Police Complaints Authority should actively facilitate the reception of complaints by accepting oral statements on the basis that the complainant will confirm the Police Complaints Authority's written record of the complaint.
- R24** The Police Complaints Authority should ensure it has more regular communication with those people whose complaints are under consideration.
- R25** The Police Complaints Authority should seek feedback from complainants by way of random sampling on their experience of the complaint process.
- R26** The Police Complaints Authority should develop strategies for addressing its current backlog of complaints, including seeking additional resources as appropriate.
- R27** The Police Complaints Authority should be encouraged to exercise its discretion in favour of accepting historic sexual assault complaints. If there is any doubt about this matter, a further legislative amendment should be included in the Independent Police Complaints Authority Amendment Bill.

The Police Complaints Authority and legislative requirements

- R28** The requirement for the police to notify the Police Complaints Authority of any complaints received by them “as soon as practicable” (section 15 of the Police Complaints Authority Act 1988) should be amended by adding the words “and in any case no later than 5 working days after receipt of the complaint”, and compliance with this requirement should be monitored by the Professional Standards section at the Office of the Commissioner.
- R29** The discretion in section 29(2)(a) of the Police Complaints Authority Act should be removed so that the Police Complaints Authority is required to notify the Attorney-General and Minister of Police if, within a reasonable time after the Authority makes a recommendation to the police under sections 27(2) or 28(2), the police fail to take action that seems to the Police Complaints Authority to be adequate and appropriate.
- R30** The Ministry of Justice should review the secrecy provisions in the Police Complaints Authority Act, and make such recommendations as may be appropriate for those provisions to be repealed or amended (through the Independent Police Complaints Authority Amendment Bill) to ensure that the Act
- encourages the Police Complaints Authority to provide a reasonable level of communication with complainants on the progress of complaints
 - does not inappropriately prevent the Police Complaints Authority from investigating complaints that may result in criminal or disciplinary proceedings being taken against a member of the police.
- R31** On the enactment of the Independent Police Complaints Authority Amendment Bill, the Government should ensure that the majority of members of the Police Complaints Authority are from outside the legal profession. If this is not possible with a three-person Authority (if the Authority and the deputy are both lawyers), the Government should give consideration to promoting further legislative change to enable a five-person Authority to be appointed.
- R32** The Government should adopt a policy to ensure that those appointed as members of the Authority reflect community diversity and strengthen the community’s perception of the Police Complaints Authority’s independence.

Police disciplinary system and procedures

- R33** Those provisions of the Police Regulations 1992 that establish the disciplinary tribunal system should be revoked as soon as possible to enable a more efficient system to come into force.

R34 New Zealand Police should implement a best practice State sector disciplinary system based on a code of conduct in keeping with the principles of fairness and natural justice as part of the employment relationship.

R35 The new disciplinary system should allow independent investigation of alleged misconduct where necessary or appropriate (in accordance with sections 5A and 12 of the Police Act 1958) but should not include the use of a formal disciplinary tribunal.

R36 New Zealand Police should ensure that the human resource and professional standards functions are fully integrated in all aspects of their operations and systems.

R37 The Commissioner of Police should invite the State Services Commissioner to review the police approach to performance management and discipline to ensure their systems and processes are adequate, standardised, and managed to a standard that is consistent with best practice in the public sector.

Code of conduct for police officers

R38 A code of conduct for sworn police staff should be implemented as a matter of urgency. Subsequently, the existing code of conduct for non-sworn staff should be brought into line with the new code for sworn members.

Police Sexual Harassment Policy

R39 New Zealand Police should amend its Sexual Harassment Policy to include a requirement that any mediated resolution of a complaint of sexual harassment be finalised in writing and signed by both parties.

Police policy on inappropriate sexual conduct and relationships

R40 New Zealand Police should develop standards, policies, and guidelines on inappropriate sexual conduct towards, and the forming of sexual relationships with, members of the public. These should be incorporated into all codes of conduct and relevant policy and training materials. The standards, policies, and guidelines should be developed with the assistance of an external expert in professional ethics and should

- specify actions and types of behaviour of a sexual nature that are inappropriate or unprofessional
- prohibit members of police from entering any relationship of a sexual nature with a person over whom they are in a position of authority or where there is a power differential

- provide guidance to members and their supervisors about how to handle concerns about a possible or developing relationship that may be inappropriate
- emphasise the ethical dimensions of sexual conduct, including the need for police officers to avoid bringing the police into disrepute through their private activities.

Police email and computer use policies

- R41** Directions given by New Zealand Police management on what constitutes inappropriate use of police email and the Internet should not allow for any individual interpretation of appropriateness by police officers.
- R42** New Zealand Police should introduce a requirement that all staff sign a document to confirm that they have read and understood the acceptable use policies for the Internet and email. These requirements should be fully explained to all recruits during their training.
- R43** All police officers should be required to acknowledge that they have read and understood any changes to police computer use policies. These requirements should also be fully explained to all recruits during their training.
- R44** New Zealand Police managers should receive regular reports on the use of the Internet by their staff. This reporting requirement should be built into the early warning system that the police are developing (see recommendations R47, R48).

Ethics training and ethics committees

- R45** All New Zealand Police districts should implement a nationally consistent ethics training programme that all police officers are required to attend. Police officers should also be required to attend regular refresher courses on ethics.
- R46** New Zealand Police should ensure that the establishment of ethics committees is mandatory for all police districts. There should be a national set of guidelines to guide police districts on the purpose, operation, and membership of their ethics committees.

Early warning system and performance management

- R47** New Zealand Police should implement a nationally mandated early warning system in order to identify staff demonstrating behaviour that does not meet acceptable standards and ensure such behaviour does not continue or escalate.

R48 The early warning system should ensure that all relevant information, sufficient to give a complete picture of an officer's full record of service, is captured in a single database, and is accessible to police managers and supervisors when making appointments and monitoring performance, as well as to complaint investigators when appropriate.

R49 New Zealand Police should review its approach to performance management, including the training provided to supervisors and managers, the performance appraisal process and documentation, and the methods in place to ensure that the follow-up identified in the performance improvement plans actually occurs.

Police culture

R50 New Zealand Police should continue its efforts to increase the numbers of women and those from ethnic minority groups in the police force in order to promote a diverse organisational culture that reflects the community it serves and to enhance the effective and impartial investigation of complaints alleging sexual assault by members of the police or by associates of the police.

R51 The Commissioner of Police should invite the State Services Commissioner to carry out an independent annual "health of the organisation" audit of the police culture (in particular, whether the organisation provides a safe work environment for female staff and staff from minority groups). The need for the audit should be reviewed after 10 years.

Reporting of allegations of sexual misconduct

R52 New Zealand Police should review its current policies, procedures, and practices on internal disclosure of wrongdoing, and actively promote a single stand-alone policy for all disclosures, including (but not limited to) those made under the Protected Disclosures Act 2000. The policy should ensure that proper inquiry is always made where information received indicates that a police member or associate may have committed a sexual offence.

R53 New Zealand Police should ensure that the policy and the approach of "report and be protected" are well understood and implemented nationally.

R54 New Zealand Police should ensure that all other relevant policies, procedures, and practices are consistent with the stand-alone policy on the reporting of serious wrongdoing and the approach of "report and be protected".

R55 The New Zealand Police ethics training programme should aim to foster a culture which encourages reporting of allegations of wrongdoing by police members or police associates and provide support to those who make disclosures, consistent with the "report and be protected" approach.

- R56** New Zealand Police managers and supervisors should actively communicate to police members the expectation that they will report any allegations of sexual misconduct made against a colleague or a police associate. Police managers and supervisors should encourage and support members to report such allegations.

Community engagement and feedback

- R57** Each police district should establish groups of community representatives, chaired by recognised community leaders, which meet regularly to provide comment and feedback on police service delivery and policing issues throughout the district. Relevant information obtained from the feedback from the community should be incorporated into the police early warning system (see recommendations R47, R48).

Implementation and monitoring of police initiatives

- R58** New Zealand Police should rationalise the projects and initiatives currently in train (including those started in response to this Commission of Inquiry into Police Conduct, and the review of the Police Act 1958) and any further projects arising out of the Government's response to this report, to ensure that overlaps between projects are addressed, interdependencies are identified, priorities are assigned, and adequate resources are made available to do the work. New Zealand Police should address these issues in its annual statement of intent, and consult with the Minister of Police in respect of the priority to be given to projects.
- R59** New Zealand Police should consult with and involve the State Services Commission and other public sector agencies, where appropriate, to ensure that the projects and initiatives of the type described in recommendation R58 take account of best practice in the public sector. The Government should take steps to remove any statutory impediment to such consultation and involvement.
- R60** The Government should invite the Controller and Auditor-General to monitor, for the next 10 years, the New Zealand Police implementation of all the projects and initiatives of the type described in recommendation R58, and also the police implementation of the recommendations of this Commission of Inquiry into Police Conduct as approved by Government. The Controller and Auditor-General should report regularly to Parliament on this matter during the ten-year period.



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INTRODUCTION AND CONTEXT

- 1.1 The Commission of Inquiry into Police Conduct was convened to inquire into and report upon the conduct, procedure, and attitude of the New Zealand Police in relation to sexual assault allegations made against members of the police or associates of the police.

EVENTS LEADING TO ESTABLISHMENT OF THE COMMISSION

- 1.2 On 31 January 2004 a Rotorua woman, Ms Louise Nicholas, made allegations in *The Dominion Post* about the handling of historic rape complaints against police officers. The allegations suggested that police officers might have deliberately undermined investigations into complaints of sexual assault against other officers. Both current and former police officers were the subject of these allegations.
- 1.3 After the publication of Ms Nicholas' allegations, a Kaitia woman, Ms Judith Garrett, came forward also alleging that her rape complaint against a police officer had not been investigated properly at the time it was made.¹
- 1.4 The publication of these allegations raised serious concerns in the public mind about how New Zealand Police investigates allegations of sexual assault by members of the police.
- 1.5 On 3 February 2004 the Prime Minister, Rt Hon Helen Clark, announced that the Government would establish a commission of inquiry to carry out a full, independent investigation into the way in which the police had dealt with these allegations. In her news release of 3 February 2004 the Prime Minister said, "The Inquiry will focus primarily on issues of process. It will have a comprehensive brief, including the ability to make recommendations to avoid such circumstances arising in the future."²
- 1.6 Also on 3 February 2004 the Commissioner of Police announced that he had initiated criminal investigations into the alleged offending by current and former police officers.³ This announcement followed the establishment of a police investigative team in late January 2004. The investigation into these matters was known as Operation Austin.

COMMISSION OF INQUIRY APPOINTED

- 1.7 On 16 February 2004 the Prime Minister and the Attorney-General, Hon Margaret Wilson, announced that the Hon James Bruce Robertson and I would be the two Commissioners

1 See further: *Garrett v Attorney-General* [1997] 2 NZLR 332 (CA).

2 Rt Hon Helen Clark, Prime Minister, "Commission of Inquiry to investigate Police handling of allegations", news release, 3 February 2004.

3 New Zealand Police, "Criminal investigation reopened – Assistant Commissioner on stand down", news release, 3 February 2004.

to conduct the commission of inquiry into the allegations against members of the police with respect to sexual conduct.⁴ Justice Robertson was at that time a senior and experienced High Court judge and was also President of the Law Commission. I brought to the task a long career in the public service.

- 1.8 The warrant for the Commission of Inquiry into Police Conduct, which sets out the appointment and terms of reference, was given by Order in Council on 18 February 2004. However, as a result of the difficulties arising from concurrent criminal investigations and prosecutions, the Commission of Inquiry into Police Conduct was the subject of a subsequent Order in Council on 2 May 2005 that modified the directions to the Commission, its membership, and reporting time.

Initial Order in Council

- 1.9 On 20 February 2004 the Prime Minister announced the terms of reference for the Commission of Inquiry into Police Conduct.⁵ On the same day the Order in Council of 18 February 2004 was published in the *New Zealand Gazette*.
- 1.10 The terms of reference are published in full as Appendix 1.1 (see Volume 2). In summary, the terms of reference directed the Commissioners to inquire into and report upon
- standards and procedures established by the police as a matter of internal police policy for the investigation of complaints alleging sexual assault by members of the police or by associates of the police or by both
 - the practice of police in the investigation of complaints alleging sexual assault by members of the police or by associates of the police or by both
 - the adequacy of any investigations that had been carried out by the police on behalf of the Police Complaints Authority and that had concerned complaints alleging sexual assault by members of the police or by associates of the police or by both
 - standards and codes of conduct in relation to personal behaviour for members of the police
 - any other matters considered relevant to the inquiry.
- 1.11 The Commission was not to determine the guilt or innocence of any particular individual in relation to any alleged sexual assault or other alleged criminal offence.

Order in Council of 2 May 2005

- 1.12 On 21 April 2005 the Attorney-General, Hon Dr Michael Cullen, announced that the Government had altered the mandate of the Commission of Inquiry into Police Conduct so that it could complete its work without prejudicing any criminal prosecutions and ongoing investigations. He said that the Commission would focus on how the police responded in general to the sexual assault allegations and whether people making them were treated appropriately.⁶

⁴ Rt Hon Helen Clark, Prime Minister, “Commission of Inquiry appointed”, news release, 16 February 2004.

⁵ Rt Hon Helen Clark, Prime Minister, “Commission of Inquiry terms of reference announced”, news release, 20 February 2004.

⁶ Hon Dr Michael Cullen, Attorney-General, “Commission of Inquiry into Police Conduct”, media statement, 21 April 2005.

- 1.13 On 2 May 2005 the Governor-General, by Order in Council, issued new directions to the Commission and changed its membership and the reporting time.⁷ The Commission was directed to conduct its preliminary investigations in private and limit its public hearings; to make findings of a more general nature than those that were envisaged at the time the Commission was appointed; not to investigate any complaints that were the subject of current or ongoing investigations by the police, or were the subject of criminal proceedings before the courts; and not to give names or particulars that were likely to lead to the identification of the person who made an allegation of sexual assault or of any person alleged to have committed the assault. This Order in Council is published in full as Appendix 1.2.
- 1.14 At the same time, I was appointed as sole Commissioner. The Hon Justice Robertson asked to be discharged because of demands resulting from his responsibilities as a judge and President of the Law Commission. Shortly thereafter he was appointed as a judge of the Court of Appeal.

COURSE OF THE INQUIRY

- 1.15 As explained above, the initial course of the inquiry changed because of the new directions to the Commission issued in May 2005. These directions formalised the Commission's 2004 decision to put on hold its review of several complaints that had become the subject of police investigations into alleged criminal offending by current or former police officers. Accordingly, the Commission did not see any material related to Ms Nicholas's or Ms Garrett's allegations, or any other material related to such police investigations. The move from consideration of particular cases to developing findings of a more general nature represented a significant shift in the work of the Commission. However, it should also be stressed that from its inception the Commission was directed not to determine the guilt or innocence of any person involved in the complaints considered.

Processes of the Commission

- 1.16 From February 2004 until August 2004 the gathering of information and consultation by the Commission included the following processes:
- formally recognising four parties to the inquiry
 - seeking and considering expressions of interest from people or organisations wishing to make submissions or give information
 - holding four public meetings
 - determining that, apart from Ms Nicholas and Ms Garrett, there were 10 submitters who came forward with complaints that were considered to fall within the terms of reference
 - notifying the subjects of these submitters' complaints that the police investigation of the allegations against them was of interest to the Commission.
- 1.17 The Commission was adjourned on 27 August 2004 to avoid prejudicing certain criminal investigations under way at that time and any subsequent prosecutions.

⁷ *New Zealand Gazette*, 5 May 2005, pp. 1796–97.

Use of terms

Alleged offenders, offending

Police members or police associates who had complaints made against them alleging sexual assault or sexual misconduct are referred to in the report as “alleged offenders”. The conduct complained of is similarly referred to as “alleged offending”. (These terms are used in a broader context than their use in criminal proceedings.) The Commission’s terms of reference prohibited it from determining whether the complaints against alleged offenders were true or not.

Associates of the police

Associates of the police are defined in the terms of reference as “persons who are not members of the Police but who, whether in the capacity of friends or in any other capacity, associate with members of the Police”. The Commission later ruled that this required an ongoing (rather than an occasional) association and that the reference to “any other capacity” was intended to cover any other personal relationship that might potentially compromise the handling of a complaint.

Complainants

The term “complainant” is used in this report to refer to those making a complaint alleging sexual assault against police members or police associates, or sexual assault or sexual misconduct against police members. (This is a more general usage than the strict definition applying to people involved in certain legal proceedings.) In the vast majority of files examined relating to allegations of sexual misconduct, complainants were female. However, it should be noted that there were a few male complainants.

Evidence

Throughout my report I refer to the information available to the Commission as “evidence”, on the basis of the broad definition of that term in section 4B of the Commissions of Inquiry Act 1908:

The Commission may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the inquiry, whether or not it would be admissible in a Court of law.

Sexual assault, sexual misconduct

The term “allegations of sexual assault” is the predominant phrase used in the terms of reference. In its strict meaning, “sexual assault” refers to those criminal offences of a sexual nature which involve some form of assault, including those listed in section 185A of the Summary Proceedings Act 1957. However, the terms of reference also refer to “unprofessional behaviour ... in the context of such allegations”. At the outset of its work the Commission noted that, when the terms of reference are read as a whole, its task related to “actual assaults and other sexual offending which has been complained about”, and rejected any suggestion that it should confine its work solely to allegations of unlawful sexual conduct. The Commission was unwilling at that point to define in any more exact or limiting way the areas in which it would be interested. (Refer to the Commission ruling of 16 April 2004, Appendix 3.1)

The complaints later considered by the Commission covered a wide range of types of improper or inappropriate sexual behaviour, including sexual harassment in the workplace, which is reprehensible in the employment context even though it may not involve criminal offending. Nevertheless, some of the types of behaviour considered by the Commission (for example, forms of sexual harassment such as the use of inappropriate language) do not by any definition involve sexual “assault”.

Taking account of all these matters, the Commission uses two broad terms, namely “sexual assault” and “sexual misconduct”, to describe the range of behaviour alleged by complainants. The term “sexual assault” is used in this report to refer to sexual behaviour that involves actual or threatened physical contact of an unwanted nature; and the term “sexual misconduct” is used to refer to any other improper or inappropriate behaviour of a sexual nature, including that which would fit the accepted definition of sexual harassment in the workplace.

- 1.18 After the May 2005 Order in Council no further public hearings were held. I undertook 10 individual hearings into the particular cases that had been identified as relevant during the initial stages of the inquiry. I also heard evidence from Police Commissioner Robert Robinson, a range of other New Zealand Police staff, and specialist witnesses. Overall I held a total of 38 private hearings between June 2005 and December 2006.
- 1.19 Commission staff and I reviewed the Operation Loft files provided by New Zealand Police (see paragraph 1.29 below). These police records translated into over 600 separate physical files and contained around 55,000 documents.
- 1.20 I have provided a detailed account of the processes of the Commission as Appendix 2.

Rulings and memoranda by the Commission

- 1.21 The Commission of Inquiry into Police Conduct made its first ruling on 16 April 2004. The ruling outlined the approach to the inquiry, including its time frame, focus, and issues of legal representation. Other rulings (some confidential) followed:
- In May and August 2004, rulings were issued dealing with time frames for hearings and confidentiality for people giving evidence, and with ensuring that the Commission's programme and publicity surrounding the inquiry did not impede or influence current police investigations and possible criminal proceedings. The Commission also made two confidential rulings on whether the alleged offenders in particular complaints were indeed "associates of the police" as defined in the terms of reference; both these rulings determined that the alleged offender could not be defined as an associate of the police and consequently that the Commission could not consider these cases.
 - In August 2004 the Commission ruled that its activities would be adjourned until the Commissioner of Police confirmed that all matters of investigation and criminal responsibility were concluded.
 - In November 2005 a ruling was issued concerning a proposal to carry out a survey of people involved in supporting those who have complained of sexual assault.
- 1.22 I also issued five memoranda in December 2005, February 2006, July 2006, October 2006, and January 2007 on the basis of memoranda of legal advice received. These concerned the jurisdiction of the Commission in relation to the Police Complaints Authority; statutory interpretation of the Police Complaints Authority Act 1988; the use of the Commissioner's knowledge and experience when reporting the findings and recommendations of the inquiry; interaction between the parties and the Commission in dealing with "new" material in the draft report process; and matters raised by Counsel for New Zealand Police at a hearing in December 2006.
- 1.23 Appendix 3 lists the Commission's rulings and memoranda in chronological order. Those rulings and memoranda that can be made public are published in full as Appendices 3.1 to 3.9.

Parties to the inquiry

- 1.24 The New Zealand Police, Police Complaints Authority, and Police Association were formally joined as parties to the inquiry on 22 March 2004. On 13 August 2004, on application to

the Commission, the Police Managers' Guild was also accorded party status. Appendix 2 provides more detail of these entities and their legal representation.

- 1.25 Appendix 4 provides relevant background information on New Zealand Police.
- 1.26 Chapter 4 describes the structure and work of the Police Complaints Authority.

Time span of the inquiry

- 1.27 At its first public meeting on 22 March 2004, the Commission made clear the time frame for the complaints of sexual assault (and police investigations into those complaints) that would be the subject of its inquiry. Complaints must have been made during the 25-year period from 1 January 1979. This was the period of interest to the Commission.
- 1.28 Although the earliest date for complaints to come within the scope of its inquiry was firmly established, a Commission ruling in April 2004 (see Appendix 3.1) left open the option of considering complaints that were lodged after the initial Order in Council on 18 February 2004. In the event, 11 complaints made after February 2004 were considered by the Commission. None dated from 2006.

Police investigation files and other documents

- 1.29 The Professional Standards section at the Office of the Commissioner was directed by the Commissioner of Police to locate and retrieve all police investigation files relating to sexual offending by police since 1 January 1979. The search of police records to identify cases that related to the Commission's terms of reference was named Operation Loft.⁸
- 1.30 The search categories used by police included sexual offending, disgraceful behaviour, harassment, sexual harassment, unlawful act, and internal discipline. As a result of their search, the police identified 185 separate records (or files) of investigations into allegations of sexual offending in which the alleged offenders were police officers and the allegations were made after 1 January 1979 and were within the Commission's terms of reference.⁹
- 1.31 Operation Loft also identified 43 investigations into allegations of sexual offending by police associates. Police files are not categorised according to an alleged offender's association with police. The search for these records therefore relied on local knowledge of the alleged offending or some form of public complaint.¹⁰
- 1.32 The police told me that the records I received (about 55,000 documents) covered all the cases from the 25-year period in which the Commission was interested and included all allegations of sexual misconduct that fell within the Commission's terms of reference, whether or not they were subsequently found to be proved.¹¹

8 I am indebted to Detective Superintendent Malcolm Burgess and Detective Inspector Angela Gallagher for their diligent and painstaking work in sifting through many years of police files to complete this operation.

9 Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, pp. 2 and 3.

10 Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, p. 3.

11 Consistent with my terms of reference, investigations that were the subject of ongoing criminal investigation or prosecution were not provided to me.

Police Complaints Authority documents

- 1.33 In addition, 19 Police Complaints Authority files related to Operation Loft cases were provided to the Commission where it proved possible to secure signed consents to disclosure under the 2004 amendment to the Police Complaints Authority Act from the complainants who had triggered the investigation.
- 1.34 I did not therefore always receive the corresponding Police Complaints Authority file for each police investigation that I reviewed. However, the police file usually contained copies of correspondence between the police and the Police Complaints Authority. This enabled me to make an assessment of the interface between these two organisations.

Police policies and procedures

- 1.35 The police also provided extensive documentation covering the structure of the organisation, codes of conduct, sexual harassment and human resources policies, and other information relevant to the work of the Commission.

Review of documents

- 1.36 After the May 2005 Order in Council the Commission was required to make findings of a more general nature than originally envisaged. Commission staff and I therefore read all of the police files provided to see what issues of a general nature emerged. Letters were sent to the parties identifying issues about which I was concerned and I also asked for further information on various matters.
- 1.37 It would have been possible to conduct the entire inquiry on the basis of a document review and consideration of written communications and submissions. However, during the initial phase of our inquiry under the first Order in Council, several people, and the family of one deceased woman police officer, had been led to expect that they would either be called to give evidence or that their cases would be receiving individual attention. To meet these expectations I held 10 individual hearings into these cases, focusing exclusively on the police handling of the particular submitter's complaint. (See Appendix 2 for further detail.)
- 1.38 All other cases were reviewed on the basis of the files alone. The complainants involved in these files had chosen not to come forward to the Commission. In many instances it was some years after the alleged incident, and I felt that any contact by the Commission could possibly stir up emotions or raise expectations when neither would be appropriate.
- 1.39 The police files were useful in assessing the way the police had carried out certain types of investigations. They enabled me to identify any weaknesses or failures in the processes used in those types of investigations during the period in question, and to illustrate particular types of behaviour or attitude apparent within the police at various times. Particular examples, where mentioned, are not presented as findings about any individual police officers.

Legislative matters affecting the inquiry

- 1.40 Two bills, and their progress through Parliament, have affected the course of the inquiry: the Police Complaints Authority (Commission of Inquiry into Police Conduct) Amendment Bill and the Police Amendment Bill (No 2).

Amendment of the Police Complaints Authority Act

- 1.41 Investigation files reviewed by the Police Complaints Authority are subject to secrecy provisions in the Police Complaints Authority Act, which prevented the relevant files being made available to the Commission. In order to rectify this situation a bill was introduced into Parliament on 30 March 2004 to enact temporary provisions to enable the Commission to fulfil its terms of reference.
- 1.42 The Police Complaints Authority (Commission of Inquiry into Police Conduct) Amendment Act, which came into force on 20 May 2004, allowed the Commission to consider files covered by the secrecy provisions, subject to appropriate protections over that information.

Police Amendment Bill (No 2)

- 1.43 The Commission had carried out its work and gathered its evidence on the basis that the Police Amendment Bill (No 2) would in due course proceed. However, in March 2006 the Hon Annette King, Minister of Police, announced a comprehensive review of the Police Act 1958 and the Police Regulations 1992, which, she said, might take up to 18 months to complete. In the light of that review, the Minister noted, the Police Amendment Bill (No 2), which had sat in the order paper for several years, had been withdrawn.¹²
- 1.44 My report takes this development into account. In view of the fact that the bill has now been withdrawn, and new legislation, or replacement legislation, is not likely to be introduced until 2008, I have identified several key changes that I believe should be implemented as soon as practicable, in advance of this major legislative review. The proposed changes are discussed in later chapters in relation to improving police disciplinary processes and implementing a code of conduct for sworn police officers.

Responses to the establishment of the Commission

- 1.45 Counsel for New Zealand Police told me that the establishment of the Commission of Inquiry into Police Conduct had operated as a significant catalyst for review and change within the police.¹³ Since the establishment of the Commission in 2004, the police have launched a range of initiatives in anticipation of the Commission's report and likely recommendations. These are discussed in more detail in Chapter 8.

Reporting

- 1.46 My reporting date under the 2 May 2005 Order in Council was 3 March 2006. However, as the complexity of my task became apparent, I sought extensions to my reporting date in order to allow me sufficient time to analyse the extensive volume of material and submissions provided by the parties during the inquiry process. I was also mindful that public release of the report of the Commission of Inquiry into Police Conduct should not jeopardise the right to a fair trial of those members of the police concurrently under investigation or subject to criminal proceedings relating to complaints alleging sexual assault. Any public

12 Hon Annette King, Minister of Police, news release, "Police Act to be reviewed", 7 March 2006.

13 New Zealand Police, Closing submissions, 16 December 2005, p. 2. (For comment on the provision of references to quotations, submissions, and other information provided by the parties, refer to "Notes for readers" in the Appendices.)

discussion of these issues had the potential to be seen as making a fair trial unlikely, and therefore charges might have been dismissed.

- 1.47 In April 2006 I provided a draft report to the parties for their comment. Substantial submissions from the parties were received in May and June 2006. Further submissions followed in July, August, September, and October, culminating in a hearing in December 2006. These covered both jurisdictional and content issues. The submissions I received from the New Zealand Police were particularly extensive and detailed, and required lengthy analysis to consider all the issues raised.
- 1.48 After full consideration of the parties' feedback I finalised my report for submission to the Governor-General in March 2007.
- 1.49 After the extension to my reporting date in September 2006, I determined that there were two issues on which I would like to report in advance of my final reporting date of 30 March 2007. These encompassed matters that were the subject of proposed legislation or ongoing policy work under review at the time, and therefore I believed that my deliberations and recommendations on these topics required urgent consideration by the Government. I subsequently prepared two interim reports; one of these related to the PCA, and the other to the police disciplinary system. However, counsel for the PCA and counsel for New Zealand Police respectively made submissions that it would not be appropriate to release interim reports on these two issues at that time. After considering their submissions I decided it was unnecessary, at that time, to release the interim reports.

PUBLIC EXPECTATIONS OF THE COMMISSION AND THE POLICE

- 1.50 The Commission received a substantial amount of evidence of the good quality of policing in New Zealand, including the handling of complaints against police officers. Effective police accountability is a cornerstone of democracy and the rule of law, and how complaints against the police are handled is crucial to public perceptions of that accountability. This means that any perceived failure in the handling of complaints can severely undermine public confidence in the New Zealand Police.
- 1.51 The headlines that prompted this inquiry themselves demonstrate the level of public interest and concern that arises when the suggestion is made that the police might protect their own in the face of complaints of criminal offending.
- 1.52 The emphasis on public accountability across Government, particularly in the past 20 years, has meant that New Zealanders have a low tolerance for inefficiency, bias, or lack of transparency with respect to the handling of complaints regarding police officers' behaviour.
- 1.53 Moreover, the public expect high ethical standards from police officers, both on duty and off. This extends to sexual conduct. Although public views on sexual morality have changed significantly in the past 25 years, there exists a strong consensus in our society regarding
 - the need for professionals to exercise extreme care in entering into sexual relationships with people they have met in the course of their professional duties

- the inappropriateness of any use of a position of power to pursue a sexual relationship
- the inappropriateness of any sexual exploitation of a vulnerable person.

1.54 The police themselves place great importance on maintaining their reputation. This is reflected in general instruction IA 101 (the opening statement in the instructions for handling complaints against the police):

(1) The most critical asset of the New Zealand Police is its reputation and it is the duty of every member of Police to promote and defend it.

(2) We promote and defend our reputation by setting high professional standards for ourselves and demonstrating to the public, through our willingness to be held accountable for breaches of those standards, that we deserve their trust and confidence.

(3) It is our reputation that encourages, for example, witnesses to come forward, jurors to believe prosecution witnesses, and communities to support our search and rescue operations. Our effectiveness as a policing service is only as strong as our public support.¹⁴

1.55 The Commission was also conscious of public expectations and the expectations of individual submitters concerning its inquiry. The May 2005 Order in Council, which directed the Commission to make its findings of a more general nature, dampened some of those expectations. However, readers may still be disappointed that the report's examples of police investigations into complaints made against members of the police or associates of the police are couched in general terms with identities protected (in accordance with the Government's direction). Nevertheless, in preparing its report, the Commission was acutely aware that the examples of police investigations that it reviewed involved real people, on whom the events in question have sometimes had a lasting impact. The examples provide valuable lessons from the past, which should not be forgotten, and insights and benchmarks for the future.

14 New Zealand Police, *Ten-One*, No 90b, 28 April 1995, General Instructions Supplement, Internal Affairs, p. 3.



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STANDARDS AND PROCEDURES FOR COMPLAINT INVESTIGATIONS

INTRODUCTION

2.1 This chapter addresses terms of reference (1)(a) and (1)(b), which require the Commission to inquire into, and report upon

- (1) the standards and procedures established by the Police as a matter of internal Police policy for the investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both, and, in particular, but not limited to,—
 - (a) whether, as a matter of internal Police policy, there have been, and are now, adequate standards and procedures in place regulating the handling of such investigations by members of the Police:
 - (b) whether, if so, any standards and procedures regulating the handling of such investigations by members of the Police have been, and are being, adequately communicated to all members of the Police:

2.2 There has not been a stand-alone document that sets out the standards and procedures established by the police for the investigation of complaints alleging sexual assault by members of the police or police associates. As Detective Superintendent Malcolm Burgess told me,

Investigators are expected to apply their experience, training, knowledge and common sense. There are certain steps that should be taken in every inquiry – for example obtaining a detailed statement of complaint, identifying other evidence that may be relevant, interviewing the suspect – but the circumstances will vary from case to case.¹⁵

2.3 I was referred to several different policy documents that would be relevant to the investigation of a sexual assault complaint against a police officer or police associate, in particular,

- law and policy documents regarding internal investigations of complaints against police officers (including general instructions, legislation, and the memorandum of understanding between New Zealand Police and the PCA)
- two policy documents regarding the investigation of sexual assault allegations generally: the sexual offences section of the Manual of Best Practice; and the Adult Sexual Assault Investigation Policy (ASAI Policy)

15 Detective Superintendent Malcolm Burgess, Brief of evidence, 8 July 2005, p. 2.

Background details of relevance to this chapter

Parties to the inquiry. The Commission formally recognised four parties to the inquiry: New Zealand Police, Police Complaints Authority (PCA), Police Association, and Police Managers' Guild.

Time frame. The period of interest to the inquiry was determined in March 2004 to be the 25 years from 1 January 1979. The Commission considered police investigations of relevant complaints that had been made since January 1979.

Operation Loft. Staff from the New Zealand Police Professional Standards section at the Office of the Commissioner carried out a comprehensive search of police records to identify all cases that related to the Commission's terms of reference (known as Operation Loft). As part of Operation Loft, Professional Standards staff members were asked to locate and retrieve any files that related to allegations of sexual offending by police or associates of the police since 1 January 1979. All these files were provided to the Commission for review.

- law and policy documents relevant to disciplinary processes (including the Police Act 1958, the Police Regulations 1992, and the police general instructions).
- 2.4 To assess the adequacy of these, as required in the terms of reference, it is necessary to understand how they have developed over the period of time on which the Commission is focusing. It goes without saying that any assessment of the adequacy of police investigations carried out 26 years previously needs to take account of the policies that were in place at that time. Moreover, it must be acknowledged that, from time to time, the police have themselves found those policies to be inadequate and have amended and updated them. (Whether or not these policies were in fact followed by police officers carrying out investigations of alleged sexual misconduct by fellow officers or police associates is a matter that will be addressed in Chapter 3.)
- 2.5 Answering the questions posed by terms of reference (1)(a) and (1)(b) necessarily involves first examining in detail a very large body of general material, including legislation, regulations, written policies, manuals, and other documents relevant to the way front-line policing is governed. All of these have been subject to change over the past 25 years, sometimes by replacing old standards with new ones, but more often by adding more detailed guidelines on particular points to the existing instructions. On some occasions, standards and guidelines have been issued as new material, despite the fact that they include no changes in substance.
- 2.6 The chapter therefore describes the following matters:
- First, to give context to the discussion of standards and procedures, it describes the number and categories of complaints that were at the heart of this inquiry and the outcomes of police investigations into these complaints, and comments on how best complaints might be classified.
 - Secondly, it explains the overall structure under which police standards and procedures are issued, and comments on the adequacy of the structure.
 - Thirdly, it outlines the general policy framework that covers the handling of complaints against police officers generally, and comments on its adequacy.

- Fourthly, it summarises the policy documents specifically related to the investigation of sexual assault allegations, including the Adult Sexual Assault Investigation Policy (ASAI Policy), and comments on their adequacy.
 - Finally, it discusses communication of the relevant instructions to members of the police.
- 2.7 I have attempted to simplify and summarise the relevant material, but even so I believe the complexity of this chapter of the report demonstrates both the complexity of the task of policing and the unfortunate tendency for it to become excessively rule-bound. In their submissions and evidence neither the police nor any other party attempted to summarise and analyse the significant body of relevant policies and procedures, presumably because of the enormity of the task. To presage my conclusion with respect to item (b) of this term of reference (whether any standards are adequately communicated to members of the police), it seems to me beyond the capability of any system of communication to ensure that more than 10,000 staff are adequately briefed on such a large volume of instructions.
- 2.8 There are no formal police standards, procedures, and policies regarding the identification of associations between police officers and alleged offenders, or for the conduct of the resulting investigations. Instead, the investigation of allegations of criminal offending, including allegations of sexual assault, by police associates follows the same process as any investigation of offending. Identification of an association between an alleged offender and the police is governed by general requirements involving the independence of investigating officers and, in particular, the avoidance of conflicts of interest, although the existence of such an association may require special steps to be taken to ensure that the investigation is (and is seen to be) fair and objective.
- 2.9 These and other matters relating to police associates are discussed in Chapter 3 in the specific context of independence.

COMPLAINTS REVIEWED

- 2.10 The police provided me with extensive documentary evidence of police investigations into complaints that were of interest to my inquiry. The Police Complaints Authority (PCA) also provided files relating to certain police investigations.

Number of complaints

- 2.11 There was difficulty in trying to reach agreement about the exact numbers of complaints before the Commission. Through Operation Loft the police identified 185 records of investigations into sexual assault allegations against police officers and 43 files recording investigations into sexual assault allegations against associates of the police that fell within my terms of reference. On examination I found that 26 of the 185 files contained allegations made by more than one person against a police member, 20 contained allegations made by one person against more than one police member, and four contained allegations made by more than one person against more than one police member.¹⁶ Looked at in this way, the

¹⁶ Not all instances are of complainants coming forward to the police. There is at least one example of the police investigators “soliciting” complaints: in Operation Loft file LT 187 an officer was accused of “disgraceful conduct” in using police equipment to photograph young women naked during police work time. None of the eight young women had come forward to the police initially.

figure of 185 is potentially misleading. By this I do not seek to imply that the police have tried in any way to try to mislead the Commission. (As noted in footnote 8, I have had much assistance from Detective Superintendent Malcolm Burgess and Detective Inspector Angela Gallagher throughout my inquiry.) However, the figure is potentially misleading because it is in danger of misleading the police themselves. If, for example, the number of police members against whom sexual assault allegations were made is counted the total is 222. On the other hand, if the number of people who had made statements alleging sexual assault by a police officer is counted the total is 262.

- 2.12 On whatever basis the figures are calculated, for management and best practice purposes the figures need to be as exact and discriminating as possible. Although it might not be inappropriate to describe a single investigation into the activities of officer A and officer B with three women as “one file”, for management purposes it is important to capture in the statistics the fact that this one file was three (or possibly more) separate complaints about two separate officers.
- 2.13 I consider the clearest method of determining the number of complaints that I have reviewed is to count both the number of complainants and the number of police officers complained about. For example, where a complainant complains of sexual assault by three members of the police each complaint is counted separately although they may have been investigated as a single allegation. Similarly, where more than one complainant complains about the actions of the same police officer each complaint is counted separately. Viewed this way I have reviewed 313 complaints of sexual assault against 222 police officers that were made between 1979 and 2005.
- 2.14 In order to provide as full and as accurate a set of statistics as possible for senior management within the police, I have recommended that New Zealand Police develop its databases accordingly (see recommendation R8).

Complaints against police associates

- 2.15 The number of complaints against associates of the police can also be described in a variety of ways. In total, 59 complainants made 61 allegations against 43 associates of the police between 1979 and 2005. I have treated this as 61 sexual assault complaints against police associates that fell within my terms of reference.

Outcomes of complaints

- 2.16 The complaint outcomes of the 313 complaints of sexual misconduct against members of the police that I reviewed were as follows:
- Criminal charges were laid against 32 police members or former police members as a result of 45 complaints (because a number of officers faced multiple charges as a result of multiple complaints). This resulted in 10 offenders being convicted of sexual assault; 20 accused were acquitted; and two officers committed suicide before their cases could be heard.
 - There were 93 complaints against 48 police officers resulting in some form of internal discipline. Of these 48 officers, 22 were subject to complaints that were referred for hearing before a disciplinary tribunal; 12 officers’ cases went to a hearing, of which 10 had complaints proven against them; and nine officers resigned or disengaged prior to

a hearing. The remainder were dealt with through lower level sanctions, ranging from counselling to reprimands.

- Three complaints against three officers were resolved under the police Sexual Harassment Policy.
- Four members of the police subject to investigation as a result of five complaints disengaged or resigned during the course of the investigation (i.e. before any charges were laid or disciplinary actions taken).
- Thirteen complaints (from nine complainants) against 12 officers were found to be false.
- Two complaints were investigated but were subsequently withdrawn by the complainants.
- There were 152 complaints against 129 police members that were “not upheld”.

2.17 The term “not upheld” requires some clarification. The definition used by New Zealand Police says, “The investigation does not sustain the complaint, or establishes that the acts complained of did occur but were justified.”¹⁷ In effect this means there is insufficient evidence for the complaint to be upheld to the standard required to take criminal or disciplinary action.¹⁸ It does not necessarily mean that the allegation was false or had no substance.¹⁹ Detective Superintendent Malcolm Burgess described to me a “continuum” of complaints:

I think there will be cases where the allegation is not false but where the allegation does not amount to a criminal or disciplinary offence. In that case, unfortunately the complaint will not be upheld.

It is similar to the situation that we’ve discussed here about an allegation of rape that might be made against anyone, where there are some complaints that are false, there are some complaints that are so obviously true and there is such a wealth of evidence that you have no difficulty with, and there are a significant number in the middle that are on a continuum, I guess, where the person complaining about the event perceives that they have been done wrong but in terms of legal requirements of proving that allegation, whether it be in a criminal or a Disciplinary Tribunal, presents difficulties to us.²⁰

2.18 I comment on the adequacy of this classification approach below.

Outcomes of complaints against police associates

2.19 The complaint outcomes of the 61 complaints of sexual assault by associates of the police that I reviewed were as follows:

- Nine associates of the police were charged and convicted of sexual offending as a result of complaints by 11 complainants.²¹

17 New Zealand Police, General instruction IA 114, “Clearance Classifications”, *Ten-One*, No 90b, 28 April 1995.

18 Detective Superintendent Malcolm Burgess, Transcript of hearing, 29 November 2005, p. 13.

19 In Operation Loft file LT 56, for example, the district commander wrote to the complainant, “While there is no doubt that you were subjected to a sexual assault, it was not considered that there was a strong case for prosecution.”

20 Detective Superintendent Malcolm Burgess, Transcript of hearing, 29 November 2005, pp. 13–14.

21 One associate was also acquitted of complaints made by two other complainants (Operation Loft file LTA 43). One associate was not charged as a result of a complaint by another complainant (Operation Loft files LTA 23 and LTA 24).

- One associate was charged and received diversion²² as a result of a complaint laid by one complainant.
- Fourteen associates were charged and acquitted as a result of complaints made by 20 complainants.²³
- Charges laid against two associates as a result of two complainants' allegations were withdrawn at depositions.²⁴
- Four associates were warned as a result of complaints made by five complainants.
- Fourteen associates were not charged as a result of 19 complaints (laid by 18 complainants).
- Three complaints (laid by two complainants) against three associates disclosed no offence.

Comment on the numbers and classification of complaints

- 2.20 I have two points of concern about the numbers and classifications of these complaints.
- 2.21 My first concern relates to the clearance classification codes that are specified in general instruction IA 114: upheld, not upheld, conciliated, or withdrawn. Although the meaning of “upheld”, “conciliated”, and “withdrawn” are readily apparent, the term “not upheld” needs clarification. General instruction IA 114 defines “not upheld” as “The investigation does not sustain the complaint, or establishes that the acts complained of did occur but were justified.”²⁵ This clearance classification is unsatisfactory because it includes complaints that are likely to be true but for which there is insufficient evidence to meet the required standard of proof for disciplinary or criminal charges.
- 2.22 The police emphasised that, regardless of the formal outcome of a complaint, they are always alert to conduct that might require comment or intervention.²⁶ Despite this I am concerned that the clearance classification does not necessarily fairly reflect whether or not poor behaviour has occurred, which should prompt action from a human resources management point of view, even if no criminal or disciplinary charge is progressed.
- 2.23 Secondly, I have real concerns both about the number of complaints of sexual misconduct made against police members, and the number of complaints (141 of the 313) regarded as containing sufficient evidence on which to lay criminal charges or undertake some form of disciplinary action. Although not all of these allegations were proven, I am concerned about the effect they would have had on the organisation. I am aware from my time as chief executive of large Government organisations that certain behaviours by staff members (even a tiny proportion of staff) are a serious threat to an organisation. This is especially the case

22 The Police Adult Diversion Scheme allows police to withdraw cases from prosecution in return for first-time offenders (aged 17 years or over and who admit guilt and accept responsibility for their actions) undertaking certain actions as appropriate to the circumstances of the offence.

23 One associate was also not charged as a result of a complaint made by a complainant (Operation Loft file LTA 10).

24 One associate was also not charged as a result of a separate complaint made by another complainant (Operation Loft file LTA 41).

25 New Zealand Police, General instruction IA 114, “Clearance Classifications”, *Ten-One*, No 90b, 28 April 1995.

26 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 36. (For comment on the provision of references to quotations, submissions, and other information provided by the parties, refer to “Notes for readers” in the Appendices.)

where staff deal with members of the public in situations where they are vulnerable, and where the integrity of the members, and the perceptions of that integrity, are paramount to delivering a professional service, as in the case of New Zealand Police.

- 2.24 The police submitted that it is important not to draw conclusions from the raw number of complaints received, without recognising that the nature of policing is “likely to give rise to larger numbers of complaints, and in particular larger numbers of meritless complaints, than might otherwise be expected”.²⁷ I agree that policing by nature involves a very high degree of community interaction; the exercise of a coercive function capable of arousing antagonism; and routine contact with both vulnerable and disturbed members of the community, as well as criminals. I accept that there will always be false complaints and the police will always be vulnerable in this regard. However, in my view the number of sexual misconduct complaints against police officers, in conjunction with the number of complaints that were seen to justify some form of action being taken by way of criminal or disciplinary charges, is significant enough for the Commissioner of Police to need to be alert to the potential risk to the reputation of New Zealand Police. The figures demonstrate how important it is that the Commissioner of Police not only ensure that all complaints are taken seriously and investigated thoroughly but also provide clear guidance to his or her staff about the high standards of ethics, integrity, and conduct that are expected of police members. (I deal with this matter in more detail in paragraphs 6.101 to 6.136.)

GENERAL DESCRIPTION OF POLICE POLICY STRUCTURE

- 2.25 The standards, procedures, and policies within which the police operate are voluminous and complex. In the course of their work (including the investigation of sexual assault complaints against police officers and associates) police officers are required to follow and be guided by the instructions contained in a formidable array of documents. These are set out in Table 2.1 overleaf.
- 2.26 The police hierarchy of procedure, policy, and guidelines is headed by statutes:
- the Police Act 1958, and subsequent amendments
 - regulations made pursuant to the Police Act
 - the Crimes Act 1961
 - other Acts that specify roles for the police (for example, the Summary Proceedings Act 1957 and the Children, Young Persons, and their Families Act 1989).
- 2.27 General instructions are the primary operational and administrative documents that govern day-to-day policing. They may be issued from time to time by the Commissioner of Police pursuant to section 30 of the Police Act 1958, and all members of police are bound to “obey and be guided by” those instructions.²⁸
- 2.28 The Office of the Commissioner may also, from time to time, issue commissioner’s directives and policy pointers. These policy documents are subordinate to general instructions and take the form of detailed instructions on a specific issue. In the past, commissioner’s directives and policy pointers were known as commissioner’s circulars and headquarters

²⁷ New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 13.

²⁸ Police Act 1958, section 30(1).

Table 2.1: Hierarchy of police policy and procedures

	Authority	Documents
Legislation ▼	Primary statute	Police Act 1958 , and subsequent amendments
	Regulations	Police Regulations 1992 , and amendments
	Other legislation	e.g. Crimes Act 1961
Policy ▼	Commissioner of Police	General instructions Police commissioner's directives and policy pointers e.g. Adult Sexual Assault Investigation Policy
	District commanders	District orders
	Station commanders	Station orders
Procedures	Office of the Commissioner	Manual of Best Practice (5 volumes)

Based on a chart provided by New Zealand Police.

circulars, and had a life span of two years unless renewed or reissued.²⁹ Under regulation 5 of the Police Regulations 1992 all members are also required to “obey and be guided by” these documents.

2.29 There appears to be some potential for confusion with respect to this requirement to “obey and be guided by” the various instructions. Superintendent David Trappitt, who produced much of the documentation on policies and procedures, when questioned on the “obey and be guided by” principle, told the Commission, “That’s a level of detail I haven’t thought about. I’ve considered they were the same, the same commentary, one to add to the other.”³⁰ The police later provided an explanation on how the requirement is to be interpreted. The police stated that although some general instructions (and policy) must be applied to the letter, others require the exercise of judgment: “those that are mandatory in form must be ‘obeyed’, while others prescribe a framework within which the Police must exercise their best judgment.”³¹ The absence of any clear distinction between, or explanation of, the “mandatory” and “guidance” provisions of policies, in my view results in an unhelpful lack of clarity about matters for which police officers are accountable.

2.30 Within each police region or district, commanders have the authority to issue standing orders applicable to all their staff.³² Region orders became obsolete on 1 January 1999

29 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 5.

30 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Transcript of cross-examination by Ms Scholtens QC, 24 May 2004, p. 10.

31 New Zealand Police, Submissions in response to draft report, 20 June 2006, pp. 35–36.

32 Regulation 5(1)(a) of the Police Regulations 1992 specifies that every member of the police shall obey the applicable region orders and district orders.

when the restructure of management levels within police abolished the regional tier of management.³³ District orders, however, continue to be used as a means of ensuring consistency of practice within a particular district. The purpose of a district order may be to reinforce a particular aspect of general instructions, or a district may develop its own policies in response to a specific local policing need. It was suggested to me that, given the quantity of general instructions, district orders are considered easier for managers to “get their heads around”.³⁴

- 2.31 Police members working within a particular police station are also expected to comply with relevant station orders and guidelines. District Commander Grant Nicholls explained the difference between district orders and guidelines: “The guideline is more focused on the frontline perhaps as an aid to assist good practice. The District Order is more focused on the management, ... at Area Commander level, to ensure absolute compliance.”³⁵
- 2.32 District Commander Nicholls told me that there should be consistency between district orders, guidelines, and general instructions, and that district commanders should ensure that the district order or guideline is not in conflict with relevant general instructions.³⁶ According to Superintendent Trappitt, districts are regularly audited by the Office of the Commissioner, and report constantly on local initiatives and performance.³⁷ It is not apparent if this audit includes a review of district orders to ensure consistency with general instructions.
- 2.33 It is apparent, however, that there is no mechanism to ensure that there is consistency in policy instructions between police districts. Although district commanders meet regularly and can exchange ideas, and the Organisational Performance Group encourages districts to share best practice,³⁸ each district commander has the discretion to choose what orders or guidelines he or she promulgates and the form of those orders or guidelines.
- 2.34 In addition to formal policy documents, the Office of the Commissioner publishes manuals of instruction giving practical advice and guidance for dealing with specific crimes or incidents. The manuals were initially printed in hard copy as the Constables Manual, the Manual for Detectives, and the Operations Manual.
- 2.35 These manuals were progressively developed in the late 1980s and 1990s into one set of manuals, referred to as the “Manual of Best Practice”.³⁹ General instruction P075, reissued in 2002, directs that all members of police “should comply with the instructions laid down” in the Manual of Best Practice.⁴⁰ The manuals were designed to reduce the

33 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 9.

34 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 25.

35 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 23.

36 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 24.

37 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 22 November 2005, p. 5.

38 Superintendent Gavin Jones, Acting District Commander, Auckland City, Transcript of hearing, 17 November 2005, p. 23. (The Organisational Performance Group in the Office of the Commissioner measures police performance. According to the New Zealand Police *Annual report for the year ended 30 June 2005*, the group carries out formal progress and performance evaluations against district performance agreements every six months.)

39 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 8.

40 New Zealand Police, General instruction P075, “Operations Manual”, 25 July 2002.

number of general instructions in existence and to provide general advice on the law and on the appropriate methods for investigation or management of crime, incidents, or other occurrences.⁴¹ There are currently five volumes governing major operations, investigation support, investigation, traffic, and human resources.⁴² I received Volume 2 (Investigation Support) and Volume 3 (Investigation) as relevant for my inquiry. Together these two volumes comprised around 1,900 pages.

Adequacy of this system

2.36 It is clear to me that the current structure of police policy and procedure is unnecessarily complicated and confusing. Although this kind of multi-tiered structure was common to Government departments in the early 1980s, all Government departments of which I have experience have shifted to a simpler and more accessible policy structure.

2.37 There is nothing in the Police Act or Police Regulations that stipulates this degree of complexity. Instead, the Act empowers the Commissioner of Police to issue whatever instructions he sees fit, in whatever form is most appropriate. The police explained the need for the lower tiers of instructions (those issued at the level of district commander and below) in terms of enabling a flexible response to particular regional needs and resources (for example, traffic policing in Southland in comparison with Auckland). Although I accept this explanation, these types of instructions should be used only for a policing situation that is unique to a particular area; they should not be used for matters such as the investigation of sexual offending that are applicable to all policing districts.

2.38 Certainly there are areas of police work (in particular those related to the gathering of evidence and the conduct of criminal investigations) that require very detailed procedures be documented and followed. However, the complexity of the system seems to arise in large part from the management culture of the police over many decades. As Superintendent Trappitt informed me,

There has historically been a tendency in the Police to produce new instructions or policies in an ad hoc way, or for different individuals, with different areas of responsibility, to produce policy in different ways.⁴³

2.39 This tendency was also confirmed by Acting District Commander Gavin Jones:

it would be timely to go back and refresh our General Instructions. There are difficulties. I am guilty of it myself because every time we have a problem in district, I say to someone, “Develop a Practice Note. We need to fix this and communicate it”. That’s what we tend to do.⁴⁴

2.40 This type of practice extended to some of the police responses to the work of this Commission. For example, in evidence given to the Commission in November 2005 Police Commissioner Robert Robinson said that, in response to concerns about the procedures for

41 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 6.

42 New Zealand Police, Manual of Best Practice, table of contents provided by Detective Superintendent Malcolm Burgess, Brief of evidence, 8 July 2005.

43 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 22 November 2005, pp. 2 and 3.

44 Superintendent Gavin Jones, Acting District Commander, Auckland City, Transcript of hearing, 17 November 2005, p. 17.

appointing suitably qualified and impartial officers to investigate complaints, he intended to issue a directive to district commanders that they consult the National Manager: Professional Standards before making appointments (except in cases addressed by the District Complaint Resolution process).⁴⁵ Similarly, in response to concerns I expressed about the lack of a policy governing inappropriate sexual relationships between police officers and persons with whom they come into contact in the course of their duties, I was informed that Police Commissioner Robinson had decided there should in future be a direction to all officers on this topic.⁴⁶

- 2.41 The current system of standards, procedures, and policies needs to be overhauled for the following reasons:
- It is unnecessarily complicated, voluminous, and confusing, all of which hinder accessibility and compliance.
 - It allows inconsistencies to develop between police standards, procedures, and policies because it lacks any mechanism to ensure that they are consistent. For example, there is no requirement that the Office of the Commissioner review district or station orders, or that districts liaise with each other about the content of their orders.⁴⁷
- 2.42 The police have acknowledged that the current system is unsatisfactory, and in early 2005 established a Corporate Instrument Review Project to assess the way that policies are developed and the way the policy and corporate instrument documents fit together, with the aim of developing a standard policy framework. One of the principal objectives of this project is to ensure consistency across the whole range of police corporate documents and, as part of the project, any conflicts between existing policies will be identified and resolved. I was informed that setting up the new policy framework would take up to three years, and the ongoing review and updating would continue indefinitely.⁴⁸
- 2.43 The police are to be commended for taking this initiative after the Commission of Inquiry into Police Conduct brought into sharper focus the need for a review of police policies.⁴⁹ In my view it is vital that front-line police officers receive clear and unambiguous policy directions, and are able to quickly access and understand key policies about how to carry out their duties.

POLICY DOCUMENTS REGARDING INTERNAL INVESTIGATIONS

- 2.44 The development of policies regarding internal investigations since 1979 can be divided into four phases:⁵⁰
- phase 1: 1979 to 1989, until the establishment of the Police Complaints Authority on 1 April 1989

⁴⁵ Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, pp. 18–19. This directive is discussed later in this chapter and in Chapter 3.

⁴⁶ Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 13. This matter is discussed fully in Chapter 6.

⁴⁷ Note the comments in Chapter 3, paragraph 3.118 on inconsistency in police practice.

⁴⁸ Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 22 November 2005, pp. 2 and 3.

⁴⁹ Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 22 November 2005, p. 2.

⁵⁰ The Commission of Inquiry into Police Conduct is interested only in the policies that were applicable between 1979 and the present as explained in Chapter 1 and Appendix 2.

- phase 2: 1989 to 1994, until a memorandum of understanding was signed between the police and the PCA on 10 November 1994 concerning their working relationship in dealing with certain offences by police
- phase 3: 1994 to 2000, during which period the current general instructions regarding internal investigations were in place
- phase 4: 2000 to 2006, during which period new policy developments have responded to recent issues.

Internal investigation policies, 1979–1989

- 2.45 During this period a complaint concerning the behaviour of a member of the police was received and dealt with either by the police under instructions issued by the Commissioner of Police, or by the Ombudsman, who could receive complaints of misconduct or complaints related to the way police handled an original complaint.⁵¹
- 2.46 Concerns regarding the manner in which the police were conducting internal investigations were evident as early as 1978, when the police commissioner issued a commissioner's circular with instruction on complaints against the police:
- It is essential that complaints against the Police are conducted by the Police in a manner that leaves no room for valid criticism or give support to a campaign to impose civilian tribunals or other bodies to conduct such investigations or reviews.⁵²
- 2.47 The circular noted three key points giving rise to criticism:
- failure to bring inquiries to conclusion in a reasonable time
 - unsatisfactory standard of investigation
 - failure to adequately inform the complainant the result of inquiries.
- 2.48 The police commissioner gave the following directions:
- On receipt of a complaint, clear written directions were to be given to ensure the investigation was completed as early as possible. In serious matters an investigator who could see the matter through to the conclusion was to be appointed. If the file was not completed within six weeks it must go to the district commander; if not completed within 12 weeks, the file was to go to the police commissioner.
 - District commanders were to keep a file containing copies of complaints and to ensure all complaints were dealt with in a manner that could not give rise to criticism, and without unnecessary delay.
 - On completion of an inquiry, district commanders were to ensure that the complainant was personally informed of the result of the investigation of their complaint.
- 2.49 On 4 March 1980, a commissioner's circular confirmed that members of the police who offended against the criminal law were to be treated no differently from the general public, and in the absence of substantial reasons to the contrary, the matter should be dealt with in

51 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 11.

52 New Zealand Police, Commissioner's circular, "Complaints Against the Police", 18 August 1978.

the criminal courts.⁵³ The circular also provided that where the matter was actionable both in the criminal court and under the Police Regulations, it was to be referred to the then Police National Headquarters for a decision to ensure consistency of approach.

2.50 In July 1980 Deputy Commissioner Thompson issued a headquarters circular providing further policy direction to members of the police executive. The circular was prompted by continuing problems in the investigation of complaints against police members. It noted the principal faults with the handling of complaints against the police:

- non-assessment of the gravity of complaints
- delay in processing
- forwarding of files to staff against whom the complaint had been made to enable that staff member to submit a report
- inadequate inquiry into the true facts
- use of job sheets where statements would be more appropriate
- passing of the file from supervisor to supervisor rather than designating one member to expedite inquiries
- accepting recommendations that were not in keeping with the facts
- denigration of complainants.⁵⁴

2.51 In order to rectify this situation the circular placed greater responsibility on district commanders, suggesting that they institute a system

whereby complaints are brought to the notice of the District Commander as soon as reasonably practicable to enable him to direct the progress of the enquiry. ...

The object of these proposals is to:

- (a) Expedite enquiries into allegations of misconduct;
- (b) Improve the standard of enquiry so that our work can withstand the most rigorous scrutiny;
- (c) Establish within Districts a system whereby staff conduct can be monitored and corrective action taken when the need arises.

2.52 The circular acknowledged that in some cases, particularly the more serious ones, it might be desirable and necessary to have an investigation conducted by staff from outside the district where the event was alleged to have occurred. But as a general rule the deputy commissioner did not believe that there were any valid reasons why this should occur; instead what was required was a more professional approach.

General instruction D129 regarding internal investigations

2.53 The first general instruction regarding internal investigations that fell within the time period of interest to my inquiry was general instruction D129, issued in October 1980.⁵⁵

⁵³ New Zealand Police, Commissioner's circular, "Police Discipline", 4 March 1980.

⁵⁴ New Zealand Police, Circular from the Deputy Commissioner of Police, "Complaints Against the Police", 14 July 1980.

⁵⁵ New Zealand Police, General instruction D129, "Complaints Against Police", *New Zealand Police Gazette*, 8 October 1980.

It specified that individuals making complaints were to be treated courteously, and were not to be referred to another station except where the member being complained of was the only available person. The complaint was to be taken down in writing, a copy of which should be forwarded to the district commander.

- 2.54 Upon receipt of the complaint the district commander was directed to notify the police commissioner if it amounted to a serious breach of conduct; take a personal interest in the progress of the inquiry; and ensure that the inquiry was handled at the correct level and expeditiously. What constituted a serious breach of conduct was not defined in the general instruction.
- 2.55 General instruction D129, adopting the policy formulated in the commissioner's circular of 4 March 1980, directed that the file be forwarded to the police commissioner if a decision was required as to whether criminal or disciplinary charges were to be laid. However, there was no requirement that an investigation be reviewed by headquarters in other circumstances.
- 2.56 The general instruction set out the principles and procedures to be followed by the member assigned the inquiry. In particular, it directed that the matter be afforded due priority and a weekly progress report made to the district commander, that statements were to be taken from witnesses except in relation to minor matters where job sheets would suffice, and that the member under investigation should not be shown the file but should be interviewed about the matter.
- 2.57 General instruction D129 noted that although the character of the complainant might be an issue, it should not override the need to have the complaint properly investigated, and it directed that no pressure or suggestion be made to the complainant to withdraw the complaint.
- 2.58 It also provided that members should not investigate complaints about matters in which they were personally involved unless they were of a minor nature that could be resolved quickly.

General instructions J80–J89

- 2.59 General instructions J80–J89 replaced general instruction D129 in April 1981. General instructions J80–J89 provided comprehensive guidelines for the investigation of complaints against members of the police and included a direction that such investigations be conducted thoroughly and fairly.⁵⁶
- 2.60 General instruction J80 acknowledged that complaints could provide a useful measure of police performance and directed that every reasonable effort should be made to resolve complaints as soon as practicable. It also noted, adopting the wording of general instruction D129, that although the character of the complainant might be an issue, it should not override the need to have the complaint properly investigated.
- 2.61 General instruction J83 directed that the complaint was to be brought, as soon as practicable, to the attention of the commissioned officer on duty, and should be forwarded promptly to the district commander with a report indicating the action already taken.

⁵⁶ New Zealand Police, General instructions J80–J89, “Internal Investigations”, *New Zealand Police Gazette*, 15 April 1981.

- 2.62 General instruction J84 set out the district commander's responsibilities regarding a complaint against the police, including sending a written acknowledgement to the complainant, appointing a member at an appropriate level to conduct or supervise the inquiry, and taking a personal interest in the progress of the inquiry.
- 2.63 General instruction J84 also gave the district commander the ability, if he or she were satisfied that an allegation was vexatious or groundless, to direct that the allegation not be investigated further.
- 2.64 General instruction J85 set out the responsibilities of the officer charged with conducting the inquiry. Of particular note are paragraphs (4) and (5). The former said that the officer should not pressure a complainant to withdraw a complaint. Paragraph (5) directed that, where practicable, the officer should endeavour to resolve complaints made because of misunderstanding by discussing the matter with the complainant.
- 2.65 As with the earlier general instruction, members were instructed not to investigate complaints about matters in which they were personally involved, unless the complaint was of a non-serious administrative nature.⁵⁷
- 2.66 In 1981 Police Commissioner Walton became concerned that some members had adopted a practice of automatically warning people who wished to make a complaint against the police of the consequences of making a false complaint, even where there were no reasons for believing that a particular complaint was false.⁵⁸ The police commissioner therefore directed that unless there were reasonable grounds for believing that a complaint was false, complainants should not be warned of the consequences of making a false complaint because such a warning could discourage people with a genuine complaint, or could be seen as intimidation of complainants.
- 2.67 In the early 1980s Police National Headquarters adopted a new practice of centrally recording all serious allegations against police members. This required police districts to notify the Deputy Commissioner (Administration) of all serious allegations. These were entered numerically on a district basis in a special system in the national headquarters records, known as the serious allegations against members (SAAM) system.⁵⁹ General instruction J81 (1) defined serious allegations as
- (a) Allegations that a member of the Police has committed any crime or offence punishable by imprisonment.
 - (b) Allegations by persons arrested, detained or interviewed (or by their parent, guardian or solicitor) that they have been unjustly arrested or mistreated.
 - (c) Any other allegation that is classified as "serious" by the District Commander.⁶⁰

57 New Zealand Police, General instruction J86, "[Internal Investigations] Exclusion", *New Zealand Police Gazette*, 15 April 1981.

58 New Zealand Police, Commissioner's circular, "Complaints Against the Police", 21 December 1981.

59 New Zealand Police, Headquarters circular, "Serious Allegations Against Members (SAAM) Recording System", 3 March 1982.

60 New Zealand Police, General instruction J81 (1), "[Internal Investigations] Definitions", *New Zealand Police Gazette*, 15 April 1981.

- 2.68 Although headquarters had to be notified of all serious allegations against police members, it was not considered necessary for a completed investigation file to be sent to the Deputy Commissioner (Administration) unless he or she so directed. The final review of the file and the decision whether or not to prosecute remained the responsibility of the district commander.
- 2.69 The results of the first 18 months' operation of the SAAM system revealed a higher number of complaints than anticipated; a preponderance of complaints of excessive force; the prevalence of certain bad practices, such as a form of strip-searching in public; and that some members were featuring on more than one occasion.⁶¹
- 2.70 A canvass of all districts showed, however, that in 1982 the creation of an internal affairs section to conduct inquiries into complaints against the police was generally not wanted. Police Commissioner Walton appears to have agreed with this, because he directed district commanders to
- ensure that every complaint was promptly and properly investigated ("one of the important duties of a District Commander, especially if discipline is to remain a line responsibility within Districts")
 - consider the need for meetings with all staff to discuss disciplinary enquiries with a view to identifying and rectifying problem areas without further advice or direction from Police National Headquarters.⁶²

Refinement of general instructions J80–J89 in 1983

- 2.71 With effect from 1 January 1983 general instructions J80–J89 relating to internal investigations were revised.⁶³ Although the substance of these instructions remained largely unchanged, the 1983 revision saw the police commissioner's earlier direction that members were not to warn complainants of the consequence of making a false complaint brought into the general instructions. The commissioner's circular detailing the changes recorded the procedure regarding a new central register of complaints against police to be maintained in the Personnel Directorate at Police National Headquarters. For the purposes of the register, complaints were defined as serious allegations (as defined by general instruction J81 (1)) or misconduct (as referred to in general instruction J90), as well as any complaint from a member of the public about a member of the police that, in the view of the district commander, warranted inclusion in the register.
- 2.72 District commanders' obligations under the revised general instructions were also enhanced. General instruction J85 directed district commanders to forward a copy of a complaint to the Deputy Commissioner (Administration) within 48 hours of receipt of the complaint; and to refer complaint files to the Deputy Commissioner (Administration) for a decision on whether or not to proceed with a prosecution where the complaint file evidenced
- (a) Misconduct which may be a summary offence under statute or regulation, where charges could be preferred in either the open court or by way of disciplinary proceedings.

61 New Zealand Police, Commissioner's circular, "Serious Allegations Against the Police", 19 July 1982.

62 New Zealand Police, Commissioner's circular, "Serious Allegations Against the Police", 19 July 1982.

63 New Zealand Police, Commissioner's circular, "Internal Investigations", 15 December 1982.

- b) Complaints which have attracted a high degree of public interest or media publicity.⁶⁴
- 2.73 The 1983 revision of the general instructions relating to internal investigations also introduced processes for dealing with any person who might have made a complaint while in custody; complaint clearance codes to bring consistency into the coding of resolutions; refined processes for classifying complaints as serious or non-serious matters; and the category of discrimination as a type of serious allegation.⁶⁵
- 2.74 I was told by Superintendent Stuart Wildon that, as a result of “dissatisfaction with the way that Police handled complaints arising from the 1981 Springbok Tour”, a national Internal Affairs section was established in 1983.⁶⁶ There was initially some confusion regarding the interface between the new Internal Affairs section and the police districts. As a result, Police National Headquarters published a circular in June 1984 providing guidelines clarifying district commanders’ powers and ensuring consistency in the way they were exercised.⁶⁷ The circular set out the circumstances in which it was appropriate to deal with offending by sworn members by way of criminal charge, when recourse to an internal charge might be more appropriate, and when a warning might be appropriate.⁶⁸
- 2.75 The circular directed that police members were to be treated no differently from the general public with regard to the discretion to arrest or charge. This included treating the police no more stringently than members of the general public. However, the circular also noted that some offences that might be quite trivial when committed by a member of the public might be quite serious when committed by a member of the police.
- 2.76 The circular reiterated that the decision to prosecute or to lay disciplinary charges rested with the district commander within whose jurisdiction the offence was alleged to have been committed. If in doubt the district commander could seek the opinion of or advice from the Deputy Commissioner (Administration) or his senior staff.
- 2.77 Some police regions issued their own orders confirming the circumstances in which serious matters had to be reported to the regional commander. I was referred to a region order, published in Region 3 in 1988, that stressed the importance of the regional commander being advised of serious occurrences, incidents likely to cause embarrassment to the police, and matters of staff welfare in which the regional commander might wish to initiate a personal response. Specific matters in which reporting to the regional commander was mandatory included complaints against police members alleging a criminal act, or complaints likely to bring the district’s police generally into disrepute.⁶⁹

64 New Zealand Police, Commissioner’s circular, “Internal Investigations”, 15 December 1982. See also similar wording for general instruction J85 (2) as published in *New Zealand Police Gazette*, No. 39, 12 October 1983, p. 216.

65 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 12.

66 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 2.

67 New Zealand Police, Headquarters circular, “Criminal and Disciplinary Proceedings Against Members of the Police”, June 1984.

68 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 12.

69 New Zealand Police, Regional order, “Matters to be Reported to the Regional Commander”, 1988.

Internal investigation policies, 1989–1994

- 2.78 The second phase in the development of policies on internal investigations begins with the establishment of the Police Complaints Authority. The concept of some form of civilian oversight of the police was first considered as a result of ongoing public debate on the outcome of police internal inquiries. In 1985 the Minister of Police on behalf of the Government distributed a discussion paper setting out a series of alternatives for dealing with complaints against police.⁷⁰
- 2.79 An officials committee chaired by Sir David Beattie was established in 1986 to “prepare a draft Bill relating to the concept of an Independent Examiner of complaints relating to the Police.”⁷¹ This draft bill was subsequently adopted by the Government with only minor amendments and was enacted as the Police Complaints Authority Act 1988 (PCA Act) on 10 March 1988. The PCA came into operation on 1 April 1989.
- 2.80 The PCA was set up as an independent civilian oversight body tasked with ensuring, amongst other things, that complaints against members of police were dealt with satisfactorily. As Rt Hon Sir Geoffrey Palmer stated when introducing the second reading of the Police Complaints Authority Bill:
- However conscientiously the Police carry out their investigative function – and I am sure that they do so very conscientiously indeed – the suspicion of partiality must remain in the minds of complainants. It is fundamental to our system of justice that people should not be judges in their own cause. ...
- It is also patently clear that the public interest requires the establishment of a second complaints authority.⁷²
- 2.81 In 1989 the PCA had jurisdiction only over complaints against sworn members of police. Civilians working within the police were members of a public service organisation called the Police Department, which was considered a separate organisation from the New Zealand Police.⁷³ The Police Amendment Act 1989, which took effect on 1 March 1990, disestablished the Police Department and introduced non-sworn members as a new category of police employee. At this time the term “civilian” was replaced with the term “non-sworn”. From this point, every reference in the PCA Act to “member of the Police” was read to include non-sworn police employees.⁷⁴

General instructions P281–P292

- 2.82 As a result of this new statutory development described above, some amendment of general instructions was required. Accordingly, in the week before the establishment of the PCA, the police issued general instructions P281–P292, which gave effect to the new complaints

70 New Zealand Police, *Complaints Against Police*, Discussion paper, February 1985.

71 New Zealand, Committee on an Independent Examiner of Complaints Against the Police, *The Report of the Committee on an Independent Examiner of Complaints Against the Police*, 1986, p. 1.

72 New Zealand] *Hansard*, 16 February 1988, Vol. 486, pp. 2007–09. Rt Hon Sir Geoffrey Palmer for Minister of Police.

73 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 17.

74 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 17.

investigation procedures required by the PCA Act.⁷⁵ These instructions were promulgated without any opportunity for comment from the newly constituted PCA. However, they were to a large extent merely a reproduction of earlier general instructions relating to internal investigations, the only notable changes being

- the requirement to notify the PCA of every complaint alleging misconduct or neglect of duty by a member of the police; every complaint concerning police practice, policy, or procedure affecting the complainant in a personal capacity; and every incident involving death or serious bodily harm caused or apparently caused by a member acting in the execution of duty⁷⁶
- the introduction of a conciliation process for complaints involving alleged minor breaches of Police Regulations or offences that may be resolved by informal warnings or counselling⁷⁷ (According to general instruction P287 the responsibility for assessing whether a complaint was suitable for conciliation lay with the police and, in particular, with the investigating officer, or his or her superior. The complainant's consent to conciliation was also required.)⁷⁸
- the requirement to supply the PCA with sufficient material to enable an assessment to be made of the adequacy of the police investigation as soon as practicable and no later than two months after the completion of the police investigation.⁷⁹

2.83 Later that year the Commissioner of Police had to issue further directions regarding the interface between the police and the PCA. On 17 August 1989, the police commissioner clarified lines of responsibility for advising a complainant of the final disposition of a complaint against the police. Where a complaint was made directly to the PCA, letters advising the complainant of the result were to be sent from the PCA's office. Where the complaint was made to both the PCA and the police (and/or the Minister), letters should be sent from each organisation.⁸⁰

2.84 My attention was drawn to Tauranga District Order 89/4, promulgated in 1989, as an example of a district order giving advice on standardising the preparation of the final report into complaints against the police.⁸¹ It directed that the following headings were to be used: Introduction, Complainant(s) and the complaint, Member(s) complained about, Witnesses/independent witnesses, Reconciliation, Matters which cannot be resolved, Matters of law, Conclusions, Recommendations. The order also noted that witnesses who are other police members could not, as a general rule, be treated as being any more independent than an associate or friend of a complainant. It was not apparent

75 New Zealand Police, General instructions P281–P292, “Police Complaints Authority Act 1988”, *New Zealand Police Gazette*, 22 March 1989, pp. 105–11.

76 New Zealand Police, General instruction P281, “[Police Complaints Authority Act 1988:] Interpretation”, which sets out the requirements under sections 12, 13, and 15 of the Police Complaints Authority Act 1988, *New Zealand Police Gazette*, 22 March 1989, p. 105.

77 In general instruction IA131, “Counselling” (2002), it is defined as “advice intended to guide a member towards improving his or her conduct or performance where it has fallen below the standard expected because of inexperience, lack of knowledge, lack of training, or other reason clearly mitigating against any adverse report or reprimand”. Before 2002, counselling was included among the possible disciplinary actions in IA 122.

78 New Zealand Police, General instruction P287, “[Police Complaints Authority Act 1988:] Conciliation of Complaints”, *New Zealand Police Gazette*, 22 March 1989, p. 109.

79 New Zealand Police, General instruction P290, “[Police Complaints Authority Act 1988:] Complaint Files for National Headquarters”, *New Zealand Police Gazette*, 22 March 1989, p. 111.

80 New Zealand Police, Commissioner's circular, “Complaints to Police Complaints Authority”, 17 August 1989.

81 New Zealand Police, Tauranga District Order 89/4, “Investigations into Complaints Against the Police”, 22 November 1989.

from the documents provided to me whether other district commanders created similar orders.

Revision of general instructions P281–P292

2.85 At a meeting of the Police Executive in 1991 the Deputy Commissioner of Police introduced an internal paper for discussion regarding criticisms from the PCA over the standard of some internal investigations. The principal criticisms were listed:

- members complained of were being provided with or shown copies of complainants' statements or letters of complaint before interview or before submitting reports
- a failure by some district commanders and senior supervisors to address obvious deficiencies and relevant issues when forwarding files
- omitting to go back to a complainant and endeavour to reconcile conflicts between the original complaint and the account of the member complained of.⁸²

2.86 General instructions P281–P292, dealing with complaints investigation, were subsequently revised, extended, and republished on 15 May 1991. Among other things the new instructions included

- directions for the investigation of complaints made on behalf of another person, in particular, that the alleged victim should, if possible, be seen to confirm the allegations and the wish for an investigation⁸³ (Nevertheless, the deputy commissioner, or the regional or district commander, had a discretion to direct that an investigation be undertaken even if the alleged victim did not wish to support the complaint made on his or her behalf.)⁸⁴
- a requirement that, where the complaint was of a serious nature, district commanders make every endeavour to appoint an investigating officer from outside the section or unit to which the member complained of belonged⁸⁵
- directions to the region or district commander, when determining whether or not to charge a member with a disciplinary offence, to consider referring the file to the PCA under the consultative provisions in section 20(3) of the PCA Act⁸⁶ (In deciding whether to consult with the Authority, regard was to be given to the seriousness of the complaint and whether it would be an advantage to obtain the PCA's input before police action was determined.)⁸⁷
- an order that complaints made by an arrested person were to be investigated in the same manner as other complaints.⁸⁸

82 New Zealand Police Executive, "Police Complaints Authority – Complaints Investigations", Meeting document reference 1991/7/8.

83 New Zealand Police, General instruction P282(6), "[Police Complaints Authority Act 1988]: General Guidelines for Receiving Complaints", *New Zealand Police Gazette*, 15 May 1991, p. 130.

84 New Zealand Police, General instruction P282(7), "[Police Complaints Authority Act 1988:] Guidelines for Receiving Complaints", *New Zealand Police Gazette*, 15 May 1991, p. 130.

85 New Zealand Police, General instruction P284(1)(j), "[Police Complaints Authority Act 1988:] District Commanders' Responsibilities", *New Zealand Police Gazette*, 15 May 1991, p. 133.

86 New Zealand Police, General instruction P283(4), "[Police Complaints Authority Act 1988:] Referral of Complaints", *New Zealand Police Gazette*, 15 May 1991, p. 131.

87 New Zealand Police, General instruction P283(5), "[Police Complaints Authority Act 1988:] Referral of Complaints", *New Zealand Police Gazette*, 15 May 1991, p. 131.

88 New Zealand Police, General instruction P286(2), "[Police Complaints Authority Act 1988:] Investigating Member's Responsibilities", *New Zealand Police Gazette*, 15 May 1991, p.134.

Prosecution guidelines

- 2.87 In 1992 the Crown Law Office issued prosecution guidelines for Crown solicitors. These guidelines are also relevant to police and provide significant assistance as to the factors that should be taken into account when exercising the discretion to prosecute. According to the guidelines there are two major factors that a prosecutor must consider before deciding to initiate a prosecution: evidential sufficiency and the public interest. Evidential sufficiency requires, first, “admissible and reliable evidence that an offence has been committed by an identifiable person” and, secondly, that the evidence is “sufficiently strong to establish a prima facie case”. An assessment of the public interest will vary depending upon the circumstances of each case. According to the guidelines, “A dominant factor [in making this assessment] is that ordinarily the public interest will not require a prosecution to proceed unless it is more likely than not that it will result in a conviction.”⁸⁹ These guidelines continue to govern police exercise of the discretion to lay charges against a suspect today.

Internal investigation policies 1994–2000

- 2.88 The third phase in the development of policies on internal investigations can be dated from 10 November 1994 when the Commissioner of Police and the Police Complaints Authority signed a memorandum of understanding defining the working relationship between police and the PCA in relation to incidents of serious misconduct or serious neglect of duty that were reported by members of the police (that is, by colleagues of the officer concerned, rather than by the alleged victim or a third party).⁹⁰ According to the memorandum, when any serious misconduct or any serious neglect of duty was reported, the police commissioner should notify the Authority as soon as practicable. Serious misconduct or neglect of duty was defined as conduct that constituted a criminal offence, or was of such significant public interest as to put at risk the reputation of police. This memorandum remains in effect today.

General instructions IA 100–IA 132

- 2.89 A substantive revision of police general instructions relating to internal investigations was undertaken in 1995, and general instructions IA 100–IA 132 replaced general instructions P281–P292 on 28 April 1995.⁹¹
- 2.90 General instructions IA 100–IA 132 remain in force today. Although they were reissued in 2002, this was a change in format with only one substantive change to the content of the instructions.⁹² Therefore, although many aspects of these general instructions are similar to earlier instructions, I have set out what they provide in detail in order to assess their adequacy in today’s environment.

⁸⁹ New Zealand Crown Law Office, *Crown Law Office Prosecution Guidelines for Crown Solicitors*, 1992. Refer 3.1 “Evidential Sufficiency” and 3.2 “The Public Interest”.

⁹⁰ New Zealand Police and Police Complaints Authority, “Memorandum of Understanding between the New Zealand Police and the Police Complaints Authority”, 10 November 1994. In: New Zealand Police, *Ten-One*, No 90b, 28 April 1995, p. 18.

⁹¹ New Zealand Police, “General Instructions Supplement: Internal Affairs Complaints, Discipline and Procedure – IA 100–IA 132”, *Ten-One*, No 90b, 28 April 1995.

⁹² Counselling, which was listed as a disciplinary sanction in IA 122 of the 1995 general instructions, is now governed by its own general instruction (IA131, 2002).

- 2.91 The general instructions draw internal investigation and disciplinary procedures into a consolidated set of instructions. They are divided into six sections: an introductory section; a section setting out the complaints procedure for internal investigations; a section outlining “District Complaint Resolution” procedures; a section outlining the disciplinary procedures; a section outlining the whistle-blower protection process; and an administrative section. These are summarised below (paragraphs 2.92 to 2.119). There is also an annex containing a copy of the 1994 memorandum of understanding between the police and the PCA, referred to above.

Part I: Introduction

- 2.92 The introductory section outlines two essential themes underlying these general instructions, which are to be administered by the officer in charge of Internal Affairs at Police National Headquarters (now known as Professional Standards at the Office of the Commissioner):
- First, there is to be speedy reporting of complaints to the PCA. The general instructions recognise that the PCA has jurisdiction over every complaint made against the police and that it is the PCA that determines the manner in which a complaint is to be investigated or if it is to be investigated at all.⁹³ In order to facilitate this, police members are required to notify the PCA of the receipt of a complaint “as soon as practicable”,⁹⁴ although this term is not defined in the general instructions.
 - Second, the PCA has the right to make recommendations regarding the disposal of the complaint before police action is taken. Upon the completion of a complaint investigation, the PCA should be informed of the police proposals regarding the disposal of the complaint. The PCA can then make its own recommendations, and if necessary, negotiations can be entered into regarding the final dispositive action to be taken. The general instruction noted, however, that the final decision on disposal rests with the police.⁹⁵
- 2.93 General instruction IA 101 recognises that the most critical asset of New Zealand Police is its reputation. It is the duty of every member of the police to promote and defend the police’s reputation. This is achieved by setting high professional standards and demonstrating to the public, through a willingness to be held accountable for breaches of those standards, that the police deserve the public’s trust and confidence.
- 2.94 The primary objective of an investigation is said to be to ensure that both the complainant and the member under investigation believe that they have been treated fairly.⁹⁶

Part II: Complaints Procedure

- 2.95 The procedure for the investigation of complaints against police members is set out in general instructions IA 103–IA 118.⁹⁷

93 New Zealand Police, General instruction IA 100(3)(a), “Principal themes in respect of complaint procedures”, *Ten-One*, No 90b, 28 April 1995.

94 New Zealand Police, General instruction IA 103(2), “The Police Complaints Authority Act 1988” and IA 105(1), “Referral of Complaints”, *Ten-One*, No 90b, 28 April 1995.

95 New Zealand Police, General instruction IA 103, “The Police Complaints Authority Act 1988”, *Ten-One*, No 90b, 28 April 1995.

96 New Zealand Police, General instruction IA 101(5), “Internal Investigations and the Reputation of the New Zealand Police”, *Ten-One*, No 90b, 28 April 1995.

97 New Zealand Police, General instructions IA 103–IA 118, *Ten-One*, No 90b, 28 April 1995.

- 2.96 General instruction IA 103 sets out the requirements of the PCA Act and police obligations under the 1994 memorandum of understanding. It notes that the PCA Act does not prevent the police from commencing or continuing any investigation and that it is expected that the police will continue to have the primary complaint investigation role in respect of any complaint or incident.
- 2.97 The general guidelines for receiving complaints against members of police are set out in general instruction IA 104. This instruction sets out the obligation on the police to receive a complaint against a member of police when a complainant first approaches the police. According to this instruction the complainant should not be asked to return or call another day to deal with some other staff member or section. Nor should the complainant be referred to another station except where the member complained of is the only person readily available to take a complaint. In these circumstances a brief report should be submitted to the district commander.
- 2.98 In order to obtain an accurate record of the complaint, general instruction IA 104 directs that a complaint that is made orally is to be reduced to writing and signed by the complainant as soon as practicable. If the matter is not a complaint but an expression of dissatisfaction, then every effort should be made to resolve it by means of an explanation to the satisfaction of the inquirer.
- 2.99 The police recognise in general instruction IA 104 that a complainant may experience difficulties in making a complaint to the police. To manage this situation, police members are directed to advise any complainant who is unable or reluctant to call at a police station that arrangements could be made to take the complaint elsewhere.
- 2.100 The general instructions inform members of police that a complaint can be recorded in the presence of the complainant's solicitor, friend, or relative if the complainant wishes. (This instruction, I presume, is also designed to make it easier for a complainant to make a complaint. However, there is no requirement that the police inform the complainant of his or her right to have a support person present, which, it seems to me, defeats the purpose of this instruction.)
- 2.101 General instruction IA 104 also places obligations on members of the police to ensure that the complainant is appropriately treated:
- Every complainant is to be treated courteously.
 - The character of the complainant is irrelevant to receiving a complaint.
 - Every complainant is to be advised of the procedure to be followed in actioning his or her complaint.
 - A complainant should not be warned of the consequences of making a false complaint unless reasonable grounds exist for believing the complaint is false and it is appropriate for such a warning to be given.
 - Where a complaint is made by a person in police custody, he or she should be questioned only on matters directly relating to the allegation.
- 2.102 Where a complaint is made on behalf of another person, police officers are directed to see the person said to be aggrieved in the first instance to confirm the allegations and the wish for an investigation. (I note that in these circumstances an investigation can still be

undertaken even if the person said to be aggrieved does not wish to support the complaint made on his or her behalf.)

- 2.103 When a complaint has been received, police members are directed to refer the complaint as soon as possible to a supervising commissioned officer. The commissioned officer will issue appropriate instructions where any matter requires early attention and will ensure the file reaches the district commander, who, in turn, will arrange to notify the PCA.⁹⁸
- 2.104 District commanders, supervisors, and investigators are encouraged to consult with the Internal Affairs section and the PCA if they require guidance at any stage of a complaint investigation.⁹⁹ Consultation with the PCA is to be facilitated through the officer in charge of Internal Affairs.¹⁰⁰
- 2.105 General instructions IA 108 and IA 109 set out the district commander's responsibilities:
- monitoring complaints against his or her staff by maintaining a district register of complaints
 - notifying all interested parties of the receipt of a complaint, in particular,
 - notifying the officer in charge of Internal Affairs of a complaint immediately when it involves a serious allegation or matter likely to attract publicity, and as soon as practicable where the complaint is of a less serious nature
 - notifying the PCA as soon as practicable of a complaint
 - providing a written acknowledgment of the complaint to the complainant (including where possible the name of the investigating officer)
 - advising the police member who is the alleged offender of the substance of the complaint (unless there is good reason not to do so) and of the result of the investigation
 - overseeing the investigation of a complaint, including
 - appointing a staff member of appropriate rank to conduct or supervise the inquiry, and giving consideration to appointing an investigator from outside the section or district if necessary
 - ensuring that the investigation is completed as quickly as practicable
 - and if the complaint is upheld, proposing the appropriate action to be taken, and forwarding the completed investigation file to the officer in charge of Internal Affairs advising him or her of the appropriate clearance for a particular complaint.
- 2.106 General instruction IA 108 also gives a district commander the ability to suspend the investigation of a complaint if he or she considers the allegation to be trivial, frivolous, vexatious, not made in good faith, or the person alleged to be aggrieved does not desire further action to be taken. In these circumstances a report must be submitted to the officer in charge of Internal Affairs for forwarding to the PCA.

98 New Zealand Police, General instruction IA 105, "Referral of Complaints", *Ten-One*, No 90b, 28 April 1995.

99 New Zealand Police, General instructions IA 106, "Consultation with Internal Affairs Section" and IA 107(1), "Consultation with the Police Complaints Authority", *Ten-One*, No 90b, 28 April 1995.

100 New Zealand Police, General instruction IA 107, "Consultation with the Police Complaints Authority", *Ten-One*, No 90b, 28 April 1995.

- 2.107 Of significance to the appointment of an investigating officer is general instruction IA 110, which directs that a police member shall not investigate any complaint in which he or she was personally involved (unless the complaint is of a minor administrative nature), nor review his or her own decisions.
- 2.108 General instruction IA 111 stresses the pivotal role of the investigator in promoting the credibility of the complaints system, and notes that the investigation must be conducted thoroughly and in an unbiased manner to ensure the public's confidence in the ability of the police to conduct internal investigations. The investigation must address not only the substance of the complaint but also any incidental and material matters (administrative or operational matters) arising in the course of the investigation.
- 2.109 The investigator's primary responsibility in the investigation of complaints is to the Commissioner of Police. Thus, even where the PCA has elected to oversee a police investigation, the investigator is obliged to regularly update the officer in charge of Internal Affairs and follow any instructions given by him or her in the course of the investigation.¹⁰¹
- 2.110 Before commencing the investigation the investigator is directed to personally visit or telephone the complainant without delay to, amongst other things,
- clarify the circumstances and nature of the complaint and obtain any additional information from the complainant
 - explain how the complaint will be investigated
 - explain the functions of the PCA.¹⁰²
- 2.111 General instruction IA 111(5) requires the investigator to use the same skills and diligence in a complaint investigation as would be used in any criminal investigation. Investigators are directed to
- interview the police member who is the alleged offender and put the allegation to him or her
 - maintain effective liaison with complainants or their solicitors
 - provide progress reports at four-weekly intervals to the officer in charge of Internal Affairs
 - provide progress reports to the district commander as frequently as required by local district orders.
- 2.112 At the completion of the investigation the investigator is to visit the complainant personally to explain the outcome, and is to prepare a report setting out the evidence, a conclusion supported by that evidence, and the proposed corrective or remedial action. The file is to be submitted to the district commander for forwarding to the officer in charge of Internal Affairs.¹⁰³
- 2.113 General instruction IA 112 states that a complainant wishing to withdraw a complaint must do so in writing. The investigator must be satisfied that the complainant made an

101 New Zealand Police, General instruction IA 111(2), "[Investigator's Responsibilities:] Relationship between Investigator and Police Complaints Authority", *Ten-One*, No 90b, 28 April 1995.

102 New Zealand Police, General instruction IA 111(4), "[Investigator's Responsibilities:] Complainant", *Ten-One*, No 90b, 28 April 1995.

103 New Zealand Police, General instruction IA 111(6), "[Investigator's Responsibilities:] Completion Action", *Ten-One*, No 90b, 28 April 1995.

informed decision; and shall consider whether there is any evidence of misconduct or neglect of duty, and if so, ensure that the matter is investigated and the appropriate action taken.

- 2.114 General instruction IA 113 directs that conciliation, where appropriate, should be considered in all complaints. (I note the ambiguity in this instruction, which contains both discretionary (“where appropriate”) and mandatory language.)
- 2.115 Four clearance classification codes are specified in general instruction IA 114: upheld, not upheld, conciliated, or withdrawn (as mentioned earlier at paragraph 2.21).

Part III: District Complaint Resolution

- 2.116 General instruction IA 119 sets out the process for resolving minor complaints locally. Only the PCA can decide whether a complaint is a minor complaint to be dealt with in this manner.
- 2.117 A further discussion of the District Complaint Resolution procedure and practice can be found in Chapter 4.

Part IV: Disciplinary Procedures

- 2.118 General instructions IA 120–IA 130 set out disciplinary procedures for sworn staff suspected of having committed a criminal offence, or any misconduct or neglect of duty pursuant to regulation 9 of the Police Regulations 1992.¹⁰⁴
- 2.119 The non-sworn code of conduct governs discipline of non-sworn members except in relation to duty stand down and the availability of diversion to those charged with an offence.¹⁰⁵
- 2.120 A full discussion of disciplinary procedures and practices can be found in Chapter 5.

Internal investigation policies, 2000–2006

- 2.121 During the period since 2000 several policy developments have occurred, either nationally or in police districts, responding to particular issues arising (including latterly those related to the work of this Commission of Inquiry into Police Conduct).
- 2.122 In March 2000, the national manager of Internal Affairs (now Professional Standards) wrote to district commanders noting, among other things, new time frames within which internal inquiries should be completed. In particular, he specified that a preliminary report should be submitted within six weeks and the full investigation completed within three months of receipt of a complaint. A complaint classified as appropriate for District Complaint Resolution was to be completed within two months.¹⁰⁶

104 New Zealand Police, General instructions IA 120–IA 130, “Disciplinary Procedures”, *Ten-One*, No 90b, 28 April 1995.

105 New Zealand Police, General instruction IA 120(2), “[Introduction:] Nonsworn Members”, *Ten-One*, No 90b, 28 April 1995. For information on diversion, see footnote 22.

106 New Zealand Police, Letter, Superintendent P. R. Nickalls, National Manager: Internal Affairs, to Superintendent M.F. Lammas, District Commander, Central District, 28 March 2000.

- 2.123 The district commander of Central Police District informed his subordinates of the new requirements in a memorandum dated 29 March 2000.¹⁰⁷ This memorandum noted that, in general, extensions would be contemplated only if there was a reason connected to the availability of evidence, and that a higher priority for internal investigations was now required. It is unclear how other district commanders communicated the new time frames to their staff or if they also considered that a higher priority was now required in terms of internal complaint investigations.
- 2.124 The district commander of Eastern Police District issued two district orders in June 2000. The first directs that the district commander is to be notified immediately or as soon as practicable about, inter alia, any serious complaints against the police, and any incidents where there is likely to be public (media) attention that will be critical of police actions.¹⁰⁸
- 2.125 The second district order provides further operational direction and guidance on internal investigations.¹⁰⁹ The district order reiterates that general instructions IA100–IA132 are to be complied with, and summarises the procedures to be followed. In general the requirements of this district order follow those laid out in general instructions IA100–IA132, with the following differences:
- The area controller is to appoint the investigator, and the complainant must be consulted to ensure that there is no conflict. Once the appointment is made the district commander is to be notified.
 - There is no requirement for investigators to advise Professional Standards at the Office of the Commissioner of progress. District headquarters submits a monthly report schedule outlining the status of complaint investigations and consequently investigators need only advise the district of progress. This direction appears in direct contrast to general instruction IA 111(5)(c), which states that the investigator shall

provide progress reports at four-weekly intervals to the O/C Internal Affairs or more frequently as directed by the O/C Internal Affairs. A detailed but brief progress report should indicate the present state of the investigation, the inquiries yet to be conducted, and the likely completion date;¹¹⁰
- 2.126 In response to the first of these two district orders, the Gisborne area controller issued a station order in 2000 directing that he be notified immediately or as soon as practicable about any serious complaints against the police, and any incidents where there was likely to be public (media) attention that would be critical of police actions.¹¹¹
- 2.127 A desk file was created in 2002 for use by Professional Standards investigating officers, containing standard forms and precedent forms regarding notification of investigation,

107 New Zealand Police, Memorandum, Superintendent Mark Lammas, District Commander, Central District, to area commanders, station commanders, district headquarters managers, and Senior Sergeant Thorne, Central District, 29 March 2000.

108 New Zealand Police, Eastern District Order No. 4, “District Commander – Advice Regarding Serious Crime/Incidents”, issued by Superintendent P. D. Moore, District Commander: Eastern District, June 2000.

109 New Zealand Police, Eastern District Order No. 6, “Investigation of Complaints Against Police”, issued by Superintendent P. D. Moore, District Commander: Eastern District, June 2000.

110 New Zealand Police, General instruction IA 111(5)(c), “[Investigator’s Responsibilities:] Investigation Procedure”, *Ten-One*, No 90b, 28 April 1995.

111 New Zealand Police, Station Order 2000/22, “Advise [sic] Regarding Serious Crime/Incidents”, issued by Inspector Bruce Blayney, Area Controller, Gisborne, [June 2000].

notification of an intention to report a member to the District Commander (Regulation 12 Notice), specimen charges, duty stand down, proposal to suspend from duty, suspension from duty, reporting to the PCA, and letters accepting resignation.¹¹² This desk file represents an attempt to ensure consistency in approach between police districts.

- 2.128 General instructions IA 100–IA 132 were republished (as IA100–IA133) between May and July 2002. As mentioned earlier, these general instructions differ only in format from the instructions that were published in 1995.¹¹³
- 2.129 In October 2002, the Professional Standards national manager wrote to district commanders and district complaints managers recording concern about the practice of withdrawing criminal charges in relation to an incident from which an unresolved complaint against an officer has flowed. The letter directed that criminal charges should not be withdrawn in cases where there is a related and unresolved complaint against the police unless the district complaints manager has been consulted.¹¹⁴
- 2.130 On 6 April 2005 the Commissioner of Police and the Authority signed a protocol for cooperation. The purpose of the protocol was to define the working relationship between the Commissioner of Police and the PCA in relation to the investigation of complaints and incidents. The following points were agreed under the protocol:
- All serious complaints and incidents would be reported immediately to the Commissioner of Police (through the Professional Standards national manager).
 - The Professional Standards national manager would notify the PCA of all serious complaints and incidents as soon as possible.
 - The PCA would advise the Professional Standards national manager whether or not PCA investigators would be assigned, and whether the PCA required any specific action by the police.¹¹⁵
- 2.131 The protocol makes certain stipulations where a PCA investigator is assigned to an investigation:
- The PCA investigator will advise the officer in charge of the police investigation and the Professional Standards district manager of the PCA's proposed investigation and of any specific concerns or requirements of the PCA.
 - The police will, as soon as practicable, comply with all requests for information and assistance from PCA investigators and will supply them with all relevant documentation.
 - PCA investigators should be invited to attend relevant briefings, debriefings, and orders groups.
 - In undertaking whatever inquiries are appropriate in the interests of the PCA, the PCA investigators will have regard to the possibility of criminal or disciplinary charges. If there is a possibility that disciplinary or criminal charges could result from the

112 New Zealand Police, Professional Standards Desk File, [2002].

113 Detective Superintendent Malcolm Burgess, Brief of evidence, 8 July 2005, p. 2.

114 New Zealand Police, Letter, Superintendent G.P. Emery, National Manager: Professional Standards, to district commanders and district complaints managers, 21 October 2002.

115 New Zealand Police and Police Complaints Authority, "Protocol for Co-operation between the New Zealand Police and the Police Complaints Authority", 6 April 2005.

investigation, the PCA investigators will defer interviews with police officers under investigation, complainants, witnesses, and experts until police interviews have been carried out. This direction is given because of the statutory secrecy provisions that apply to investigations carried out by or on behalf of the PCA whereby information gathered by PCA investigators cannot be used in criminal or disciplinary proceedings. These matters are discussed further in Chapter 4.

- PCA investigators may request that police interviews deal with matters of interest to the Authority, and police interviewers shall, as far as the circumstances of their investigation permit, meet such requests.

2.132 As part of internal reviews being undertaken within police after the establishment of this Commission of Inquiry into Police Conduct, Police Commissioner Robinson issued a memorandum on 24 November 2005 to district commanders and the Police Executive regarding the appointment of officers to investigate complaints or allegations of a serious nature. The memorandum requires all district commanders to consult the Professional Standards national manager when determining who should investigate a complaint (other than for complaints dealt with under the District Complaint Resolution process). The purpose of this is to ensure that the principles of independence are appropriately applied, and to ensure consistency of decision-making.¹¹⁶

ADEQUACY OF THE INTERNAL INVESTIGATION POLICIES

2.133 The history outlined above shows a process of steady improvement in the direction and content of policies and procedures for investigating complaints against police officers. My impression, setting this development alongside the files I have read in chronological order, is that New Zealand Police has achieved in the past decade a high level of general competence in the matter of internal investigations. The files from the past decade show a marked improvement over those from earlier years, which may be attributed, in part, to the development of the policies regarding internal investigations.

2.134 Having said that, there do appear to be some areas of concern in relation to police policy that continue to require attention:

- the policy with regard to notifying complaints to the Commissioner of Police
- a question of how well members of the public understand their rights to make a complaint; and their rights when they have made a complaint
- the ad hoc nature of policy development in this area.

Notification to the Commissioner of Police

2.135 The general instructions require that the Professional Standards national manager is notified of every complaint made against a police member as soon as is practicable and is immediately notified of every complaint that is of a serious nature or likely to attract media attention. The Professional Standards national manager reports to the Deputy Commissioner of Police (Operations), who, it is presumed, will then brief the Commissioner of Police. However, there is no direction in the general instructions, nor any of the police policies placed before

116 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, Attachment 1 (dated 24 November 2005).

this Commission, that the Commissioner of Police is to be notified of a complaint and when he or she is to be notified. The only reference to notifying the Commissioner of Police about a serious complaint that I am aware of is the procedure set out in the protocol for cooperation with the PCA, which applies to very few complaints (see Chapter 4). This omission is of particular concern if the allegation could amount to a serious criminal offence or misconduct, or if it is likely to attract media publicity.

- 2.136 There should be no doubt over whether the Commissioner of Police should be informed of serious complaints, and I was told by the police that the police commissioner is, in fact, informed almost immediately of very serious complaints.¹¹⁷ Nevertheless I recommend that policy clearly specify the type of complaint that must be notified to the Commissioner of Police immediately, and the type of complaint that must be notified to the commissioner as soon as practicable. This direction should also specify who is to notify the police commissioner.

Rights of the public when making a complaint

- 2.137 It is not clear to me that members of the public are sufficiently aware of their rights: first, their right to make a complaint, and second, their rights as a complainant. Other public sector service delivery organisations clearly communicate to the people with whom they interact the standards of service they can expect, and also how to make a complaint about the services they receive. Very often these expectations are publicly displayed. In the case of the police, the general instructions currently in force clearly recognise that complainants have rights: the right to be treated courteously and with respect, the right to object if they feel that the investigating officer may be biased, the right to be informed of the investigation's progress, and so on. What is not clear is whether those rights are adequately and systematically explained to the public, particularly to complainants.
- 2.138 There are a number of models used by public service providers, such as a service charter or a code of rights that "uses simple and consistent messages" to inform and empower those using the services and making complaints and help staff understand how they should approach their role.¹¹⁸ This seems to me particularly important for sexual assault complainants. I believe that the police should introduce something similar whereby the rights of complainants (as contained in the general instructions) are clearly set out in a readily accessible manner. Existing models, such as the Inland Revenue Charter, about which I heard evidence, and the Code of Health and Disability Services Consumers' Rights, may provide useful guidance.
- 2.139 In addition to a service charter, I believe it is important that members of the public are able to access information on the complaints process with relative ease. This should be a matter for periodic survey to ensure that there is awareness amongst the general public that there are processes for making a complaint and that they have defined rights when doing so. As a start, it may be helpful for police stations to display large public notices explaining the complaints procedures.

117 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 36.

118 Mr David Butler, Commissioner of Inland Revenue, Transcript of hearing, 7 December 2005, pp. 9–10.

Ad hoc nature of policy development

- 2.140 I was concerned at the apparent ad hoc manner in which policy has been developed and implemented, particularly between 2000 and 2006. I could not discern any clear rationale for including important matters (such as the new time frames for conducting internal investigation and appointing investigating officers) in a commissioner's directive rather than a general instruction.
- 2.141 I was told by Police Commissioner Robinson that there is a "very formulaic process" involved in amending the general instructions, which involves the police commissioner of the day receiving recommendations to amend the general instructions and then signing them off personally. He also told me that there is no process for automatically updating the general instructions when changes occur that have an impact on them, for instance as a result of new legislation, or changes in policy and practice occurring as a result of a commissioner's directive.¹¹⁹
- 2.142 Directives issued by the Police Commissioner do not have the status of general instructions. It is also not the practice to update general instructions to reflect directives that have been issued. For example, general instruction IA 108 has not been amended to ensure consistency with Police Commissioner Robinson's directive of November 2005 regarding the appointment of investigators to internal complaint investigations.¹²⁰
- 2.143 Directives are placed on the police intranet as policy pointers, and in this way become available to all staff.¹²¹ However, directives are not necessarily addressed to those staff who may be affected by them. Police Commissioner Robinson told me that his directive of November 2005 was couched as an instruction to members of the Police Executive, because they were the only members that needed to comply with it and giving the direction to them would bring about the level of change he wanted. As such, it was also unnecessary to include it in the general instructions until they were next reviewed.¹²² I am concerned by this reasoning given the significant involvement of such people as the district complaints managers, area controllers, and supervisors in the management of complaints against police officers. Although general instruction IA 108 specifies that it is the district commander's decision who to appoint as investigating officer, there are obvious implications for other staff who assist with such matters or have authority to act under delegation. These people should be aware of any changes to policy that may affect their work.
- 2.144 I heard evidence in other areas that the general instructions tend to be written to address a particular issue, without relation back to other general instructions that exist. I was told for instance by Mr Wayne Annan, New Zealand Police General Manager: Human Resources, that there does not appear to be a rigorous process of aligning the human resources policy with relevant legislation in the human resources area.¹²³

119 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, p. 20.

120 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, pp. 19 and 20.

121 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 37.

122 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, p. 20.

123 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, pp. 10 and 11.

2.145 In my view the police need to develop

- a clearer policy development framework, which recognises that general instructions are the most appropriate way of ensuring consistent practice, addresses the need for both national consistency and regional flexibility where each is appropriate, and provides the police commissioner with clearer processes for revising instructions and ensuring compliance
- a process for ensuring that the general instructions are automatically updated when a change is made to an existing policy, for example, by way of a commissioner's directive
- an enhanced policy capability to provide policy analysis that draws upon the experience of front-line staff and upon research from New Zealand and beyond.

POLICIES AND PROCEDURES IN RESPECT OF SEXUAL ASSAULT ALLEGATIONS

2.146 The past 25 years have seen significant changes in the way that adult sexual assault allegations have been investigated by the police, including those involving complaints against police officers. These were driven in large part by the following trends:

- changes in social attitudes towards sexual violence
- changes in the law regarding crimes of sexual violence and evidence in such cases (for example, the question of corroboration)
- emergence of support groups to support victims and enable them to speak out
- greater understanding by professionals of the traumatic impacts of sexual violence and how this affects, for example, the way they present to the police.

2.147 The development of police standards, procedures, and policies since 1979 regarding the investigation of sexual assault allegations can be divided into four phases (these differ from the phases described previously relating to internal investigations in general):

- phase 1: 1979–1982, during which period the investigation of sexual assault complaints was governed by the 1964 Manual for Detectives
- phase 2: 1983–1985, during which period the sexual assault investigation sections of the Manual for Detectives and the Constables Manual were revised
- phase 3: 1986–1997, during which period significant changes to the law relating to sexual offences were made and new police policy documents issued
- phase 4: 1998–2006, during which period the ASAI Policy was promulgated and the Manual of Best Practice most recently updated.

Sexual assault investigation policies, 1979–1982

2.148 Before 1983 the investigation procedure for dealing with allegations of sexual assault was set out in a 1964 Manual for Detectives. This covered practice in interrogation; interviewing witnesses; investigating the offences of indecency (females), indecency (males), rape, and unlawful sexual intercourse; and the elements to be established for proving those offences.

2.149 The manual provided a detailed summary of how an investigation should proceed, and directed the officer to keep in touch with the complainant. The substance of the manual reflects the attitude prevalent when it was first published. Consider, for example, the

wording used by the manual in directing the investigator to consider whether the complaint was genuine:

False complaints in respect to offences of rape are not uncommon. Women often consent in the heat of passion and later make false complaints due to:

1. Fear of pregnancy
2. Shame
3. Revenge
4. Notoriety
5. After finding of seminal stains – allegation made in response to questioning to cover the indiscretion. (Complaints made under duress of parents or friends.)
6. Excuse by young women for arriving home late and in a dishevelled condition. (Complaints made under duress of parents or friends.)

If through lack of corroboration by failing to find any evidence at scene, or through medical examination, and the complainant's conduct and demeanour is not impressive, you are of the opinion the complaint may not be genuine you must closely interrogate her on this point before taking a written statement. Endeavour to speak to her alone as the influence of parents or friends may continue if present.¹²⁴

The manual did, however, qualify this by directing the investigator “not be too ready to jump to the conclusion that the complaint is false.”¹²⁵

2.150 Significant public concerns were voiced in the 1970s and early 1980s regarding police procedures when investigating rape complaints. These are evidenced in the police response to criticisms of the Committee on Women to the Select Committee on Violent Offending in 1978, and the report on rape investigations published by the Institute of Criminology at Victoria University of Wellington in 1982.¹²⁶

2.151 The police policy response to these criticisms was by way of a headquarters circular issued to all district commanders and the commandant of the Royal New Zealand Police College on 17 December 1982. The circular said,

While Police investigative procedures are adequate staff are reminded of the sensitivity of investigating rape complaints.

... [members] must be mindful of the circumstances of the complainant and her need for counselling and support.¹²⁷

2.152 By 1982 rape crisis centres were well established in most New Zealand centres and the headquarters circular recognised the counselling and support services that they provided to sexual assault complainants. The headquarters circular directed police to liaise with their local rape crisis centres to ensure that the police role was carefully explained and understood

124 New Zealand Police, Manual for Detectives, 1 May 1964, pp. 3 and 4 of “Rape” section.

125 New Zealand Police, Manual for Detectives, 1 May 1964, p. 4 of “Rape” section.

126 New Zealand Police, “Police Report on Submissions of the Committee on Women”, 14 September 1978; and New Zealand Police, Headquarters circular to district commanders and commandant of the Royal New Zealand Police College, 17 December 1982.

127 New Zealand Police, Headquarters circular to district commanders and commandant of the Royal New Zealand Police College, 17 December 1982.

and also to ensure that local police were aware of the service available from the rape crisis centre. Where necessary police were directed to assist the complainant by making initial contact with the rape crisis centre.

Sexual assault investigation policies, 1983–1986

- 2.153 A new edition of the Manual for Detectives dealing with serious sexual offending was published in 1983.¹²⁸ This manual remained in active use until replaced by the Manual of Best Practice in 1993.¹²⁹
- 2.154 Like the earlier edition, the 1983 Manual for Detectives set out the elements to be proved for the various sexual offences and possible defences. Further matters relevant to the prosecution of sexual offences were also elaborated on, including the character of the complainant, matters of corroboration, the admissibility of evidence, similar acts, evidence of a wife, and proof of age.
- 2.155 The 1983 Manual for Detectives clearly indicated that the police had taken notice of public criticisms regarding their interactions with sexual assault complainants, and the new manual included a section on dealing with sexual assault victims.¹³⁰ This section recognised that sensitivity was required by police and it directed police officers to respect the complainant and treat him or her with courtesy, decency, humanity, and good manners. This included interviewing the complainant in private with a parent or friend present if so desired; explaining the need for questions; explaining the investigation and court procedures; and advising the complainant of the counselling services available to assist him or her. Investigators were also directed to keep in touch with the complainant throughout the course of the investigation so as to demonstrate that the complaint was receiving all possible attention.
- 2.156 Although the Manual for Detectives directed investigators to “Accept that the victim is telling the truth ...” and not to “be too hasty to conclude that the complaint is false”, it also directed:
- Ensure complaint is genuine. Rape may be falsely alleged –
- (i) due to fear of pregnancy
- (ii) as an excuse for being late home¹³¹
- 2.157 In 1985 the Constables Manual was reprinted. This manual set out the relevant law and elements of the more minor sexual offences of indecent acts and indecent assault. It also described what a constable was required to do upon receiving a complaint of an indecent act or indecent assault: obtaining a statement from the complainant, advising his or her supervisor of the complaint, interviewing witnesses, interviewing the alleged offender, and so on. Regarding indecent assault on females, the Constables Manual also instructed police officers to

Take particular note of the victim’s physical and mental state:

128 New Zealand Police, Manual for Detectives, 1983.

129 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 7.

130 New Zealand Police, Manual for Detectives, 1983, pp. 48.17–48.19.

131 New Zealand Police, Manual for Detectives, 1983, pp. 48.18 and 48.21.

Consider: shame or fear of family retribution but also consider vindictiveness or pure fantasy.¹³²

There were no comparable cautions regarding the credibility of complainants of other types of offending.

Sexual assault investigation policies, 1986–1997

- 2.158 The third phase in the development of the police sexual assault investigation policies is linked to legislative change: amendments to the Crimes Act 1961, Evidence Act 1908, and Summary Proceedings Act 1957; and the enactment of the Victims of Offences Act 1987 (now repealed).

Legislative amendments

- 2.159 In December 1985 significant amendments regarding sexual offences were made to the Crimes Act, Evidence Act, and Summary Proceedings Act. These changes were communicated to police members on 15 January 1986 through the *New Zealand Police Gazette*.¹³³ Of particular importance to the investigation of sexual assault allegations was the enactment of sections 23AB and 23AC of the Evidence Act 1908.
- 2.160 Section 23AB reformed the law relating to corroboration of the complainant's evidence. Although it was possible before 1986 for a jury to convict on the uncorroborated evidence of a complainant, judges were obliged to warn juries that it was unsafe or dangerous to do so. Section 23AB of the Evidence Act, as inserted by section 3 of the Evidence Amendment Act (No 2) 1985, removed this requirement and provided that if the judge elected to comment on the absence of corroboration no particular form of words was required.
- 2.161 Section 23AC dealt with the question of delay by the complainant in making a complaint of sexual assault. Before 1986 it was often argued that the complainant would have complained at the first opportunity if her complaint were genuine. Any delay was said to reflect on the complainant's credibility. Under section 23AC, however, where such an argument was raised, the judge was able to explain to the jury that there might be good reasons why a victim of such an offence might refrain from or delay making such a complaint.
- 2.162 A substantial growth in the reporting of adult sexual violation and child sexual abuse offences occurred during the 1980s. To ensure that the police were well placed to deal with the volume of such complex crime the Assistant Commissioner of Police for Crime and Operations issued a headquarters circular on 15 January 1988 designed to give police accurate and up-to-date information to determine trends and develop systems to enhance investigation practices and procedures. To this end, the headquarters circular required a notification to be sent to Police National Headquarters in every case where a sexual violation or sexual abuse offence was reported.¹³⁴ A further headquarters circular was issued on 29 July of the same year to all district commanders and the commandant of the Royal

132 New Zealand Police, Constables Manual, Reprint 1985, p. 2 of "Indecent Assault on Females" section.

133 New Zealand Police, "Rape Law Reform", *New Zealand Police Gazette*, 15 January 1986, pp. 8–14.

134 New Zealand Police, Headquarters circular to district commanders and the commandant of the Royal New Zealand Police College, "Sexual Violation Offending Report", 15 January 1988.

New Zealand Police College requesting that they ensure that all police members were aware of the requirements of the earlier headquarters circular.¹³⁵

Victims of offences

2.163 The Victims of Offences Act was enacted in July 1987 to “make better provision for the treatment of victims of criminal offences”. A victim was defined by section 2 of the Act as

a person who, through or by means of a criminal offence ... suffers physical or emotional harm, or loss of or damage to property; and, where an offence results in death, the term includes the members of the immediate family of the deceased.

2.164 On 29 June 1990 the Commissioner of Police issued a commissioner’s circular regarding the police’s obligations under the Victims of Offences Act.¹³⁶ Police obligations, according to the commissioner’s circular, included

- treating victims with courtesy, compassion, and respect for their personal dignity and privacy
- providing access to welfare, health, counselling, medical, and legal services where needed
- explaining the services and remedies available to a victim
- providing information about the progress of the investigation, the charges laid or the reasons for not laying charges, the role of the victim as a witness in the prosecution of the offence, the date and place of the hearing, and the outcome of the proceedings (including any appeals)
- returning property held for evidentiary purposes as promptly as possible
- obtaining victim impact statements
- obtaining the victim’s views on bail in respect of a charge of sexual violation or other serious assault or injury
- notifying the victim of the escape or release of an offender convicted of an offence of sexual violation or other serious assault or injury.

2.165 The commissioner’s circular regarding victims of offences was followed in 1997 by a policy pointer setting out the police Victims of Crime Policy.¹³⁷ Although the substance of these documents was largely the same, the policy pointer required that the details of victims should be referred to relevant support services as soon as possible after the incident. It also included a direction that district managers ensure local agreements were in place with support agencies to ensure that early assistance was provided to all victims. The relevant support agencies for sexual assault complainants were such organisations as Rape Crisis, HELP, Sexual Abuse Survivors Trust (SAST) and the Women’s Refuge; Victim Support may also function as a support agency for victims of sexual assault.

135 New Zealand Police, Headquarters circular to district commanders and the commandant of the Royal New Zealand Police College, “Sexual Violation Offending Report”, 29 July 1988.

136 New Zealand Police, Commissioner’s circular to region commanders, district commanders, and the commandant of the Royal New Zealand Police College, “Victims of Offences”, 29 June 1990.

137 New Zealand Police, Policy pointer 1997/4, “Victims of Crime Policy”, *Ten-One*, No 149, 29 August 1997, pp. 11–15.

- 2.166 In addition to the legislative changes and the police responses to them as described above, other police policies and practices were updated and developed during 1986–1998. I was informed by Superintendent Trappitt that a new Manual of Best Practice was published in 1993.¹³⁸ Also, the police policy on investigation of child abuse was published in 1995.

Child Abuse Policy

- 2.167 A policy pointer, “Policy and guidelines for the investigation of child sexual abuse and serious physical abuse” (Child Abuse Policy), was issued on 1 December 1995. The Child Abuse Policy was developed in conjunction with the then New Zealand Children and Young Persons Services (NZCYPS) (now Child, Youth and Family). It recognises that

An inter-agency approach to the investigation and management of child abuse cases will enhance protection of the child, accountability of any offender, and partial or full reintegration of the child into the family.¹³⁹

- 2.168 The Child Abuse Policy forms the basis of a joint approach between the police and NZCYPS. Important features of the Child Abuse Policy are

- a clear enunciation of the procedures to be followed when undertaking a child abuse investigation, including contacting the child, interviewing the child, interviewing the child’s siblings and non-offending parent(s) where appropriate, and the interview of the offender
- inter-agency coordination of reports of physical and sexual abuse, which requires the police to notify NZCYPS of any allegations made to the police and vice versa
- recognition that the primary role of the police with respect to child abuse is the investigation of child abuse offences and, where appropriate, the prosecution of the offender
- consultation between the police and NZCYPS regarding the appropriate manner of investigation given the circumstances of each case (and to this end, the Child Abuse Policy directs that a police officer and social worker are to form the basis of the investigation team)
- child abuse investigations to be undertaken wherever possible by a member of the Child Abuse Team who has received specialised training. (The Child Abuse Policy specifically refers to the training courses that had been developed by the Royal New Zealand Police College to address this requirement of the policy.)

- 2.169 This is a nationally mandated policy, which is applied consistently across the country and which I consider to work well in practice.

Sexual assault investigation policies, 1998–2006

- 2.170 Two significant policy developments relating to the investigation of adult sexual assault allegations occurred during the period since 1997: the promulgation of the 1998 ASAI

138 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 7.

139 New Zealand Police, Policy pointer 1995/12, “Policy and guidelines for the investigation of child sexual abuse and serious physical abuse”, *Ten-One*, No 106, 1 December 1995, p. 12.

Policy and the revision of the Manual of Best Practice. The ASAI Policy is summarised below.

Adult Sexual Assault Investigation Policy

2.171 In the late 1990s the police prepared a specific policy to govern complaints of sexual assault against adults known as the Adult Sexual Assault Investigation Policy. An early draft of this policy was distributed in 1997. The finalised version was published as a policy pointer on 6 February 1998, and designated a two-year lead-in time to allow police to meet the requirements of the policy.¹⁴⁰

2.172 The ASAI Policy was developed with the assistance of representatives from medical practitioner groups, counselling agencies, and community groups. It is divided into 12 parts:

- Policy Principles
- The Police Commitment
- Selection of Personnel for Adult Sexual Assault Investigations
- Training
- Procedures – Investigation Management
- The Offender
- Legal Action
- Facilities and Equipment
- Statistics
- Historical Complaints
- Options available for resolution of complaints
- Administration.

A brief account of these 12 parts of the ASAI Policy follows, with some additional discussion and comment on training and administration based on evidence presented to the Commission.

“Policy Principles”

2.173 The ASAI Policy acknowledges the destructive consequences of adult sexual assault, that the safety of the victim is paramount, and that perpetrators of adult sexual assault must be held accountable for their actions.

2.174 It directs police to treat complaints of sexual assault as serious criminal matters to be investigated and, when evidence is available, to consider prosecution. Where an alleged sexual assault is reported within seven days of the incident, priority must be given to the investigation of the allegation wherever possible.

¹⁴⁰ New Zealand Police, Policy pointer 1998/1, “Adult Sexual Assault Investigation Policy”, *Ten-One*, No 159, 6 February 1998, pp. 11–15.

- 2.175 The ASAI Policy recognises that an inter-agency approach to the investigation and management of adult sexual assault cases “will enhance protection of the adult victim, accountability of any offender, and reintegration of the victim into the community.”
- 2.176 The police response to the needs of the victim is aimed at ensuring early intervention and maximum protection, aiding the victim’s long-term recovery from the trauma, and ensuring the victim’s cooperation with the investigation through to its completion. To this end, the policy directs police to consult with the victim throughout any decision-making process.

“The Police Commitment”

- 2.177 According to the ASAI Policy the police have four main functions in sexual assault investigations:
- to ensure the safety of the victim
 - to investigate and, when evidence is available, consider prosecution
 - to coordinate the support for the victim, and keep the victim informed of the progress of the investigation as far as possible
 - to identify those responsible for offending and ensure they are held accountable.
- 2.178 The policy uses very prescriptive language (“shall”, “will”, “must”) to mandate how each of these functions will be performed.
- 2.179 District managers (now district commanders) are responsible for implementing the ASAI Policy. Importantly, the policy requires district managers to ensure, amongst other things, that front-line and watch-house staff under their control are trained in taking initial sexual assault complaint action and dealing with victims; that there are sufficient and suitable investigation staff who are fully trained in all aspects of the investigation of adult sexual assault; that investigating staff receive supervision from an appropriate non-commissioned officer; and that local agreements are in place with support agencies to ensure that early assistance is provided to all complainants.
- 2.180 The district manager is also responsible for appointing an adult sexual assault coordinator in his or her district. This person is responsible for liaising with all appropriate local support agencies, police medical officers, and Doctors for Sexual Abuse Care (DSAC) to ensure that police policy is being complied with. The coordinator is also responsible for ensuring that local training, in line with national directives, is being carried out; that there are sufficient qualified police members in place to satisfy local demands; monitoring the performance of trained members; and monitoring complaint files to ensure compliance with the ASAI Policy.¹⁴¹
- 2.181 Communication centre managers are also charged with ensuring that communication centre staff under their control are trained in taking initial sexual assault complaint action and dealing with victims.

141 New Zealand Police, Policy pointer 1998/1, “Adult Sexual Assault Investigation Policy”, Appendix 1, *Ten-One*, No 159, 6 February 1998, p. 15.

- 2.182 The ASAI Policy sets out the responsibilities of the various agencies involved in sexual assault complaints. The policy directs that police are responsible for the investigation of criminal offences; support agencies are responsible for ensuring that the victim receives crisis support, counselling, and the initiation of therapy; specially trained medical practitioners are responsible for both the forensic and standard medical examination of the adult victim; and Environmental Science and Research Limited (ESR), in conjunction with police, is responsible for forensic scene examination.

“Selection of Personnel for Adult Sexual Assault Investigations”

- 2.183 The ASAI Policy states that police personnel who investigate or have responsibility for the investigation of adult sexual assault complaints should possess a variety of knowledge, skills, and attributes. These include an awareness of the needs of adult sexual assault victims, an understanding of the roles and responsibilities of specialist agencies working with sexual assault victims, and knowledge of the relevant laws and practices relating to adult sexual assault investigations. Importantly they must also be trained in sexual assault investigations.

“Training”

- 2.184 The ASAI Policy recognises that trained investigators are essential to the successful functioning of this policy. To this end the policy requires that investigators must have fully undergone the specialised training into all aspects of adult sexual assault investigation procedures, including protocols with other agencies including Māori, before becoming responsible for any adult sexual assault investigations.
- 2.185 An ASAI training course was subsequently developed by Detective Senior Sergeant Neil Holden and has been delivered at the Royal New Zealand Police College since February 2003. The overall aim of the ASAI training course is to develop in investigators the understanding, knowledge, and skills to effectively investigate adult sexual assaults. It also aims to develop good practice in adult sexual assault investigations, encourage networking with other people involved in the investigation, and build empathy with victims. To this end, the course underscores the view that the victim’s perspective should be paramount and reinforces this by having five different victims’ presentations during the week-long course.¹⁴²
- 2.186 The training was based on a five-step good practice model developed by Detective Senior Sergeant Holden after lengthy research into current practice, overseas trends, consideration of criticism of police practice, and discussion with a curriculum group assembled by Detective Senior Sergeant Holden. The curriculum group was made up of senior police investigators and people working with the police in the adult sexual assault field, such as Dr Jordan from the Institute of Criminology, Victoria University of Wellington; Dr Jane MacDonald representing DSAC; Ms Linda Beckett; and two support agency representatives, one from Wellington Rape Crisis and a representative from Wellington Sexual Abuse HELP Foundation.
- 2.187 The curriculum group brought together ideas concerning the overall aims of the course, length of training, and target audience that resulted in the development of the first one-

142 Detective Senior Sergeant Neil Holden, Criminal Investigation Branch (CIB) Development Officer, Brief of evidence, 10 November 2005, p. 3.

week course. This initial course was held 10–14 February 2003 with 20 detectives and detective sergeants participating.¹⁴³

- 2.188 The ASAI Policy also says that, “Trained investigators should be encouraged to attend subsequent on-going training appropriate to their needs.”¹⁴⁴ I understand that an ongoing national training package for investigators trained in adult sexual assault investigation has yet to be developed by the police.

“Procedures – Investigation Management”

- 2.189 The ASAI Policy states that when the police receive a report of suspected adult sexual assault it should be referred as soon as possible to a trained investigator. If a trained investigator is not available and it is necessary that initial action, investigation, or intervention proceed as a matter of urgency, then “the most suitable police personnel should be tasked”. The complaint should be handed over to a trained investigator within two days for completion and the formal interview and statement-taking from the complainant.
- 2.190 The ASAI Policy says that the police must ensure that all victims have a support person or persons present during the interview process; this can be a friend, family member, counsellor, or a person from an identified support group. The victim can also request to have a support person from an identified sexual assault support group or trained sexual assault counsellor present during the medical examination.
- 2.191 The ASAI Policy recognises the importance of the formal interview of the complainant, and statement-taking in achieving a successful prosecution. It therefore directs that these aspects of the investigation must be undertaken only by a trained investigator.
- 2.192 Similarly, the ASAI Policy recognises the skills of doctors trained in the examination of suspected victims of sexual assault, such as DSAC and police medical officers, and states that they are to be the preferred medical practitioners when dealing with a sexual assault complaint.

“The Offender”

- 2.193 The ASAI Policy reiterates that the interview and any prosecution of an alleged offender is a police responsibility. Trained investigators are referred to the Manual of Best Practice for a description of the operational procedures for interviewing and prosecuting an alleged offender.

“Legal Action”

- 2.194 If a prosecution is not proceeded with, the reasons for not proceeding must be carefully explained to the complainant either by the officer in charge of the case or the coordinator of adult sexual assault investigations.¹⁴⁵

143 Detective Senior Sergeant Neil Holden, CIB Development Officer, Brief of evidence, 10 November 2005, p. 3.

144 New Zealand Police, Policy pointer 1998/1, “Adult Sexual Assault Investigation Policy”, *Ten-One*, No 159, 6 February 1998, p. 13.

145 This instruction can also be found in general instruction A293 “Informing Complainants”, issued in 2002, which provides that complainants should be advised, with a clear statement of the reason, where a decision is made not to arrest or prosecute an alleged offender.

“Facilities and Equipment”

- 2.195 The district manager is responsible for ensuring that appropriate facilities are available for interviews and medical examinations of adult sexual assault complainants.

“Statistics”

- 2.196 Like the 1988 headquarters circular regarding sexual offence reporting (see paragraph 2.162), the ASAI Policy requires that offences are promptly entered into the police database so that accurate and up-to-date information is available to determine trends and develop systems to enhance investigation practices and procedures.

“Historical Complaints”

- 2.197 In dealing with sexual assault complaints of a historical nature the ASAI Policy directs the police to consider such factors as the choice made by the victim, the evidence offered by the victim, availability of other evidence, availability of witnesses, legal precedents, the offender’s response, and the likelihood of continued offending. Police members are informed that consultation with the victim is a priority throughout the investigation process and that decisions must be made in consultation with the victim and the adult sexual assault investigations coordinator.

“Options available for resolution of complaints”

- 2.198 The ASAI Policy sets out the following options for police for resolution of a recent adult sexual assault investigation: recording the complaint and talking to the alleged offender; recording the complaint and taking no other police action; recording the complaint and referring the victim and alleged offender for counselling; full investigation and warning; investigation and prosecution.
- 2.199 For historical complaints the options available for resolution include
- Recording the complaint and talking to the offender; recording the complaint and taking no other police action; recording the complaint and referring the victim and offender for counselling; warning; or prosecuting the offender.¹⁴⁶

“Administration”

- 2.200 The ASAI Policy assigns administrative responsibility for the policy to the manager of the Criminal Investigation Branch (CIB) Support Group.
- 2.201 Superintendent Trappitt informed me that a framework for the evaluation of the ASAI Policy had been developed in May 1998, and he produced a draft copy of the evaluation specification report.¹⁴⁷ According to this report the evaluation would comprise five components: victims, police, support persons, medical practitioners, and relevant agencies. It said that there was a need for a systematic evaluation to “assess, primarily, the

146 New Zealand Police, Policy pointer 1998/1, “Adult Sexual Assault Investigation Policy”, *Ten-One*, No 159, 6 February 1998, p. 15.

147 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 8.

implementation of the policy and the degree to which victims' needs are being met and their safety assured".¹⁴⁸

2.202 I have seen no evidence that this evaluation has yet been undertaken.

The revision of the Manual of Best Practice

2.203 In addition to the ASAI Policy, the other major development during the period from 1998 to 2006 was the revision of the Manual of Best Practice.

"Sexual Offences" section

2.204 Relevant to this inquiry is the revised "Sexual Offences" section, which was published in 2001 and is to be read in conjunction with the ASAI Policy. Like the earlier Manual for Detectives, the Manual of Best Practice details the law and the elements that must be proved for various sexual offences. It also sets out the procedures to be followed when investigating a sexual offence. The procedure section is divided into offences against decency and offences against the person.¹⁴⁹

2.205 The "Sexual Offences" section refers no less than four times to the ASAI Policy; the procedures section dealing with offences against the person begins with the instruction that the investigator must follow the ASAI Policy when investigating an adult sexual assault complaint "in spirit and in deed".

2.206 According to this procedures section, the investigator's first responsibility is to the victim. Specific instructions regarding initial action include giving priority to the victim's physical needs; ensuring the victim feels safe and secure; recording anything the victim says about the crime and the alleged offender when, and exactly as, the victim recounts it; and letting the victim know what to expect from that point. Where an alleged assault is reported within seven days, a forensic medical examination must take place as soon as possible. Preferred medical practitioners are those who have had specialised training in examining suspected victims of sexual assault, such as DSAC and police medical officers.

2.207 Police officers tasked with interviewing and obtaining a statement from the complainant are directed to try to help the victim feel safe; this includes telling the victim that the interview will be as brief as possible, and that he or she can have a support person present. After the interview police officers are directed to continue to include the victim in the investigative process. Direction is also provided regarding conducting the scene examination, including contacting Environmental Science and Research to obtain assistance or advice. If a prosecution does not proceed, the officer in charge of the investigation or the district coordinator of adult sexual assault investigations must carefully explain the reason to the victim.

2.208 Where a historical complaint is made, police officers must consider the following factors when deciding how to respond to the complaint:

148 New Zealand Police, *Adult Sexual Assault Investigation Policy: Evaluation Specification Report* (draft), May 1998, 14 p.

149 New Zealand Police, *Manual of Best Practice*, Volume 3, "Sexual Offences" section, 2001, as printed August 2005.

- the choices made by the victim, including their right not to report the assault at the time and their reasons for not reporting it then and reporting it now
- the evidence offered by the victim
- the availability of other evidence
- the availability of witnesses
- legal precedents
- the suspect's response
- the likelihood of continued offending.

“Victims Rights” section

2.209 The Manual of Best Practice was also updated in 2003 to recognise the enactment of the Victims' Rights Act 2002. The manual sets out relevant provisions of the Act and describes the programmes, remedies, and services available. It directs police officers to refer victims to support services as soon as practicable and provide them with full information about proceedings.¹⁵⁰ The manual details a memorandum of understanding between New Zealand Police and the New Zealand Council of Victim Support Groups. This is similar to the earlier memorandum attached to the Victims of Crime Policy.¹⁵¹ The “Victim Support” section of the manual includes a direction that the district commander or officer in charge of a station appoints a police representative on local Victim Support group committees. The manual also describes restorative justice processes and the procedure for notifying a victim of the release of an offender.

Adequacy of the sexual assault investigation policies

2.210 I was generally impressed at the way in which the police had steadily improved policies relating to the investigation of adult sexual assault during the period of interest to my inquiry. At the beginning of the period, policies in force reflected some very distorted views of the credibility of victims of alleged sexual assault, and the general approach to interviewing victims was rightly perceived as likely to be in itself a re-victimisation. The shift towards practices that recognise the impact of recent trauma, encourage a good working relationship with professional support agencies, and restore to the victim a sense of empowerment are all to be commended.

2.211 The overall impression I received was that the police now treat victims of alleged sexual assault very sensitively and, when they work effectively with support agencies, provide an environment in which the process of recovery and the process of investigating a crime can proceed alongside each other. The ASAI Policy appears to me an important step forward, formalising as it does the understanding of best practice that police have gained over the past two decades.

2.212 A number of the expert witnesses called by the police agreed that the ASAI Policy represented best practice in terms of investigating allegations of sexual assault; however, several concerns remained. For instance, Ms Angela Brott, Co-ordinator of the Women's Refuge and Sexual

150 New Zealand Police, Manual of Best Practice, Volume 2, “Victim Support” section, March 2003.

151 New Zealand Police, Policy pointer 1997/4, “Victims of Crime Policy”, Appendix A, *Ten-One*, No 149, 29 August 1997, pp. 13–15.

Assault Resource Centre Marlborough, said that the Adult Sexual Assault Investigation Policy was a good policy and usually worked well. Her only exception was the provision that allowed victims to choose their own support person. She considered a trained sexual abuse counsellor more appropriate for the support role than a friend or family member.¹⁵²

2.213 Ms Kathryn McPhillips, Clinical Manager of the Auckland Sexual Abuse Help Foundation Trust, also praised the ASAI Policy. In her experience it often operates effectively despite a shortage of police who have completed the formal training. She told me that the policy represents good practice in the investigation of sexual crimes and appropriately recognises the needs of victims.¹⁵³

2.214 Dr Jordan confirmed that the policy represented good intentions on the part of the police. Her concern, however, related to the implementation of the ASAI Policy:

as recently as March this year (2005), experienced detectives were arriving at the Royal New Zealand Police College for courses admitting that they did not even know such a policy existed, let alone what it specified.

The lack of policy implementation is reflected also in the fact that no attempt to appoint a National Sexual Assault Co-ordinator was made until 2005, ... nearly eight years since the Policy's introduction.

All districts have now appointed local co-ordinators, although some officers have questioned the rushed manner by which some were appointed.¹⁵⁴

2.215 A witness from DSAC, Dr Clare Healy, echoed this concern, saying, "For the policy to work it must be supported at all levels within the force." She observed,

There seems to be a widely held view that the policy as written is currently unworkable in many districts and it seems difficult in some districts to appoint adult sexual assault co-ordinators. This is due to staff shortage, untrained staff and appropriately trained staff leaving for other units.¹⁵⁵

2.216 Detective Sergeant Tusha Penny, whose police team at Lower Hutt specialises in child abuse, told me that although her team is aware of and follows the ASAI Policy, "in almost every respect that policy simply represents good investigative practice". She said that her CIB training (undertaken in 1994) "closely reflected the practices that later made up the [ASAI] Policy".¹⁵⁶

2.217 Based on the evidence presented to the Commission, there are three key areas in which I believe further improvement is needed, all of them related to aspects of the ASAI Policy, its status, and its effective implementation:

- the unrealistic mandatory wording in the ASAI Policy

152 Ms Angela Brott, Co-ordinator, Women's Refuge and Sexual Assault Resource Centre Marlborough, Brief of evidence, 2 November 2005, pp. 5.

153 Ms Kathryn McPhillips, Clinical Manager, Auckland Sexual Abuse Help Foundation Trust, Brief of evidence, 3 November 2005, p. 3.

154 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 6.

155 Dr Clare Healy, accredited member Doctors for Sexual Abuse Care (DSAC), Brief of evidence, 8 November 2005, paragraphs 10–11.

156 Detective Sergeant Tusha Penny, Brief of evidence, 3 November 2005, p. 2.

- the inconsistencies between the ASAI Policy and the Manual of Best Practice
- the apparent lack of a resource plan to ensure that the training and facilities referred to in the policy are actually available.

Mandatory wording in the Adult Sexual Assault Investigation Policy

- 2.218 The ASAI Policy is expressed in mandatory language. For example, it requires that the interview of a complainant must be undertaken by an investigator with specialised ASAI training. Despite that, Police Commissioner Robinson told me that, although the policy represents what is generally accepted as international best practice and is a highly desirable statement for an organisation to sign up to, compliance with it remains an “aspirational” target. He said that there are a range of tensions between delivering training while also delivering a 24-hours-a-day seven-days-a-week service to the community, and between the delivery of the significant suite of training required for the day-to-day operation of the police and the delivery of specialist training such as the ASAI training.¹⁵⁷
- 2.219 It is unclear to me how Police Commissioner Robinson could state that compliance with the ASAI Policy remained an “aspirational” target, given that regulation 5 of the Police Regulations requires that the mandatory wording in the ASAI Policy must be obeyed.¹⁵⁸
- 2.220 If the police are correct in their view that this policy represents international best practice, then mandatory compliance with it should cease to be aspirational. The police should address and resolve the range of tensions that exist so that full compliance with the policy can be achieved. If however the police consider that a lower standard of compliance is all that can realistically be achieved, then this should be reflected in the wording of the policy.
- 2.221 The problem is exemplified by the long delays experienced in establishing a specialist training programme, as envisaged by the ASAI Policy. The original intent was that a programme would be designed and implemented during the initial two-year lead-in period from 1998 to 2000. In the event, it was not until 2002 that Detective Senior Sergeant Holden was tasked with preparing the first ASAI training course, and it was not until February 2003, almost five years after the ASAI Policy was released and three years after it was officially to be implemented, that the first course was held for 20 detectives and detective sergeants.¹⁵⁹ I was given the impression that at current rates of throughput it is highly unlikely that the police will ever be in a position to comply with the requirement in the ASAI Policy that all cases of alleged adult sexual assault will be dealt with by officers with specialist training.
- 2.222 I also heard in evidence that there is a view amongst some members of the CIB that although the ASAI Policy and the related specialist training represents best practice, it does not alter the fact that a trained and experienced detective is entirely capable of dealing with sexual assault investigations. This view suggests that the ASAI training has not captured the hearts and imagination of some very senior CIB officers because they are very much of the view that the three-year detective training programme, which provides instruction in

157 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, p. 8.

158 Under regulation 5(2)(b) all members are required to obey and be guided by “The Commissioner’s circulars”, which are now called policy pointers, such as the ASAI Policy. As previously discussed at paragraph 2.29, general instructions and policies that are in mandatory form must be obeyed.

159 Detective Senior Sergeant Neil Holden, Brief of evidence, 10 November 2005, pp. 2 and 3.

dealing with victims and complainants across a raft of criminal areas, covers essentially the same ground as that dealt with during the five-day training course on the ASAI Policy.¹⁶⁰ Acting District Commander Gavin Jones told me that his personal view was that ASAI training

should have been rolled into either our CIB induction course, and that would give us some certainty that every member joining the CIB would be trained and, therefore, meet the policy, or rolled into our detective course, meaning that every detective graduating would be trained because it's untenable to – well, it's just not possible to train 1,000 detectives, that's about the number we have in New Zealand, within the timeframes that were set over the period of time set for the course.¹⁶¹

- 2.223 It seems to me a matter of great importance that the police clarify this situation, establish a clear policy on the required level of competence for sexual assault investigation, and proceed on that basis.

Aligning the Adult Sexual Assault Investigation Policy with the Manual of Best Practice

- 2.224 The ASAI Policy and the Manual of Best Practice purport to cover different material on adult sexual assault investigation, and both state that they must be read in conjunction with the other. However, it is unhelpful to have to cross-reference material on the same topic from two separate documents, especially when the material is at times repetitive and on a few occasions contradictory. The result is an unnecessarily unwieldy and fragmented approach to policy and procedure on adult sexual assault investigation.
- 2.225 The ASAI Policy is described as providing “the policy and principles for the practice and procedures for the investigation of **ADULT** [emphasis as printed] sexual assault”,¹⁶² while the Manual of Best Practice is described as containing the procedures for investigating sexual offences. There is, however, a degree of overlap and repetition in the two documents. For example, both provide nearly identical information on the procedure regarding medical examinations¹⁶³, and also on the approach to dealing with historical complaints.¹⁶⁴ The fact that the content of the two documents is contradictory in a few instances creates some ambiguity as to how a victim of sexual assault should be treated. For example, the ASAI Policy states that the police must ensure that all victims have a support person present during the interview process, who must be from an identified sexual assault support group or a trained sexual assault counsellor.¹⁶⁵ However, the Manual of Best Practice instructs the police officer to tell the victim that “he or she can have a support person present.”¹⁶⁶ Thus

160 Assistant Police Commissioner Peter Marshall, Transcript of hearing, 7 November 2005, p. 38.

161 Superintendent Gavin Jones, Acting District Commander, Auckland City, Transcript of hearing, 17 November 2005, p. 18.

162 New Zealand Police, Policy pointer 1998/1, “Adult Sexual Investigation Policy”, *Ten-One*, No 159, 6 February 1998, p. 11.

163 See paragraphs 5.4.2 and 5.4.3 of the Adult Sexual Assault Investigation Policy, 6 February 1998; and pp. 896–897 of the Manual of Best Practice, Volume 3, “Sexual Offences” section, 2001, as printed August 2005.

164 See paragraphs 2.197 and 2.208 of this report; paragraphs 10.1 and 10.2 of the Adult Sexual Assault Investigation Policy, 6 February 1998; and p. 898 of the Manual of Best Practice, Volume 3, “Sexual Offences” section, 2001, as printed August 2005.

165 New Zealand Police, Policy pointer 1998/1, “Adult Sexual Assault Investigation Policy”, *Ten-One*, No 159, 6 February 1998, p. 13.

166 New Zealand Police, Manual of Best Practice, 2001, Volume 3, “Sexual Offences” section, as printed August 2005, p. 893.

the presence of an expert support person during the interview is a mandatory requirement in the ASAI Policy, whereas the presence of any support person (expert or otherwise) is optional in the Manual of Best Practice.¹⁶⁷

- 2.226 In most other instances police officers must cross-reference and reconcile the instructions of both documents in order to meet the requirements for the investigation of adult sexual assault. Detective Senior Sergeant Holden, who has experience as a district adult sexual assault coordinator, confirmed to me that he saw no good reason to maintain two separate documents.¹⁶⁸ Similarly, in their submissions in response to my draft report, the police have said that they take no issue with the suggestion that the ASAI Policy should be incorporated within the Manual of Best Practice.¹⁶⁹

Resource planning for the ASAI Policy

- 2.227 I was concerned to find that the ASAI Policy was issued without an accompanying national plan for resourcing the training and the dedicated facilities to which it refers. Instead, district commanders were expected to meet the requirements of the policy within existing budgets without any specific guidance from police national headquarters.
- 2.228 With respect to dedicated facilities, I was told that some larger police stations had suites especially designed for the interviewing and examination of the victims of sexual abuse.¹⁷⁰ The police showed me an example of such facilities in Lower Hutt, where the facilities have obviously been designed with care having regard to the needs of complainants and the requirements of effective investigations. However, in many districts such facilities remain on a “wish list” of property projects to be considered by district commanders alongside other needs. The impression was that most medical examinations are now taking place at medical or rape crisis facilities. Similarly, interviews with the complainant may take place in the complainant’s own home or at rape crisis facilities. The police told me that the “primary consideration in the choice of venue, aside from the availability of suitable facilities, will be for the place selected to be as comfortable as possible for the victim.”¹⁷¹ This appears to represent an acceptable alternative to dedicated facilities. If so, the policy needs to reflect this and to spell out the important considerations in the choice of venue for interviews and medical examinations.
- 2.229 In relation to training, as noted above, a specialist training module has been available since February 2003, but the resources devoted to it mean that only a small proportion of CIB staff have so far received the training. I was told that the courses were fully subscribed; however, I was not given any indication of when, or even if, the police expected the whole of the CIB workforce to receive the training.
- 2.230 I was told that there is a move to prepare a “package” of training that can be taken out to the districts, and that this would enable more staff to go through the course without the

167 The advantages and importance of having a professional support person are discussed in Chapter 3 at paragraphs 3.219 to 3.222.

168 Detective Senior Sergeant Neil Holden, Transcript of hearing, 10 November 2005, p. 42.

169 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 38, paragraph 107.

170 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 10.

171 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 38, paragraph 108.

need to come to Wellington, and would enable the districts to involve more front-line staff in the training.¹⁷²

- 2.231 I fully appreciate that the police have to manage finite resources, and that difficult choices must be made regarding allocation of funding for facilities and training. It did seem clear to me, nevertheless, that a policy such as the ASAI Policy, which made very specific commitments on these matters, should have been implemented with a dedicated resourcing plan indicating how the commitments on training and facilities would be met. Given the importance of the policy and the costs involved, a specific budget should have been sought from Government, including realistic estimates of how many officers could be put through the training module per year, and addressing questions such as how to provide for access to appropriate facilities in smaller centres. If such a request for funding were approved by the Government and Parliament, I believe the resourcing issues associated with the ASAI Policy could be resolved, which would mean the policy could be fully implemented.

COMMUNICATION OF STANDARDS AND PROCEDURES

- 2.232 Term of reference (1)(b) requires the Commission to report on whether standards and procedures for complaint investigations have been, and are being, adequately communicated to members of the police. In answering this term of reference I have sought, in the course of my reading and questioning of those who have appeared before me, to understand the channels of communication with front-line officers; to ascertain, where possible, what level of familiarity front-line officers have with the body of standards and procedures described above; and to identify what training takes place to keep officers apprised of standards and procedures.

Publication

- 2.233 The form of publication for general instructions has varied from 1979 to the present day:
- Between 1979 and 1991 general instructions were published in the *New Zealand Police Gazette*. The instructions were also periodically printed in a manual personally available to each officer.¹⁷³
 - In 1991 publication of general instructions was changed to the police magazine *Ten-One*, which is personally delivered to each member. Since that time *Ten-One* has been the primary method of communicating new general instructions to members.¹⁷⁴
 - Today, general instructions are collected together electronically, and police staff can access the database to read and retrieve material.¹⁷⁵
- 2.234 In 2002 general instruction P075 directed that all commissioned and non-commissioned officers would also be issued with a copy of the Manual of Best Practice. Copies were issued to stations and officers as determined from time to time by the police commissioner. All

172 Dr Clare Healy, accredited member DSAC, Brief of evidence, 8 November 2005, paragraph 14.

173 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 5.

174 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 5.

175 New Zealand Police, Policy pointer 1993/05, "General Instructions Access and Administration", effective from 1 August 2003.

manuals on issue were to be properly maintained and updated when amendments were issued.¹⁷⁶

- 2.235 General instruction P075 was amended in October 2005 (since the establishment of the Commission). It no longer requires commissioned and non-commissioned officers to be issued with copies of the Manual of Best Practice. The new general instruction reads,

P075 – Manual of Best Practice

- (1) A Manual of Best Practice has been issued by the Commissioner to provide information, guidance, and instruction on procedures to be adopted in operational situations.
- (2) All members of police should comply with the guidelines laid down in the Manual of Best Practice in conjunction with the appropriate legislation, General Instructions and policy pointers.
- (3) The Manual of Best Practice can be accessed through the Police Intranet. This electronic version should be referred to in preference to any paper copies, which are likely to be out of date.
- (4) When a chapter is updated notification is given in the Ten-One magazine.
- (5) An online “Guide to Updates” sits in each volume of the Manual of Best Practice. Members are advised to refer to the guide for information on what has been updated in each chapter.
- (6) Members wanting to advise that information in the Manual of Best Practice is incorrect should contact the Publications Editor at the Royal New Zealand Police College.¹⁷⁷

Familiarity of front-line staff with investigation standards and procedures

- 2.236 Over the course of various interviews with front-line officers it became apparent that their degree of familiarity with police standards and procedures was variable. As one might expect, officers were knowledgeable about the formal requirements for their day-to-day tasks. When officers encountered a situation outside of their experience they tended to
- respond as best they could, drawing upon their training and experience
 - consult with supervising officers wherever possible
 - seek out specific guidance from the Manual of Best Practice and general instructions.

- 2.237 By way of illustration one detective was asked if someone made a complaint against an officer who worked in their area, whether there were policies that would apply to their decisions as to how to handle that, and whether they were different from every other policy. The answer: “To be honest I couldn’t tell you of the policy. I could only tell you how I would deal with that.”¹⁷⁸

- 2.238 A relatively new recruit, Constable Gregory Cater, commented,
- If I need to find policy I know to look on the Police Intranet, as General Instructions are in the Online Library. I have also occasionally seen notices on the *Bully Board* on the Police Enterprise computers when

¹⁷⁶ New Zealand Police, General instruction P075, “Operations Manual” (“Manual of Best Practice”), 25 July 2002.

¹⁷⁷ New Zealand Police, [Quotation provided in] Submissions in response to draft report, 20 June 2006, pp. 39–40.

¹⁷⁸ Detective Sergeant Tusha Penny, Transcript of hearing, 3 November 2005, p. 61.

policy changes. Policy is sometimes published in the Police *Ten-One* magazine. However I do not always get an individual copy of each *Ten-One*, but have access to copies in the Police station.¹⁷⁹

(This comment was surprising given the requirement for each member to have a copy of *Ten-One* personally delivered to them.)

Constable Cater explained how his access to the necessary information worked in practice:

Access to policy is not so much of an issue, as access to computers, as there are not a whole lot of computers at the station. When I do get on a computer it is quite easy to find what I am looking for due to the search options. Most of the time I don't have time with frontline policing to go to the *Bully Board* to check for policy.

I usually ask the older more experienced staff on my section if I need to know about policy, and they are able to provide advice. I also rely on my supervisor to direct how we do things, and to guide me on following general instructions and policy.¹⁸⁰

The same constable, who had spent several years in the military before joining the police, also commented,

In my experience the military have a better dissemination of policy down the ranks to officers. Officers are a smaller group of people. The military is a lot more structured. I attended weekly meetings where policy often got passed on. I was made aware of policy verbally, and was also emailed material, so I had to look at it, rather than go looking for it. I was asked about policy in a casual way, for example at the next meeting it was discussed and I was asked for my opinion. In the military I was forced to browse through policy and was made aware of the main points and changes, whereas I am not really sent anything in Police to examine in that detail.¹⁸¹

2.239 In response to questioning about the user-friendliness of police policy documents and manuals, a senior sergeant who has been in the police for 21 years, informed me, "They're forever in the updating process and they are definitely getting more user friendly, ...".¹⁸²

2.240 A constable who had been in the police for eight years was asked if she was familiar with the general instructions dealing with complaints against police. Her response was, "No, I am not familiar with those. In my role as a constable, I know where they are and I know if I need to get them where to find them."¹⁸³

2.241 There were some experienced officers who voiced concern over whether front-line staff were sufficiently aware of the general instructions. Acting District Commander Jones, for example, noted,

I suspect that, particularly our more junior staff, they wouldn't have a clue that we have General Instructions on this or that.

179 Constable Gregory Cater, Brief of evidence, 8 November 2005, p. 3.

180 Constable Gregory Cater, Brief of evidence, 8 November 2005, p. 4.

181 Constable Gregory Cater, Brief of evidence, 8 November 2005, p. 6.

182 Senior Sergeant Freda Grace, Transcript of hearing, 8 November 2005, p. 33.

183 Constable Andrea Mather, Transcript of hearing, 8 November 2005, p. 37.

You see, when I and people in my vintage did their promotion exams, we had an examination called Administration, and part of that Administration exam required us to learn verbatim every General Instruction. But that's okay because you had a year to study.

So most people in my era, ... if we don't know or can't quote the General Instruction, we know where to find it. And I think, sadly, most of our new staff either wouldn't know there was a General Instruction or wouldn't know where to find it.¹⁸⁴

Ensuring adequate communication

2.242 It seems entirely reasonable to expect that front-line police officers should be highly familiar with a core set of policies that relate to their general and specific duties, and should have access to timely guidance when confronted with something more unusual, either through manuals or from senior officers. The police did not believe the evidence demonstrated any shortcomings in this respect.¹⁸⁵ But I was left with the impression that, because there is such a large volume of policies and the core set of policies is not well defined, officers largely choose for themselves what policies they get to know in depth. No system appears to be in place to confirm that officers have read and understood changes to policy that are relevant to their work.

2.243 For example, in questioning Superintendent Trappitt, I asked if there was any way of knowing in any of these processes that every front-line person had actually read those instructions. He replied that there was not.¹⁸⁶ This surprised me, given that many organisations have systems that require staff to confirm in writing that they have read and understood policies that are essential to the performance of their duties.

2.244 This is of particular concern in the light of the statement in the Police Act, section 30:

(3) A general instruction is deemed to have been communicated to a member of the Police when the instruction has been—

- (a) Published in the *Police Gazette*; or
- (b) Published in a Police magazine that is published under the authority of the Commissioner and distributed to all members; or
- (c) Published in a manual of general instructions issued by the Commissioner to all members; or
- (d) In the case of a member of a particular group of Police, published in a manual of instructions issued by the Commissioner to members of that particular group; or
- (e) Brought to the personal notice of the member.

2.245 In other words, the Act contains a presumption that police officers are aware of general instructions and bring an understanding of them to bear upon their work. It would seem to me essential that the police have ways of demonstrating what the law presumes to be the

184 Superintendent Gavin Jones, Acting District Commander, Auckland City, Transcript of hearing, 17 November 2005, p. 16.

185 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 44.

186 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Transcript of hearing, 24 May 2004, p. 21.

case is indeed so. I would certainly expect that police officers were familiar with policies dealing with complaints against fellow officers.

Training

- 2.246 The police provide a basic grounding in standards, procedures, and policies through the recruit training programme run by the Royal New Zealand Police College. Newly qualified constables must also undertake ongoing training during their two-year probationary period. Officers who wish to qualify as detectives must go through the CIB training programme, which is a fairly exhaustive programme and includes training on handling adult sexual assault cases. In addition, the police provide and purchase a wide range of training packages for specialist areas of police work and general upskilling of their workforce. I was told that annual expenditure on training by the police is currently around \$50 million.¹⁸⁷ I was left in no doubt that New Zealand Police has invested considerable resources in building up a workforce that includes many very highly trained professionals.
- 2.247 Ongoing training priorities are managed at two levels. There are a few nationally mandated training packages that all staff must undertake in respect of certain “core” skills, and where proficiency must be certified each year. At present, a staff safety and tactical training programme, which consists of firearms and self-defence training, is in this category, as is first aid training. In addition, I was advised that custodial suicide prevention training would soon be nationally mandated.¹⁸⁸
- 2.248 Beyond this, district commanders determine what additional training is provided within their districts and to whom. A wide range of national training packages are available, although districts also have the option of contracting independent training providers to develop and/or run courses for district staff. The training needs of district staff are identified within the district, based on the particular needs of the district. For example, one district has recently had a training package developed on matters relating to dealing with people with a mental illness because of a perceived need in that district.¹⁸⁹
- 2.249 The need to keep staff training up to date raises important management issues such as the uncertain work pressures of staff and the difficulty in backfilling the positions of those attending training. Despite such constraints, it appears that training in a particular field can be delivered expeditiously if district commanders agree that it has high priority. I was told about an ethics training package that has recently been endorsed by the Police Executive. The officer in charge of the package expressed confidence that all 10,000 police staff could be put through the half-day course within 18 months.¹⁹⁰

Conversely, there are times when achieving training targets proves difficult. The delayed roll-out of the ASAI training course (noting, however, that it is a full week course) is a key example.

187 Assistant Police Commissioner Peter Marshall, Transcript of hearing, 7 November 2005, p. 37.

188 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 66.

189 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 61.

190 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 73. This ethics training is discussed further in Chapter 5.

- 2.250 It appeared to me that the current approach to the management of training makes it difficult for the police to give confident assurances about the extent to which all staff are sufficiently refreshing their skills, including their understanding of formal standards and of best practice. The police provide a national service and have to maintain a mobile workforce to deal with workload pressures that can be unpredictable. To achieve this, core skills need to be kept up to date (in the same way that professionals such as doctors are required to register ongoing training completed). I was surprised by how little training was nationally mandated compared with what was left up to the discretion of district commanders. I cannot understand how training objectives can be achieved without the police being able to demonstrate that the full range of core skills are being refreshed on a regular basis. Again, I would expect the policies dealing with complaints against fellow officers to be identified as “core” policies that every officer ought to know about.
- 2.251 The police place a lot of emphasis on the flexibility and autonomy that districts have to develop their own training packages to respond to local needs.¹⁹¹ District commanders enter those packages on a district training catalogue database within the Royal New Zealand Police College library. This means that district training coordinators around the country can access the database and find the training programme should they wish. I heard evidence of how this is done.¹⁹² However, it is not mandatory for districts to use an existing package – they may choose to develop their own programme.¹⁹³
- 2.252 Although the district commanders I spoke to concerning training seemed committed to the goal of maintaining a well-trained workforce, it did not seem to me that they received sufficient guidance on priorities from the Office of the Commissioner. One district commander commented to me, regarding training,
- what often happens in police is decisions are made in isolation and everything is seen [by the Office of the Commissioner] to have high priority and then districts are left to deliver it and at the same time achieve all the other outcomes that are expected of us.
- And I have made the comment from time to time that the organisation has been very poor in weighing up what through policy and good practice is required of us with the resource, people and time available to us.¹⁹⁴
- 2.253 Declaring everything to be high priority is not, in my experience, a particularly helpful practice. Training priorities ought to be determined by an appreciation of the important competencies required for each position within the police. I believe the police would be better able to give assurances concerning the skill levels of staff if there were a more rational approach to the prioritisation of training, providing clearer guidance to districts and clearer national standards.
- 2.254 Police services are provided on a national basis, and police members work and transfer regularly across district boundaries. Although some training needs vary from one district to

191 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 42.

192 Superintendent Gavin Jones, Acting District Commander, Auckland City, Transcript of hearing, 11 November 2005, pp. 6–7.

193 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 62.

194 Superintendent Mark Lammas, District Commander, Central District, Transcript of hearing, 15 November 2005, p. 63.

another, and some discretion and flexibility for district commanders may be desirable, it is important that the police are consistent in the implementation of policies and the delivery of services so that national standards of service are maintained. This requires a coordinated and strategic view of the organisation's overall training requirements and priorities.

OVERALL ASSESSMENT OF THE ADEQUACY OF POLICE STANDARDS AND PROCEDURES

- 2.255 In assessing the adequacy of the police standards and procedures for the investigation of sexual assault allegations against members of the police or associates of the police it is important to note that the earliest policies I reviewed were at a very rudimentary stage of development, and that much has been achieved since then. In 1979, the processes for carrying out internal investigations and for investigating adult sexual assault were largely indistinguishable from general police policies and guidelines. Neither issue had much prominence for police officers or managers. The situation now is greatly improved.
- 2.256 Despite that progress, there remain several issues that have come to my attention when assessing the police policies that in my view require attention. These are
- the proliferation of policies
 - the standards and procedures regarding internal investigations
 - implementation of the ASAI Policy
 - the systems for communicating information about standards and procedures to police members.

Proliferation of policies

- 2.257 There appears to be a general tendency within the police for standards, policies, and procedures to proliferate to the point where no officer can reasonably be expected to have a complete grasp of the detail. The Corporate Instrument Review Project commenced in 2005 (see paragraph 2.42) appears to be urgently needed. Rationalising and clarifying the relevant policies and procedures should assist in the investigation of sexual assault investigations along with other types of investigations. The process should ensure that the distinction between what is mandatory and what is guidance is made clear. The fact that there are three national policy documents governing sexual assault investigations into members of police (the general instructions regarding internal investigations, the ASAI Policy, and the Manual of Best Practice), plus the commissioner's directives and district orders, is not ideal and reflects the tendency to create new documents without necessarily amending or removing earlier ones.

Standards and procedures regarding internal investigations

- 2.258 There are four particular issues in relation to the policies regarding internal investigations:
- There appears to be no clearly stated policy with regard to notifying the Commissioner of Police when there is a serious complaint made against a police officer.
 - There is no easily accessible documentation available to complainants outlining their rights when making a complaint to the police, for instance their right to object if they feel the investigating officer may be biased.

- There is no formal strategy to ensure that members of the general public are informed of their rights to make a complaint against a member of the police.
- Policy development in this area appears to be uncoordinated and piecemeal.

Implementation of the Adult Sexual Assault Investigation Policy

- 2.259 The mandatory wording in the ASAI Policy is unrealistic in the light of the resources available to implement this policy. The policy appears to be well supported by those with expertise in this area, and in my view the policy should be implemented consistently across the country as a matter of priority. Implementation of the policy requires a resourcing plan and a dedicated budget, which should be supported by funding sought from the Government and Parliament.
- 2.260 The ASAI Policy and the Manual of Best Practice also need to be rationalised to ensure they are not contradictory in any way, and combined into a single document for ease of access and improved use.

Communication and training

- 2.261 There is no system in place to ensure that police officers are aware of what policies and instructions are important to their area of work, and that they have the necessary level of knowledge of those policies and instructions. Similarly, although there are a few nationally mandated training packages dealing with a narrow range of “core” skills for all staff, most staff training is decided at the district level without any national consistency.
- 2.262 Practices for communicating policies to staff need to be strengthened. There needs to be a system for ensuring that officers are aware of the policies and policy changes that are most important for their work, and have read and understood them. This work should be undertaken in conjunction with a review of what “core” skills need to be nationally mandated for ongoing training.

Recommendations

Police policies and procedures

- R1** New Zealand Police should review and consolidate the numerous policies, instructions, and directives related to investigating complaints of misconduct against police officers, as well as those relating to the investigation of sexual assault allegations.
- R2** New Zealand Police should ensure that general instructions are automatically updated when a change is made to an existing policy.
- R3** New Zealand Police should develop a set of policy principles regarding what instructions need to be nationally consistent and where regional flexibility should be allowed.
- R4** An enhanced policy capability should be developed within the Office of the Commissioner to provide policy analysis based on sound data, drawing upon the experience of front-line staff and upon research from New Zealand and beyond.

Police policies and procedures for complaints

- R5** New Zealand Police should develop an explicit policy on notifying the Commissioner of Police when there is a serious complaint made against a police officer. This policy and its associated procedures should specify who is to notify the police commissioner and within what time frames.
- R6** New Zealand Police should ensure that members of the public are able to access with relative ease information on the complaints process and on their rights if they do make a complaint against a member of the police.
- R7** New Zealand Police should undertake periodic surveys to determine public awareness of the processes for making a complaint against a member of the police or a police associate.
- R8** New Zealand Police should develop its database recording the numbers of complaints against police officers to allow identification of the exact number of complaints and the exact number of complainants for any one officer.

Adult Sexual Assault Investigation Policy

- R9** New Zealand Police should review the implementation of the Adult Sexual Assault Investigation Policy to ensure that the training and resources necessary for its effective implementation are available and seek dedicated funding from the Government and Parliament if necessary.

- R10** New Zealand Police should incorporate the Adult Sexual Assault Investigation Policy in the “Sexual Offences” section of the New Zealand Police Manual of Best Practice for consistency and ease of reference.

Communication of policies and training

- R11** New Zealand Police should strengthen its communication and training practices by developing a system for confirming that officers have read and understood policies and instructions that affect how they carry out their duties and any changes thereto.
- R12** New Zealand Police should strengthen its communication and training practices to ensure the technical competencies of officers are updated in line with new policies and instructions.
- R13** Bearing in mind the mobility of the workforce, New Zealand Police should conduct a review of what training should be mandatory at a national level and what should be left to the discretion of districts.



– 3 –

POLICE PRACTICE IN COMPLAINT INVESTIGATIONS

INTRODUCTION

3.1 This chapter addresses terms of reference (2)(a) to (2)(d), which requires the Commission to inquire into, and report upon

- (2) irrespective of the existence or adequacy of standards or procedures as a matter of Police policy, the practice of Police in the investigation of complaints alleging sexual assault by members of the Police or by associates or the Police or by both, in particular, but not limited to,—
 - (a) the practice of Police in relation to the investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both in Kaitia and Rotorua (or other relevant localities) at the material times:
 - (b) the current practice of Police when investigating complaints alleging sexual assault by members of the Police or by associates of the Police or by both:
 - (c) whether Police practice has met and now meets the applicable Police standards and procedures (if any):
 - (d) what requirements (if any), both at a local level and at the level of Police Headquarters, have been in place, or are now in place, to ensure that Police practice complies with any relevant standards and procedures:

This chapter is divided into three sections addressing first component (2)(a), next (2)(b) and (2)(c) together, and then (2)(d). My recommendations are presented at the end of the chapter.

Background details of relevance to this chapter

Time frame. The period of interest to the inquiry was determined in March 2004 to be the 25 years from 1 January 1979. The Commission considered police investigations of relevant complaints that had been made since January 1979.

Parties to the inquiry. The Commission formally recognised four parties to the inquiry: New Zealand Police, Police Complaints Authority (PCA), Police Association, and Police Managers' Guild.

Submitters. Of those who approached the Commission directly about the police investigations into their complaints, 10 submitters were considered to fall within the terms of reference and directions.

Witnesses. The Commission heard evidence from Police Commissioner Robert Robinson, a range of other New Zealand Police staff, the Police Complaints Authority, the president of the Police Association, and various specialist witnesses.

Operation Loft. Staff from the New Zealand Police Professional Standards section at the Office of the Commissioner carried out a comprehensive search of police records to identify all cases that related to the Commission's terms of reference (known as Operation Loft). As part of Operation Loft, Professional Standards staff members were asked to locate and retrieve any files that related to allegations of sexual offending by police or associates of the police since 1 January 1979. All these files were provided to the Commission for review.



PRACTICE IN INVESTIGATION OF SPECIFIC COMPLAINTS: CONSTRAINT ON INQUIRY

- 3.2 Term of reference (2)(a) required the Commission to inquire into, and report upon
- (2) irrespective of the existence or adequacy of standards or procedures as a matter of Police policy, the practice of Police in the investigation of complaints alleging sexual assault by members of the Police or by associates or the Police or by both, in particular, but not limited to,—
 - (a) the practice of Police in relation to the investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both in Kaitaia and Rotorua (or other relevant localities) at the material times:
- 3.3 This term of reference directed the Commission to examine the practices related to investigation of alleged offences in Kaitaia and Rotorua involving Ms Nicholas and Ms Garrett. However, the alleged offences in question were the subject of fresh criminal investigations at the time the Commission commenced its work. The Commission became conscious of the potential for its work to contaminate those (and other) inquiries or place them or any subsequent prosecutions in jeopardy. On 21 April 2005, the Government announced it would alter the mandate of the Commission so that it could complete its work without prejudicing any criminal prosecutions and ongoing investigations.
- 3.4 The Order in Council of 2 May 2005 providing directions to the Commission effectively amended the terms of reference and prevented the Commission from inquiring into Ms Nicholas's or Ms Garrett's allegations about the way their complaints were first investigated. The criminal processes were not completed within sufficient time for me to consider the several investigations involving their complaints. Further potential criminal prosecutions were also relevant. I am therefore constrained from addressing term of reference (2)(a) in any way. Full details of these events are set out in Appendix 2 of this report, paragraphs A2.31 to A2.44.



PRACTICE IN COMPLAINT INVESTIGATION

3.5 This section addresses terms of reference (2)(b) and (2)(c), which require the Commission to inquire into, and report upon

- (2) irrespective of the existence or adequacy of standards or procedures as a matter of Police policy, the practice of Police in the investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both, in particular, but not limited to,—

...

- (b) the current practice of Police when investigating complaints alleging sexual assault by members of the Police or by associates of the Police or by both:
- (c) whether Police practice has met and now meets the applicable Police standards and procedures (if any):

3.6 The focus of term of reference (2)(b) is the current practice of the police. Term of reference (2)(c) requires me to consider whether police practice (not necessarily current practice) has met and now meets applicable police standards and procedures. The two terms of reference are distinct but are conveniently considered together. I have chosen to address them by considering each of the following stages or aspects of the investigation of a complaint¹⁹⁵ alleging sexual assault by a member of the police or a police associate:

- the process of making a complaint
- the appointment of an investigating officer
- conduct of the investigation
- determination of whether criminal charges should be laid
- managing relationships and communications with complainants and related agencies.

3.7 For each stage or aspect, I have endeavoured to do the following:

- describe the current standards and practices, having regard to the difficulties (discussed in Chapter 2) in clearly articulating some aspects of police standards and procedures
- examine how the cases of nine of the ten submitters were dealt with¹⁹⁶
- consider evidence from the Operation Loft files that appears to illustrate issues concerning past practice
- where necessary, identify areas to be addressed for the future.

3.8 As explained in Chapter 1, I examined the submitters' cases in formal hearings, at which evidence was presented by the police and other parties and, in some cases, the submitters themselves. The hearings gave me an insight into the submitters' experiences, which I have

¹⁹⁵ In general, a criminal investigation begins with a complaint or other information regarding an alleged offence through to the conduct of a prosecution or other action: Detective Superintendent Malcolm Burgess, Brief of evidence, 9 November 2006, p. 3.

¹⁹⁶ The case of Submitter J is discussed in Chapter 6.

taken into account when deciding how best to present their cases in this report and to identify lessons that can be learned for future practice. Unless otherwise stated by way of footnote reference, the evidence discussed in this report arose from those hearings.

- 3.9 The mention of an Operation Loft file indicates that the recorded case is, in my opinion illustrative of trends and types of behaviour that need to be considered when current practice is being reviewed or when new practices, standards and procedures are being developed. The mention of a particular example does not mean that the matters raised by that example were common or widespread throughout the police.

THE PROCESS OF MAKING A COMPLAINT

- 3.10 Between 1993 and 2003 the number of allegations of sexual misconduct by police officers has been relatively stable at around 10 per year on average.¹⁹⁷ In 2004, the number of allegations of sexual misconduct increased to 42, falling back to 24 in 2005. The higher figures in these years are thought by the police to be the result of the publicity arising from the establishment of this Commission of Inquiry into Police Conduct and from the investigation arising out of Ms Nicholas's complaint. These events prompted other complaints and resulted in an increased number of (mainly historical) complaints.¹⁹⁸ If that is so, it suggests that for whatever reason, an indeterminate number of individuals have in the past felt unable to come forward with allegations of sexual misconduct by police officers, despite the existence of the Police Complaints Authority (PCA) and other independent authorities (such as court registrars, members of Parliament, and ombudsmen) who are able to receive complaints. A few such individuals approached the Commission. However, their complaints could not be reviewed because my terms of reference allowed consideration only of cases that had been investigated by the police.¹⁹⁹
- 3.11 This kind of under-reporting is a recognised feature of sexual offending generally, and not just when the alleged offender is a police officer. Many victims of sexual violation do not report the incident or minimise the severity of the act²⁰⁰ and it is not uncommon for there to be a surge of complaints after publicity regarding particular types of crime.
- 3.12 Dr Jan Jordan, an expert witness specialising in women's experience of reporting rape offences to the New Zealand Police, explained that rape can have "such a profound and traumatic impact on the victims that it negatively affects their willingness to report and their ability to do so convincingly".²⁰¹ A sexual assault complaint necessarily requires the disclosure of very personal information to the police and potentially in a court of law. However, the trauma experienced by a complainant may make it difficult to complain, and they may not always tell the police everything. I was told that complainants may well struggle to say, "I have been raped", which is why the police "need really good training and sensitivity right from the start".²⁰²

197 Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, Appendix 3.

198 Detective Superintendent Malcolm Burgess, Transcript of hearing, 29 November 2005, p. 18.

199 See Appendix 2 paragraph A2.16.

200 Dr Jan Jordan, *The Word of a Woman? Police, Rape and Belief*, Palgrave MacMillan, Basingstoke, UK, 2004, p. 19.

201 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 4.

202 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Transcript of hearing, 3 November 2005, p. 22.

- 3.13 The sensitive and distressing nature of any complaint of sexual assault may also affect when a complaint is made. There were examples among the files of complainants who did not go straight to the police, but where the complaint surfaced in some indirect way, for instance when other complaints came to light.²⁰³
- 3.14 A 2001 file provides an example of a woman who did not immediately make a complaint. It seems the main reason for this was because she was ashamed of what had happened. However, in her statement she also said, “I did not think that anyone would believe me.” Similarly, the first person she told about the incident stated, “She said to me, they won’t believe me because I’m a known criminal and that fella is a cop.”²⁰⁴
- 3.15 The perception that the police will not believe or will not investigate an allegation of sexual assault against a member or associate of the police has featured in a number of files that I reviewed.²⁰⁵ This perception appears to arise from
- an awareness that making a complaint against a police officer is a complaint against an authority figure within the community (this status may extend to a police associate), and hence the complainant may be concerned that the alleged offender will be seen as having greater credibility than she or he
 - the fact that the complaint is made to the very organisation to which the alleged offender belongs, or with which he or she has close and friendly associations.
- 3.16 There are strict policies and procedures under current practice designed to ensure that a complaint against a member of police, once made, is taken and investigated. Indeed, the police submitted strongly that, although sexual offending is always a very daunting crime to report, there are no particular barriers to making complaints of sexual offending involving police officers or police associates.²⁰⁶ The investigations into allegations of sexual assault against members of the police that I reviewed indicated that the applicable policies were generally complied with in the majority of cases.
- 3.17 Nevertheless, I believe the existence of the perception on the part of some complainants that the police will not believe or will not investigate an allegation of sexual assault against a member or associate of the police may add to the difficulty that some people have in first making a complaint, meaning that they may struggle, perhaps for years, before mustering the courage to do so.

Current practices for making and receiving complaints

Making a complaint of sexual assault against a member of police

- 3.18 Various agencies and processes can be used to make a complaint about a police officer. Complaints of sexual assault by police officers can be made to any of the following:
- the PCA²⁰⁷

203 For example, Operation Loft files LT 67, LT 86, LT 94, and LT 139.

204 Operation Loft file LT 64.

205 See for example, Operation Loft files LT 52, LT 64, LT 72, LT 118, LT 121, LT 125, LT 185, and LT 198.

206 New Zealand Police, Submissions in response to draft report, 20 June 2006, pp. 28–33, and New Zealand Police, Submission (“Comments on seven new extracts (circulated on 8 September 2006), and on proposed interim report regarding police disciplinary system”), 27 October 2006, pp. 5–7.

207 Police Complaints Authority Act 1988, section 14(3).

- any member of the police²⁰⁸
- the registrar or deputy registrar of any District Court (where the complaint is in writing)²⁰⁹
- an ombudsman²¹⁰
- a member of Parliament.²¹¹

3.19 According to the police website, complaints can be made in any of the following ways:

- verbally, in which case the substance of the complaint will be written down by the police officer taking the complaint
- by way of a written statement, taken by a commissioned or non-commissioned police officer
- by way of a letter prepared by the complainant to any of the organisations or positions listed above
- by completing a complaint form provided by the PCA and available at some police stations or at the office of the PCA
- online at www.pca.govt.nz.²¹²

The new PCA website contains a complaint form, which can either be completed online or be posted to the PCA.²¹³ I discuss the making of oral complaints to the PCA in Chapter 4.

3.20 Where a sexual assault complaint has been made to a registrar or a deputy registrar of the District Court, an ombudsman, a member of Parliament, or the PCA it will be referred to the police for investigation because New Zealand Police is the only body within New Zealand with a prosecutorial function in respect of sexual assault allegations. Although the PCA has had the resources to conduct its own investigations since 2003, the secrecy provisions within the Police Complaints Authority Act 1988 (PCA Act) prevent any of the material gathered by its investigators from being used in criminal prosecutions or disciplinary proceedings.

3.21 Just over half of all sexual assault complaints (excluding sexual harassment complaints) against police members between 2000 and 2005 were made by the complainant approaching the police directly (40 of 79 complaints, or 50.6 percent). Eight sexual assault complaints against police officers were made to the PCA (10.1 percent) and 25 complaints (31.6 percent) alleging sexual assault by a police officer were made either as a result of someone contacting the police on the complainant's behalf (for example, a family member, friend, or support agency) or as a result of the police becoming aware of a rumour that a sexual assault had occurred. Six complaints (7.6 percent) were as a result of police inquiries.

208 Police Complaints Authority Act 1988, section 14(3).

209 Police Complaints Authority Act 1988, section 14(3).

210 Police Complaints Authority Act 1988, section 14(3).

211 New Zealand Police website, www.police.govt.nz, accessed 28 September 2006. Note that the Police Complaints Authority Act 1988 does not specify that a complaint against a member of police can be made to the Minister of Police.

212 New Zealand Police website, www.police.govt.nz, accessed 28 September 2006.

213 Police Complaints Authority website, www.pca.govt.nz, accessed 28 September 2006.

- 3.22 As outlined in paragraph 2.97, the police have an obligation to receive complaints about police members. In particular, as relevant to current police practice, general instruction IA104(4) directs
- Every complainant shall be received and his or her complaint taken when he or she calls at the station, community policing centre or other Police office. The complainant shall not be asked to return or call another day to deal with some other staff member or section.²¹⁴
- 3.23 Indeed, I was told by Assistant Police Commissioner Peter Marshall,
- All Police officers can and should be able to receive a complaint. If the Commission has evidence that particular complainants were sent away pending the availability of other staff, then this was inappropriate. In some stations, it may take some time for the complainant to be seen by a CIB officer, but even then the officer that the complainant initially approaches should take “holding action”, such as filling out the initial complaints notification form and ensuring the complainant is being properly looked after while CIB staff arrive.²¹⁵
- 3.24 If a police district receives a complaint alleging sexual assault by a police member, it is required to record the complaint and notify Professional Standards at the Office of the Commissioner, which subsequently notifies the PCA.
- 3.25 The PCA is required under its enabling legislation to give direction on all complaints against police officers. Although the PCA Act does not prevent the police from commencing or continuing any investigation into a sexual assault complaint against a member of police,²¹⁶ it is the PCA that decides how a complaint against a police officer should be handled. Under section 17 of the PCA Act, the PCA decides whether to investigate the complaint itself, defer action until after the police investigation of the complaint has been completed, oversee the police investigation of the complaint, or take no action with regards to the complaint.
- 3.26 It is current police practice to request that the PCA defers action where a complainant alleges that a serious criminal offence has been committed. This is intended to ensure that the secrecy provisions in the PCA Act are not engaged and the police are able to use evidence gathered during the investigation in any subsequent criminal or disciplinary proceedings.
- 3.27 The PCA has agreed with this course of action in the majority of complaints since 2000; however, the PCA generally requires the police to advise it of all developments of consequence in the course of the investigation and requires the matter to be included in the police district’s monthly reporting schedule.²¹⁷

214 New Zealand Police, General instruction IA 104, “General Guidelines for Receiving Complaints”, *Ten-One*, No 90b, 28 April 1995, republished 2002.

215 Assistant Police Commissioner Peter Marshall, Brief of evidence, 7 November 2005, p. 9.

216 Police Complaints Authority Act 1988, section 22.

217 See Chapter 4 for further discussion of the Police Complaints Authority and its interaction with New Zealand Police.

Making a complaint of sexual assault against an associate of the police

- 3.28 There are no specific police procedures regarding the acceptance and conduct of an investigation into an allegation of sexual assault by a police associate. I was told, “investigation of associates of Police follow the same process as any investigation of criminal offending”, although “the suspect’s association with the Police may require special steps to be taken ... on a case by case basis, having regard, among other things, to the exact nature of the association”.²¹⁸

Evidence of past practice when receiving a complaint

Complaints against members of the police

- 3.29 An assessment of the Operation Loft files indicates that in the vast majority of cases the police took a complaint against a police member promptly and professionally in accordance with the standards and practices applicable at the time. In only a few instances did the initial police member approached not take the complaint immediately.²¹⁹ According to the police, “Many of those cases where questions of non-compliance arose could be explained by the particular circumstances of the case”.²²⁰
- 3.30 For example, in a 1984 case the complainant (while being held overnight in the police station cells) made allegations of indecent exposure to two constables and a senior police officer. A further senior police officer was also advised of the allegation. Despite the complainant specifically asking one of the constables how to make a complaint, the complaint was not taken until the complainant returned to the police station the following day with her solicitor.²²¹ Indeed one of the officers responded to the complainant’s attempt to make a complaint with a grossly insensitive remark, and all failed to take her complaint seriously.²²² The police acknowledged that the officer’s actions were extremely insensitive.²²³ However, because of her earlier bizarre and abusive behaviour they submitted, “it was not immediately apparent to the Police that her allegation was meant to form the basis of a genuine complaint”.²²⁴
- 3.31 In a 2003 file a complainant made an allegation of an indecent assault to a sergeant, and the sergeant chose not to take a complaint, instead directing the complainant to contact a senior member in the morning. Regarding this, the district commander reported,
- Sergeant [name] should have taken a complaint from [the complainant] rather than refer her to another officer. I will have her advised of that, but by way of advice rather than formal counselling.²²⁵

218 Detective Superintendent Malcolm Burgess, Brief of evidence, 11 December 2006, p. 3.

219 For example, Operation Loft files LT 93, LT 137, and LT 163.

220 New Zealand Police, Submission (“Comments on seven new extracts (circulated on 8 September 2006), and on proposed interim report regarding police disciplinary system”), 27 October 2006, p. 8. (For comment on the provision of references to quotations, submissions, and other information provided by the parties, refer to “Notes for readers” in the Appendices.)

221 Operation Loft file LT 137.

222 Operation Loft file LT 137.

223 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 61.

224 New Zealand Police, Submission (“Comments on seven new extracts (circulated on 8 September 2006), and on proposed interim report regarding police disciplinary system”), 27 October 2006, p. 10.

225 Operation Loft file LT 93.

The allegation in this case was made against one of the officers who was transporting the complainant to the police station and while the complainant was being transported. No mention of the complaint was made to the staff who processed the complainant at the police station. The complainant did not actually make the complaint until eight weeks later when she rang the station. She then failed to keep her appointments to be interviewed. The police attributed this failure to the fact that there was a warrant for her arrest.²²⁶

Complaints against associates of the police

- 3.32 The vast majority of complaints against associates of the police were also appropriately taken. However, I did receive evidence from one submitter (Submitter A) that the police had failed to take her complaint of rape when she initially approached the police in 1982 or 1983. Instead of taking the complaint, the police officer brought the alleged offender into the same room to discuss the allegations with her.²²⁷ (The police later agreed that this was extremely insensitive.²²⁸) I note that the complainant received a police apology when her complaint was reinvestigated in the mid-1990s. The circumstances of this case are set out more fully in paragraphs 3.123 to 3.129.

Areas to be addressed

- 3.33 The evidence presented before this Commission illustrates the willingness of the police in the vast majority of cases to accept and investigate sexual assault complaints against police members or associates of the police, and where appropriate, to prosecute the alleged offender. However, the evidence also showed, understandably perhaps, that some complainants may perceive that the police will not believe or will not investigate a complaint of sexual offending by a police member or associate of the police. Indeed, in one case that was what a complainant said she was told when she went to the station to lay a complaint against an officer.²²⁹
- 3.34 Although the police rightly point out that it is not possible to overcome the reticence of all potential complainants,²³⁰ I believe it is important to address this perception as far as possible.
- 3.35 It is absolutely critical for the prospects of successful prosecution of offending such as rape that the complaint is received as soon as possible after the offence is committed.
- 3.36 The police must take active steps to facilitate victims coming forward, either in person at the police station or by telephone, and especially when an alleged offender is a member of the police. As discussed in paragraphs 2.137 to 2.139, there is also a need for greater effort in educating the public about the complaints process. It is important that members of the public are aware that there are processes in place to enable them to complain about a member of the police and that these processes will ensure that their complaint is investigated fairly and impartially.

226 Operation Loft file LT 93.

227 Operation Loft file LT 69.

228 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 61.

229 Operation Loft file LT 217. Despite extensive inquiries the police were unable to identify the officer alleged to have made this statement and do not accept that it is necessarily true.

230 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 28.

- 3.37 Outside organisations such as Doctors for Sexual Abuse Care (DSAC) or Rape Crisis can also provide support and encouragement to complainants and help clarify any concerns that the police do not believe or investigate complaints against members or associates of the police.
- 3.38 This issue also demonstrated to me the importance of ensuring that there is wide public awareness of the existence and functions of the PCA, and that the PCA is easily accessible to complainants throughout New Zealand.

APPOINTING AN INVESTIGATING OFFICER

- 3.39 Evidence provided to the Commission demonstrated strong awareness of the need to appoint a suitably qualified officer to investigate a complaint of sexual assault against a police officer or police associate, although a limited application of the Adult Sexual Assault Investigation Policy (ASAI Policy) requiring a trained investigator. The key issue in many cases is how best to ensure that the investigating officer has the necessary independence from the person complained against (and other parties), as well as the necessary skill and experience.
- 3.40 “Independence” is a broad concept, but I use it here in the sense that a police investigator must at all times act objectively and impartially towards the complainant, the person complained against, and other persons; and that there should be no room for any suggestion that an association of some kind between an investigator and any other person has influenced the conduct or outcome of an inquiry.

Importance of independence

- 3.41 It is well recognised in the conduct of public affairs, especially in a small country like New Zealand, that a public official’s personal circumstances, knowledge, and associations will inevitably from time to time conflict with the performance of his or her official duties. Not all such “conflicts of interest” require the official to withdraw from the particular matter at hand. Some conflicts are of such a minor nature that they can be managed adequately through disclosure and the application of a professional attitude. The ability to identify and deal with low-level forms of conflict is an integral element of an official’s “independence of mind”, and every public organisation is expected to have ethical guidelines and management systems to support that. But at the other extreme, it is accepted that other forms of conflict of interest – such as those of a financial nature or those involving close relationships with affected persons – require an official to withdraw and play no part in the matter at hand.
- 3.42 Drawing a line between the two extremes is neither possible nor desirable. There are many types of behaviour or association that may give rise to a conflict of interest. It is a matter of judgment, having regard to the particular circumstances, as to whether the interest needs only to be disclosed by the official and managed by the organisation concerned or whether it disqualifies the official from any involvement.
- 3.43 However, independence does not only involve the application of legal and ethical standards. It can also involve matters of perception. Different perspectives cause different perceptions, and what an official or an organisation regards as an acceptable level of independence may differ from what the public, the news media, or politicians perceive as such. External

perceptions may not always be reasonably held, but the fact that they are held, and/or that the official or organisation does not acknowledge them, can ultimately result in a loss of credibility and damage to reputation. This is another concern that was raised with me.

Importance of independence when investigating complaints involving police and associates

- 3.44 Independence as described above is of course fundamental to all police investigations, but it is an especially important consideration in the planning and investigation of complaints against police officers. Not only are the risks to an independent investigation more visible and acute because of its necessarily “internal” nature, but also the possibility of adverse perceptions from outside the organisation is inherently greater. The fact that the investigation may be overseen or reviewed by the Police Complaints Authority limits the risk of adverse perception but, as my inquiry shows, it does not exclude it altogether.
- 3.45 Independence is also especially important in cases involving allegations of sexual misconduct by police officers, or sexual offending by officers or police associates. In her evidence, Dr Jan Jordan from the Institute of Criminology at Victoria University of Wellington discussed the key role of the investigating officer in the investigation of sexual assault complaints generally:
- the police occupy such a pivotal role as gatekeepers to the criminal justice system, a structural position that currently gives them massive discretion regarding case investigation.²³¹
- 3.46 It is of paramount importance that the officer investigating a complaint against either another police officer or a police associate is independent, and perceived to be independent, of the officer or associate he or she is investigating. Independence is particularly at risk if the investigator was personally involved in the matter that is the subject of the complaint, or has a relationship or association (past or present) with the subject of the complaint, the complainant, or some other person such as a key witness. Conflicts of interest of these kinds inevitably give scope for a perception that the investigator does not have the necessary independence for the investigation. A lack of independence can also compromise the investigator’s objectivity in actuality – for example, by making the investigator more susceptible to improper pressure or favouritism (implicit or explicit) from the police officer who is associated with the subject of the investigation, and/or the officer’s colleagues or family.
- 3.47 Ultimately, independence is central to the reputation of the police and the public’s trust in the police to make impartial decisions. A decision that is, or appears to be, influenced by other interests damages the reputation of both the individual officer and the organisation as a whole.
- 3.48 Independence risks can be addressed to some extent by ensuring that the investigator has sufficient experience and seniority to manage perception issues²³² and sufficient objectivity *in fact* to ensure the investigation is carried out in a fair and proper manner. But simply

231 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 13.

232 Detective Superintendent Malcolm Burgess, Transcript of hearing, 11 December 2006, p. 6.

“managing” the conflict in this way is not the right approach if the relevant legal and ethical standards dictate withdrawal from the matter altogether. Indeed in some cases the perception of a conflict may cause such difficulties that it just makes good sense for the officer to stand aside, irrespective of whether there is a legal or ethical responsibility to do so. These are matters that ought to be covered by policies and procedures so as to ensure sound and principled decision-making and oversight (not to mention knowledge of the relevant legal and ethical standards) by senior officers.

Standards and procedures relating to independence

Complaints involving police officers

3.49 The review of standards and procedures in Chapter 2 of this report shows an evolving understanding since 1979 of the need to consider issues of independence, especially when appointing investigators of complaints involving police officers, and to ensure that all complaints are investigated fairly and appropriately. In particular,

- The requirement that a member not investigate a complaint in which he or she was personally involved (except in a case of a minor administrative nature), nor be involved in reviewing his or her own decisions, has been a common feature of general instructions at least since 1980. It is now enshrined in general instruction IA110.
- A 1984 directive gave formal recognition to the principle that police officers who are the subject of complaints of criminal offending should be treated no more (or less) stringently than members of the general public with regard to arrest or charge. The directive also stated that an offence that may be trivial when committed by a member of the public may be serious if committed by an officer, and that charging decisions should be made by the district commander.²³³
- Since 1991, general instructions have detailed the process that police must follow for complaints of any nature against police officers (whether involving alleged misconduct or criminal offending). The instructions entrust the district commander with responsibility for appointing an officer of appropriate rank to investigate a complaint involving a police officer, and to recognise the need for the investigator to have sufficient independence. General instruction IA108 now requires the district commander to give “consideration, in appropriate circumstances” to appointing an investigator from outside the section or the district as the particular case may require.
- In November 2005, in response to the Commission of Inquiry into Police Conduct, Police Commissioner Robert Robinson directed district commanders to consult the National Manager: Professional Standards about the appointment of complaint investigators, to determine whether the investigator should be appointed from outside the district concerned. The directive applies in all cases except those addressed by the District Complaint Resolution process.²³⁴ In evidence to the Commission, Police Commissioner Robinson said the objective of the requirement was to achieve consistency across districts and ensure the future impartiality of investigators.²³⁵

233 New Zealand Police, Headquarters circular, “Criminal and Disciplinary Proceedings Against Members of the Police”, June 1984.

234 New Zealand Police, Memorandum from Police Commissioner Robinson to Office of the Commissioner executive and district commanders, 24 November 2005.

235 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, pp. 18–19.

- General instruction IA101 states that New Zealand Police's reputation is its most critical asset, that setting high professional standards for themselves will enable police to promote and defend that reputation, and that the primary objective of any internal investigation must be to leave a complainant and a member under investigation each in the belief that he or she has been treated fairly.

Complaints involving police associates

- 3.50 General instructions IA101 to IA132 apply only to the investigation of complaints involving police officers. But independent investigation is also important in cases involving police associates. Indeed it is arguably more so because cases involving associates will not be subject to the independent scrutiny the PCA undertakes in respect of complaints involving police officers. The term "police associate" is not always easy to define in practice, and requires a case-by-case consideration. I note that there are no formal police standards, procedures, and policies regarding the identification of associations between police officers and suspects, or for the conduct of the resulting investigations. Instead, the investigation of allegations of criminal offending, including allegations of sexual assault, by police associates follows the same process as any investigation of sexual offending.
- 3.51 The police acknowledged that an association between a suspect and police may require special steps to be taken to ensure that the investigation is (and is seen to be) fair and objective,²³⁶ but submitted that the issue is properly governed by general provisions involving the avoidance of conflicts of interest, and that flexibility is important to enable potential conflicts to be resolved on a case-by-case basis.²³⁷

Summary of the applicable standards

- 3.52 The current applicable standards and practices can perhaps be summarised in the following five statements of principle:
- Complaints involving police officers or police associates should be investigated in the same manner and to the same standard (having regard to their degree of seriousness) as those involving ordinary members of the public.
 - The fact that an allegation involves a police officer, rather than an ordinary member of the public, is relevant to its seriousness and the consequent degree of independence and rigour required in an investigation.
 - Independence, although fundamental to all investigations, needs special consideration in any investigation of a police officer or a police associate because of risks such as conflicts of interest and openness to improper influence or favouritism.
 - A perception of a lack of independence can be just as damaging to the integrity of an investigation involving a police officer or an associate, and hence the credibility of the police, as an actual lack of independence.
 - Ensuring the independence of investigations requires experience and judgment (especially when placed alongside the needs for prompt and efficient investigation of a complaint) and decision-making at a high level of seniority.

236 Detective Superintendent Malcolm Burgess, Brief of evidence, 11 December 2006, p. 3.

237 New Zealand Police, Submissions regarding police associates, 4 September 2006, p. 2.

Current practice when appointing an investigator of a complaint against a police officer

- 3.53 The issue of independence most commonly arises at the time an officer is appointed to investigate a complaint. Superintendent Wildon told me that historically the police have taken the view that it is necessary to bring in an investigator from another part of the country only in unusual or particularly serious cases, but that in recent times greater care has been taken in selecting investigators to ensure they have no personal or professional relationship with the member under investigation. He said that although Professional Standards is tasked with overseeing and reviewing the handling and outcome of all complaints against serving police officers, most inquiries are conducted within the district where the complaint arose. Districts are responsible for organising the inquiry and for making preliminary recommendations as to how complaints should be resolved. Districts maintain their own complaints registers, and most have dedicated complaints managers.²³⁸
- 3.54 Superintendent Wildon explained to me the involvement which Professional Standards had in the appointment of a complaint investigator before Police Commissioner Robinson's directive of November 2005, noted above, that district commanders consult the National Manager: Professional Standards (in all but non-serious cases) about the appointment of complaint investigators. When a complaint is made to a police district, the district commander must notify Professional Standards as promptly as possible so that the complaint can be logged and the PCA notified. When a complaint is initially directed to the PCA and is to be referred to the police for investigation on its behalf, the PCA refers the matter to Professional Standards. In either of these situations, practice before November 2005 would almost always involve Professional Standards referring the matter back to the relevant district for investigation, unless it considered the investigation clearly needed to be led by an investigator from outside the relevant district. In those cases, it would forward the complaint to an appropriate external investigator directly. This situation would arise, for example, in cases where senior staff in the relevant district have a conflict of interest and should not take any further part in the resolution of the complaint. It may also arise in particularly serious cases, or cases where the alleged offender was of a senior rank.²³⁹
- 3.55 In his brief of evidence, prepared in November 2005, Superintendent Wildon said that his office had not until that time had a role in the appointment of the lead investigator for a complaint, even though from time to time a district would seek advice. He considered that position would change as a result of the November 2005 directive.²⁴⁰ This contrasted with his oral evidence to the Commission, in which he said that the directive was not the result of ineffective consultation about the appointment of investigators but that

I think there is good consultation with districts. It's very common for us to speak about the appointment of an investigator and it's happened for some time.²⁴¹

238 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, pp. 2–5.

239 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, pp. 3–4.

240 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 5.

241 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Transcript of hearing, 21 November 2005, p. 41.

- 3.56 In further evidence to the Commission in December 2006, Detective Superintendent Burgess also described the directive as having formalised established practice. Speaking of practice since the directive had taken effect, he said that under the consultation requirement district commanders now discuss serious matters with the Professional Standards national manager; and, for example, as a result of such consultations, he had personally maintained oversight of staff from one district who had travelled to other districts to conduct investigations at the request of those districts' commanders.²⁴²

Relevant factors in making appointments

- 3.57 As noted in paragraph 3.49, general instruction IA108 requires the district commander to give consideration to the appointment of an investigating officer from outside the station, town, or district where the incident occurred and/or where the alleged offender worked. However, a range of other factors may also need to be considered in this decision. Detective Superintendent Burgess summarised the factors in his evidence as follows:

The appointment of investigators will take into account the seriousness of the allegation, how recently the alleged offence has occurred and the urgency with which any inquiry should be commenced. This process will also take account of the amount of information known about the allegation, the availability of independent investigators and the degree of independence required by the circumstances.²⁴³

- 3.58 The urgency of the inquiry may also affect the timing of the decision on an appropriate investigator. Detective Superintendent Burgess explained that after the initial contact with the complainant it is usual, particularly in urgent situations, for a preliminary interview to be arranged as part of a "holding action" after receipt of the initial complaint, and this may on some occasions be conducted by the officer to whom the complaint is first made.²⁴⁴
- 3.59 However, using investigators from another district is expensive, and because of the reduction in the number of districts (and the consequent increase in their size), there are many cases where the district commander can appoint a suitably senior officer from a different centre within the same district who can conduct the inquiry without any suggestion of bias. Superintendent Wildon also said that the evolution of the complaint investigation system has also emphasised the various levels of review of inquiry files and the independence and seniority of those who review the inquiry and the proposed resolution.²⁴⁵
- 3.60 Detective Superintendent Burgess told me that, if a matter is to be investigated inside the district instead of by an external appointment, it is acceptable for the complaint to be investigated by a senior officer such as the district Professional Services manager, an area commander, or a crime manager.²⁴⁶ However, I also heard evidence from three district commanders, who explained how they decide whom to appoint to undertake an investigation into a complaint against a police officer.

242 Detective Superintendent Malcolm Burgess, Transcript of hearing, 11 December 2006, p. 8.

243 Detective Superintendent Malcolm Burgess, Brief of evidence, 11 December 2006, p. 4.

244 Detective Superintendent Malcolm Burgess, Brief of evidence, 11 December 2006, p. 5.

245 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, pp. 3–5.

246 Detective Superintendent Malcolm Burgess, Transcript of hearing, 11 December 2006, p. 9.

- 3.61 Superintendent Grant Nicholls, District Commander, Eastern Police District, informed me that he expects most of the less serious complaints, concerning such things as the attitude and language of police members, to be investigated by the immediate line supervisor of the member complained of and for the supervisor to take appropriate action to monitor future performance. In more serious cases, Superintendent Nicholls will discuss with the area commander and/or the district crime service manager about the appropriate investigator to conduct the inquiry. In most instances the investigator appointed will be a non-commissioned officer. Where the allegation is of serious misconduct or criminal behaviour, close consideration is given to the appointment of an investigator from outside the area, or for the most serious matters, outside the district.²⁴⁷
- 3.62 Superintendent Mark Lammas, District Commander, Central Police District, informed me that the appropriate choice of investigating officer will vary depending on the circumstances of the case. Most complaints can be resolved within the area where they arise, and in those cases he delegates the appointment of the investigating officer to the area commander. Indeed, in cases that do not fall into the most serious category it is not unusual for an investigating officer to have already been assigned by the area commander. In that situation, Superintendent Lammas will review the appointment but intervene only if he considers the area commander's choice to be inappropriate; for example, if the investigator does not have the necessary skill level for the investigation, or is too close to one of the participants to be seen to be independent. Superintendent Lammas takes the view that the necessary degree of distance between the investigator and the alleged offender increases with the seriousness of the allegations. He noted that the other advantage of having area commanders take responsibility for appointing investigators where the complaint can be resolved locally is that they are more aware of which investigators are available (as affected by matters such as leave or workload).²⁴⁸
- 3.63 Where Superintendent Lammas believes that a complaint is too serious to be resolved locally, he will direct the choice of investigator, either by name or by rank and location. Superintendent Lammas told me that it is not difficult in a district the size of Central to find, where necessary, a senior investigator from another centre who has no working relationship with any of the people involved in a particular inquiry.²⁴⁹
- 3.64 The situation is slightly different in Auckland City Police District where an independent Professional Standards section (previously known as a District Complaints section) has been operating since the early 1980s.²⁵⁰ Under this system, the manager of Auckland Professional Standards receives all complaints made about any member of the Auckland police, assesses them, and assigns them to a dedicated inspector to either undertake or oversee the investigation.²⁵¹ Superintendent Gavin Jones, Acting District Commander, Auckland City Police District, emphasised the importance of safeguarding the independence of the investigation:

247 Superintendent Grant Nicholls, District Commander, Eastern, Brief of evidence, 14 November 2005, pp. 3–4.

248 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 14 November 2005, pp. 2–3.

249 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 14 November 2005, p. 3.

250 Superintendent Gavin Jones, Acting District Commander, Auckland City, Brief of evidence, 17 November 2005, p. 3.

251 Superintendent Gavin Jones, Acting District Commander, Auckland City, Brief of evidence, 17 November 2005, pp. 3 and 4.

Where allegations are serious, consideration is always given to arranging for the investigation to be undertaken by someone who is independent of the Police member complained about. The reasons for this are two-fold. Firstly, to ensure that there are no conflicts of interest and secondly to ensure that the integrity of the investigation is maintained. ...

Ensuring independence in an investigation is not a particular problem in Auckland because of the size of the region. It is reasonably easy to identify a competent investigator who does not know the individual complained about.²⁵²

- 3.65 I believe there are many positive examples of practice from these and other districts. For example, it is apparent that some police districts attempt to ensure that the complainant is happy with the investigating officer appointed. An example is offered in a letter from the investigating officer in the Wellington Police District to a complainant:

The Police Complaints Authority requires that you are satisfied with the investigator appointed to carry out the enquiry. If you have any problems with me being appointed to investigate your matter, could you please let me know when you contact me to make the appointment?²⁵³

- 3.66 Superintendent Lammas informed me that he endeavours to accommodate a complainant's wishes if he or she expresses a particular desire for an investigator from another part of the district. In most cases the investigating officer discusses his or her appointment with the complainant, and Superintendent Lammas receives written confirmation, on a standard form, signed by the investigating officer, either of the complainant's assent to that appointment or of any reasons why there is an objection. If an objection is lodged he considers that, and on most occasions will arrange for another investigator to be appointed.²⁵⁴

- 3.67 The impression from all of this evidence is that practice varies between districts in terms of how an investigator is appointed and by whom, and what degree of independence from the member under investigation is needed. A similar picture emerged from my review of police files. In many instances files did not indicate where the investigating officer was based and, consequently, it was difficult for me to ascertain if the investigating officer could be considered sufficiently independent of the alleged offender. However, in those cases where proximity could be observed there seems to have been considerable variation of practice as to the extent to which independence issues were considered, the types of factors that were considered, and when a file was assigned to an investigating officer from outside the station, town, or district where the incident occurred and/or where the alleged offender worked. The following examples illustrate the point.

252 Superintendent Gavin Jones, Acting District Commander, Auckland City, Brief of evidence, 17 November 2005, p. 4.

253 Operation Loft file LT 172.

254 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 3.

Evidence from the submitters' cases

The appointment of an investigating officer in Submitter H's case

- 3.68 In 2001 Submitter H reported to the police that she believed her partner, a police officer, had indecently assaulted a child. She expressed a number of concerns to the Commission about the subsequent police investigation. These included that, contrary to the recommendation of the Child Abuse Unit that had carried out the initial investigation, the interview was conducted by a detective stationed at the same police station as the alleged offender. The submitter considered the working relationships between the investigators and the alleged offender created a barrier to an objective investigation. She also felt that her complaint was neither taken seriously nor investigated thoroughly, and that she and her family had little or no assistance from the local police when the alleged offender continued to harass them for some time afterwards.
- 3.69 Submitter H's complaint was taken by the local Child Abuse Unit. The detective inspector responsible for investigating the case told the Commission that he considered the allegation to be extremely serious and that it needed to be thoroughly investigated within as short a time frame as possible. Officers from the Child Abuse Unit conducted the preliminary investigation, including taking statements from Submitter H and others, and arranging a medical examination of the child.
- 3.70 Having completed this preliminary investigation, one of the officers responsible made a "strong recommendation" to the detective inspector that the interview of the alleged offender should be conducted by someone from outside the district, or at the very least by a senior police officer who was not from the area where the alleged offender worked. He recorded that Submitter H was a "convincing witness" and that the explanation the alleged offender had given another witness about his actions was "unlikely".²⁵⁵
- 3.71 The detective inspector discussed this recommendation with his superior. In his covering report to his superior he had recorded his view that, at that stage, there would not be sufficient evidence to warrant prosecution unless the alleged offender made an admission of criminal sexual activity. That underlined the importance of the interview and any statement obtained.
- 3.72 Despite this, the detective inspector and his superior decided that it was not necessary to bring in someone (who would have to be of the rank of detective senior sergeant or above) from outside the district. They gave the job to a detective senior sergeant in the station where the subject worked (however the police told me that the subject was primarily based at a community policing office and was only nominally attached to the station). Because that officer had only recently taken up his position in the station, they were satisfied that there was no conflict of interest and that the interview would be conducted "professionally and without prejudice" (that is, impartially).
- 3.73 The police said in their submissions on this case that the selection of an interviewing officer for an internal investigation will always be a matter of judgment for the senior officers charged with oversight of the inquiry. However, they accepted that, with hindsight and

²⁵⁵ Operation Loft file LT 68.

despite the interview being an “unremarkable one about which there can be no suggestion of bias”, it was “tempting to disagree” with the decision not to engage an interviewer from outside the district. Although it would, in the police’s view, have made no difference to the outcome, the choice of a different investigator “would have avoided the allegation that [the interviewing officer] somehow contrived to protect [the alleged offender] because they were nominally attached to the same station”.²⁵⁶

Other examples from the Operation Loft files

- 3.74 In some instances the files very clearly show that the independence issue was addressed. For example, in a 2002 case involving an allegation of indecent assault, the alleged offender was based (and the incident occurred) in one Bay of Plenty town, and it was considered inappropriate to appoint an investigating officer from that town. An investigating officer was appointed from another Bay of Plenty town.²⁵⁷ In another (1997) case, involving allegations of disgraceful conduct in a South Island city, an investigating officer was appointed from a North Island city.²⁵⁸ In a 1993 case involving an allegation of indecent assault, the PCA noted, “This was a serious complaint and I am glad to see that it was assigned to a senior officer from outside the District to investigate.”²⁵⁹
- 3.75 In other files it appears that the investigator was a local officer, who knew the alleged offender and/or witnesses. This was the position in a 1983 case where the complaint was made by the alleged offender’s wife, from whom he had become separated, and involved allegations of indecent assault of their children. In his report the investigator stated that earlier in the year, while in the Police Club, the alleged offender had outlined some of his domestic problems to him.²⁶⁰
- 3.76 There is a danger that confidentiality may be compromised if a complaint is investigated locally. In one of the cases referred to in paragraph 3.29 above, dating from 1995, the complaint was referred back to the station at which the alleged offender was based after the complainant first attempted to lodge the complaint at a different station. A lack of confidentiality within the station meant that soon after the complaint had been received and a preliminary interview with the complainant had been arranged, the alleged offender learned informally from a colleague that a complaint had been made against him. This resulted in the alleged offender approaching the complainant and attempting to dissuade her from proceeding with the complaint.²⁶¹
- 3.77 Some of the cases involved the investigating officer also being the supervisor of the alleged offender. In a 1998 file involving allegations of indecent assault, the area controller wrote a letter to a small town station formally appointing the supervisor of the alleged offender as the investigating officer:

The complainant in this matter takes issue with the manner in which she was dealt with by [name] of your staff on [date] 1998.

²⁵⁶ New Zealand Police, Submissions, 11 July 2005, pp. 6–7.

²⁵⁷ Operation Loft file LT 73.

²⁵⁸ Operation Loft file LT 152.

²⁵⁹ Operation Loft file LT 122.

²⁶⁰ Operation Loft file LT 135.

²⁶¹ Operation Loft file LT 163.

You are hereby appointed the Investigating Officer in relation to this complaint and I draw your attention to General Instructions IA114(4) & (6)(a) which relates to visiting the complainant at the commencement of and completion of the investigation.²⁶²

- 3.78 In another 1998 file involving allegations of indecent assault made by a member of the public whom the officer concerned was “cultivating” as a police informant, the sub-area manager sought an outside area investigator but the district manager directed him to appoint an investigator from within his own resources.²⁶³ It is not clear from the file what the reasons for this were. But surprisingly, a local investigator was appointed who appears to have had management responsibility for the alleged offender and also had had some peripheral involvement in the case in that capacity. The report to the PCA from Internal Affairs states,

[The alleged offender had] sought guidance from [the investigating officer] on general matters as it relates to cultivating and operating informants, however he should have more fully briefed the [investigating officer] on his dealings with the complainant. The fact that [the investigating officer] had some involvement does not disqualify him from the internal enquiry. His involvement was in the giving of generic advice as I have said, and he was unaware of the specific details and the complainant’s identity.²⁶⁴

It emerged in evidence that some of the investigating officer’s guidance had been given after he had been appointed to investigate the complaint.²⁶⁵ This could be seen as a breach of the spirit if not the letter of general instruction IA110, even if the guidance was peripheral to the subject matter of the complaint itself. Counsel assisting discussed this point with Detective Superintendent Burgess, who agreed that the officer ought not to have discussed the matter with the alleged offender in his supervisory capacity after he had been appointed to investigate the complaint.²⁶⁶

- 3.79 In a 2000 case concerning an allegation of indecent assault, the supervising officer of the alleged offender was conscious that it was inadvisable that he should have any role in the investigation. In a report he noted,

I am aware that [the complainant] has made a complaint to the Police regarding the actions of [the alleged offender] recently, and as he works under my supervision I have taken this matter no further [than] recording the brief facts on the attached job sheet.²⁶⁷

However, he was subsequently appointed as the investigating officer, conducted all interviews, and took all statements relating to the allegations, including that of the alleged offender.²⁶⁸ The police accepted that the case raised perception issues that should have been managed, but noted that the investigation was undertaken satisfactorily.²⁶⁹

262 Operation Loft file LT 92.

263 Operation Loft file LT 177.

264 Operation Loft file LT 177.

265 Detective Superintendent Malcolm Burgess, Transcript of hearing, 11 December 2006, p. 25.

266 Detective Superintendent Malcolm Burgess, Transcript of hearing, 11 December 2006, pp. 23–26.

267 Operation Loft file LT 33.

268 The area controller in this case reported that he maintained an overview of the investigation; however, it is not apparent from the file what this amounted to.

269 New Zealand Police, Submissions in response to draft report, 20 June 2006, pp. 46–47.

- 3.80 There is a question about whether it is appropriate in principle for an officer's supervisor to become involved in complaint investigation. Superintendent Nicholls said in his evidence that it is acceptable in minor cases involving such things as the attitude and language of police members, where the immediate line supervisor of the member can take appropriate action to monitor future performance (see paragraph 3.61). I accept that evidence. But involving a supervisor is not appropriate in a serious case that requires formal investigation, not only because the existence of a supervisory relationship would be likely to compromise the investigator's objectivity in the investigation but also because that involvement could compromise his or her ability to take action following the investigation (for example on whether disciplinary action should be taken) or be perceived to do so. As a matter of principle, it seems preferable for the investigatory and supervisory roles to be separated, in all but "minor" complaints.
- 3.81 The PCA's view is that the investigating officer would not usually be the supervisor of the member of police who is the subject of a complaint, except on rare occasions and only with the approval of the complainant.²⁷⁰ I would encourage this practice as good policy.

Practices involving police associates

Current practice

- 3.82 As noted at paragraph 3.50, cases involving associates are investigated in the same way as any other police investigation. Detective Superintendent Burgess said in evidence,

This entails the laying of a complaint, conducting an investigation, assessing whether or not there is evidence to mount a prosecution and if so, conducting a prosecution, though the suspect's association with the Police may require special steps to be taken to ensure that the investigation is (and is seen to be) fair and objective. These measures can only be determined on a case by case basis, having regard, among other things, to the exact nature of the association. For example, if the suspect were a child of a Police officer who worked in another part of the country and who did not know the investigating staff, it is unlikely that any special steps would be required. On the other hand, if the suspect were the child of an officer well known to local CIB staff, it is likely that steps would need to be taken to avoid any perception of partiality; one way of doing this, subject to any investigative steps that needed to be taken immediately, would be to bring in an investigation team from another district.²⁷¹

- 3.83 Some instances of association are immediately recognised without difficulty. However, as the relationship becomes more remote the question is less susceptible to quick and easy answer.

Evidence of past practice

- 3.84 Independence issues arose in a number of the files I reviewed involving allegations against police associates. The case of Submitter A (discussed at paragraphs 3.123 to 3.129) is perhaps the clearest illustration of a failure (which the police fully acknowledged by way

270 Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 5.

271 Detective Superintendent Malcolm Burgess, Brief of evidence, 11 December 2006, pp. 3–4.

of apology to the complainant) to address a conflict of interest involving a police associate. In that case the associate was clearly well known to the officer who received and dealt (inadequately) with the complaint. Another case, from 1991, illustrates the importance of addressing the independence issue. It involved complaints of indecent assault on two boys under the age of 12. The case was locally investigated. It was acknowledged that the alleged offender belonged to a club that involved police members, that he was “a regular drinker in the [town name] Police Club” and “also a close friend of Police officers at [town name]”, and that the file was not well investigated or documented until it was reviewed by the investigator’s supervisor.²⁷²

- 3.85 A 1995 case involved a charge of sexual violation by rape against the son of a police officer, which was locally investigated.²⁷³ Detective Superintendent Burgess said in respect of that decision,

My observation would be that perhaps we weren’t as rigorous in applying the degree of independence in 1995 that we tend to apply now. However, it would be my view that in those particular circumstances that file should have been investigated by someone other than the [local CIB], even in 1995.²⁷⁴

It is positive to note that on receipt of the recommendations by two local officers that there was insufficient evidence to prosecute, a senior officer recognised the conflict of interest and the need for independent legal advice to determine whether to proceed with prosecution. After first requesting further investigation, the legal section recommended that there was “a clear prima facie case which must be placed before the court.”²⁷⁵ A trial occurred six months later and the accused was acquitted.

Commission comment on independence of appointees

- 3.86 The evidence from the files supports Superintendent Wildon’s evidence (see paragraph 3.53) that greater care has been taken in recent times to ensure the independence of the investigating officer. There is no doubt that most decisions about appointing a suitable officer now involve the application of experienced judgment and a sound knowledge, not only of the needs of the investigation but also of the ethical issues involved in identifying and managing conflicts of interest.
- 3.87 Despite that, I was struck by the variety of different practices when appointing an investigating officer and by the frequency of cases where a district commander has chosen not to have a complaint investigated externally because of, first, the additional costs to the district and, secondly, reasons of urgency. I accept these are relevant factors that must be placed alongside the need for a fully independent investigator to be appointed. On the other hand, they intensify the risks that principled decision-making will be sacrificed in the interests of pragmatism and that the appointment will not be perceived as sufficiently independent. Ultimately, this may not serve the interests of police credibility and reputation.

²⁷² Operation Loft file LTA 3.

²⁷³ Operation Loft file LTA 42.

²⁷⁴ Detective Superintendent Malcolm Burgess, cross-examined by Mr Kieran Raftery, Transcript of hearing, 29 November 2005, p. 32.

²⁷⁵ Operation Loft file LTA 42.

Making appointments in urgent cases

- 3.88 The impact of urgency on the timing of the appointment of an investigator in a case involving sexual assault deserves some discussion. The case of Submitter D (discussed at paragraphs 3.143 to 3.149) in 1995 is a good illustration of how judgments have been made about this issue. In that case the investigation was undertaken by a member from the station from which the alleged offender had just transferred, and the interview was conducted by the acting head of the CIB. The investigation was undertaken by a member of police from the station from which the alleged offender had just transferred, and the alleged offender was immediately interviewed by the acting head of the CIB. I was informed that the police had to make a speedy choice between interviewing the alleged offender immediately, which meant using a senior officer, or involving someone from outside the district, which would have resulted in a delay of several hours. The latter option risked the alleged offender leaving for another city (with possible loss of forensic evidence) or learning the detail of the evidence and tailoring a story to fit. As a result the district commander chose to have the alleged offender interviewed immediately. I was informed that the investigating officer had not worked with the alleged offender, had never had a relationship with him outside work, and, because of the officer's transfer away from the station, did not need to be concerned about a future working relationship.
- 3.89 In another case, involving an allegation in 1995 of sexual violation by rape, the area controller acknowledged "earlier directives that an officer from outside the District should be called in to investigate in serious criminal charges like this",²⁷⁶ but he explained that speed of action was essential which was why he appointed a local investigator.
- 3.90 But speedy action will not always be paramount. Though no doubt certain aspects of an investigation require prompt action (for example, scene and medical examinations when the complaint is of a recent nature, and a preliminary interview), other aspects will not necessarily be prejudiced by a short delay. Indeed, Dr Jordan told me that some delay in the taking of the formal statement from the complainant might be preferable. In Dr Jordan's view, better evidence may be obtained as a result of some delay, and this would also allow time for a specialist interviewer to be used, which produces a better result all round.²⁷⁷ The ASAI Policy also includes reference to the possibility of delay to accommodate the needs of the victim and to allow for a trained investigator to become available.
- 3.91 Moreover there will be a point, after the completion of necessary preliminary inquiries and "holding actions", where the choice of investigator for the formal stages of the investigation can be put to the district commander for consideration (in consultation with the Professional Standards national manager) without the need for urgency to get in the way of a principled decision.

Guidance on police associates

- 3.92 I am also concerned about the lack of guidance on conflicts of interest in respect of police associates. Conflicts of interest almost invariably involve differing circumstances

²⁷⁶ Operation Loft file LT 56.

²⁷⁷ Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Transcript of hearing, 3 November 2005, pp. 11–12.

and relationships, and it is impossible to attempt to define all such circumstances and relationships at the outset. I agree with the police that each case needs to be considered on its merits and that it is not possible to produce a precise definition of an “associate”.²⁷⁸ But the judgment as to whether the chosen investigator has, and is perceived to have, the necessary degree of independence from the person under investigation is just as difficult, if not more so, than in cases involving complaints against police officers.

3.93 I appreciate the evidence given by Detective Superintendent Burgess about the special steps that may be taken to ensure that an investigation involving a police associate is (and is seen to be) fair and objective and the likelihood that independence issues arising in investigations into associates will be picked up in the review of the file by a senior police officer, for example the district complaints manager. However, after considering the police evidence and submissions on this point I do not agree these procedures are sufficient. In the absence of formal police standards, procedures, and policies regarding the conduct of an investigation into an allegation of sexual assault, or indeed any offending, by a police associate, investigating officers are having to exercise their judgment in a vacuum about important matters such as

- identifying when the subject of an allegation is a police associate
- recognising when there is a potential not only for bias but also for the perception of bias in an investigation of a police associate
- deciding how to deal with this, including matters such as the appointment of an investigating officer and the briefing of the victim
- communicating with police officers, as appropriate, regarding the investigation, to ensure that the integrity of the investigation is preserved
- deciding whether to inform superior officers of the nature of the investigation and any measures being taken to protect its integrity.

3.94 The examples I saw involved investigations undertaken by police officers stationed within the same area as the alleged offender. It is my view that the more recent cases involving associates have been well investigated. But I am concerned about the number of cases in which the police do not appear to have taken adequate steps to manage conflicts of interest, or perceived conflicts of interest involving associates, and ensure that the investigations are undertaken by officers who are sufficiently removed from the alleged offender, and who are seen by the complainant and the general public to be sufficiently removed from the alleged offender.

3.95 Counsel assisting explored this issue with Detective Superintendent Burgess, who acknowledged,

perhaps the perception issue is not triggered quite as noticeably when it is an associate as it is when the subject of the investigation is a Police Officer and potentially I guess because the investigation of a Police Officer automatically comes within the jurisdiction of the PCA with that independent oversight, whereas the other matters will find their way through the courts.²⁷⁹

²⁷⁸ New Zealand Police, Submission in response to draft report, 4 September 2006, p. 2. See also comment on the term “police associates” in “Use of terms” in Chapter 1.

²⁷⁹ Detective Superintendent Malcolm Burgess, Transcript of hearing, 29 November 2005, p. 33.

- 3.96 As mentioned earlier, the lack of independent oversight by the PCA of a criminal investigation involving a police associate would, in my opinion, suggest that even greater care needs to be taken where the alleged offender is an associate of the police to ensure that there is no perception of partiality. Although I am not suggesting that these matters always need to be sent outside the district in which the complaint was made, it is important that they are investigated by officers who are independent, and seen to be independent.

Areas to be addressed

- 3.97 It is important that the issue of independence is carefully managed – both in the appointment of an investigating officer and throughout the ensuing investigation – and that decisions are made in a transparent and principled way that makes them capable of withstanding external scrutiny.
- 3.98 The evidence generally shows thorough and impartial investigative practice, despite the investigator in many cases not being from outside the district where the police officer was stationed or the associate was based. It is also positive to note that in many of the cases I considered there clearly was an awareness of the need for an independent investigating officer (and one who is perceived to be independent). This was reinforced by the evidence I heard from the three district commanders and other senior officers.
- 3.99 The evidence presented to me from the three district commanders on their approaches to the appointment of an investigating officer indicated a range of practices, and overall was very positive. It was also pleasing to hear from Detective Superintendent Burgess in November 2006 that the directive of November 2005 from the Commissioner of Police is resulting in a good level of consultation with, and oversight by, Professional Standards. But I am concerned about the number of earlier examples from the files showing less than ideal consideration of the independence issue. I am also concerned about the ongoing risk of pragmatic rather than principled decision-making and the consequent potential for perceptions that investigating officers are not sufficiently removed from the alleged offender to meet the necessary standards of independence. These conclusions together have brought me to the view that the independence of investigations into complaints against police officers and police associates would benefit from a new general policy, to include guidelines and procedures, on independence and identifying and managing conflicts of interest in respect of complaints involving police officers and police associates. I believe there are three reasons why a policy is desirable:
- It would improve the quality of decision-making and ensure that matters of principle are properly considered and weighed against matters of practicality. Currently, the difficult judgments that are revealed by the discussion of the cases are exercised in something of a policy vacuum. This is especially the case for complaints involving police associates, but decisions in cases involving police officers would also be better served if comprehensive guidance were available. It is a widely accepted principle of public law that policy guidance and procedural direction enhance the exercise of discretionary judgment. In my experience, most organisations have comprehensive guidance about such things, and I think the police would obtain similar benefit from them.
 - It would reduce the risk of accusations of bias and improper influence, and/or allegations of inadequate investigation. If the complainant, the officer (or police associate)

complained against, or any officer who has a personal relationship or association with the person who is the subject of the complaint, can see that the investigating officer has been appointed in accordance with a clear set of policy guidelines, and has been consulted in the course of that process, he or she is much less likely to harbour concerns about the independence of the investigation.

- More generally, it would enhance public confidence in the system by which the police investigate complaints involving police officers and associates. The more transparent and principled a decision-making process is, the more easily it can be defended if the need arises. This ultimately preserves the credibility of the decision-making body.

- 3.100 I envisage that a policy designed to safeguard independence in respect of complaints of sexual offending involving police officers or police associates would encourage a consistent practice of identifying any independence issues at the outset of an investigation of a complaint involving a police officer or a police associate, with the aim of ensuring a high degree of transparency and national consistency. This would enhance the benefits to be achieved from Police Commissioner Robinson's directive of November 2005 that district commanders consult with the Professional Standards national manager as to the appointment of investigating officers in serious complaints. In the case of complaints against police officers, the guidelines and procedures forming part of the policy would not replace the existing requirements of general instructions IA100 to IA132, but would flesh them out with the particular aim of assisting the exercise of judgment, especially when issues of cost and investigatory efficiency are involved. It may be preferable to have a separate set of guidelines and procedures in respect of police associates.
- 3.101 A unified policy would have the further advantage of bringing together some of the positive initiatives found in the districts and applying them nationally. For example, the practice of ensuring that the complainant has no reasonable objection to the officer appointed to investigate his or her complaint was a local initiative and it is not clear whether this has been adopted throughout the country. I believe that this is a useful initiative that would empower complainants and help to prevent perceptions that the investigation of their complaint and the conclusions reached were not impartial.
- 3.102 I therefore recommend that a policy be prepared that, amongst other things, identifies the essential requirements of independence in the investigation of complaints involving police officers or police associates, identifies the range of factors that could give rise to a conflict of interest, and provides guidelines and procedures to assist police officers (including supervisors, officers potentially conflicted, and investigators) to identify and then adequately manage actual or perceived conflicts of interest. For example, in my experience, it is the practice in some organisations for there to be regular requests to staff to identify whether they have conflicts of interest in respect of particular matters.
- 3.103 I also consider that the national ethics training programme is a useful basis on which to increase understanding within the police of independence issues, including those involving conflicts of interest. I heard evidence from Mr Phillip Weeks, a former police officer, now a non-sworn member, who manages Crime and Safety Training at the Royal New Zealand Police College. Along with another colleague, he helped develop the programme

entitled “Making Ethics Real”.²⁸⁰ Many of the hypothetical ethical dilemmas posed for discussion during the programme involve consideration of issues of conflict of interest. The police submitted that the programme also provides clear guidance on the need to avoid involvement in cases where there is a potential conflict of interest, or where subordinates may have a conflict.²⁸¹

- 3.104 I believe there is some potential to enhance the contribution the programme makes in this area. Although the hypothetical examples deal with different types of conflict of interest, there is no mention of the concept itself nor any general description of what types of relationships, associations, or other factors may give rise to a conflict of interest. The absence of a general policy or instruction on conflicts of interest (as there is, for instance, in the case of other examples dealing with rewards, gratuities, gifts, and koha) makes it less easy to interpret the hypothetical examples. Neither is there a hypothetical example that squarely addresses the types of potential conflict of interest I have identified from the files discussed above, regarding the investigation of a fellow police officer or police associate.
- 3.105 I therefore recommend that the “Making Ethics Real” training programme be expanded to directly address this topic. I note that a specific policy on independence would also facilitate the ability of this programme to foster understanding of all aspects of the independence issue.

CONDUCT OF A SEXUAL ASSAULT INVESTIGATION

- 3.106 Detective Superintendent Burgess informed me that, having received and recorded the complaint or other information regarding an alleged offence, it is the responsibility of the investigator to complete inquiries that prove or disprove the allegation. These inquiries may include
- a statement of complaint from the alleged victim
 - statements from witnesses
 - scene examinations with a view to corroborating the complaint and obtaining forensic evidence
 - medical or other forensic examination of victims and suspects (In inquiries involving sexual allegations, it is almost always appropriate for a medical examination to be carried out.)
 - identifying and interviewing the suspect or suspects. (Suspect interviews normally take place after all other relevant inquiries have been completed, although that is not always the case. Ordinarily, the interviewer wants to have as much information as possible available to him or her before conducting the interview. There will be occasions, however, where investigators will determine that it is more appropriate to speak to the suspect sooner rather than later.)²⁸²
- 3.107 Detective Superintendent Burgess also informed me that the time frame for investigations, and for the various steps within an investigation, could vary enormously. This was readily apparent in the investigation files that I examined: the quickest investigation undertaken

280 I discuss this in some detail in Chapter 6, especially at paragraphs 6.181 to 6.190.

281 New Zealand Police, Submission in response to draft report, 4 September 2006, p. 3.

282 Detective Superintendent Malcolm Burgess, Brief of evidence, 12 July 2005, pp. 3–4.

between 2000 and 2005 was completed in less than a day (in the sense that the charge was laid on the same day that the complaint was laid); the longest investigation was completed in 547 days; the average investigation took 204 days; and the median was 159 days. (The measure here is the number of days between the complaint being laid and the alleged offender being charged or the file sent to the PCA, where this could be determined.)

Current best practice in sexual assault investigations

- 3.108 The elements of an investigation, as outlined by Detective Superintendent Burgess, are the same throughout the districts. A statement is taken from the complainant, medical and scene examinations are conducted where appropriate, relevant witnesses are identified and interviewed, and the alleged offender (where identified) is also interviewed.
- 3.109 I heard evidence on current practice from Detective Sergeant Tusha Penny, officer in charge of the Lower Hutt child abuse team, how an inquiry into a sexual assault allegation should be undertaken. Although Detective Sergeant Penny had no specific experience with investigating sexual assault allegations against police officers, I set out her explanation as an example of what is considered good practice in investigating sexual assault complaints.
- 3.110 According to Detective Sergeant Penny every inquiry unfolds slightly differently, and the course of the inquiry will initially depend on the way that the complainant presents. If her team is called out because a sexual assault has just happened, the first step, assuming that the victim is safe and is in a condition to talk to the police, is to obtain preliminary details of the offence. Detective Sergeant Penny informed me that it is vital that the police learn the basic details of the offending before anything else happens. Accordingly, an officer will ask the victim what happened, whether he or she knows the offender, where the scene is, whether there were any witnesses, and whom the victim would like to support him or her. This allows the inquiry to swing into action immediately. Preserving the crime scene and obtaining forensic evidence are very important, and in order to do this the police need to arrive there as quickly as possible.²⁸³
- 3.111 After these preliminary details have been taken, and assuming the victim is happy for the police to do so, the police will contact a support person for the complainant, either from a professional agency such as the Rape Counselling Network or anyone else whom the complainant nominates.²⁸⁴
- 3.112 The police then explain to the victim what is going to happen next. Detective Sergeant Penny acknowledged the need for this explanation to be clear and careful. One way of minimising the distress that the inquiry process causes victims is to make sure that they understand well in advance what is going to happen and why it is important.²⁸⁵
- 3.113 While part of the police inquiry team examines the scene, the police priority as far as the victim is concerned is arranging the forensic medical examination. It is always necessary to take a very detailed statement from the victim, but this can wait a day or two. On the other hand, the sooner the victim is examined by a doctor, the greater the likelihood that

²⁸³ Detective Sergeant Tusha Penny, Brief of evidence, 3 November 2005, p. 3.

²⁸⁴ Detective Sergeant Tusha Penny, Brief of evidence, 3 November 2005, p. 3.

²⁸⁵ Detective Sergeant Tusha Penny, Brief of evidence, 3 November 2005, p. 3.

forensic evidence will be located. The other reason that the police consider it important to complete the medical examination quickly is because it is only once this has been done that the victim can wash and begin the process of recovery. Detective Sergeant Penny noted that in the majority of cases a member of DSAC conducts this examination.²⁸⁶

- 3.114 Detective Sergeant Penny told me that what happens next will depend on matters such as the hour of the day and how the victim is coping. In most cases, and especially if it is late and the victim is exhausted, the police will take her home and make an appointment to take a full statement within a day or two. Sexual assault complainants in the Lower Hutt area will usually be interviewed in the child abuse suite at the Lower Hutt Station, which has more comfortable and non-threatening surroundings than the rest of the station, or at the house of the Hutt Rape Counselling Network (HRCN). The police will warn the victim at the outset that the interview will take several hours, and may extend over several days, because it will be necessary for the victim to tell the police everything in considerable detail.²⁸⁷

Compliance with the ASAI Policy

- 3.115 As discussed above, the police will contact whomever the complainant nominates as her or his support person. This person will not necessarily be from an identified sexual assault support group or trained sexual assault coordinator.

- 3.116 I received evidence from Ms Angela Brott, Co-ordinator of the Women's Refuge and Sexual Assault Resource Centre Marlborough, that she was concerned that the police did not always contact appropriate support agencies when dealing with a sexual assault complainant:

It is my view that it is more appropriate for a trained sexual abuse counsellor to act as the victim's support person than it is for a friend or a family member to fill this role. ...

In addition, we occasionally come up against a detective who does not believe that our agency should be called. These cases frustrate me because I know the victim will not be getting all the assistance she is entitled to. I believe that it should be mandatory for investigating staff to call us in to assist.²⁸⁸

- 3.117 I was concerned by this evidence because the ASAI Policy requires the police to ensure the victim has a support person from an identified sexual assault support group or trained sexual assault counsellor with them during the interview process and is given appropriate information.

- 3.118 Although the ASAI Policy is a national policy, I understand from Dr Jan Jordan that there is still a "continuing lack of predictability and consistency regarding the police's response".²⁸⁹ She said,

it's very hard to guarantee still that it's not going to be a lottery for a rape complainant in terms of who she gets, who handles her case and

286 Detective Sergeant Tusha Penny, Brief of evidence, 3 November 2005, p. 3.

287 Detective Sergeant Tusha Penny, Brief of evidence, 3 November 2005, pp. 3–4.

288 Ms Angela Brott, Co-ordinator, Women's Refuge and Sexual Assault Resource Centre Marlborough, Brief of evidence, 2 November 2005, p. 5.

289 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 10.

what kind of reception she gets, and that need to get away from it being like Lotto is I think one of the most important challenges, to try and find ways of having the structures in place and having the monitoring in place to ensure greater consistency ...²⁹⁰

3.119 I suspect that the lack of consistency referred to by Dr Jordan arises from a failure to fully implement the ASAI Policy (as discussed in Chapter 2).

3.120 Ms Brott, coordinator of a Marlborough support agency for victims of sexual assault, told the Commission,

it is also hard to have detectives who have been through the training programme always available – it can be enough of a struggle in Blenheim to have CIB staff available at all times. Having said that, my experience is that most detectives are naturally good at dealing with victims of sexual assaults, and treat victims with empathy and consideration.²⁹¹

Ms Brott also told me, “The only cases that I know of where things have gone wrong are cases where non-CIB staff have had to become involved in the investigation.”²⁹²

3.121 However, the roll-out of the adult sexual assault investigation training course, the appointment of a national coordinator, and an increased awareness of the ASAI Policy should result in greater consistency of approach throughout the entire organisation, and ensure that best practice is occurring in all instances.

Evidence of police practice when undertaking an investigation

3.122 The increasing professionalism disclosed in current practice is readily apparent in the files I reviewed, irrespective of whether the alleged offender was a police member or a police associate. However, some instances of past practice showed a standard of investigation that was less than could be expected, even having regard to the standards and practices applicable at the time.

Police practice in the investigation of submitters’ complaints

The investigation of Submitter A’s allegations

3.123 Submitter A’s complaint was made to the police shortly after two episodes of alleged offending in 1982–1983. However, the police failed to investigate it. The incident was effectively shelved, or buried. In my view a reasonable inference from the file is that the reason for this was the close association between the man accused and the local police personnel. A reading of the police files associated with a later criminal investigation of this complaint (undertaken in 1994–1995) reveals that at about the same period other allegations were made about the same offender (in relation to his stepdaughters) by the offender’s partner; these allegations were similarly ignored.

290 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Transcript of hearing, 3 November 2005, pp. 33–34.

291 Ms Angela Brott, Co-ordinator, Women’s Refuge and Sexual Assault Resource Centre Marlborough, Brief of evidence, 2 November 2005, p. 6.

292 Ms Angela Brott, Co-ordinator, Women’s Refuge and Sexual Assault Resource Centre Marlborough, Brief of evidence, 2 November 2005, p. 4.

3.124 In 1996 an investigation, focusing on the police action (or inaction) in the early 1980s, was instigated by an assistant commissioner after a meeting between police and Submitter A's member of Parliament. This investigation was undertaken by a Rotorua detective inspector who recorded the following:

- 1.9 It is clear from extensive interviews conducted with residents and Police Officers stationed at [place name] in the early 1980's, that the Police Service provided to that town, at that time, was inadequate and superficial.
- 1.10 It is also apparent that the Police were reluctant to accept that there might be any wrong-doing on the part of [the alleged offender].
- 1.11 It is also readily apparent that the victim [Submitter A], has been severely affected by her experiences at [place name]. The rape itself has had a profound effect upon her and has impacted on the way she now leads her life.
- 1.12 This whole set of circumstances has been exacerbated by the lack of Police action at the time which has had a compound effect on the victim.
- 1.13 While there is clear evidence of dereliction of duty on the part of the Police members involved, there is no opportunity to seek redress or undertake disciplinary proceedings.
- 1.14 One of the members involved, [name], was actually subjected to disciplinary proceedings for dereliction of duty not long after these series of events and any attempt at disciplinary proceedings in respect of him would be met with a "autrefois convict".
- 1.15 The recommendation at the end of the body of the report on this matter will be that [Submitter A], [and the mother and her two daughters], all of whom have been affected by the offending of [alleged offender], should be recipients of an official Police apology in the name of the Commissioner of the New Zealand Police.²⁹³

3.125 In hearings before me, the police acknowledged that their handling of Submitter A's complaint, when it was first made in the early 1980s, represented "serious dereliction of duty on the part of the officers involved. There is no excuse for this."²⁹⁴

3.126 The police did, however, do their best to rectify the situation when the complaints resurfaced in the 1990s. First, an investigation into the criminal allegations raised by Submitter A and by the alleged offender's stepdaughters was undertaken by members of the Rotorua Sexual Abuse Team in 1995–1996. The investigation resulted in charges being laid against the alleged offender in both cases. He was convicted and sentenced to nine years' imprisonment in 1996 in respect of his stepdaughters. However, he was acquitted in October 1996 in respect of Submitter A's allegations.

3.127 It is impossible to say with certainty that the alleged offender would have been acquitted in relation to the complainant's allegations had he been tried in 1983–1984. No relevant medical records could be found by the time the matter came to trial, and the complainant's

293 Operation Loft file LT 69.

294 New Zealand Police, Submission, 31 August 2005, p. 2.

doctor had since died. The odds of acquittal would undoubtedly have been lower had written or oral medical evidence been available, even if its sole effect was to show that the complainant had visited her doctor within a short time of the alleged offending. The odds would have been lower still had the medical evidence been in the form of notes confirming the trauma of which Submitter A complained. The whereabouts of notes (if any were made) remains a mystery. Nevertheless, the investigation undertaken by the Rotorua Sexual Abuse Team in 1995–96 was thorough and complied with the standards and procedures laid out in the Manual of Best Practice.

- 3.128 Secondly, in a letter dated 14 February 1997, Assistant Police Commissioner Scott made a frank and unreserved apology “both personally and on behalf of the Police Department” to Submitter A.²⁹⁵ Counsel for New Zealand Police told me,

From the point of view of the Police, Assistant Commissioner Scott’s apology represented a binding acknowledgement that the organisation had let [Submitter A] down badly, and had fallen well short of the standards that it sets for itself.²⁹⁶

- 3.129 This was followed by a personal apology by the Commissioner of Police some time later.

The investigation of Submitter B’s allegations

- 3.130 The allegation in Submitter B’s case was that the police officer in question had abused a position of trust in relation to a young woman who was placed in his foster care and who later bore his child.

- 3.131 The alleged abuse began when the complainant was 15, and included allegations of indecent and other forms of sexual assault. After her child was born, the subject of the complaint repeatedly denied paternity, but eventually admitted it. Although an apparently consensual relationship continued between the complainant and the subject of the complaint for a number of years, there was a regular pattern of complaints including allegations of assault and threats.

- 3.132 The initial investigation undertaken in 1985 when Submitter B was 17 years old and was the result of Submitter B’s lawyer contacting the police on her behalf complaining of intimidation. A statement was taken from Submitter B, which included indecent assault allegations and details of the sexual nature of the relationship before she turned 16. I was concerned at the initial response of the inspector assigned to this investigation, who told the alleged offender that if the paternity issue which brought the complaint to the attention of the police “was rectified the complaint could be satisfactorily resolved without the [complainant’s] statement becoming official.”²⁹⁷ The police were unable to ascertain who authorised this statement, but offered the following suggestion:

a likely explanation arises from the nature of [Submitter B’s lawyer’s] original complaint on [Submitter B’s] behalf. [Submitter B’s lawyer] sought Police intervention to prevent [the alleged offender] from intimidating [Submitter B]....²⁹⁸

²⁹⁵ Operation Loft file LT 69.

²⁹⁶ New Zealand Police, Submission, 31 August 2005, p. 4.

²⁹⁷ Operation Loft file LT 148.

²⁹⁸ New Zealand Police, Submission, 10 August 2005, p. 9.

- 3.133 I note in this respect that general instruction J80, in force at the time, directed police members to make every reasonable effort to resolve complaints as soon as practicable and a generous interpretation of the inspector's actions would suggest that this is what he was attempting to achieve.²⁹⁹
- 3.134 Nevertheless, when it became apparent that the alleged offender would not admit to paternity, the inspector initiated a criminal investigation after a subsequent interview with Submitter B. The police submitted to the Commission of Inquiry into Police Conduct that the investigation was an exceptionally thorough one. In the course of the investigation, the investigators (although based in the district in which the complaint originated) "interviewed well over 30 witnesses" and "examined a large number of documents and established covert surveillance" of the police officer complained about.³⁰⁰
- 3.135 As far as can be ascertained the investigation, although flawed, complied with applicable police standards and procedures. (However, see my comments on the exercise of the discretion to prosecute in relation to this case at paragraphs 3.191 to 3.198.)

The investigation of Submitter C's allegations

- 3.136 Submitter C's complaint was of rape by an on-duty police officer. The matter was complicated by the fact that Submitter C had no recall of complaining to the police about the matter at the time (1989). The police have no record of any complaint dating from 1989. However, a victim support worker claimed (in 2004) that she had accompanied Submitter C when a complaint was lodged with the police in 1989. I am unable to resolve the matter.
- 3.137 However, there was an investigation into this incident in 1991. This investigation was at the police's initiative after rumours about the officer concerned having boasted of having sexual intercourse with Submitter C in a police car whilst on duty. A full investigation was launched into the allegations. Submitter C, who later said she was frightened of what would happen to her because she had been in possession of cannabis on the night of the alleged incident, denied the encounter.
- 3.138 Nevertheless, the police continued with the investigation and interviewed a number of witnesses. Only one police officer interviewed was able to provide relevant information; however, others were aware of the rumours. (I note, however, that a second police officer, who was interviewed both in 1991 and when the matter was reinvestigated in 2004, provided more detailed information in his statement in 2004 than in 1991.)
- 3.139 Given Submitter C's denial of the incident in 1991, and the lack of evidential information available, the police decision not to charge the member with a criminal or disciplinary offence is understandable. However, this officer is a good example of someone who appears to have engaged in the sort of behaviour that, although it may fall short of criminal offending, was entirely inappropriate in the employment/discipline context. I will deal with this issue at greater length in Chapter 5.

299 New Zealand Police, General instruction J86, "[Internal Investigations] General Guidelines", *New Zealand Police Gazette*, 15 April 1981.

300 New Zealand Police, Submission, 10 August 2005, p. 3.

- 3.140 In 2004, Submitter C was approached by members of the police after they received information that suggested the original investigation into her complaint had not been properly undertaken. Submitter C told the Commission that the approach came out of the blue, that she was not advised of the purpose of the visit, and that she found it quite intimidating.
- 3.141 The alleged offender had in fact died in the interim.
- 3.142 It appears that Submitter C was not adequately notified that there was a formal investigation into her complaint, and a review of it by the PCA. Counsel for the police told me,
- The complainant should be kept fully informed throughout the course of any inquiry into his or her complaint. This is one of the requirements of the Adult Sexual Abuse [sic] Policy, and represents good practice in any investigation, whether into sexual offending or not. ... if [Submitter C] was not kept informed that inquiries were undertaken as a result of her complaint then she should have been, though it is apparent that she knew [the alleged offender] had committed suicide, and accordingly could not have expected that any proceedings would follow.³⁰¹

The investigation of Submitter D's allegation

- 3.143 Submitter D had a relationship with a police officer in 1995 after the officer was involved in his professional capacity in domestic difficulties between the submitter and her former husband. (The officer was to be a witness in a court case against the submitter's ex-husband.) The submitter alleged that the officer raped her. She laid a complaint with the police the same day, after being encouraged to do so by a nurse at her local hospital.³⁰²
- 3.144 The investigation of Submitter D's complaint was conducted in a professional way. In accordance with the standards and procedures set out in the Manual of Best Practice, immediate steps were taken to secure the scene and gather forensic evidence, as well as to obtain an account from the alleged offender before there was any opportunity for him to leave the area or learn the detail of the evidence gathered. The officer concerned did not return to work after the complaint; in the months between the alleged rape and his subsequent disengagement he was either on sick leave or on formal stand-down.
- 3.145 Detective Superintendent Burgess gave me his assessment of the investigation:
- Most of the steps that I would expect in an inquiry of this kind were completed in the initial investigation. Some additional inquiries were later completed at the request of Crown Law. I believe that all relevant inquiries were completed to allow an assessment of the available evidence in support of criminal or disciplinary charges. In this instance it was determined that there was insufficient evidence to warrant a criminal prosecution but that disciplinary charges should be laid. I concur with that assessment.³⁰³
- 3.146 One area where the alleged offender's status as a police officer had an impact on the inquiry was the fact that he telephoned the investigating officer, more than once, with

³⁰¹ New Zealand Police, Submission, 6 September 2005, p. 11.

³⁰² Operation Loft file LT 1.

³⁰³ Detective Superintendent Malcolm Burgess, Brief of evidence, 12 July 2005, p. 4.

the clear intention of influencing the investigation in his favour. I was pleased to note the investigating officer was well aware of what the alleged offender was seeking to do, and told him that he would “play [the inquiry] straight down the middle”. My assessment of the file indicates that this is exactly what the investigating officer did.

3.147 Submitter D’s understanding of the investigative process, and its conclusions, was different from that of the investigators. In this case the investigating officer was a member of a team that specialised in undertaking sexual assault allegations. The complainant’s statement was taken in the presence of a support person and was delayed a number of times to accommodate the complainant’s needs. Nevertheless, as part of any thorough investigation the investigating officer was required to put things that the police had learned and inconsistencies in the complainant’s statement to her in order to learn the complainant’s explanation for any apparent inconsistencies. I accept that failure to do so would mean that the investigating officer would be remiss in his or her duties. Apart from the obvious impact on the merits of the investigation, failure to put such questions could potentially result in the complainant experiencing much greater distress when she was faced with these questions in cross-examination by defence counsel.

3.148 Although Submitter D’s complaint was investigated correctly, I was concerned about her experience of the investigation and the effect it had on her. For example, she had the impression that the detective who took her initial statement was angry with her for having made a complaint about a policeman, and did not understand her reaction to the explanation given by the alleged offender for what had happened. She was also upset about the way items of evidence were removed from her bedroom after the alleged rape, and said that she had never received back a number of private journals and diaries. The police accepted that the documentation regarding these items was not completed properly, but said the investigating officer was confident they were returned.³⁰⁴ It is impossible to determine from the police files what the truth of this matter is; however, I believe that the police should have recognised the significant personal value of these items and taken particular care when handling them. I note, however, that the police reject any suggestion of insensitivity or unprofessional behaviour towards Submitter D.

3.149 In hindsight, it may have been that communication between Submitter D and the police was hampered by Submitter D’s medical condition, which was at that time undiagnosed. Although I cannot determine the truth of these matters, I am concerned about the distress that the investigation caused her and I note that investigations need to be sensitive to the many forms of disability or impairment that may affect complainants.

The investigation of Submitter E’s allegations

3.150 The complaint in Submitter E’s case was that a diversion officer (who had been dealing with the complainant’s husband) had used his position to take advantage of her at a time when she was vulnerable and had engaged in sexual activity with her. It was acknowledged that this activity was consensual.³⁰⁵

304 Submitter D, Statement of evidence, 24 June 2005, pp. 5–6; New Zealand Police, Submission, 12 July 2005, pp. 8–9.

305 Operation Loft file LT 126. For information on diversion, see footnote 22.

3.151 Detective Superintendent Burgess reviewed the file relating to this complaint:

In this case, [the investigating officer] took most of the steps that I would expect in an inquiry of this kind. While he might have gone further, and sought out potential witnesses, I do not believe that this would have affected the evidential outcome. I note that he sought advice on this case, including legal advice. It was not unusual to seek legal advice, either from the local legal adviser, or from the Crown. That practice is still adopted today.³⁰⁶

3.152 The investigation into Submitter E's complaint was generally handled in accordance with the standards and procedures in place within police at the time. Because the act complained of was entirely consensual there was limited prospect of criminal charges. Nevertheless, the police recognised the inappropriate nature of the liaison and commenced an internal inquiry, obtained psychological and legal advice, and recommended that the alleged offender face disciplinary charges as a result. Those charges were pre-empted by the decision of the alleged offender to retire from the police. Submitter E had a strong sense of injustice about this. Again, this is a subject to which I return in Chapter 5.

3.153 The general inappropriateness of the type of behaviour that this complaint evidences will be discussed more fully in Chapter 6.

The investigation of Submitter F's allegations

3.154 Submitter F's evidence to the Commission was that she was raped in 1997 by a recently retired police officer during an overnight assignment with colleagues (who included two serving officers).³⁰⁷ She said that she was so devastated by what happened that she did not immediately lay a complaint. Soon afterwards, however, a local detective sergeant heard rumours of the incident and approached Submitter F about it. Unfortunately (even if understandably) she said she felt unable to tell the full story to him and alleged only that she had been subjected to an indecency. She told me that later, in 1998, and with the assistance of a lawyer, she felt able to tell her full story.

3.155 Submitter F also told the Commission that she had been intimidated and treated inappropriately when she was interviewed during the police investigation. The police officers concerned rejected these allegations in evidence to the Commission.³⁰⁸

3.156 The police inquiry that eventuated appeared to follow appropriate procedures. It included the execution of warrants at the alleged offender's address and at the place of the alleged incident, and a forensic examination and acoustics testing at the place where the complainant alleged that the offending took place.

3.157 The district commander recognised the potential for allegations that the investigation was biased in favour of the alleged offender and dealt with this matter by appointing a detective inspector from a different district who had no personal association with any of the participants.

³⁰⁶ Detective Superintendent Malcolm Burgess, Brief of evidence, 8 July 2005, p. 3.

³⁰⁷ Operation Loft file LT 4.

³⁰⁸ New Zealand Police, Submissions, 19 August 2005, p. 2.

- 3.158 I was initially concerned at the time taken to interview the alleged offender in this case. However, I was informed that this decision was based on a desire to have all evidence available to the investigating officer before this interview took place, and I accept that.
- 3.159 A detective inspector who reviewed this investigation on behalf of the PCA in 1999 was critical of the police for failing to initiate a more thorough inquiry after the complainant's informal discussions with a detective sergeant in 1997 after the latter had approached her about rumours that he had heard. In their submissions to me the police rejected this criticism as unfair. They offered the following explanation:
- modern practice in sexual cases places a premium on ensuring that the complainant retains control of the process, and does not feel that she is being forced to make a formal complaint before she is ready to do so. To place pressure on the complainant in these circumstances risks re-victimising her; victims of sexual offending will often take some time to summon the mental strength to set in motion what is almost always a very difficult and stressful process. It was important that [the complainant] understand her options, and that the Police would support her if she chose to formalise her complaint. On the other hand, it was important that she understood that it was entirely up to her whether she decided to proceed officially or not.³⁰⁹
- 3.160 Unfortunately Submitter F had told the detective sergeant only that the alleged offender had tried to have sex with her and that she had resisted. Had her original complaint been of rape, he might well have taken steps to preserve possible forensic evidence in anticipation of Submitter F gaining the confidence to complain formally. This would have included trying to persuade her to undergo a medical examination.³¹⁰
- 3.161 Submitter F later made a complaint to the PCA that the detective sergeant who first approached her about a possible offence had in fact been a friend of the alleged offender, and had discouraged her from making a complaint. It was clear that the detective sergeant did know the alleged offender. However, the PCA (after an investigation by a police inspector, and the PCA's own assessment of the files) found that the officer had acted appropriately and had taken advice on how he should handle the matter. I discuss in more detail in Chapter 7 the difficulties and appropriate response of the police when faced with rumours of sexual assault against police members.

The investigation of Submitter H's allegation

- 3.162 One of Submitter H's concerns about the investigation of her complaint (see paragraphs 3.68 to 3.73) was the alleged offender had six weeks' notice that he was to be interviewed about the matter. The police did not accept that there was any prejudice as a result of the delay in interviewing the alleged offender. The alleged offender was aware of Submitter H's complaint from the outset because she had told him about it.
- 3.163 In general the investigation into Submitter H's allegation was conducted in an appropriate manner and in accordance with the Child Abuse Policy. The police appear to have taken Submitter H's subsequent complaints of harassment seriously, and believed that they had

309 New Zealand Police, Submissions, 19 August 2005, p. 6.

310 New Zealand Police, Affidavit (Operation Loft file LT 4), 27 July 2005, p. 5.

been addressed by the issue of a warning and trespass notices to the alleged offender. The police told me that after this the submitter indicated that the “drive bys” had become far less frequent and that she had not made any notes of them.

- 3.164 Submitter H told me she did not receive copies of the trespass notices so had no assurance that the alleged offender had been properly served and did not feel that she could use them if she needed to. The police submitted that copies of the notices were placed on the file at the local police station for ease of reference if any breach was reported and that it was standard for a further copy to be provided to the complainant. They said that if Submitter H did not receive a copy then that was an oversight and if she had drawn their attention to that then copies would immediately have been made available to her. I cannot resolve this issue.
- 3.165 Police Internal Affairs and the PCA also became involved in the matter. As required, the local superintendent notified Internal Affairs of the inquiry by telephone at the outset, but there was no further follow up for some months. This resulted in a delay in referring the matter to the PCA, as required by both legislation and the general instructions. The police accepted that they should have alerted the PCA to the inquiry within days of Submitter H’s complaint being received – even though the PCA note in accordance with standard practice they would have deferred any investigation until the criminal inquiry was completed. (I discuss the timeliness of the notification to the PCA in paragraphs 4.51 – 4.58.)

The investigation of Submitter I’s allegation

- 3.166 Submitter I made an allegation of physical assault by a number of police officers in 1986. This was investigated at the time and is not the subject of my inquiry. In 2003, he alleged for the first time that he had been sexually violated during the same incident that he complained about in 1986. It is this investigation that comes within my terms of reference.
- 3.167 When Submitter I made this allegation, there was discussion between him, his lawyer, and an officer about how it should be advanced. The discussion appears to have given rise to a misunderstanding. Submitter I told the Commission that he thought the police would be approaching him for an interview, that he waited some four months before writing to them, and that although an interview followed soon afterwards he did not understand the cause of the delay. However, the police produced a statement by Submitter I’s lawyer in which he said that Submitter I had been very distressed at that time of the initial discussion, that the officer had dealt with the matter in a professional and sympathetic manner, and that he (the lawyer) had advised Submitter I to reflect on things and contact the police, either directly or through him, if he wanted to take it further.
- 3.168 The detective sergeant who investigated the matter reviewed the 1986 file, spoke to several of the original witnesses, and went to considerable lengths to find a recent complaint witness to whom Submitter I may have spoken. In addition, he travelled overseas to interview the two alleged offenders.
- 3.169 Counsel for the police submitted that the investigation had been exemplary:
 The way the Police treated [Submitter I’s] complaint was as close to a model response as any the Commission has seen. In addition to

conducting a careful and thorough inquiry, Detective Sergeant [name] kept [Submitter I] informed of progress throughout, and telephoned to advise him of the results of the trip to Australia. He also personally explained why he would not be recommending a prosecution. Professional Standards and the PCA were fully informed, and [Submitter I's] Official Information Act request was actioned promptly. It is submitted that [Submitter I] has no cause for complaint.³¹¹

- 3.170 The investigation into Submitter I's allegation appeared to meet the standards, and comply with the procedures, set out in police policy.

Examples of police practice from the Operation Loft files

- 3.171 An example of an inadequate recording of a complainant's statement can be found in a 1991 investigation involving an associate of the police. The interviews of the complainants in this investigation were not carried out or recorded with any sort of accuracy.³¹² Detective Superintendent Burgess agreed that in these circumstances a video interview or question and answer statements detailing exactly what was alleged would have been preferable to job sheets with the investigating officer's interpretation on them.³¹³

- 3.172 An example of the police failing to explore all avenues of inquiry is provided by a 1988 case when the investigating officer failed to address the Crown solicitor's recommendations that further enquiries be made.³¹⁴ Indeed, when this file was reconsidered by the police in 2004 as part of Operation Loft, the district commander stated,

Originally it was referred to the Crown for a legal opinion and it was returned with some comments concerning enquiries that needed to be carried out in relation to a possible witness/offender. There is no indication that this has been done.

A further point to know is that [the alleged offender] is currently before the courts on another matter. The officer in charge of that case is [name]. The circumstances surrounding that offending is very similar to the offending identified on this file.

The Operation Loft recommendation is that this matter be referred back to the district for further investigation.³¹⁵

- 3.173 Similarly a complainant in a 1998 case was contacted again in 2004 when it became apparent that the original interview with the alleged offender had been inadequate.³¹⁶ In this case the investigating officer had failed to put the substance of the allegations to the alleged offender.

Areas to be addressed

- 3.174 Various witnesses, doctors, volunteers, and police specialists in sexual abuse informed me of changes that had been made to the processing of complaints of sexual assault over recent

311 New Zealand Police, Submission, 9 September 2005, pp. 5–6.

312 Operation Loft file LTA 3.

313 Detective Superintendent Malcolm Burgess, Transcript of hearing, 11 December 2006, p. 31.

314 Operation Loft file LT 151.

315 Operation Loft file LT 151.

316 Operation Loft file LT 40. See also, Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, p. 7.

years. The evidence I have heard leads me to conclude that the police have made great strides forward in both the practice and the conduct of investigations of sexual assault over the past 25 years. Where there were failings, they occurred only in a very small minority of cases and in most instances were picked up by the police's internal review processes. I discuss these review processes in more detail later in this chapter.

- 3.175 There are issues relating to communication with complainants. Again, these are discussed later in this chapter.

EXERCISE OF THE DISCRETION TO PROSECUTE

- 3.176 New Zealand Police is the only body in New Zealand with a prosecutorial function in relation to sexual assault allegations. The discretion to prosecute is guided by the Solicitor-General's Prosecution Guidelines, issued in 1992.
- 3.177 Detective Superintendent Burgess told me, "the average [annual] prosecution rates for all sexual offending in New Zealand since 1980 is 39.8% with a low of 26.8% and a high of 54.5%."³¹⁷ These figures compared favourably with the prosecution rates of overseas countries.
- 3.178 Nevertheless, I was interested to learn of several cases where the police were satisfied that the incident complained of had occurred, but were unable to lay criminal charges for a variety of reasons including
- the vulnerability of the complainant (for example, in a case involving an intellectually disabled woman the police chose not to lay charges on the advice of medical specialists who informed them that the complainant would not be able to withstand the rigours of the court process and her ability to manage in the community would be adversely affected as a result)³¹⁸
 - the disposition of the complainant (for example, in a number of cases the complainant did not want to give evidence in court)
 - the credibility of the complainant (which may be undermined by such things as mental illness or previous convictions for dishonesty offences).

Current practice governing the exercise of the discretion to prosecute

- 3.179 As mentioned in Chapter 2, a Crown solicitor's decision to lay criminal charges is governed by the Solicitor-General's guidelines. According to the guidelines there are two major factors that a prosecutor must consider before deciding to initiate a prosecution: evidential sufficiency and the public interest. These principles apply with equal force where the suspect is a police officer or associate of the police.
- 3.180 The police are similarly guided by the Solicitor-General's guidelines. Witnesses appearing before the Commission told me that the police can lay charges only where there is some chance of success in securing a conviction and that, in their view, it is neither in the public interest nor in the complainant's interest to proceed with a prosecution where there is a

³¹⁷ Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, p. 6.

³¹⁸ Operation Loft file LT 75.

high likelihood that the trial will end in acquittal.³¹⁹ Detective Superintendent Burgess told me,

where there is a clear evidential basis for or against a criminal charge being laid then that decision will often be made by the investigating officer. Where the evidence is not so clear or where the nature of the crime alleged is more serious, it is now common for legal advice to be sought. This will often include independent external legal advice.

The decision to prosecute a criminal charge is subsequently reviewed by the Crown Solicitor or by the Police Prosecution Centre. The Crown Solicitor is independent of Police. The Prosecution Centre is centrally managed from Police Headquarters and maintains a degree of independence from the investigative arm of Police. The Prosecution Centre may make decisions on files relating to associates of Police ... While this is a Police decision it forms no part of the investigative process.³²⁰

- 3.181 Detective Inspector Stephen Rutherford, Crime Manager for the Counties Manukau CIB, explained the reasons why his staff will take a matter to court only if they are likely to get a conviction:

I expect my staff to only take a case to Court if we consider we have a good show of getting a conviction. There are a number of reasons for this. First, I do not want to waste time and resources. Secondly, we must be fair to the suspect. Thirdly, and most importantly, I will not lightly put a complainant through the trauma of a Court case unless I feel that there is sufficient evidence to support the charge. The judicial process can leave a complaint feeling re-traumatised and re-raped emotionally.³²¹

Members of police

- 3.182 The decision whether to charge a member of police with sexual offending is made either in the district where the allegation was investigated or when the file is reviewed by Professional Standards at the Office of the Commissioner.
- 3.183 According to Superintendent Wildon, at the completion of a sexual assault investigation into a member of police, the investigator prepares a summarising report, which should outline the course of the inquiry, summarise the available evidence on each aspect of the complaint, and make appropriate recommendations regarding the outcome. This should include the investigator's view of whether the complaint should be upheld and, if so, what action might be appropriate as a consequence. The investigator's report is then passed to the district complaints manager, who prepares a short report either concurring or disagreeing with the initial recommendation. In some districts the district complaints manager passes the file directly to Professional Standards; in other areas the file goes first to the district

319 Detective Superintendent Malcolm Burgess, Transcript of hearing, 29 November 2005, p. 16; Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, pp. 7–8.

320 Detective Superintendent Malcolm Burgess, Brief of evidence, 11 December 2006, p. 9.

321 Detective Inspector Stephen Rutherford, Brief of evidence, 17 November 2005, p. 4.

commander for a further review. In many cases, the district also arranges for legal advice to be taken from the local legal section and sometimes from the local Crown solicitor.³²²

- 3.184 If the district takes the view that criminal charges are appropriate, it is common for the alleged offender to be charged without further reference to Professional Standards at the Office of the Commissioner. The full file will be referred at a later date to Professional Standards for a formal review of the investigation, and then to the PCA for external review; but this will not occur until all criminal proceedings have concluded.³²³
- 3.185 When reviewing an investigation where charges have not been laid at district level, Superintendent Wildon and his staff at Professional Standards at the Office of the Commissioner will consider if the district was correct not to lay charges. I was informed that it is not uncommon in serious cases for the file to be sent to the Crown Law Office for legal advice, even if advice has already been taken at district level.³²⁴
- 3.186 If Professional Standards concludes that criminal charges should be brought (and this will generally be a decision reached in consultation with an assistant commissioner or above), then the matter is referred back to the district for prosecution. Where Professional Standards concludes that criminal charges should not be laid, then the whole file, including all the various reports prepared up to that point, is referred to the PCA for a final external review.³²⁵
- 3.187 According to section 28(2)(b) of the PCA Act 1988, the PCA may, if it disagrees with the police's decision, recommend that criminal proceedings be considered or instituted against any member of the police. It cannot, however, direct the police to do so. I was informed, "The police have taken and continue to take the view that these decisions are matters for them."³²⁶
- 3.188 Superintendent Wildon described the police awareness of complainants' possible reactions to a decision not to lay charges against a member of police:

In making recommendations as to whether a prosecution should be commenced, my staff and I are always conscious of the need to prove criminal ... charges beyond reasonable doubt. It is inappropriate to bring charges in cases where a conviction is unlikely. Even so, the Police are always highly aware of the possibility, if the final decision is that no charges should be brought, that the complainant or others will accuse us of having "covered up" the offending on behalf of the subject of the complaint. This kind of allegation is an occupational hazard. No matter how hard the Police try to explain decisions carefully to complainants, and to have numerous independent reviews of the file to ensure that the decision is fair in every case, as long as the Police have primary responsibility for investigating their own members it will be very

322 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 6.

323 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 6.

324 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 7.

325 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 7.

326 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 7.

difficult to eliminate this perception entirely. This is one of the reasons why we often engage Crown Law in serious or difficult cases.³²⁷

Associates of the police

3.189 The decision whether to charge an associate of the police with sexual offending is generally made at district level because these investigations are not subject to the same review processes as those involving members of the police. The decision will of course be reviewed as part of the usual prosecutorial or supervisory functions. These processes are discussed in more detail in the next section of this chapter.

Evidence of police practice concerning the discretion to prosecute

3.190 I was able to observe the application of the discretion to prosecute in a number of files, including those of some submitters. The submitters' cases illustrate the range of issues involved in the discretion in cases involving sexual assault, and the adequacy of the standards and procedures involved.

Actions after the investigation of Submitter B's allegations

3.191 In 1985, it was determined that there was not enough evidence to sustain a criminal charge against the officer who was the subject of Submitter B's complaint (see paragraphs 3.130 to 3.135). Although there was no direction in the police policy documents that a charge should be laid only where there was a greater than 50 percent chance of conviction, I was informed that this represented good practice in 1985 as it does now.³²⁸ The investigating officer summed up the position:

1.3.1 I am quite satisfied with respect to [Submitter B's] credibility and that she is telling the truth in respect to this offence. I believe it is relevant that she was not aware that the circumstances constituted a criminal offence.

...

1.3.3 Throughout this entire enquiry I have found [Submitter B's] statements to be consistent and in many circumstances corroborated. As can be appreciated, with the passage of time, the recollection of dates and times has been difficult.

1.3.4 [Submitter B's] credibility however, would be a crucial issue and considering her delinquent and truant behaviour prevailing at the time, a reasonable doubt would not be difficult to create in [the alleged offender's] favour.

1.3.5 I therefore believe that a prosecution in all probability would fail and accordingly recommend that no prosecution be undertaken in respect of this crime.³²⁹

3.192 As counsel for the police acknowledged,

327 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, pp. 7–8.

328 New Zealand Police, Submission, 10 August 2005, p. 4.

329 Operation Loft file LT 148.

Viewed by today's standards, the decision not to prosecute [the alleged offender] in 1985 for indecently assaulting [Submitter B] was a conservative one. That said, there can be no doubt that the decision was made in good faith following a very thorough inquiry, on the recommendation of an officer who was most sympathetic to [the complainant]. At that time, Judges were required to warn juries of the danger of convicting on the uncorroborated word of the complainant, and the decision, which was reviewed by the local legal officer, was an unremarkable one in that context.³³⁰

3.193 Although I understand the reasoning behind the decision not to prosecute the subject of Submitter B's allegations in a criminal court, I was concerned that the 1985 investigation did not result in disciplinary charges relating to the sexual relationship with Submitter B. (I do note, however, that the alleged offender faced other disciplinary charges.) The police addressed this issue in submissions to me and acknowledged, "The failure to pursue disciplinary charges arising from the sexual relationship, either in 1985 or [later], was unfortunate. The Police do not seek to defend it."³³¹

3.194 Submitter B's complaint was reconsidered in the early 1990s. I was concerned that the inspector who undertook this task believed that the "intervention of a Tribunal Hearing in 1985 precludes my reconsideration of acts occurring before 1985".³³² Counsel for New Zealand Police informed me,

[This decision] ... was wrong. The inspector appears to have been under the misapprehension that [the alleged offender] was formally warned as result of his sexual association with [Submitter B] up to and including 1985. In fact, the 1985 warning related only to a specific incident of assault.³³³

3.195 The inspector did, however, consider whether charges based on the post-1985 sexual relationship could be the subject of criminal or disciplinary charge. He concluded that consensual activity while the alleged offender was off duty had "little to do with [the officer's] employer",³³⁴ namely the police, and that the police would struggle to prove, beyond reasonable doubt, Submitter B's allegation that some of the activity occurred while the alleged offender was on duty. As counsel for the police told me,

The basis for this decision was similar to the basis of the 1985 decision: while the Police had no doubt about the accuracy of [Submitter B's] account, it was unlikely that they could prove the allegation to the required level.³³⁵

3.196 Submitter B's complaint was brought to police attention again in 1996. The police considered whether it was possible to bring charges against the officer concerned under section 131 of the Crimes Act 1961 (sexual intercourse with a girl under care and protection)³³⁶ but found that "There was no evidence capable of supporting such a charge;"³³⁷

330 New Zealand Police, Submission, 10 August 2005, pp. 4–5.

331 New Zealand Police, Submission, 10 August 2005, p. 5.

332 Operation Loft file LT 148.

333 New Zealand Police, Submission, 10 August 2005, p. 6.

334 Operation Loft file LT 148.

335 New Zealand Police, Submission, 10 August 2005, p. 6.

336 Section 131 of the Crimes Act 1961 was subsequently amended by the Crimes Amendment Act 2005 section 7 to "Sexual conduct with dependent family member".

337 New Zealand Police, Submission, 10 August 2005, pp. 6–7.

- 3.197 This review did not, however, give detailed consideration to a charge of indecent assault, and the police do not dispute that a more careful consideration of a charge of indecent assault should have been undertaken. As the police told me,

In 1996, the need for a corroboration warning had been removed (though the fact that such a warning would have been given was not among [the original investigating officer's] main reason for recommending that [the alleged offender] not be charged). It would have been preferable for the Police to re-examine the evidence that might have supported a charge of indecent assault and formed their own assessment in light of the more "complainant friendly" environment that followed the 1986 reforms. The reference in the report to delay, and the public interest, indicates that the outcome may have been the same, but this exercise should nonetheless have been undertaken.³³⁸

- 3.198 I agree with these comments. Moreover, the consequences of police inaction and wrong decisions may have contributed to (or at least failed to mitigate) Submitter B's ongoing difficulties.

Actions after the investigation of Submitter D's allegations

- 3.199 Though the initial police inquiry into Submitter D's case (see paragraphs 3.143 to 3.149) was completed in little more than one month, it took approximately five months before the final decision not to prosecute could be made, and a further two months before disciplinary charges were brought. The delay in this case arose because of, first, the decision to seek an independent review from the Crown Law Office on whether criminal charges should be laid; secondly, the need to undertake further inquiries at the request of the Crown law Office; and thirdly, the need to prepare separate disciplinary charges (and have them approved by the Deputy Commissioner of Police) once it had been finally decided not to lay criminal charges. Completion of these steps took from the start of July 1995 until 20 December 1995. Disciplinary charges were served on the officer on 19 January 1996.

- 3.200 The Deputy Solicitor-General offered the opinion that a conviction was unlikely (a conclusion that accorded with that of the police), and as a result no charge was laid. Nevertheless, the Crown Law Office recognised that the behaviour of the alleged offender appeared to

seriously call into question his fitness to serve as a Police Officer. The relationship with [the complainant] began while he was responsible for a case in which [her] daughter was alleging assault by her father. [The complainant] and her ex-husband had a history of bitter custody conflict. A successful prosecution was clearly very important to [the complainant]. In these circumstances it was most wrong for the officer in charge of the case to undertake a sexual liaison with [the complainant] prior to the conclusion of the case.³³⁹

- 3.201 On the same day as disciplinary charges were served on the officer, he applied to disengage from the police. Those charges therefore did not proceed. I will discuss this matter further in Chapter 5 because it seems to me to be inappropriate that the employment situation of an officer in the circumstances cannot be dealt with more expeditiously.

338 New Zealand Police, Submission, 10 August 2005, p. 7.
339 Operation Loft file LT 1.

Actions after the investigation of Submitter F's allegations

3.202 The police concluded that there was insufficient evidence to warrant laying a charge in respect of Submitter F's complaint (see paragraphs 3.154 to 3.161). The detective inspector assigned to the investigation provided an explanation to the Commission:

... my initial inclination was that the matter should be placed before the Court, though this was only because I did not want there to be any suggestion that we had declined to prosecute [the alleged offender] because he was a former Police officer. I considered the chances of a conviction to be very slim, given the obvious shortcomings in [the complainant's] account, and the absence of any significant corroboration. [The complainant] had given a number of conflicting statements, which would undoubtedly have been seized on and exploited by defence counsel. Had [the alleged offender] not been a former Police officer, I would have recommended that no charges be laid, without taking the trouble to seek a legal opinion.³⁴⁰

A Crown solicitor reviewed the evidence and advised that a conviction would be unlikely. (I note that Submitter F had serious misgivings as to the conduct of the investigation by the police, and therefore in the evidence given to the Crown solicitor to review.) The Solicitor-General's guidelines, issued in 1992, confirm that it is not generally in the public interest to prosecute where a conviction is unlikely, and the police's decision not to lay charges in this case was based on the advice provided by the Crown solicitor acting in accordance with these guidelines.

Actions after the investigation of Submitter G's allegations

3.203 The exercise of the discretion on whether to bring disciplinary charges also arose in the case of Submitter G, who complained of an inappropriate, very intimate, body search whilst in police custody in August 1997.³⁴¹

3.204 The police investigation into this matter was completed competently and expeditiously. Submitter G's complaint was received by the PCA in early November 1997. It was immediately referred to the police for investigation. The investigation was undertaken by an inspector; and his report recommending that the complaint be upheld was completed by 12 December 1997. The district commander agreed with his recommendations, and Internal Affairs reported to the PCA on 31 December 1997 confirming that the complaint had been upheld.

3.205 Counsel for the police told me that the body search of this complainant was an unfortunate incident that the Police regret. The actions of the officers were not the product of any improper motive, and they were seeking to eliminate what may otherwise have been a serious danger in the cellblock. Nonetheless, it should not have happened.³⁴²

³⁴⁰ New Zealand Police, Affidavit (Operation Loft file LT 4), 26 July 2005, p. 4.

³⁴¹ Operation Loft file LT 212.

³⁴² New Zealand Police, Submission, 8 September 2005, p. 2.

- 3.206 The senior sergeant who ordered the search was subsequently counselled.³⁴³ However, the other members did not face any form of disciplinary sanction. I note that the inspector who conducted the investigation was confident that lessons had been learned and there would be no recurrence. Although recognising that the decision not to invoke any sanction against those members was a matter of judgment, I nevertheless found the decision surprising.

Areas to be addressed

- 3.207 My conclusion on current police practice is that the decision to prosecute or not is generally made in accordance with the applicable standards and procedures, and takes into account all the admissible evidence available to the police at the time. Although some of the files raise other concerns with aspects of police practice, I believe the New Zealand public can be confident that, in the words of counsel for the Police Association, “there is not in fact a significant level of criminal sexual activity within the Police Force which has gone untried.”³⁴⁴
- 3.208 Despite this, a number of the submitters and complainants in the files expressed concern that the person complained of had not been charged with criminal or disciplinary offences. Some of these complainants appeared to have little knowledge or understanding of why the person against whom they had made their complaint had not been charged. Little, if any, of the reasoning behind the decision not to charge, or the reasons why the person complained of could avoid disciplinary charges by leaving the police, had been understood by the complainant at the time. I address this issue in the next section.

COMMUNICATION AND MANAGEMENT OF COMPLAINTS

- 3.209 An investigation of alleged sexual offending is a complex and sensitive process, which needs effective management to ensure that all required steps are taken in a timely and efficient way, that all available resources (both within the police and with support agencies) are engaged and able to contribute to the necessary level, and that parties are kept adequately informed of progress throughout. These aspects of an investigation are important, not only because of the need for all available resources to be put to the best use, but also because of the need to ensure that the particular needs and interests of complainants in sexual cases are addressed. When the person complained of is a member of the police, the communication and management of complaints is of particular importance because of the greater potential for suspicion on the part of the complainant and the greater risks to New Zealand Police as an organisation.

Communication with complainants

- 3.210 A particular concern of some submitters (and other complainants) was the adequacy of communication with them during the course of the investigation. For example, in a 1991 file, regarding a complaint of sexual harassment, the complainant was critical of the lack of communication:

343 At this time counselling was included in general instruction IA 122 as a possible disciplinary action. It involved recorded advice intended to guide a staff member towards improved conduct or performance.

344 New Zealand Police Association, Opening remarks on behalf of the Police Association, 5 December 2005, p. 2.

Since that date I have not been contacted personally or received any written notification of how my complaint has been handled or even if the person complained of has been spoken to by [the investigating officer].

I am distressed that this incident has occurred and especially that I have been subjected to this offensive and indecent behaviour in my work place. I feel that I should have been informed and that a six week delay has caused me more distress.

...

[The investigating officer] concluded the interview by telling me that if I had any queries I should contact him. However, like any complainant, I do not think that it should be up to me to be contacting him to find out how my complaint is being handled.³⁴⁵

- 3.211 Similarly, in response to a 1993 case involving allegations of sexual violation by rape and indecent assault, the PCA reported to the Commissioner of Police as follows:

... I am not satisfied on the evidence so far before me that this young and somewhat fragile complainant has had fully explained to her the very real statutory safeguards offering wide protections to a complainant in a sexual violation prosecution and trial.³⁴⁶

- 3.212 The police explained to me that communication with complainants has always been the responsibility of investigators. They considered practices had improved in the past decade:

This aspect of investigations has generally improved since the enactment of the (now repealed) Victims of Offences Act 1987 and the Victims Rights Act 2002. The Victims Rights Act places statutory obligations on Police and other parties to provide information to victims. The improvement in communication also reflects improvements in Police investigation practice – the Manual of Best Practice, Volume 2, identifies the requirements on investigators to keep victims informed of the progress of investigations.³⁴⁷

- 3.213 Communication is especially important in respect of the latter stages of an investigation, and more so if a decision is made not to proceed with criminal charges or other disciplinary action. The police explained to me that it is the responsibility of the officer in charge of the investigation to explain to the complainant the reasons for not proceeding with a charge.³⁴⁸

- 3.214 However, a failure to communicate a decision not to lay charges can have its origins in poor internal communication. This is illustrated by a 2003 case concerning a charge of indecent assault made against an associate of the police. The charge was reduced to assault and the offender was offered diversion, which he accepted. The complainant subsequently made a complaint to the PCA, believing that the offender was treated leniently because he was an associate of the police. The complaint was enquired into, and the investigating officer found that the outcome was appropriate. However, he reported,

³⁴⁵ Operation Loft file LT 136.

³⁴⁶ Operation Loft file LT 98.

³⁴⁷ Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, p. 8.

³⁴⁸ Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, p. 8.

I was of the opinion that Prosecutions did not sufficiently inform the officer in charge of the case or the complainant as to why this course of action occurred, and that is why she made this complaint.

...

I also apologised to the complainant for the fact that the circumstances surrounding the prosecution had not been properly explained to her at the time and she accepted this.³⁴⁹

3.215 I was told by Ms Brott that part of her role was to explain these decisions to complainants:

It is also part of my job to help explain difficult decisions to the victim. Early on in the process, I explain to the victim that the Police will not put her through the trauma of a prosecution unless they are confident that they have a good case. This helps prepare the victim for the possibility that the Police will decide that they do not have enough evidence to take the case to Court. Victims are sometimes upset if this decision is made, but in my experience will usually accept it if they have been prepared for that possibility from early on in the process, and if the reasons for the decision are carefully explained. The important thing is ensuring that the victim does not think that she has been disbelieved. My role, in this situation, is helping the victim to understand that it is OK that the case has not gone to court.³⁵⁰

3.216 Clear lines of communication with complainants will inevitably be of even greater importance when investigations take longer than expected. As noted earlier in this chapter, the average investigation was found to take approximately six and a half months.³⁵¹ The absence of clear lines of communication with complainants also may lead to suspicions that the police are “protecting their own” or that the complaint is not being taken seriously because it is against a police officer.

3.217 The police told me that, irrespective of the level of communication, it is inevitable that a number of complainants could not accept that their alleged assailant was not going to be charged and were understandably upset by the decision.³⁵² One support service provider told me that the police were very good at explaining the process to the victim and decisions not to bring charges.³⁵³ But such decisions can be hard to understand, even when communicated sensitively to a complainant. Given the risks associated with any suggestion that the police have been tardy in carrying out internal investigations, have failed to investigate a complaint to the required standard, or have failed to communicate decisions adequately to complainants, I believe it is important that complainants and their support people are given

- realistic expectations at the start of an investigation about when key milestones are likely to be met

349 Operation Loft file LT 15.

350 Ms Angela Brott, Co-ordinator, Women’s Refuge and Sexual Assault Resource Centre Marlborough, Brief of evidence, 2 November 2005, p. 4.

351 The longest investigation was completed in 547 days and the average investigation took 204 days (see paragraph 3.107).

352 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Transcript of hearing, 21 November 2005, pp. 76–77.

353 Ms Irene Livingstone, Hutt Rape Counselling Network, Brief of evidence, pp. 4–5.

- regular updates on progress, and advance notice if the investigation is likely to be delayed for any reason
- assistance in understanding the reasons for any decision not to proceed with a prosecution or other disciplinary action, including where a police member resigns before charges proceed.

3.218 The Police Association submitted that police members under investigation as alleged offenders are also inadequately communicated with:

The frustrations expressed by complainants heard by the Commission is directly mirrored by comparable frustration from those who are aware, that they are under investigation and yet they receive no feed back as to the outcome of that inquiry. Obviously, if they are to be charged either with a criminal offence or a disciplinary offence, then that provides an end to the inquiry. Far more problematic, are those inquiries which simply stop.³⁵⁴

Obviously the level of communication with an alleged offender requires careful judgment. However, I agree that, in what will inevitably be a stressful situation for both complainant and alleged offender, it is vital that the police maintain clear lines of communication with all parties as appropriate.

Relationship with sexual assault support groups

3.219 As the preceding discussion of communication with complainants illustrates, improved relationships with support groups such as HELP, Rape Crisis, and DSAC have led to significant improvements in the overall service to complainants. However, the benefits are wider than that. The involvement of support people usually means the police response is of a more consistent and higher quality. It also assists in the gathering of evidence, in particular dealing with the forensic interview process and any medical examination. It also provides assistance to the complainant in starting her recovery from the trauma itself, and in dealing with the difficult issues that may arise in the course of an investigation (such as, for example, a conclusion by police that there is insufficient evidence to prosecute).

3.220 Such support groups are clearly an essential part of a good service for people who are the victims of sexual assault. It is important to stress that the police are not a social service, and that although officers are expected to show sensitivity and empathy to victims of alleged crimes, too close a relationship with the complainant can prejudice their duties to investigate and, if appropriate, pursue a criminal prosecution.

3.221 Hence the need for outside organisations to provide support, facilities, and services to victims of sexual assault. I heard from several witnesses that where such groups are adequately resourced and professionally run they can significantly transform the experience of victims of sexual assault, providing them with essential and sympathetic support through a potentially distressing police investigation, and assist them to begin their recovery. I also heard that where constructive relationships exist between support groups and the police this assists the progress of the investigation, aids the gathering of evidence, and ensures that the complainant's needs are catered for throughout.

³⁵⁴ New Zealand Police Association, submission in response to draft report, 14 June 2006, p. 4.

- 3.222 However, it is also clear that such good working relationships are not a matter to be left to chance. I heard evidence that the quality of these partnerships varied across the country and had developed on an ad hoc basis.³⁵⁵ Creating and maintaining good working relationships requires considerable attention on the part of both the police and the organisations at a local and regional level. There is an important distinction between support groups and the police that needs to be maintained to ensure that the respective roles of each remain clear. A careful, systematic, and professional approach to the relationship needs to be a high priority for police. I would expect to find an openness and respect for each other's roles.

Funding issues

- 3.223 It is a matter of considerable concern that support services do not appear to have adequate or consistent funding. The support groups exist on a mixture of grants from Government departments and private fund-raising. By way of comparison, I note that Victim Support services are 60 percent funded by the Government through the Ministry of Justice, and I believe a similar secure funding base should be established for the volunteer services for victims of sexual assault.
- 3.224 Representatives of DSAC told me that there is inadequate funding for their work and most of their time is given voluntarily. I was told that the Auckland District Health Board funds two and a half days of doctors' time per week; for the remainder of the week doctors are expected to provide their services free. Again, a case needs to be made for a better funding regime for these services.
- 3.225 Although I am not in a position to comment on where funding for support groups best comes from, it is important that it be nationally consistent and adequate to ensure support services are available to all people who find themselves victims of sexual assault.

Complaint management

- 3.226 Differences emerge between districts in respect of the mechanisms for managing a complaint. When reading the recent investigation files provided by the police, I was struck by the many examples of good practice, particularly from Central, Canterbury, and Southern Police Districts. In particular, I note the high level of oversight of internal investigations in the Central, Canterbury, and Southern Police Districts, where, for example, investigating officers are sent letters reminding them of the requirements under the general instructions regarding internal investigations.³⁵⁶ These letters may also specify the time frames in which an investigation is to be completed and time frames for updating the district commander or district complaints manager. The same or similar practices may occur in other districts, but this is not apparent from the files I reviewed. I believe that a high level of oversight is a useful way to manage complaints and would like to see the practice of reminding investigators of their obligations (and monitoring compliance) applied consistently throughout the country.

355 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Transcript of hearing, 3 November 2005, p. 14.

356 For example, Operation Loft file LT 42.

- 3.227 The letters given to investigating officers did not, however, include reference to the other relevant policy documents that govern the investigation of sexual assault complaints against police officers, namely the Adult Sexual Assault Investigation Policy and the “Sexual Offences” section of the Manual of Best Practice. Given that it is still early in the roll-out of the adult sexual assault investigation training, it is advisable that the requirements of the ASAI Policy are set out early in the investigation so that all internal investigators know exactly what is expected of them. This would ensure that a complainant received all the benefits to which he or she is entitled under the policy, for example having a qualified support person present during interviews with the police, and being interviewed in an area that is comfortable, secure, private, and safe – and not in a suspect interview room. Although I did not receive evidence suggesting that the latter situation had happened since the policy had been implemented, there nonetheless remains a real possibility of complainants being disadvantaged unless the attention of investigating officers is specifically drawn to the policy and manual at the outset of all such investigations.



ENSURING COMPLIANCE WITH STANDARDS AND PROCEDURES

3.228 This section addresses term of reference (2)(d), which requires the Commission to inquire into, and report upon

- (2) irrespective of the existence or adequacy of standards or procedures as a matter of Police policy, the practice of Police in the investigation of complaints alleging sexual assault by members of the Police or by associates or the Police or by both, in particular, but not limited to,—

...

- (d) what requirements (if any), both at a local level and at the level of Police Headquarters, have been in place, or are now in place, to ensure that Police practice complies with any relevant standards and procedures:

3.229 This term of reference requires me to consider how the police, both at district and headquarters levels, ensure that their practice complies with relevant standards and procedures.

3.230 There were two prime areas that seemed to me to be relevant in considering this term of reference:

- the internal complaints review structure, which is designed to ensure that complaints against members of the police are investigated properly and that all relevant standards and procedures for internal investigations are complied with
- the management and assurance structures and systems that New Zealand Police has in place to ensure that police practice complies with the relevant standards and procedures across the country.

3.231 In this section, I have also considered how the police supervise smaller and rural stations to ensure consistency of practice. This is because, as a result of reading the files, I had concerns about some instances of inappropriate behaviour in these types of stations going unchecked for some time.

3.232 I also explore the concept of constabulary independence in this section, and whether it has any implications for ensuring compliance with the relevant standards and procedures.

MONITORING THE INVESTIGATION OF COMPLAINTS AGAINST THE POLICE

3.233 The police operate an internal complaints review structure designed to ensure that complaints against members of the police are investigated properly and that all relevant standards and procedures are complied with. This system is managed through the Professional Standards section at the Office of the Commissioner and involves at least two levels of review before a complaint file is forwarded to the PCA for an independent external review.

- 3.234 I was told that before 1983 and the establishment of Internal Affairs (now known as Professional Standards) there was no national section responsible for overseeing or reviewing internal complaints. Complaints were handled entirely at district level and there was no mechanism for ensuring consistency of approach from district to district.³⁵⁷ One of the objectives of the current centralised Professional Standards section is to try to ensure that similar cases are resolved in a consistent way throughout the country. A reviewer will assess the investigator's recommendation, both in light of his or her professional experience, and against other similar cases that have been through Professional Standards.
- 3.235 Under the current system there are, at a minimum, four or five levels of oversight of the investigation of complaints against police officers:
- the area controller or manager, who may supervise the investigator
 - the district professional standards manager (also known as the district complaints manager), who reviews the investigation
 - in some districts, the district commander, who may review the investigation
 - Professional Standards section at the Office of the Commissioner, which also reviews the investigation
 - independent review of the investigation by the PCA.

Monitoring of complaints against police officers at district level

- 3.236 Investigations are monitored by the area controller or manager, who supervises the investigator. The files indicate that the area controller or manager provides day-to-day advice and assistance on the progress of the investigation.
- 3.237 The investigator is required to provide a monthly update to the district professional standards manager regarding the progress made with the investigation. This may be forwarded through the investigator's area controller or manager. I was informed that, during the course of an investigation, "It is normal for the member to provide ongoing feedback on progress of the investigation and to co-operate with the Professional Standards group."³⁵⁸ The district professional standards manager subsequently forwards a schedule regarding the progress of all complaints to Professional Standards at the Office of the Commissioner, which forwards the schedule to the PCA.
- 3.238 The level of information contained within the monthly updates to district professional standards managers differs between districts. I was told that there is no national monthly reporting template used consistently throughout the country.³⁵⁹ Instead, two district commanders, Superintendent Lammas and Superintendent Nicholls, have developed their own templates for investigators to use when providing an update on the progress of the investigation.³⁶⁰ Superintendent Lammas believes that the benefits of using his form are

357 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 2.

358 Inspector Neil Banks, Professional Standards, Canterbury, Brief of evidence, 14 November 2005, pp. 3–4.

359 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 54.

360 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 15 November 2005, p. 72; and Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 54.

that the investigators “have to answer the hard questions like what have they done in the last month, what is remaining to be done, how long is it going to take, ...”.³⁶¹ He did, however, acknowledge, “maybe some of the districts have something better.”³⁶²

- 3.239 I heard no evidence from other districts of similar models, nor am I aware of any from my assessment of the files. Considering the practical advantages of a nationally consistent reporting mechanism, I am surprised that these templates are not utilised elsewhere. Although this is a minor example, it illustrates my concern that there is no national consistency of approach. There is nothing peculiar to the Central or Eastern Police Districts that warrants them taking a different approach on this matter from other districts. Although district initiative is to be applauded, best practice should be shared and, where appropriate, nationalised.
- 3.240 At the completion of an investigation, the investigator prepares a summarising report, which outlines the course of the inquiry, summarises the available evidence on each aspect of the complaint, and makes recommendations on the outcome and appropriate disposal of the complaint. The investigating officer’s manager or area commander subsequently checks this report and the complaint file before forwarding it to the district professional standards manager.
- 3.241 It is the role of the district professional standards manager to review the file and prepare a short report either concurring or disagreeing with the investigating officer’s findings and recommendations. This may also include obtaining legal advice from either the local police legal section or sometimes from the Crown solicitor. The files indicate that the police will generally err on the side of caution and take legal advice wherever there is a question regarding whether or not to prosecute a member accused of sexual assault.³⁶³
- 3.242 In some districts the district professional standards manager passes the file directly to Professional Standards at the Office of the Commissioner. In others the complaint is forwarded to the district commander for review. Central Police District is in a unique situation in that the district commander undertakes the role of district professional standards manager himself.³⁶⁴ As a result all complaints against members of the police come to his office and all investigations are overseen by him.
- 3.243 By comparison, in other districts, for example in Canterbury, Eastern, and Auckland Central Police Districts, a complaints manager oversees all internal investigations, and as a general rule files do not get reviewed by the district commander, although the district commander is kept informed of the progress of an investigation into any serious allegation.³⁶⁵ This is not meant as a criticism of either method of operating, but is an illustration of the differences of approach taken by districts. Although it may not be possible for all district commanders

361 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 15 November 2005, p. 72.

362 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 15 November 2005, p. 72.

363 For example, Operation Loft file LT 36.

364 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 5.

365 Inspector Neil Banks, Professional Standards, Canterbury, Brief of evidence, 14 November 2005, p. 4; Superintendent Grant Nicholls, District Commander, Eastern, Brief of evidence, 15 November 2005, p. 3; and Superintendent Gavin Jones, Acting District Commander, Auckland City, Brief of evidence, 17 November 2005, p. 3.

to take on the same role as the district commander of Central Police District, I can readily see the merits in his approach. As Superintendent Lammas observes,

I believe that my personal involvement in each complaint raises District standards, both in the investigation of complaints and generally in terms of behaviour. For example, anyone with ambition for promotion in my district will know that I have seen every complaint file that is generated. They know that the way they personally behave as members of Police, report complaints, undertake investigations and make recommendations on those investigations form part of the picture I develop of my staff.³⁶⁶

- 3.244 Time and workload constraints mean that it is generally not feasible for district commanders to oversee the investigation of all complaints against members of their staff. It is, however, important for district commanders to be aware of all complaints received about their staff in order to monitor the health of their staff and district and to ensure that all complaints are dealt with properly.

Monitoring of complaints against police officers at national level

- 3.245 As noted earlier, Professional Standards at the Office of the Commissioner is charged with overseeing and reviewing the handling and outcome of all complaints against serving police officers, on behalf of the PCA.³⁶⁷ As part of this role, and during the investigation of the complaint, Professional Standards requires districts to provide monthly updates regarding the progress of the investigation. These are usually short updates and are forwarded by Professional Standards to the PCA so that the PCA, too, can monitor the progress of an investigation.
- 3.246 I noticed, when reviewing the investigations into allegations of sexual assault by members of police, examples of districts failing to provide monthly updates to Professional Standards at the Office of the Commissioner or failing to complete the investigation within the required three-month time frame specified in police policy documents.³⁶⁸ As a result the police failed to update the PCA regularly on the progress of these complaints. In the majority of these instances, Professional Standards took steps (even if not always on a monthly basis) to remind the district of their obligation to provide these updates or provide reasons why the investigation had not been completed. However, this action was usually taken several months after the updates had ceased.³⁶⁹ This suggests that, even though the investigation of a complaint against a member of the police is monitored by Professional Standards, the effectiveness of this monitoring may be limited. I was told by Superintendent Wildon that the present system works as well as it can with the resources it has; however, there are generally around 200 files awaiting attention at any given time.³⁷⁰
- 3.247 Professional Standards at the Office of the Commissioner receives the full file and all reports after it has been reviewed by the district professional standards manager and at the conclusion of the inquiry (or any criminal proceedings). The file is subsequently reviewed

³⁶⁶ Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 5.

³⁶⁷ Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 2.

³⁶⁸ These policies are referred to in paragraphs 2.48 and 2.122.

³⁶⁹ For example Operation Loft files LT 154, LT 32, LT 65, and LT 120.

³⁷⁰ Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 13; and transcript of hearing, pp. 55 and 56.

by a senior officer (or by contract staff, such as a retired senior officer). Superintendent Wildon described the review process:

The reviewing officer is expected to consider all aspects of the inquiry, including the way that it was handled by the investigator. I am aware of cases, even during my relatively brief time at Professional Standards, where the reviewing officer has sent the file back to the District for further investigation, or for certain participants to be re-interviewed. Before making any assessment of the recommendation, the reviewer must be satisfied that the inquiry was both objective and thorough. The reviewer then assesses the investigator's recommendation, both in light of his or her professional experience, and against other similar cases that have been through Professional Standards; one of the objectives of a centralised Professional Standards section is to try to ensure that similar cases are resolved in a consistent way throughout the country.³⁷¹

3.248 In cases where it is difficult to determine if there is sufficient evidence to support a criminal charge, Professional Standards may seek independent legal advice from Crown Law. If a decision is made to charge an alleged offender the file is referred back to district for prosecution.

3.249 If Professional Standards concludes that no action, either criminal or disciplinary, should be taken, then the whole file, including all of the various reports prepared up to that point, is referred to the PCA for a final external review. Superintendent Wildon outlined this stage:

if, as usually happens, the file has been handled properly at District level, and the recommendation is a sound one, the reviewing officer will usually add little more than a short letter noting his or her agreement. On the other hand, if further work is required, or the reviewer does not agree with the District's recommendation, a longer more detailed report will be prepared.³⁷²

Adequacy of the Professional Standards review mechanisms

3.250 It is apparent from the files that I reviewed that the Professional Standards review process plays an important part in ensuring that investigations are conducted appropriately. In particular, it ensures that appropriate witnesses are spoken to, all avenues of inquiry are followed up and that appropriate general instructions are complied with. For example, in one file an investigating officer had failed, in his letter to the complainant, to advise her of her right to contact the Police Complaints Authority if she had concerns about the investigation. This oversight was picked up by the district commander who rectified the situation. The investigator was also notified of the need to comply with this general instruction in the future.³⁷³

3.251 There does not, however, appear to be any mechanism within the Professional Standards system for ensuring that the investigation of a complaint complies with relevant policies and instructions other than the general instructions relating to internal investigations.

371 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, pp. 6–7.

372 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 7.

373 Operation Loft file LT 95.

- 3.252 Although the Professional Standards oversight process provides a structured check on investigations involving complaints against police officers, including complaints of sexual assault, neither it nor the audit and assurance processes appear to have considered that those investigations do not in many cases comply with the ASAI Policy; in particular, investigators specifically trained in adult sexual assault investigation are not routinely used. It does not appear that the ASAI Policy features in the “audit” thinking. It is also of concern (as will be noted in Chapter 7) that an inappropriate statement can be recorded on a file and go unnoticed despite going through various levels of checking and review.³⁷⁴

MONITORING THE INVESTIGATION OF COMPLAINTS AGAINST ASSOCIATES OF THE POLICE

- 3.253 There is no equivalent review system in place for dealing with complaints against police associates. Instead the same review process that is applied to any allegation of sexual offending is used. This means if charges are laid the review will form part of the “normal prosecutorial function”. If charges are not laid the investigation is reviewed as part of the “supervisory review function”.³⁷⁵
- 3.254 I saw examples of both types of review functions in operation and it is apparent that these systems will in most instances identify if there have been any flaws in the investigation. For example a 1995 case involving an allegation of sexual violation by rape was sent to the police legal section for review in order to determine whether charges should be laid. The file was returned to the investigating officer requesting further investigation into “major discrepancies of fundamental importance between [the complainant’s] statement and that of the suspect.”³⁷⁶ Similarly further inquiries were undertaken in a 1991 investigation after the officer in charge of the station reviewed the file.³⁷⁷
- 3.255 Although I recognise the likelihood that inadequacies in an investigation will be identified as part of the prosecutorial or supervisory review function, I remain concerned at the lack of formal policies and procedures governing an investigation into an associate of the police. As I have mentioned earlier the lack of independent oversight of these types of cases suggest that greater care must be taken to ensure that they are, and are perceived to be, independent. I reiterate my earlier comments that investigations into police associates (and members of the police) would benefit from a new general policy on independence and identifying and managing conflicts of interest.

NATIONAL CONSISTENCY, DISTRICT AUTONOMY, AND CONSTABULARY INDEPENDENCE

- 3.256 I was told that there are various mechanisms through which the Commissioner of Police ensures that district practice complies with relevant standards and procedures. The police consider that the most significant way in which effective oversight is achieved is through the chain of command. District commanders are charged by the police commissioner with ensuring that each police district conforms to national policy; in turn, district commanders

374 Operation Loft file LT 200.

375 Detective Superintendent Malcolm Burgess, Transcript of hearing, 11 December 2006, pp. 5-6.

376 Operation Loft file LTA 42.

377 Operation Loft file LTA 3.

place responsibility on their area commanders to ensure that this occurs. Counsel for the police told the Commission that districts are subject to performance management reviews, as well as internal and external audits, to ensure that the “output” of each station, sub-area, area, and district is constantly monitored.³⁷⁸ Any issues raised by the internal and external audits, as well as operational and administrative risks that have been identified, are reported to the recently established Assurance Committee (see paragraph 3.262 below), which is chaired by the Commissioner of Police.

- 3.257 Under the current police management and organisation structures the district commanders have the mandate, delegations, and responsibility for the operation of their districts.³⁷⁹ Although this structure grants the district commanders considerable autonomy (including the autonomy to develop appropriate policies and procedures to meet local needs), I was told that they do not act in isolation.³⁸⁰ New Zealand Police sets limits on district discretion:

The Police expect districts to follow national policy, however they do not have any difficulty with individual districts having their own way of doing things, provided the organisation’s desired outcomes are achieved, local policing needs are met and district policies do not conflict with national policies.³⁸¹

- 3.258 The 12 district commanders have geographic operational responsibility for their areas but also sit as members of the Police Executive Committee and share collective responsibility for strategic and policy decisions within the organisation.³⁸² The Police Executive Committee makes recommendations to the Commissioner of Police, who takes the decisions, based on the executive committee’s recommendations, collegially with his deputies.³⁸³
- 3.259 District commanders are required to prepare an annual district plan, which provides strategic direction for the district over a 12-month period. They are required to file weekly reports on events that have occurred within their district. Police Commissioner Robinson required district commanders to immediately appraise him of any significant event occurring within their districts via an email to the Office of the Commissioner and the commissioner’s support group (including the Board of Commissioners and other key managers within the Office of the Commissioner).³⁸⁴ District commanders are also subject to a performance appraisal undertaken annually by the Deputy Commissioner of Police, with a progress meeting held six monthly.
- 3.260 I was told that under Police Commissioner Robinson, the district commanders had three- or four-monthly videoconferences with the commissioner, the deputy commissioners, key managers, and, on occasion, external experts. During these meetings Police Commissioner Robinson would explore some aspect of the district’s performance. This could involve a detailed exploration of either some aspect of policy and the implementation thereof, or it could involve an operational issue regarding a particular crime type.³⁸⁵

³⁷⁸ New Zealand Police, Closing submissions, 16 December 2005, pp. 44–45.

³⁷⁹ Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 10.

³⁸⁰ Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 10.

³⁸¹ New Zealand Police, Closing submissions, 16 December 2005, p. 44.

³⁸² Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 10.

³⁸³ Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 11.

³⁸⁴ Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 47.

³⁸⁵ Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 47.

3.261 The Commission heard that, in addition to the normal management reporting, the Organisational Performance Group provides an audit of various aspects of policing and performance in each district every six months. This group looks at a range of criteria, which will in the future include adherence to the Adult Sexual Assault Investigation Policy.³⁸⁶ The Organisational Performance Group can spend up to three days in the district interviewing staff, and going through files and records.³⁸⁷ The group subsequently produces a report for the Commissioner of Police, which is provided to the Police Executive Committee member responsible for the district and to the district management team. The Police Executive member then meets with the district commander and his or her management team to discuss the report.

The Assurance Committee

3.262 As part of the review of the governance arrangements he instituted in 2005, Police Commissioner Robinson broadened the role of the previous Audit Committee and reconstituted it as an Assurance Committee. Police Commissioner Robinson told me that the Audit Committee had outlived its usefulness and that he had in the past year revamped it.³⁸⁸ The Assurance Committee is made up of the Commissioner of Police, the two deputy commissioners, and three external members.³⁸⁹ This committee “monitors both the internal and external auditing to which the Police are subject, and assists in the identification and monitoring of risks that the organisation may face.”³⁹⁰ Police Commissioner Robinson said that the committee met on a monthly basis in the current initial phase, and added, “I would anticipate once the Committee has greater confidence and assurance around our own operation it will probably become a quarterly meeting.”³⁹¹

Constabulary independence

3.263 Some interpretations of the concept of constabulary independence suggest that it means that police districts have complete autonomy regarding how they apply policies within their own boundaries. Dr Warren Young from the Law Commission disputed this interpretation and explained the concept of constabulary independence as follows:

The doctrine derives from the development of the office of constable in England during Saxon and Norman times. The office was originally a part-time one, with the constable annually elected to maintain the King’s peace in the area. It carried with it certain heavily prescribed coercive powers, that were original to the office rather than delegated from some other source and were required to be exercised by the individual constable independently of political control. That became known as “constabulary independence.”³⁹²

3.264 Dr Young said that in his view the original doctrine (which, in its extreme form, held that a constable was answerable to the law and the law alone) is no longer applicable to a

386 Assistant Police Commissioner Peter Marshall, Transcript of hearing, 7 November 2005, p. 57.

387 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 48.

388 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, p. 10.

389 Mr Michael Wintringham, Mr David Wright, and Ms Pauline Winter.

390 New Zealand Police, Closing submissions, 16 December 2005, p. 45.

391 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, p. 11.

392 Dr Warren Young, Law Commission, Brief of evidence, 22 November 2005, p. 6.

modern police force subject to statutes and accountabilities in a manner similar to other state agencies.³⁹³

- 3.265 Dr Young also explored the question of whether the concept of constabulary independence requires that police districts are autonomous, particularly in the implementation of policy:

I would find it difficult to see district autonomy of that sort as being something that derives from constabulary independence. It might well be that as a matter of operational practice, you want districts to have the ability to respond to local conditions, and ... have flexibility how they implement policy.

But I think it is taking constabular independence too far to suggest that that requires local District Commanders, for example, to have autonomy in the way they police. I just don't think in modern day that's what it means.

I should add, ... it's contrary to the Police Act as well.³⁹⁴

- 3.266 I understand that the concept of constabulary independence, although important in order to ensure independence from executive control in relation to matters of operational law enforcement, is properly not advanced as a reason for the Commissioner of Police, and through him the district commanders, to resist scrutiny of the way that the police are managed, administered, and controlled.³⁹⁵

Oversight of smaller and rural police stations

- 3.267 Based on my reading of the files, I had some concern about the oversight given to ensuring compliance with standards and procedures in smaller and rural stations, where, as a result of a lack of adequate supervision, problems could potentially go undetected over a long period. The police were aware that this was a topic in which I was interested and called witnesses to reassure me that mechanisms were now in place to effectively supervise small stations, which were defined by the police as stations with one, two, or three sworn officers. My consideration of small stations extended to rural stations with small numbers of staff, but several had more than three officers (referred to in the report as "smaller and rural" stations).

- 3.268 I found that there had been several incidents at small stations during the period covered by my inquiry. The case of Submitter A, discussed at paragraphs 3.123 to 3.129, involved a complaint made at a small station. The associate against whom the complaint was made had a good relationship with the police officers in the local station, and as a result there were several issues involved with the quality of the investigation into her complaint. A 1996 police report said,

It is clear from the extensive interviews conducted with residents and police officers stationed at [place name] in the early 1980's, that the Police Service provided to that town, at that time, was inadequate and superficial.³⁹⁶

393 Dr Warren Young, Law Commission, Brief of evidence, 22 November 2005, p. 6.

394 Dr Warren Young, Law Commission, Transcript of hearing, 22 November 2005, p. 15.

395 The accountability of the Commissioner of Police is discussed in *Laws of New Zealand*, Police, paragraph 11.

396 Operation Loft file LT 69.

3.269 As noted elsewhere, Submitter A subsequently received an apology from Police Commissioner Robinson in person in 2000.³⁹⁷

3.270 I also found incidents that appeared to arise as a result of senior management not being aware that policing standards had deteriorated (even though this had been so for some time), or from a general lack of supervision and oversight from outside the station³⁹⁸:

- In December 2002 two constables in a small town station alleged that the officer in charge used his position to obtain sexual favours from women in the community, especially solo parents, and that the community had lost confidence and respect in the officer. The allegation of sexual impropriety was not proved. The case file noted,

The thrust of the results is that there is some possible ill-advised conduct on behalf of [name of officer] in connection with local women. There is a lot of rumour that cannot be sustained to any formal degree.³⁹⁹

During the investigation it was found that there had been concerns about the officer's attitude and practices in the community for several years. The investigating officer recorded the views of those in the community and other police members:

the overwhelming view of community leaders and members I spoke with, confirmed that he was considered lazy, was intensely disliked and was seen as a barrier between an effective police-community partnership.⁴⁰⁰

It was decided that it would be in the best interests of the officer concerned and those of the police and the community for him to transfer to another station in order to complete his 35 years service in the police. The area controller in this case noted, "That this situation was able to fester and grow over a long period of time is disappointing".⁴⁰¹ There was also no suggestion of any performance issues in any of this officer's appraisals; indeed, he had been nominated for an outstanding appraisal in the year ended June 2002 with supporting documentation from other members of the police. The area controller's report stated, "The fact that these issues were not reported much earlier does not reflect well on the members involved or the supervision process."⁴⁰²

- In September 1996 three police members came forward with complaints of sexual harassment (dating from January 1995 to August 1996) against the officer in charge of a small town station. A complaint of a similar nature against the officer had been dealt with informally through mediation in December 1995. At that time the officer declined the offer of sexual harassment training and gave his "assurance that he would modify his behaviour and that this would not happen again".⁴⁰³ The officer's offending was known by police hierarchy in December 1995 yet he was able to continue in his role unsupervised until September 1996. He was permitted to disengage before the complaints went to a tribunal hearing.⁴⁰⁴

³⁹⁷ Operation Loft file LT 69.

³⁹⁸ For example, Operation Loft files LT 61 and LT 91.

³⁹⁹ Operation Loft file LT 61.

⁴⁰⁰ Operation Loft file LT 61.

⁴⁰¹ Operation Loft file LT 61.

⁴⁰² Operation Loft file LT 61.

⁴⁰³ Operation Loft file LT 91.

⁴⁰⁴ Operation Loft file LT 91.

3.271 In response to the issues I identified, the police provided evidence regarding the management of one-, two-, and three-person stations. Senior police officers set out the line responsibility for supervising small stations and illustrated the different methods of supervision undertaken in different districts, given the discretion individual managers have to select methods designed to suit their own particular requirements. Information was also provided on a national policy issued in September 2005 to guide district evaluations and decision-making associated with the assessment of “1-2-3 person” station staffing.

Supervision and training of staff

3.272 Assistant Police Commissioner Marshall told me that supervision of small stations is the responsibility of the area commanders. In each district there are about four areas, each of which is overseen by an area commander (at inspector level). In many areas there are also sub-area controllers (at senior sergeant level) with direct oversight of small stations. It is the responsibility of sub-area controllers and area commanders to make sure that stations under their jurisdiction are functioning correctly. District commanders keep pressure on area controllers to ensure that all stations are performing at a high level.⁴⁰⁵ How this is carried out is largely up to each district and area, depending on the number of small stations it has and their geographical spread.⁴⁰⁶ “Cluster groups” of areas of a similar size and demographic type have been formed to provide area commanders with an opportunity to share best practice.⁴⁰⁷

3.273 As an area commander, Inspector Philip Jones gave evidence on how he manages small stations within his area of Otago Rural, a large area geographically but relatively sparsely populated and thus having a lot of small stations. He outlined how he supervises the small stations through

- training
- direct supervision and monitoring
- feedback received
- internal control measures.⁴⁰⁸

3.274 Inspector Jones identified training as a “major factor in ensuring that my staff are operating effectively, safely, professionally and in compliance with relevant policy and law.”⁴⁰⁹ The inspector monitors attendance at training and makes use of the database on training kept by the regional Training Service Centre to identify what training has been completed, and what is to be completed by individual members. He told me that at their monthly district executive meeting each area commander is also briefed by the person in charge of the training centre about training issues, and any gaps in key training of individual members.⁴¹⁰ It is the responsibility of the sub-area supervisor to ensure that a staff member is trained in critical areas.

⁴⁰⁵ Assistant Police Commissioner Peter Marshall, Brief of evidence, 7 November 2005, pp. 14 and 15.

⁴⁰⁶ Inspector Dawn Bell, New Zealand Police Human Resources Manager: Recruitment and Appointments, Brief of evidence, 9 November 2005, p. 19.

⁴⁰⁷ Inspector Philip Jones, Area Commander, Otago Rural, Transcript of hearing, 11 November 2005, p. 5.

⁴⁰⁸ Inspector Philip Jones, Area Commander, Otago Rural, Transcript of hearing, 11 November 2005, pp. 5 and 6.

⁴⁰⁹ Inspector Philip Jones, Area Commander, Otago Rural, Brief of evidence, 11 November 2005, p. 2.

⁴¹⁰ Inspector Philip Jones, Area Commander, Otago Rural, Transcript of hearing, 11 November 2005, p. 6.

- 3.275 Other senior officers discussed the role of training in the supervision of small-station staff. Superintendent Lammas, District Commander, Central Police District, said that in his district staff of small stations are part of the training programme that involves staff in larger stations. Also, about every two years, Central Police District has a rural seminar.⁴¹¹ However, he went on to tell me that meeting the training needs of a small number of staff spread over the larger rural areas can become more problematic, and staff in more isolated rural areas can miss out on training opportunities. This can occur despite such things as the rural seminars.⁴¹²

Internal control and audit

- 3.276 Superintendent Lammas said that in his district there is an internal control process and internal audit that is completed on a monthly basis.⁴¹³ This is to a large extent an administrative process but it ensures that someone from outside the station visits on a regular basis. Superintendent Lammas endeavours to visit each small station once a year; he expects that the area commander will visit more frequently, and the person in charge of that station should visit the station at least four times a year.⁴¹⁴ An individual officer's performance is measured using crime statistics, traffic statistics, each member's productive output, and the member's relationship with the community.⁴¹⁵
- 3.277 Inspector Jones told me that in terms of internal control measures, Otago Rural has two systems: a monthly internal control audit, and a three-monthly internal control audit, both checking different areas. The monthly audit focuses on the more critical areas (such as the completion of charge sheets) and high-risk areas (such as the care and use of weapons), as well as the administrative areas. The inspector outlined how they have a first, second, and third line check in their audit systems. The first line is the people in the station; the second is the sub-area supervisor; and the third line is the inspector himself.⁴¹⁶ As area commander, Inspector Jones identified this line supervision as the most significant method of managing and monitoring performance in the rural environment.⁴¹⁷
- 3.278 The inspector has implemented an audit process in the past four years whereby a retired senior sergeant comes around every six months and reviews or audits the area's internal audits and highlights any deficiencies.⁴¹⁸ This is a local initiative, undertaken in addition to the police internal audit function, which audits district performance against a Statement of Service Performance.

Community relationships and feedback

- 3.279 Other senior police officers also discussed the importance of community feedback in the monitoring of small stations. Superintendent Lammas said that in his district the member's relationship with the community is monitored through community comment, an assessment of any complaints generated, and an assessment of the member's relationship with other

411 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 8.

412 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 15 November 2005, p. 74.

413 Superintendent Mark Lammas, District Commander Central, Brief of evidence, 15 November 2005, p. 8.

414 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 15 November 2005, p. 75.

415 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 9.

416 Inspector Philip Jones, Area Commander, Otago Rural, Transcript of hearing, 11 November 2005, p. 8.

417 Inspector Philip Jones, Area Commander, Otago Rural, Brief of evidence, 11 November 2005, p. 3.

418 Inspector Philip Jones, Area Commander, Otago Rural, Transcript of hearing, 11 November 2005, p. 34.

agencies such as iwi, the local council, and the media.⁴¹⁹ Similarly Superintendent Nicholls told me that his district has a number of formal consultative groups including meetings and liaison with representatives of the Government entities of Education, Housing, Corrections, Conservation, Inland Revenue, Accident Compensation Corporation, Work and Income, and Child, Youth and Family, as well as with local authorities and the district health board, sports groups, local iwi, probation services, and the Chamber of Commerce. These relationships are maintained and provide a mechanism through which issues of community concern can be raised.⁴²⁰

- 3.280 Assistant Police Commissioner Marshall told me that senior officers are expected to stay in close touch with their sole-charge constables, and to visit the communities themselves on a regular basis. Part of a senior officer's job is to liaise closely with the leaders of local communities (for example mayors, local rotary clubs, neighbourhood watch coordinators, school principals); if the relationship between the community and its local constable were to sour for any reason, then, at least under the structure in place now, the local officer's supervisor would hear about this quickly. He believes that the present structure constantly demands accountability at all levels, and the performance of every station is closely monitored.⁴²¹
- 3.281 Superintendent Lammas explained that officers in charge of small stations are very carefully selected.⁴²² Police officers in small stations in his district also have a more direct relationship with senior police staff, including with himself as district commander, than staff of the same rank in larger stations. He said that because these staff are essentially the face of the police in smaller communities, they are more visible than their colleagues in larger stations, and thus he takes a far more active interest in them than he takes in other staff at constable or sergeant level.⁴²³
- 3.282 Inspector Jones also regularly visits the small stations in his area. When he makes these visits he already has information on any issues that may be coming up in relation to that station, based on the internal control reports and the monthly meetings with the sub-area supervisors, or from general feedback received.⁴²⁴ He told me that feedback from the community is also a very useful source of information about the performance of small stations.⁴²⁵
- 3.283 I asked Superintendent Lammas whether problems in small stations could go undetected today and he replied, "it could, particularly if it was an officer by him or herself". However he went on to say "We have an environment where people are much more willing to complain than 10 or 20 years ago."⁴²⁶ Similarly, Assistant Police Commissioner Marshall said that in small communities it is easier to determine what is happening because the people expect service and are very quick to complain.⁴²⁷ Superintendent Nicholls also said

419 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 9.

420 Superintendent Grant Nicholls, District Commander, Eastern, Brief of evidence, 15 November 2005, p. 8.

421 Assistant Police Commissioner Peter Marshall, Brief of evidence, 7 November 2005, pp. 14 and 15.

422 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 8.

423 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 8.

424 Inspector Philip Jones, Area Commander, Otago Rural, Transcript of hearing, 11 November 2005, p. 8.

425 Inspector Philip Jones, Area Commander, Otago Rural, Transcript of hearing, 11 November 2005, pp. 9–12.

426 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 15 November 2005, p. 91.

427 Assistant Police Commissioner Peter Marshall, Transcript of hearing, 7 November 2005, pp. 60 and 61.

that in rural communities issues of performance would readily be brought to the notice of the district management. There is a significant level of community interaction with police, particularly with the command levels of police within these communities. He said he would be extremely surprised if a significant policing issue in the district remained undisclosed in the environment in which they currently operate.⁴²⁸

- 3.284 Inspector Dawn Bell, New Zealand Police Human Resources Manager: Recruitment and Appointments, also drew my attention to some recent national initiatives regarding small stations. She informed me that a survey has been undertaken of one-, two-, and three-person stations. The survey focused on identifying the risks associated with small station policing and has generated the establishment of a small station focus group to discuss issues of interest. She advised that the survey report is currently being prepared.⁴²⁹

National initiatives

- 3.285 Inspector Bell also explained that the Human Resources section recently issued a national policy designed to guide district evaluations and decision-making associated with the assessment of one-, two-, and three-person police station staffing. The policy states that regular evaluation and re-assessment of one-, two- and three-person stations will be undertaken to achieve an appropriate balance between providing for the safety and wellbeing of rural station members, meeting the needs and expectations of the community, and operational policing requirements. The policy establishes a method of regular data collection and sets out, among other things, that district Human Resources managers are responsible for consulting with members, managers, and supervisors to determine if the data for the station indicates that current policing practices are not working effectively and to consider interventions and policing practices that may achieve the desired outcomes.⁴³⁰

- 3.286 The objective of the policy is to
- provide a framework to guide district evaluations and reviews of one-, two-, and three-person station staffing on a regular basis
 - provide districts with relevant information on one-, two-, and three-person stations so informed decisions can be made
 - ensure a consistent approach to the evaluation and review of one-, two-, and three-person station staffing yet also allow unique station, district, and community features and needs to be recognised
 - ensure adequate staffing levels in rural stations.⁴³¹

- 3.287 I note in the third bullet point above that this is a national policy that also allows for unique district features to be recognised. As such, I think it is a very positive and useful example of an application of nationally consistent standards while still allowing for some regional discretion. I believe this approach could usefully be extended beyond the management of

⁴²⁸ Superintendent Grant Nicholls, District Commander, Eastern, Brief of evidence, 15 November 2005, pp. 7 and 8.

⁴²⁹ Inspector Dawn Bell, New Zealand Police Human Resources Manager: Recruitment and Appointments, Brief of evidence, 9 November 2005, p. 21.

⁴³⁰ Inspector Dawn Bell, New Zealand Police Human Resources Manager: Recruitment and Appointments, Brief of evidence, 9 November 2005, Appendix DB20, "Assessment of 1-2-3-Person Station Staffing", p. 2.

⁴³¹ Inspector Dawn Bell, New Zealand Police Human Resources Manager: Recruitment and Appointments, Brief of evidence, 9 November 2005, pp. 21 and 22.

one-, two- and three-person station staffing to the monitoring, evaluation, and reporting methods employed in respect of smaller and rural stations more generally.

Adequacy of the management structures and systems

- 3.288 I heard of some good initiatives being undertaken, such as the establishment of an Assurance Committee, the establishment of ethics committees at district level (discussed in Chapter 6), and the steps taken by districts to monitor behaviour at smaller and rural stations. However, I am concerned about the lack of consistency with key management processes and systems across the country and the implications of this for consistently and adequately identifying and managing inappropriate behaviour. For instance, I had concerns over the level of discretion for districts in meeting the training requirements for staff. Further, I am not confident that there are always mechanisms in place to ensure that concerns of all sections of the community are passed onto police management when things go wrong.
- 3.289 My concern is about achieving the proper balance between national, centralised direction and district autonomy. I recognise that there is not a “right” approach to achieving this balance. However, in my view, although delegation for day-to-day decision-making and operations must go to those people in the field carrying out the work, that delegation must occur within a clear national management and policy framework, especially when dealing with matters as important as complaints of sexual assault and misconduct by police officers.
- 3.290 I believe that more clarity is required about when districts can make their own decisions and when they must follow a nationally directed approach. The Sexual Harassment Policy is an example of a nationally mandated approach being implemented consistently across the country, with very good results.
- 3.291 For the devolved model of management to operate effectively in terms of the way sexual misconduct within the police is addressed, New Zealand Police must have in place
- good data and information
 - clear policies and standards, which are easily accessible to staff
 - regular monitoring to ensure compliance with those policies and standards.
- 3.292 In my view currently these requirements are not adequately in place in the police. Extensive data is collected, but it is not integrated, well analysed, and used to best effect. For instance, one district commander told me,
- ... I spent 18 months doing internal investigations, we’ve always collated data and we’ve always sent it to the Office of the Commissioner. It’s only recently that I’ve come to realise that they don’t actually do anything with it. I just assumed that someone in the Office of the Commissioner was tasked with analysing, because we analyse everything else, ...⁴³²
- 3.293 As discussed in Chapter 2, there are three national policy documents governing sexual assault investigations into members of police, plus the commissioner’s directives and district orders. This duplication is a real concern. The proliferation of policies within New Zealand

⁴³² Superintendent Gavin Jones, Acting District Commander, Auckland City, Transcript of hearing, 17 November 2005, p. 13.

Police has resulted in a lack of clarity for staff about the policies and procedures that they must follow. Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, told me that there is no way of knowing whether or not every front-line person has actually read all the instructions.⁴³³ He told me that in some critical areas there is an internal review process where some areas are checked but that is at a general level rather than at the specific level of each individual member. There is no specific follow-up in relation to individual members to ensure that they are familiar with a specific policy that they may have to obey.⁴³⁴

3.294 To conclude, this section has examined the processes in place to ensure that police practice with respect to the handling of complaints does in fact comply with relevant standards and procedures. Police address this need primarily through the management chain of command and the Professional Standards review mechanisms.

3.295 My overall findings are as follows:

- There are many examples of good practice across the country. However, the mechanisms used by the police to ensure that practice in investigating allegations of sexual assault by police officers complies with the relevant standards and procedures vary across districts.
- District and area commanders appear to have significant discretion as to how they operate and whether they implement national policies or develop and use their own preferred procedures.
- There is an unhelpful lack of consistency across the country in key areas, such as the monitoring of complaints against police officers and internal practices for investigating those complaints. There is no review system for dealing with complaints against police associates, other than that which is applied to any investigation of a complaint of sexual offending.
- Policies and directives are issued to districts without any obvious mechanisms for ensuring that they are understood and consistently followed by front-line staff.
- Extensive data is collected in relation to the behaviour of individual officers, but it is not well integrated and analysed on a consistent basis.

433 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Transcript of hearing, 24 May 2004, p. 6.

434 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Transcript of hearing, 24 May 2004, pp. 21 and 22.

Recommendations

Consistency and transparency in complaint processes

R14 New Zealand Police should ensure that the practice of providing investigating officers with a reminder of the standards for complaint investigation is applied consistently throughout the country.

R15 New Zealand Police should improve the process of communicating with complainants about the investigation of their complaint, particularly if there is a decision not to prosecute. Complainants and their support people should be given

- realistic expectations at the start of an investigation about when key milestones are likely to be met
- the opportunity to comment on the choice of investigator
- regular updates on progress, and advance notice if the investigation is likely to be delayed for any reason
- assistance in understanding the reasons for any decision not to prosecute.

Independence of investigations

R16 New Zealand Police should develop a consistent practice of identifying any independence issues at the outset of an investigation of a complaint involving a police officer or a police associate, to ensure there is a high degree of transparency and consistency. The practice should be supported by an explicit policy on the need for independence in such an investigation. In respect of the handling of conflicts of interest, the policy should, among other things,

- identify types and degrees of association
- define a conflict of interest
- provide guidelines and procedures to assist police officers identify and adequately manage conflicts of interest (including in cases where cost or the need for prompt investigation counts against the appointment of an investigator from another section or district)
- ensure that the risk of a conflict of interest involving investigation staff is considered at the outset of any investigation involving a police officer or police associate.

R17 New Zealand Police should expand the content of its ethics training programme to include identifying and managing conflicts of interest, particularly in respect of complaints involving police officers or police associates.

Support for sexual assault investigations

- R18** New Zealand Police should ensure that training for the Adult Sexual Assault Investigation Policy is fully implemented across the country, so that the skills of officers involved in sexual assault investigations continue to increase and complainants receive a consistent level of service.
- R19** New Zealand Police should initiate cooperative action with the relevant Government agencies to seek more consistent Government funding for the support groups involved in assisting the investigation of sexual assault complaints by assisting and supporting complainants.

Management assurance

- R20** In relation to investigations of sexual assault complaints against police officers or police associates, New Zealand Police should have in place systems that
- verify that actual police practices in investigating complaints comply with the relevant standards and procedures
 - ensure the consistency of such practice across the country, for instance in the supervision of smaller and rural stations
 - identify the required remedial action where practice fails to comply with relevant standards
 - monitor police officers' knowledge and understanding of the relevant standards and procedures.



– 4 –

POLICE INVESTIGATIONS ON BEHALF OF THE POLICE COMPLAINTS AUTHORITY

4.1 This chapter addresses term of reference (3):

- (3) the adequacy of any investigations which have been carried out by the Police on behalf of the Police Complaints Authority and which have concerned complaints alleging sexual assault by members of the Police or by associates of the Police or by both, and, if any of those investigations have not been adequate, the respects in which they were inadequate:

The fifth of the terms of reference is also relevant (as explained later):

- (5) any other matter that may be thought by you to be relevant to the general or particular objects of the inquiry:

4.2 The Commission of Inquiry into Police Conduct took the view that term of reference (3) required it to review investigations carried out by the police either on behalf of or subject to review by the Police Complaints Authority (PCA). I have already discussed in Chapter 3 the adequacy of investigations carried out by the police since 1979 into complaints alleging sexual assault by police members or police associates. Of those investigations, there is a subset that have been reviewed or overseen by the PCA since its establishment in April 1989. For comment on the latter group of police investigations, see paragraphs 4.68 to 4.74 of this chapter.

4.3 The primary focus of this chapter is on the PCA's governing legislation and structure, the number of complaints it has received since it was established and how those have been dealt with, and the PCA's interaction with the police and with complainants. I also discuss the Independent Police Complaints Authority Amendment Bill, which is currently before the House of Representatives, and a police proposal (presented to this Commission) that the PCA and its legislation be the subject of more far-reaching changes.

4.4 Key aspects of the structure and operation of the PCA are summarised in the box overleaf.

A more detailed explanation of the PCA and its functions, powers, and discretionary capabilities occurs later in this chapter.

Background details of relevance to this chapter

Time frame. The period of interest to the inquiry was determined in March 2004 to be the 25 years from 1 January 1979. The Commission considered police investigations of relevant complaints that had been made since January 1979. The Police Complaints Authority (PCA) was established in April 1989.

Parties to the inquiry. The Commission formally recognised four parties to the inquiry: New Zealand Police, Police Complaints Authority, Police Association, and Police Managers' Guild.

Legal advice to the Commission. Ms Mary Scholtens QC and Mr Kieran Raftery acted as counsel assisting the Commission in its work programme. Mr Douglas White QC was appointed legal adviser to Dame Margaret Bazley after she became sole Commissioner in May 2005.

Submitters. Of those who approached the Commission directly about the police investigations into their complaints, 10 submitters were considered to fall within the terms of reference and directions.

Witnesses. The Commission heard evidence from Police Commissioner Robert Robinson, a range of other New Zealand Police staff, the Police Complaints Authority, the president of the Police Association, and various specialist witnesses.

Operation Loft. Staff from the New Zealand Police Professional Standards section at the Office of the Commissioner carried out a comprehensive search of police records to identify all cases that related to the Commission's terms of reference (known as Operation Loft). As part of Operation Loft, Professional Standards staff members were asked to locate and retrieve any files that related to allegations of sexual offending by police or associates of the police since 1 January 1979. All these files were provided to the Commission for review.

Operation Austin. In 2004, in response to public allegations of sexual offending by police and of inadequate handling of historic rape complaints, the police initiated criminal investigations into the alleged offending. The investigations into this conduct became known as Operation Austin.

Making complaints against the police. Complaints alleging sexual assault by members of the police may be made to the PCA, any member of the police, the registrar or deputy registrar of any District Court, or to an ombudsman.

The Police Complaints Authority

- came into operation on 1 April 1989
- operates under the Police Complaints Authority Act 1988
- receives certain complaints (as defined in the Act) against the police
- operates independently of the police
- consists of an Authority appointed by the Governor-General, who may be assisted by a Deputy Authority, together with a small staff of investigators, reviewing officers, and administrative staff members
- has (under the Act) barristers or solicitors of the High Court as the appointed Authority and Deputy Authority. (In fact, the Authority has been a High Court or District Court judge since the inception of the PCA.)

SCOPE OF MY INQUIRY IN RELATION TO THE POLICE COMPLAINTS AUTHORITY

- 4.5 The four parties to the inquiry held differing opinions as to how my terms of reference might apply to the PCA.
- 4.6 Although term of reference (3) specifically required me to inquire into both the manner and the adequacy (or otherwise) of the relevant investigations carried out by the police on behalf of the PCA, it was initially unclear whether I had jurisdiction to consider the structure of the PCA, the way it operates, and its relationship with the police under the current Police Complaints Authority Act 1988 (PCA Act) or under the Independent Police Complaints Authority Amendment Bill if enacted in its present form.
- 4.7 The matter was highlighted by a proposal submitted by the police in November 2005 that changes be made to the PCA's mandate and mode of operation. Counsel for the PCA queried whether my terms of reference allowed me to consider this proposal, and as a result I sought submissions from counsel assisting the Commission and counsel for the parties on the extent of my jurisdiction in this regard.
- 4.8 At a hearing on 8 December 2005 I received submissions from counsel for the PCA and counsel assisting. Counsel for New Zealand Police supported the submission of counsel assisting.
- 4.9 Counsel for the PCA, Mr John Upton QC, submitted that I did not have jurisdiction to consider the police proposals for changes to the PCA. Mr Upton stated that he did not consider that it was intended that this Commission would review the workings of the PCA and propose fundamental changes of the type suggested by the police so soon after a review of the PCA had been received by the Government.⁴³⁵ That review was undertaken by the Hon Sir Rodney Gallen in 2000,⁴³⁶ and gave rise to the bill currently before Parliament that proposes several changes to the PCA.
- 4.10 In his submission to me counsel assisting noted that this Commission is neither an inquiry into the PCA nor a general review of the Authority. Nevertheless, the natural consequence of the direction to me in term of reference (3) meant that my inquiry might well involve at least some consideration of the structure of the PCA, the way it operates, and its relationship with the police. Also counsel assisting submitted that, as a result, I would need to consider the impact of the legislation currently before Parliament on such matters.
- 4.11 I subsequently sought advice from my legal adviser, Mr Douglas White QC, on the conflicting views of counsel assisting and counsel for the PCA. Mr White noted the relevance of the fifth term of reference. He advised me that on the face of it this provision enabled me to consider and report on "any other matter" provided that I believed it was "relevant" to either the "general" or "particular" objects of the inquiry. He concluded that the fifth term of reference allowed me to consider and report on the police proposal that changes be made to the PCA's mandate and mode of operation. In the light of the advice

435 Police Complaints Authority, Submission as to jurisdiction, 8 December 2005, p. 8. (For comment on the provision of references to quotations, submissions, and other information provided by the parties, refer to "Notes for readers" in the Appendices.)

436 Hon Sir Rodney Gallen, *Review of the Police Complaints Authority* (Gallen Report), October 2000.

I received from Mr White, I issued a memorandum on 15 December 2005 stating that I did have the jurisdiction to consider matters related to the PCA that appeared to me to be relevant to the general and particular objects of my Commission (see Appendix 3.5).

- 4.12 The question of my jurisdiction to consider matters related to the PCA was revisited in 2006. The PCA did not agree that the Commission's jurisdiction extended to such matters. It considered my jurisdiction was limited to the adequacy of investigations carried out by the police on behalf of the PCA, and not to the PCA itself or its workings. The PCA requested that I record its views on this matter⁴³⁷ and I do so. However, my advice is that I am within my terms of reference in addressing the matters related to the PCA. (The relevant memoranda of advice and the memorandum of the Commission of 28 July 2006 are provided as Appendix 3.7.)
- 4.13 This chapter will, therefore, consider the structure, operation, and role of the PCA, and its relationship with the police under the current PCA Act and the proposed bill insofar as I consider these issues are raised by the evidence and relevant to the issues I am tasked to address.

CURRENT LEGISLATIVE CONTEXT OF THE POLICE COMPLAINTS AUTHORITY

- 4.14 As outlined in Chapter 2, the Government first considered the concept of some form of civilian oversight of the police in 1985. An officials committee, chaired by Sir David Beattie, was established in 1986 to "prepare a draft Bill relating to the concept of an Independent Examiner of complaints relating to the Police".⁴³⁸ This draft bill was enacted as the Police Complaints Authority Act on 10 March 1988, and the PCA came into operation on 1 April 1989.
- 4.15 The Authority is one of the very few positions that are appointed by the Governor-General "on the recommendation of the House of Representatives".⁴³⁹ I was told by counsel for the PCA that this method of appointment reflects the constitutional importance of the position of the PCA and the wish to emphasise its independence as far as possible.⁴⁴⁰ This is reinforced by the fact that the Governor-General can remove the person appointed as the PCA from office only "upon an address from the House of Representatives".⁴⁴¹

Functions of the Police Complaints Authority

- 4.16 The functions of the PCA are set out in section 12 of the PCA Act. In general terms, there are two main functions:
- to receive complaints alleging misconduct or neglect of duty by any member of the police or concerning any practice or policy of the police affecting the person who makes a complaint
 - to investigate of its own motion any incident involving death or serious bodily harm notified to the PCA by the Commissioner of Police.

⁴³⁷ Police Complaints Authority, Submission in response to draft report, 30 May 2006, p. 3.

⁴³⁸ *The Report of the Committee on an Independent Examiner of Complaints Against the Police* (1986), p. 1.

⁴³⁹ Police Complaints Authority Act 1988, section 4(2). There are currently five positions created in this manner, namely the Police Complaints Authority, the three Ombudsmen, the Parliamentary Commissioner of the Environment, the Auditor-General, and the Judicial Conduct Commissioner.

⁴⁴⁰ Police Complaints Authority, Submission as to jurisdiction, 8 December 2005, p. 2.

⁴⁴¹ Police Complaints Authority Act 1988, section 6(3).

4.17 The jurisdiction of the PCA in relation to complaints is limited to those alleging police misconduct or neglect of duty. The PCA is not empowered to investigate complaints alleging criminal misconduct or to prosecute alleged offending. Nor can the PCA determine guilt or innocence in criminal cases.

4.18 Counsel for the PCA explained this distinction to me using the following two examples:

Mrs Brown complains to the Police about a burglary of her house by a third party. Then (being dissatisfied about the Police handling of the matter) she complains about that ... The first complaint is for the Police to [handle]. The second is for the PCA (or the Police under its oversight).

In the second example, Mrs Brown complains to the Police about a sexual assault on her by a member of the Police. This complaint has two dimensions – one of criminal offending (to be investigated by the Police), and the second of Police misconduct (to be investigated by the PCA). The two dimensions will obviously overlap to some extent, but it is only the complaint to the extent that it alleges misconduct on the part of the Police which the PCA is empowered to investigate.⁴⁴²

4.19 On receipt of a complaint, the PCA has discretion to do any of the following:

- investigate the complaint itself⁴⁴³
- defer action until receipt of a report from the police on their investigation of the complaint⁴⁴⁴
- oversee a police investigation into the complaint⁴⁴⁵
- decide to take no action on the complaint⁴⁴⁶
- indicate to the Commissioner of Police that the complaint should be dealt with in accordance with the conciliation procedure established by the PCA (known as District Complaint Resolution).⁴⁴⁷

Where the PCA defers action to enable the police to investigate, the Commissioner of Police must report to the PCA on the result of the investigation as soon as practicable (and in any case no later than two months) after its completion.⁴⁴⁸

4.20 Where the PCA undertakes its own investigations under the PCA Act, it forms an opinion on “whether or not any decision, recommendation, act or omission, conduct, policy, practice, or procedure which was the subject-matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable”.⁴⁴⁹ This opinion, along with its reasoning, is conveyed to the Commissioner of Police, together with any recommendations that the PCA thinks fit, including that disciplinary or criminal proceedings be considered or instituted against any member of the police.⁴⁵⁰ This Commission is not concerned with such investigations. There have been very few in fact because the PCA has had its

⁴⁴² Police Complaints Authority, Submission, 29 July 2005, pp. 2 and 3.

⁴⁴³ Police Complaints Authority Act 1988, section 17(1)(a).

⁴⁴⁴ Police Complaints Authority Act 1988, section 17(1)(b).

⁴⁴⁵ Police Complaints Authority Act 1988, section 17(1)(c).

⁴⁴⁶ Police Complaints Authority Act 1988, section 17(1)(d).

⁴⁴⁷ Police Complaints Authority Act 1988, section 17(3).

⁴⁴⁸ Police Complaints Authority Act 1988, section 20(1).

⁴⁴⁹ Police Complaints Authority Act 1988, section 27(1).

⁴⁵⁰ Police Complaints Authority Act 1988, section 27(2).

own independent investigative capacity only since November 2003, and none relevant to complaints of sexual assault by police officers or their associates.

- 4.21 The more common situation is where the PCA refers the complaint for police to investigate; less commonly, the PCA oversees a police investigation. In both these situations the PCA reviews the completed police investigation⁴⁵¹ (after legal action is taken, if that course is followed by the police) and forms an opinion on whether any decision, recommendation, act, omission, conduct, policy, practice, or procedure that was the subject matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable.⁴⁵² After forming its opinion, the PCA indicates to the Commissioner of Police whether it agrees with the commissioner's decision or proposed decision in respect of the complaint.⁴⁵³ The PCA may, where it disagrees with the police, make such recommendations as it thinks fit, including that disciplinary or criminal proceedings be considered or instituted against any member of police.⁴⁵⁴
- 4.22 The police may seek the PCA's views about a case, either informally (i.e., where there is a good and proper reason, but no statutory obligation, to do so) or under section 20(3) of the PCA Act which allows the police to consult the PCA on any proposal for action on a complaint before providing the report required by section 20(1).

Powers of the PCA

- 4.23 As noted above, the PCA may disagree with a police finding on a complaint or with any action proposed by the police. It may direct the police to reinvestigate a complaint if it thinks that the original investigation was inadequate,⁴⁵⁵ or to reconsider their proposals for action on a complaint.⁴⁵⁶
- 4.24 Although the PCA has the power to make recommendations to the Commissioner of Police on most aspects of a complaint, including a recommendation that disciplinary or criminal proceedings be considered or instituted against any member of the police,⁴⁵⁷ it cannot direct the prosecution of a police officer before the court or a police tribunal.
- 4.25 The Commissioner of Police is required as soon as practicable after receiving a recommendation from the PCA to notify the PCA of the action (if any) proposed to be taken to give effect to the PCA's recommendation or to give reasons for any proposal to depart from, or not to implement, the PCA's recommendation.⁴⁵⁸
- 4.26 With respect to the specific cases under consideration by this Commission, counsel for the PCA advised me that the PCA had examined 145 of the Operation Loft files that were provided to me by the police.⁴⁵⁹ Of these, 70 were determined to be situations where the PCA was not in a position to agree or disagree with the police. In no fewer than 70 of the

451 Police Complaints Authority Act 1988, section 19(a).

452 Police Complaints Authority Act 1988, section 28(1).

453 Police Complaints Authority Act 1988, section 28(2)(a).

454 Police Complaints Authority Act 1988, section 28(2)(b).

455 Police Complaints Authority Act 1988, section 19(d).

456 Police Complaints Authority Act 1988, section 19(e).

457 Police Complaints Authority Act 1988, section 28(2)(b).

458 Police Complaints Authority Act 1988, section 29(1).

459 Police Complaints Authority, Transcript of hearing, 9 December 2005, pp. 57 and 58.

remaining 75 cases, the PCA fully endorsed the action of the police. Of the remaining five, there were three instances where the PCA and the police had a divergence of views (in each of these instances the police accepted the PCA's view and amended the outcome accordingly),⁴⁶⁰ and there were two instances where the PCA made comments critical of the standard of the investigation (in one case, that less time should have been spent on that investigation), but ultimately agreed with the action taken by the police.⁴⁶¹

4.27 Under section 29(2)(a) of the PCA Act, if, within a reasonable time after a recommendation is made, no action has been taken that seems to the PCA to be adequate and appropriate, the PCA may, after considering any comments made by the Commissioner of Police, send a copy of its opinion and recommendations on the matter to the Attorney-General and the Minister of Police.⁴⁶² The PCA may also, where it considers it appropriate, transmit a report on the matter to the Attorney-General for tabling in the House of Representatives.⁴⁶³ These powers have never been used.⁴⁶⁴

4.28 The Authority, Judge Ian Borrin,⁴⁶⁵ explained to me that in his view section 29(2)(a) of the PCA Act is to be interpreted as referring to “broader recommendations of practice, policy, procedure”, rather than relating to the outcome of a specific complaint.⁴⁶⁶ He described the actions of the PCA in the few instances where the Authority has not agreed with the conclusion reached by the police and reported to them:

we put our view to the Police so that the matter can be the subject of discussion, because it may be that we are misunderstanding something about the matter. It may be that they will be assisted by our input, and so, the matter is then the subject of ongoing discussion, and it may result in an agreed resolution or we may be in the position that they have one view and we have another. That does not happen very often, but it does happen.⁴⁶⁷

...

Where the outcome of a complaint is the subject of disagreement, that is to say, as to whether it should be sustained or not ... if there is disagreement we simply disagree; the Police will enter it on one basis in their records, together ... with the conclusion that we had reached, and we will enter it on our basis.⁴⁶⁸

...

My experience has been that the Police have been most responsive to suggestions that we have made.⁴⁶⁹

4.29 These comments were given in response to a question from counsel assisting, who had interpreted section 29(2) as referring to, or certainly as including, recommendations specific to a particular file (rather than only to broader matters of practice, policy, and

⁴⁶⁰ See Operation Loft files LT 51, LT 80, and LT 148.

⁴⁶¹ See Operation Loft files LT 5 and LT 194.

⁴⁶² Police Complaints Authority Act 1988, section 29(2)(a).

⁴⁶³ Police Complaints Authority Act 1988, section 29(2)(b).

⁴⁶⁴ Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, pp. 37 and 60.

⁴⁶⁵ Note that since the time of the Commission hearings, Judge Borrin has retired. Her Hon Justice Lowell Goddard took office in February 2007.

⁴⁶⁶ Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 60.

⁴⁶⁷ Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 57.

⁴⁶⁸ Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 60.

⁴⁶⁹ Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 60.

procedure). The PCA subsequently agreed that there may be a specific outcome on which there is formal disagreement between the police and the PCA and which is sufficiently serious in itself to be referred to the Government. Counsel for the PCA noted, however, that in the view of successive Authorities no such case had arisen to date.

- 4.30 It is my view that where the PCA is critical of the police handling of a case, and the police do not accept that criticism, it should not be possible for these matters to be left where they lie; rather, they should be formally notified to the Minister of Police, the Attorney-General, and the House of Representatives. The PCA and the police opposed any removal of the discretion under section 29(2) of the Act. They stated that it was very rare for the police and the PCA to formally disagree, and that any disagreement may cover a range of situations of varying degrees of importance and seriousness. The police and the PCA submitted that the Authority, as an independent judicial officer, could be relied upon to determine whether any disagreement is of sufficient moment to warrant referral to ministers.⁴⁷⁰ However, I consider that it is important that these very rare instances of disagreement are notified to Government. I believe it is important for the PCA to have effective sanctions in its armoury of powers. I therefore recommend that the discretion in section 29 be removed in the Independent Police Complaints Authority Amendment Bill in order to ensure that the PCA brings all disagreements to the attention of the Government of the day.

PCA discretion regarding complaints

- 4.31 The PCA has the ability under section 17(1)(d) of the PCA Act to decide to take no action on a complaint. The PCA's discretion in such decisions is governed by section 18 of the PCA Act:

- (1) The Authority may in its discretion decide to take no action, or, as the case may require, no further action, on any complaint if—
 - (a) The complaint relates to a matter of which the person alleged to be aggrieved has had knowledge for more than 12 months before the complaint was made; or
 - (b) In the opinion of the Authority—
 - (i) The subject-matter of the complaint is trivial; or
 - (ii) The complaint is frivolous or vexatious or is not made in good faith; or
 - (iii) The person alleged to be aggrieved does not desire that action be taken or, as the case may be, continued; or
 - (iv) The identity of the complainant is unknown and investigation of the complaint would thereby be substantially impeded; or
 - (v) There is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives, which it would be reasonable for the person alleged to be aggrieved to exercise.
- (2) The Authority may decide not to take any further action on a complaint if, in the course of the investigation of the complaint by the Authority or the Police, or as a result of the Commissioner's report on

⁴⁷⁰ Police Complaints Authority, Submission in response to draft report, 30 May 2006, p. 5; New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 118.

a Police investigation, it appears to the Authority that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.⁴⁷¹

- 4.32 This section is used very sparingly by the PCA. However, I was concerned by two instances where the PCA told a complainant that it had no jurisdiction to consider his or her complaint because the alleged incident had occurred before the PCA was created.⁴⁷² This was unfortunate. The PCA is of the view that it has no jurisdiction to consider complaints of police misconduct (relating to either sexual assault allegations or the police investigation of a complaint) that took place before the Act came into effect in 1989.⁴⁷³
- 4.33 The PCA Act came into force on 1 April 1989. Section 18(1)(a) provides the only “time limit” on complaints by providing, in effect, the PCA with the discretion whether to take action where the complainant has had knowledge of a complaint or grievance for over 12 months before making the complaint. Section 40 made transitional arrangements for complaints already lodged either with an ombudsman or the police. The PCA Act, therefore, does not appear to preclude the receipt or investigation of historic complaints about the conduct of police officers or of a police investigation.
- 4.34 Matters giving rise to the establishment of this Commission of Inquiry into Police Conduct and to the contemporaneous police Operation Austin have clearly demonstrated the need for complainants in like situations to be able to take their complaints to some forum. Young women who have been the subject of sexual misconduct are often severely traumatised by the experience, and unfortunately it may be some years before they have the confidence to make a complaint. Given the PCA’s practice of not accepting historical complaints, I am concerned that there is no independent agency to which these complaints can be made. On my reading of the PCA Act it seems that it is open to the PCA to review such historic cases. The PCA took issue with my reading of the PCA Act. Accordingly, I took advice on the matter from my legal adviser, after he had received and considered submissions from the PCA and counsel assisting. The advice I received was as follows:
- ... I have given careful consideration to the submissions made by Counsel for the PCA and Counsel Assisting. For the reasons given by Counsel Assisting, I am satisfied that the presumption against retrospective legislation is not applicable to the issue whether the PCA has jurisdiction to consider pre 1 April 1989 allegations.⁴⁷⁴
- 4.35 I decided to accept that advice. The PCA does not agree and notes that the consistent interpretation of the PCA Act from the outset by all those who have been the Authority over the years is that the PCA lacks the legal jurisdiction to investigate matters that arose before the PCA Act came into force on 1 April 1989. If there remains any ambiguity or doubt about the matter, I believe that a further amendment should be included in the Independent Police Complaints Authority Amendment Bill to remove such uncertainty.

471 Police Complaints Authority Act 1988, sections 18(1) and 18(2).

472 Operation Loft files LT 23 and LT 53.

473 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 54.

474 Mr Douglas White QC, Memorandum of advice for the Commission of Inquiry into Police Conduct, 28 July 2006, paragraph 27 (see Appendix 3.7).

Impact of the secrecy provisions on PCA investigations

- 4.36 It has been the practice of the PCA not to conduct its own investigations into complaints that may result in criminal or disciplinary proceedings being taken against a member of the police until those proceedings have been completed, and to defer completion of complaint investigations where a matter is already the subject of proceedings. The fundamental reason for this practice is the provisions in the PCA Act known as the “secrecy” provisions.⁴⁷⁵ Mr Allan Galbraith, Manager of Investigations for the PCA, explained to me that, although section 12 of the PCA Act allows the PCA to conduct investigations, section 25(4) directs that no statement taken or answer given by any person in the course of any PCA investigation shall be admissible as evidence in proceedings against that or any other person in any court, inquiry, or other proceeding. Section 32 requires the PCA and its staff to maintain secrecy in respect of all matters coming to their knowledge in the exercise of their functions, subject to certain discretions to disclose information for particular purposes. The effect of these provisions is that although the Authority may investigate police activities in terms of the Act, information gathered in that process is not available for the purpose of any proceedings – criminal or disciplinary.⁴⁷⁶ The PCA must be careful to avoid being involved in an investigation where that involvement could later result in “contamination” of proceedings because of the presence of inadmissible evidence.⁴⁷⁷ According to Mr Galbraith, these limitations “do not, however, restrict investigations within the apparent intentions of the Act”.⁴⁷⁸
- 4.37 Mr Galbraith informed me that, as a consequence of the investigative capacity available to the PCA since November 2003, a PCA investigator would, in appropriate cases, be assigned to a complaint of sexual assault made against a police officer. But because of the need to avoid contamination of any subsequent criminal or disciplinary proceedings, the role of the assigned investigator “may best be described as ‘active monitoring.’ ... The PCA investigator actively endeavours to ensure that the Police investigation is timely, thorough, and in accordance with best practice.”⁴⁷⁹
- 4.38 The police have expressed concern at the impact of the secrecy provisions on PCA investigations and the utility of information gathered by the PCA, as well as the lack of effectiveness of the Act in facilitating independent investigations.⁴⁸⁰ This is discussed further below.

STRUCTURE OF THE POLICE COMPLAINTS AUTHORITY

- 4.39 In December 2005 the PCA was composed of the Authority, Judge Ian Borrin, assisted by a Deputy Authority, and a staff of four investigators, six reviewing officers, and three administrative staff. (At that time there were 18 members of staff sharing the 13 full-time equivalent positions.)⁴⁸¹

⁴⁷⁵ Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 30.

⁴⁷⁶ Mr Allan Galbraith, Manager of Investigations for the PCA, Brief of evidence, 9 December 2005, p. 2.

⁴⁷⁷ Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 7.

⁴⁷⁸ Mr Allan Galbraith, Manager of Investigations for the PCA, Brief of evidence, 9 December 2005, p. 3.

⁴⁷⁹ Mr Allan Galbraith, Manager of Investigations for the PCA, Brief of evidence, 9 December 2005, p. 6.

⁴⁸⁰ New Zealand Police, “Outline of Police Position in Relation to the Police Complaints Authority Act 1988 and Changes to Professional Standards”, paper written for and presented to the Commission of Inquiry on Police Conduct on 15 November 2005.

⁴⁸¹ Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 11.

- 4.40 The PCA Act provides for both an Authority and a Deputy Authority. Both of these positions have precisely the same statutory powers, duties, and functions. Both positions were filled from the establishment of the office in 1989 through to 2000. In 1997 Judge Borrin was appointed Deputy Authority. In June 2000, while Sir Rodney Gallen completed his review of the PCA, Judge Borrin became the Acting Authority, and from July 2000 when Judge Borrin was confirmed as the Authority until September 2005 the position of Deputy Authority was vacant.⁴⁸² A Deputy Authority was appointed in September 2005 but ceased duty at the end of March 2006. Therefore, between July 2000 and October 2006, there has been a Deputy Authority for a period of only six months or so.⁴⁸³
- 4.41 The independent investigative capability of the PCA was established during the year ended 30 June 2004.⁴⁸⁴ Until that time the PCA did not undertake its own investigations because it did not have the capability to do so. In November 2003, in the light of the recommendations of Sir Rodney Gallen, the PCA received funding for and appointed a manager of investigations and three investigating officers. The task of the investigating officers is to operate at the “front end” of the investigation and review process, rather than in the role of reviewing officers, who receive the end product of police investigations.⁴⁸⁵
- 4.42 I was told that the task of the reviewing officers is to review investigations conducted for the PCA by the police and to prepare letters for reporting to complainants and to the police.⁴⁸⁶ I was informed that the reviewing officers also now prepare final reporting letters in respect of the (relatively few) matters investigated by the PCA’s own investigators. In those matters the PCA has access to reports from both its own investigating officers and from the police.⁴⁸⁷

NUMBER OF COMPLAINTS RECEIVED

- 4.43 In the year ended 30 June 2006 the PCA received 2,829 complaints lodged by 1,741 complainants. Of these complaints, 2,481 were accepted for full investigation. The PCA regards the total number of *complainants* rather than the total number of *complaints* as the more reliable indicator both of its own workload and of the level of dissatisfaction with police performance. At 1,741, the number of complainants in the year ended June 2006 was 161 fewer than in the previous 12 months and 215 fewer than the 1,956 complainants in the year ended June 2004. This latter number was considerably higher than the 1,781 complainants in the preceding year.⁴⁸⁸ (The record number of complainants was recorded in the year ended June 1997 at 2,066.⁴⁸⁹)
- 4.44 According to the PCA, the increase in complaints in the June 2004 year arose from two sources. First, the stricter policy of the police in matters of traffic enforcement had led to an appreciable increase in the number of complaints from motorists involved in enforcement incidents. Secondly, the PCA considered that the public allegations made in 2004 in respect

⁴⁸² Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 11; and Transcript of hearing, 14 October 2005, p. 66.

⁴⁸³ Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 2.

⁴⁸⁴ Police Complaints Authority, *Annual Report for the year ended 30 June 2004*, p. 5.

⁴⁸⁵ Mr Allan Galbraith, Manager of Investigations for the PCA, Brief of evidence, 9 December 2005, pp. 2, 3, and 7.

⁴⁸⁶ Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 11.

⁴⁸⁷ Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 11.

⁴⁸⁸ Police Complaints Authority, *Annual Report for the year ended 30 June 2006*, pp. 4–5.

⁴⁸⁹ Police Complaints Authority, *Annual Report for the year ended 30 June 1998*, p. 33.

of police sexual conduct and attitudes led to the PCA being approached over matters that may not otherwise have been referred to it.⁴⁹⁰

- 4.45 I was told by Judge Borrin during the inquiry that the PCA had a backlog of 2,000 cases at that time, and that 635 of them were over 18 months old. Some of these 635 cases were tied up in court proceedings for which the Authority was waiting resolution, but the majority were matters that, “but for our smallness of size, could be completed in better time”.⁴⁹¹
- 4.46 For the year ended 30 June 2006, the PCA’s total budget was \$1.755 million.⁴⁹² In April 2006 a funding injection of \$0.25 million excluding GST was received from the Government in response to the increase in the PCA’s workload. An additional sum of \$0.55 million has been scheduled for payment during the year ending June 2007 to allow the current accumulation of complaints to be resolved.⁴⁹³

INTERACTION BETWEEN THE POLICE COMPLAINTS AUTHORITY AND THE POLICE

Basis of the working relationship

- 4.47 The Commissioner of Police is obliged under the PCA Act to notify the PCA as soon as practicable of any complaint against a police member made directly to the police.⁴⁹⁴ Similarly, the PCA has a duty to notify the Commissioner of Police as soon as practicable of every complaint received directly by the Authority.⁴⁹⁵ This covers all complaints by members of the public.
- 4.48 In relation to complaints coming from within the police, these are the subject of a memorandum of understanding between the police and PCA signed on 10 November 1994. According to the memorandum, when any “serious misconduct” or any “serious neglect of duty” is reported, the Commissioner of Police should notify the Authority as soon as practicable. Serious misconduct or serious neglect of duty is defined as conduct that constitutes a criminal offence, or is of such significant public interest as to put at risk the reputation of the police. In its schedules, the memorandum categorises each of the 42 particular offences set out in regulation 9 of the Police Regulations 1992 as either within or outside its scope.⁴⁹⁶
- 4.49 As outlined in Chapter 2, on 6 April 2005 the police and the PCA entered into a protocol for cooperation defining the working relationship between the police and the PCA in relation to the investigation of complaints, incidents, and other matters.⁴⁹⁷ This protocol operates only when PCA investigators are deployed. I was informed that the police and PCA had been operating in accordance with this protocol for some time before it was signed.⁴⁹⁸

490 Police Complaints Authority, *Annual Report for the year ended 30 June 2004*, p. 5.

491 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 18.

492 Police Complaints Authority, *Annual Report for the year ended 30 June 2006*, p. 7.

493 Police Complaints Authority, *Statement of Intent July 2006–June 2009*, p. 12.

494 Police Complaints Authority Act 1988, section 15.

495 Police Complaints Authority Act 1988, section 16.

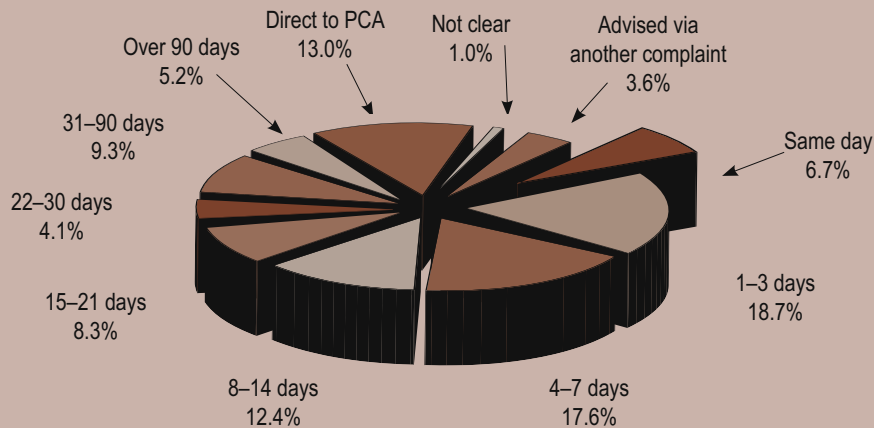
496 New Zealand Police and Police Complaints Authority, “Memorandum of Understanding between the New Zealand Police and the Police Complaints Authority”, 10 November 1994. In: New Zealand Police, *Ten-One*, No 90b, 28 April 1995, p. 18.

497 New Zealand Police and Police Complaints Authority, “Protocol for Co-operation between the New Zealand Police and the Police Complaints Authority”, 6 April 2005.

498 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, pp. 49–50.

Figure 4.1: Notification to PCA of complaints of sexual assault by members of police, 1989 to 2005, showing time taken from receipt of complaint by police or other means of receipt of complaint¹

Data expressed as percentages of the total notifications.



¹ The data do not include those complaints investigated under the auspices of Operation Austin or those where the alleged offender was not a current member of police at the time of the complaint.

4.50 The protocol requires the police to notify the PCA of all serious complaints and incidents “as soon as possible”.⁴⁹⁹ The PCA submitted that this is a higher standard than that specified in the PCA Act.⁵⁰⁰ Once notified, PCA investigators are assigned to investigate only serious complaints, incidents, and other matters that the PCA considers appropriate. Even where a PCA investigator has been assigned to a complaint, the PCA will continue to rely on the police investigation for a substantial part of its base information.⁵⁰¹

Notification of a complaint

4.51 As just mentioned, the police are obliged to notify the PCA of any complaint received by them from a member of the public as soon as practicable, or, if the complaint is of a serious nature, as soon as possible.⁵⁰² The PCA Act does not provide a definition of the expression “as soon as practicable”, but I would consider that it would be appropriate for the PCA to be notified within one week of the police receiving a complaint.

4.52 Between 1989 (the year the PCA came into operation) and 2005, the PCA was notified of 192 complaints of sexual assault by members of police. As illustrated in Figure 4.1, of these 192 complaints

- 83 (43 percent of all complaints) were notified to the PCA within one week of the police receiving the complaint
- 24 were notified between one and two weeks of the police receiving the complaint (12 percent of all complaints)

499 New Zealand Police and Police Complaints Authority, “Protocol for Co-operation between the New Zealand Police and the Police Complaints Authority”, 6 April 2005, p. 2, paragraph 6.

500 Namely “as soon as practicable” (Police Complaints Authority Act 1988 section 15).

501 New Zealand Police and Police Complaints Authority, “Protocol for Co-operation between the New Zealand Police and the Police Complaints Authority”, 6 April 2005, p. 2, paragraph 5.

502 See footnotes 495 and 496.

- 16 were notified to the PCA between two and three weeks after the police received the complaint (8 percent of all complaints)
- eight were notified to the PCA between three and four weeks after the police received the complaint (4 percent of all complaints)
- 17 complaints were notified to the PCA between 31 and 90 days of the police receiving the complaint (9 percent of all complaints)
- 10 complaints were notified to the PCA over 90 days after the police had received the complaint (5 percent of all complaints)
- 25 complaints were made directly to the PCA (13 percent of all complaints)
- two complaints were “not clear” with respect to when they were notified (1 percent of all complaints)
- seven complaints (4 percent of all complaints) were notified as part of another complainant’s complaint.

4.53 Of particular concern to me was the number of complaints that were notified to the PCA after 30 days. In the worst instance it took the police 518 days to notify the PCA of a complaint, and this notification occurred only after the complainant had made a third complaint about the same officer.⁵⁰³

4.54 In another instance the PCA was not notified of a complaint until after the police investigation into the matter had been completed.⁵⁰⁴ Counsel for the PCA informed me, nothing turns on the point in this case, because in any event even if notification had been promptly given to the PCA by the Police, the PCA, in accordance with its usual and necessary practice would inevitably have deferred any action on the file until the Police investigation of the criminal complaint was complete.⁵⁰⁵

4.55 Nevertheless, I am concerned that the police failed to meet their statutory obligations to notify the PCA as soon as practicable, and the PCA, as a result, was not given the opportunity to direct how the complaint was to be dealt with.⁵⁰⁶

4.56 The former Police Complaints Authority, Hon Sir John Jeffries, expressed similar concerns when he was not notified of a complaint until 93 days after the complaint had been made. In a letter to the Commissioner of Police in 1994 he wrote,

this failure to advise me was a clear-cut breach of the obligations of the Commissioner under s. 15 of my enabling Act. Moreover such failure to advise prevents me exercising my statutory functions in a timely fashion under s. 17 of the Act. Apart from breach of mandatory statutory obligations a complaint of extremely serious misconduct, and possible criminal misconduct, has been allowed to drift unresolved for many months.⁵⁰⁷

503 Operation Loft file LT 71. (I note that the outcome of the investigation of this complaint was that it was false, but nevertheless the appropriate procedures should have been followed.)

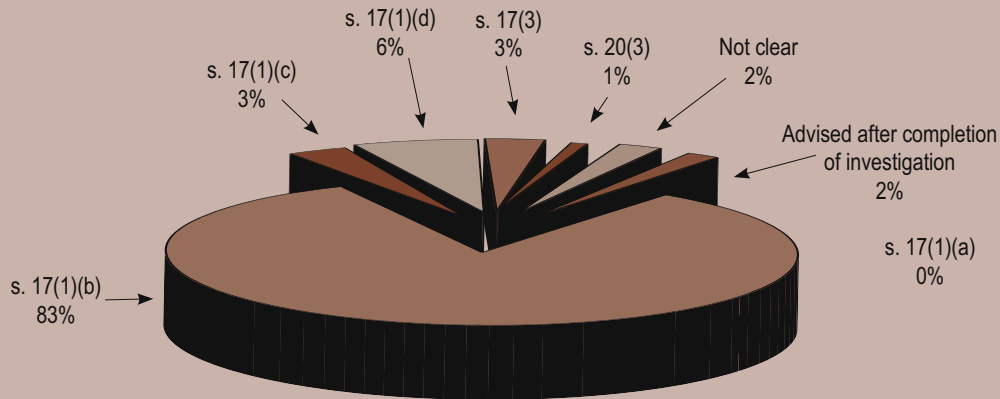
504 Operation Loft file LT 68.

505 Police Complaints Authority, Submission, 29 July 2005, p. 4.

506 Counsel for the PCA also expressed a concern to me about these issues being addressed in a chapter of the report focusing on the PCA, when they involve criticism of the performance of the police, not the PCA. I accept that the PCA is not responsible for the performance of the police in notifying it of complaints; the context of the discussion is nevertheless the relationship and interaction between the PCA and the police.

507 Police Complaints Authority (Sir John Jeffries), Letter to the Commissioner of Police, 28 January 1994.

Figure 4.2: Initial direction by the Police Complaints Authority on receipt of a complaint, according to the section of the PCA Act 1988 used¹
Data expressed as percentages of the total complaints of sexual assault by members of police notified to PCA, 1989 to 2005.



¹ The data do not include those complaints investigated under the auspices of Operation Austin or those where the alleged offender was not a current member of police at the time of the complaint.

4.57 The PCA submitted that it was misleading to take the data over the period without an analysis of the change in reporting times over the period since 1989.⁵⁰⁸ Consequently I undertook an analysis of that data and found that there were such fluctuations in the data that it was impossible to determine any pattern of general improvement over time. However, I did note that in 10 years of the 17-year period, the majority of complaints were notified to the PCA within seven days. Also, I was pleased to see that in 2005 all of the complaints were notified within seven days.

4.58 I consider the requirement for the police to notify the PCA “as soon as practicable” means that notification should occur within one week at the very latest. The timeliness of such notifications should also be monitored by Professional Standards section at the Office of the Commissioner.

Directions from the PCA under section 17 of the PCA Act

4.59 As set out in paragraph 4.19, the PCA may take any or all of several different courses of action under section 17 of the PCA Act in its initial direction on a complaint:

- investigate the complaint itself, section 17(1)(a)
- defer action while the police investigate, section 17(1)(b)
- oversee a police investigation, section 17(1)(c)
- take no action, section 17(1)(d) (in accordance with section 18)
- refer the matter to District Complaint Resolution, section 17(3).

4.60 Figure 4.2 illustrates use of the different provisions of the PCA Act in the initial response of the PCA.

⁵⁰⁸ Police Complaints Authority, Submission, 27 October 2006, p. 4.

- 4.61 With respect to the 192 sexual assault complaints against police officers made between 1989 (the year of the coming into force of the PCA Act) and 2005, the PCA's actions were as follows:
- None were investigated by the PCA itself under section 17(1)(a) of the PCA Act.
 - There were 160 complaints investigated by the police and reviewed by the PCA under section 17(1)(b).
 - Six complaints were overseen by the PCA under section 17(1)(c).
 - The PCA decided to take no action on 12 complaints, under section 17(1)(d) in accordance with section 18.
 - Six complaints were referred for District Complaint Resolution under section 17(3).
 - Five cases were not clear.
 - The PCA was advised of three complaints after the completion of the police investigation.
- 4.62 I was informed in October 2006 that the current practice of the PCA is to appoint a PCA investigator to undertake an independent investigation where a sexual assault allegation has been made against a police officer.⁵⁰⁹

District Complaint Resolution

- 4.63 The District Complaint Resolution system was developed by the PCA as an efficient and effective means of resolving a problem arising between a member of the public and the police. It is used where a complaint of a non-serious nature is made, for example a complaint of poor attitude as opposed to criminal behaviour.
- 4.64 The District Complaint Resolution procedure is not commonly used for sexual assault allegations, given their seriousness. However, I have seen its operation in several files that I have reviewed,⁵¹⁰ and overall I consider it to be an efficient method of dealing with a limited number of such complaints at the lower level.
- 4.65 Where a complaint is designated as appropriate for District Complaint Resolution it is referred to the district from which it arose for resolution. This will normally involve a senior officer talking with the complainant about their complaint and finding a mutually agreeable method of resolving it. The complainant is subsequently provided with a letter confirming what has been discussed and stating that if they are not satisfied with the result of the complaint they should write to the PCA. If a complainant is dissatisfied with the outcome, the PCA will review the police file in the same manner as it would any other complaint file.
- 4.66 Judge Borrin considered the resolution system had proved valuable:
- The experience has been that this is a successful procedure, so much so that we have tended to use it increasingly over the years, and in one or two years we have used this procedure in as many as 40% of the matters referred to us by members of the public. It's been a matter of

509 Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 5.

510 Operation Loft files LT 95, LT 153, and LT 209.

some pride and pleasure that, of those, there has been a failure rate of only about 5%.⁵¹¹

- 4.67 The PCA does not conduct any sampling of the people whose complaints were resolved in this manner to see if they were satisfied with the services they received from the PCA. Instead the PCA relies on whether or not there is any further correspondence from the complainant after receiving the dispositive letter informing of the right to seek a review by the PCA if he or she is dissatisfied with the result of the complaint.⁵¹² I was told by the PCA, “The very fact that the PCA only gets a very small proportion of requests for review indicates ... that the DCR [District Complaint Resolution] system is working well.”⁵¹³

ADEQUACY OF POLICE INVESTIGATIONS ON BEHALF OF THE PCA

- 4.68 Term of reference (3) requires the Commission to review the adequacy of police investigations on behalf of the PCA into complaints that allege sexual assault by members of the police or police associates. Chapter 3 has already discussed in detail the adequacy of those complaint investigations during the entire period of interest to this inquiry. Investigations into members of the police that have been overseen or reviewed by the PCA form a subset of those investigations defined by date (the PCA was not established until April 1989) and subject matter (the PCA has no jurisdiction in respect of complaints against police associates).
- 4.69 At first reading, it seemed that very few of the complaints of sexual assault falling into the relevant subset were in fact subject to investigation by the police “on behalf of the PCA” as that phrase is used in this inquiry’s term of reference (3). Only six were overseen by the PCA. The vast majority were investigated by the police and only later reviewed by the PCA. In the event, I have considered the terms of reference to apply to all complaints investigated by the police and reported to the PCA, irrespective of whether the PCA oversaw the investigation as it was carried out or reviewed the investigation after its completion.
- 4.70 The preponderance of complaints that are only reviewed by the PCA after police investigation reflects the need, discussed earlier, to ensure that the secrecy provisions of the PCA Act do not operate to prejudice any possible criminal or disciplinary proceedings. The PCA reassured me, “The more serious the matter the more intense the scrutiny by the PCA.”⁵¹⁴ Despite this, the legislation seems to me to have produced a perverse result: the more serious the complaint, the more the PCA has to take a backseat role so as to ensure there is no contamination of the criminal or disciplinary process.
- 4.71 The investigations overseen or reviewed by the PCA since its establishment in April 1989 all fall into the period, discussed in Chapter 3, when the quality of investigation was much improved compared with that evidenced in the earliest files considered by the Commission

511 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 23.

512 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 26.

513 Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 6.

514 Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 6.

(from 1979). Further improvements in the manner in which investigations were conducted have continued up to the present.

4.72 Thus, although I saw evidence of some failings in the past, the files also illustrate significant improvements in the period since 1989:

- an evolving understanding of the need to consider issues of independence, especially when appointing investigating officers, and to ensure that all complaints are investigated fairly and appropriately
- a growing recognition of the needs of sexual assault complainants and the importance of accessing professional assistance for them
- the development of a professional review structure within the police whereby any failings within the investigation process are identified and rectified wherever possible
- a willingness to seek both internal and external legal advice when considering whether to lay criminal charges.

4.73 However, further improvements are necessary. In particular the police should address the need for confidence in the system of investigating complaints, through

- effective implementation of the Adult Sexual Assault Investigation Policy, to ensure a nationally consistent approach towards investigating sexual assault complaints
- policies, and enhanced training, to assist members of the police to adequately identify and manage conflicts of interest (whether actual or perceived) in respect of complaints involving police members or police associates.

4.74 The existence of the PCA as an independent body to investigate or review complaints against the police is another essential element in ensuring confidence in the complaints system because it helps to overcome the perception, which is still held by some complainants, that the police will not accept a complaint against a colleague and/or will not adequately investigate such a complaint.

PCA INVOLVEMENT WITH COMPLAINANTS OF SEXUAL ASSAULT

4.75 Based on my reading of the files and the evidence I heard during the inquiry, I believe there are three areas where enhancements to the practices of the PCA and the level and/or use of its resources would be valuable for complainants of sexual assault. The first relates to the accessibility of the PCA; the second to the communication between the PCA and the complainant during the investigation of their complaint; and the third to the need to address the time the PCA takes to complete its consideration of a complaint.

Accessibility of the PCA

4.76 In order for the PCA to function effectively it needs to be accessible to members of the public. I was informed by the current Authority, Judge Borrin,

[The PCA] is readily accessible to those members of the public who wish to approach it. Most complaints are in written form from the outset, either by way of a letter or a complaint form from the complainant (forwarded by fax or post) or by way of a statement made to, and then forwarded by, the Police. Others make initial contact by telephoning

the office (on an 0800 line) in order to discuss their concern in a preliminary way and they are offered a complaint form should they wish it and it is sent to them for completion and return, but generally they choose, following such a telephone call, to write in by letter.⁵¹⁵

- 4.77 The PCA did not at that time maintain a website, although one has since been developed and became accessible in July 2006. The website contains information about how to make a complaint to the PCA, and enables a complaint to be made online. Similar information had been available for some time on the police website. The police website explains,

Serious cases involving allegations of misconduct, neglect of duty or grievances concerning police practice, policy or procedure, if reported directly to the police, will be notified to the Police Complaints Authority (PCA) to determine how the matter will be dealt with. The Police, or the Police Complaints Authority, may conduct an investigation.

The PCA also investigates incidents involving death or serious harm involving police officers.

The PCA is an entirely independent body appointed by the Governor-General.⁵¹⁶

Until recently, the police website used to explain that the PCA “does not currently have a website, so we have provided this information for your convenience”;⁵¹⁷ it now provides a link to the PCA website.⁵¹⁸

- 4.78 The PCA has produced an information pamphlet, which is available at some police stations, community law centres, and bureaux of the Citizens Advice Bureau. Judge Borrin told me that the pamphlets used to be provided to police stations, but that the practice “seems to have fallen into disuse”. He said that it would be desirable to have pamphlets and forms available at police stations, but did not consider it essential because complainants who present at police stations are either handing over a complaint they have already written or have come prepared to make a complaint to the police.⁵¹⁹

- 4.79 In my view it is important to ensure that members of the general public, in particular those who have dealings with the police, are informed of their rights to make a complaint about the police and have easy access to the complaints process. The evidence I have considered provided examples of the difficulties experienced by people who felt they could complain only to the colleagues of the person who had allegedly assaulted them. Although I welcome the development of the PCA’s website, I believe it would be helpful for the PCA, in conjunction with the police, the Ministry of Justice, and other relevant agencies, to develop a communications strategy with the objective of increasing the general awareness of the PCA and its work, and ensuring in particular that information on the PCA is readily and prominently available in police stations.

515 Judge Ian Borrin, Brief of evidence, 9 December 2005, p. 4.

516 New Zealand Police, <http://www.police.govt.nz/contact/complaints.html>, “Complaints against New Zealand Police: Police Complaints Authority”, accessed 1 October 2006.

517 New Zealand Police, <http://www.police.govt.nz/contact/complaints.html>, “Complaints against New Zealand Police: Police Complaints Authority”, when accessed at 12 June 2006.

518 New Zealand Police, <http://www.police.govt.nz/contact/complaints.html>, “Complaints against New Zealand Police: Police Complaints Authority”, accessed 1 October 2006, provides a link to <http://www.pca.govt.nz>.

519 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 16.

- 4.80 The PCA should also regularly sample complainants to see how satisfied they were with their interaction with the PCA and with the police on the PCA's behalf. I understand that many other Government agencies, for example, the Health and Disability Commissioner, seek feedback from those who have been involved in their complaints processes.
- 4.81 Dr Warren Young, an expert witness, told me that in his view, although the complaints system has significantly improved since the advent of the PCA, it still fails to meet the criteria for a credible process for dealing with complaints against the police. He offered some examples of obstacles encountered by potential complainants:
- Those who wish to make complaints to the police may be uncomfortable about complaining to the police station in which the police officer complained about works, simply because they will be aware that they are complaining to the officer's colleagues. While they are able to lay their complaints with other agencies of complaint, including the Police Complaints Authority, they may not know of the existence of those other avenues of complaint and may find them inaccessible or difficult to use anyway. For example, it is a significant impediment that the Police Complaints Authority is located solely in Wellington and that (while it has an 0800 number) it requires all complaints to be made in writing.⁵²⁰
- 4.82 Judge Borrin confirmed that it is a PCA requirement that a complaint be made in writing. A form is provided for that purpose. The PCA Act allows complaints to be made either orally or in writing, requiring that a complaint made orally shall be reduced to writing as soon as possible.⁵²¹ This permits the PCA to write down an oral complaint and have the complainant agree or adopt the written version. However, this has happened only "on a handful of occasions".⁵²² Instead the PCA has developed the practice of requiring a complaint to be made in writing by the complainant (or someone on his or her behalf) to "avoid an inadvertently incorrect record, made by someone else, of the complaint or to avoid a subsequent mischievous claim that the complaint was not fully or accurately recorded".⁵²³
- 4.83 I am concerned about this practice, which does not seem to me to take adequate consideration of the difficulties some members of the public have in dealing confidently with Government agencies. In my experience, the requirement for a complainant to put a complaint in writing can limit the accessibility of a complaints process, especially for those who are less literate, have some forms of mental or physical disability, or have suffered an intensely personal and traumatic experience such as rape.
- 4.84 I heard evidence of the difficulties experienced by one person with both the PCA's complaint form and the general accessibility of the PCA.⁵²⁴ I was told that on other occasions complainants have asked community organisations to prepare the complaint for them and to send it on to the PCA.⁵²⁵
- 4.85 I recognise the risks inherent in the conversion of an oral complaint to a written form, and agree with the PCA that, quite apart from the statutory requirement (that an oral complaint

520 Dr Warren Young, Law Commission, Brief of evidence, 22 November 2005, pp. 10 and 11.

521 Police Complaints Authority Act 1988, section 14.

522 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 14.

523 Judge Ian Borrin, Police Complaints Authority, Brief of evidence, 9 December 2005, p. 2.

524 New Zealand Police, Submissions, 11 July 2005, p. 7.

525 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 15.

be reduced to writing as soon as practicable), it is desirable to invite a person who has made an oral complaint to confirm that the PCA has committed it accurately to writing.⁵²⁶ The PCA was concerned about the ramifications of such a process, both practically and in terms of maintaining its independence from complainants, and moreover did not accept that there is evidence of any widespread problem or difficulty in the completion of written complaints.⁵²⁷ I do not see the obstacles as insurmountable, and believe it would be a useful and workable addition to the PCA's procedures to enable a complainant who has difficulty making a written complaint to make it orally to the PCA and be invited to confirm that the PCA has recorded it accurately in writing.

Communication between the PCA and the complainant

- 4.86 It is clear from the files that I have read that the PCA does not communicate adequately with complainants. The usual practice appears to be that the complainant is sent an initial letter advising them of the approach that the PCA is taking with regard to their complaint and then a final dispositive letter is sent at the conclusion of the PCA review of the file.
- 4.87 In response to enquiries from counsel assisting Judge Borrin told me,
 We have no established and routine system for reporting progress to a complainant. The reason for that is that we do not have the resources of time and personnel to do that no matter how desirable it is and, to put it frankly, we're too busy doing the rest of the work. We do, of course, reply to inquiries as to progress.⁵²⁸
- 4.88 According to the PCA Act, the PCA need inform the complainant of the progress of an investigation only if "it seems appropriate".⁵²⁹ The PCA commented that my concerns about communication with complainants were based on one or two cases only.⁵³⁰ Nevertheless in practice it appears that communication during an investigation occurs only if the complainant approaches the PCA seeking a report on progress.
- 4.89 Some of the submitters from whom I heard evidence were upset that the PCA's examination of their case did not take sufficient account of what, in their view, were the main deficiencies in the police investigation. In these instances, the submitters' concerns may not have been adequately set out in the initial documentation surrounding the complaint, or they may have arisen after the complaint was laid, or they may have been a result of misunderstandings. Whatever the case, contact early in the process might have prevented what was, for the complainant, an unsatisfactory result.
- 4.90 It seems to me very important that the PCA provide something of a human face to complainants. I believe even a telephone call to the complainant confirming the details of the complaint, clarifying the complainant's concerns, and providing a point of contact within the PCA would have immense benefits in terms of complainant satisfaction. As it was, complainants may have felt that a decision had been made entirely on the basis of documentation, mostly that provided by the police, and much of which they have never seen.

526 Police Complaints Authority, Submission in response to draft report, 30 May 2006, p. 9.

527 Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, pp. 6–7.

528 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 40.

529 Police Complaints Authority Act 1988, section 30(b).

530 Police Complaints Authority, Submission in response to draft report, 30 May 2006, p. 3.

- 4.91 I acknowledge that better communication with complainants has become possible with the employment of PCA investigators in November 2003.⁵³¹ However, the investigators are appointed only in serious cases (including sexual assault complaints) and, in such cases, investigators must be careful about contacting complainants whose complaints allege criminal offending. This is to avoid possible “contamination” of any criminal proceedings, discussed earlier.
- 4.92 Judge Borrin accepted that a deficiency exists in respect of regularly advising complainants of the progress of their complaints. He told me that only in the most serious of cases is the PCA in regular communication with victims or relatives.⁵³² He explained that this is because his office “does not have the resources to undertake in all matters this very desirable task”.⁵³³
- 4.93 I believe that this issue needs some closer consideration. It seems to me very important that the PCA should ensure there is regular communication with those people whose complaints are under consideration.
- 4.94 Of further concern was the manner in which some complainants were informed of the outcome of their complaint.
- 4.95 Section 30(c) of the PCA Act requires the PCA to inform the complainant of the result of an investigation “as soon as reasonably practicable after the conclusion of the investigation, and in such manner as it thinks proper”.⁵³⁴ The PCA has commented that its invariable practice is to provide complainants with a full analysis and discussion if there is no police report that does so.⁵³⁵ I consider that it would be more appropriate for this to be the general practice irrespective of whether the complainant has received a police report. Given that the PCA operates independently of the police, complainants deserve a transparent and complete account of the PCA’s reasoning.
- 4.96 I was also concerned about the impact of the secrecy provisions on a complainant’s ability to access information held about his or her complaint. I note that section 32 of the PCA Act contains exceptions to the duty of secrecy, including exceptions to enable the PCA to communicate with any person for the purpose of carrying out its functions, or for the purpose of an investigation. The PCA said that section 32 is not an impediment to reporting to a complainant.⁵³⁶ I accept that view, but despite this I see no reason why information held by the PCA warrants protection beyond the usual provisions that would apply to a police investigation under the Official Information Act 1982 and the Privacy Act 1993. It is a well-settled principle of information law that secrecy provisions with discretionary exceptions can result in a less open attitude in official processes than provisions that presume

531 Mr Allan Galbraith, Manager of Investigations for the PCA, Brief of evidence, 9 December 2005, p. 2. The PCA submitted that the communication process has changed significantly over the time since the PCA was established (Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 7).

532 The PCA submitted that complaints of sexual assault by members of the police are invariably categorised as serious complaints (Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 7).

533 Judge Ian Borrin, Police Complaints Authority, Brief of evidence, 9 December 2005, p. 2.

534 Police Complaints Authority Act 1988, section 30(c).

535 Police Complaints Authority, Submission in response to draft report, 30 May 2006, p. 10.

536 Police Complaints Authority, Submission in response to draft report, 30 May 2006, p. 11.

the availability of information unless there is reason to withhold it.⁵³⁷ In my view it is quite likely that section 32 has had that effect in respect of the complaint investigation process. Moreover the existence of section 32 means that complainants are in practice unable to exercise their right of access to personal information under the Privacy Act in respect of information on their complaint file.⁵³⁸ I do not believe this is satisfactory, and it appears to be inconsistent with the fundamental principles of fairness for a person to be denied access as a matter of right to personal information unless there is a demonstrated need to withhold it. There seems no reason why the right of access to personal information under the Privacy Act should not be available to complainants, both during an investigation and after a complaint has been dealt with.

Delays in completing the investigation and notifying the complainant

4.97 Judge Borrin told me that delays in completing an investigation could occur because the PCA must await the outcome of relevant court proceedings before it completes its consideration. He explained that there is also the significant factor of resources: “The office does not have the resources to complete its reviews of matters within a timeframe that would leave me feeling comfortable.”⁵³⁹

4.98 In one instance, there was a six-month delay between the PCA receiving a substantive report from the police and notifying the complainant of the review of her complaint. Counsel for the PCA offered the following explanation:

The delay in reviewing the file and reporting ... was unfortunate but was a reflection of the fact that ... the PCA has been significantly under resourced. ...

The delay in replying to [the complainant] ... was due to factors outside the control of the PCA, namely, the significant under funding and under resourcing issues which the PCA was facing at the time.⁵⁴⁰

4.99 In my view the PCA needs to be more timely in its processing of complaints. The backlog of complaints (2,000 at December 2005) needs to be addressed as a matter of urgency. I was told that the majority of these outstanding complaints could be completed in better time, but for the small size of the PCA.⁵⁴¹ Judge Borrin saw this as an issue of resourcing. I believe that the PCA needs to be proactive in identifying ways of reducing the current backlog to the extent it is able within the current framework while continuing to proactively work to obtain additional resources as necessary.

INDEPENDENT POLICE COMPLAINTS AUTHORITY AMENDMENT BILL

4.100 The Independent Police Complaints Authority Amendment Bill was introduced to the House on 4 December 2002 and referred to the Law and Order Committee on 20 February

537 Committee on Official Information, *Towards Open Government: Supplementary Report*, 20 July 1981, paragraph 1.10, p. 7.

538 The Privacy Act does not apply when there is a provision in another Act that regulates the disclosure of personal information (Privacy Act 1993, section 7).

539 Judge Ian Borrin, Police Complaints Authority, Brief of evidence, 9 December 2005, p. 3.

540 Mr John Upton QC, Statement on behalf of the PCA, 7 July 2005, pp. 4 and 5.

541 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 18.

2003. The committee received 17 submissions on the bill and subsequently recommended that it be passed with the amendments shown.⁵⁴²

- 4.101 The bill proposes several amendments to the PCA Act. As already noted, the suggested amendments arose out of a review of the Police Complaints Authority conducted by Sir Rodney Gallen in 2000. The purpose of his review was to examine the role of the PCA in investigating and resolving complaints and incidents involving the police.
- 4.102 The bill seeks to amend the PCA Act by changing the name of the entity to the Independent Police Complaints Authority, and increasing the PCA's membership from two to three persons, including a chairperson, who is to be a current or former judge. The name change and the increase in the PCA's membership are designed to enhance the PCA's independence. The bill maintains the secrecy provisions in the PCA Act; however, it provides for an exception to these provisions to allow disclosure in certain very limited circumstances in order to avoid a miscarriage of justice.
- 4.103 I support the general direction of the bill, particularly the intention to increase membership of the PCA to three people. I consider it appropriate for the PCA to be chaired by a judge or a retired judge. However, in my view, it is important that the other members of the PCA are representative of the community, who bring a wider perspective to the work of the PCA. If additional legal people are deemed to be necessary as members of the Authority, then the numbers could be increased to five to ensure that majority representation by people from outside the legal profession is gained. In my view the existing model is out of step with the trends in New Zealand society. Membership representative of all New Zealanders would assist in making the PCA more approachable and strengthen the perception of the PCA's independence.
- 4.104 It was thought appropriate to change the name of the PCA to emphasise its independence. The term "Police Complaints Authority" in itself may tend to imply some sort of ownership of the process by the police. I agree that it is important to dispel this notion. Although it is not the most important of matters I support a name change. I also agree with Sir Rodney Gallen's suggestion, which I note was not taken up in the bill, that the name be "The Independent Authority for the Investigation of Complaints Against Police".⁵⁴³ Although long, the name would emphasise its independence from the police even more than the name proposed under the present bill and more accurately describe the functions of the Authority.
- 4.105 I discuss the police proposals with respect to the secrecy provisions below, but wish to comment here on the bill's proposal to provide only limited exception to the secrecy provisions. The proposed new section 33A provides for disclosure of information that may point to an accused's innocence, but not if it points to his or her guilt.
- 4.106 It is extremely important that the PCA should (and should be able to) disclose material to enable an accused to assert his innocence. Thus if a police officer is falsely accused of a sexual assault, such an amendment to the Act would help prevent a miscarriage of

542 Independent Police Complaints Authority Amendment Bill, as reported by the Law and Order Committee, 17 November 2003.

543 Hon Sir Rodney Gallen, *Review of the Police Complaints Authority* (Gallen Report), October 2000, paragraph 11.2.

justice. However, I feel it is equally important that if the PCA has acquired “through the performance of its functions” (to quote the bill) information that points to a police officer being guilty of a sexual assault, then that information should also be available for use in a prosecution. The PCA has the ability under the PCA Act to make recommendations that disciplinary or criminal proceedings be taken against a member, and to disclose such information as is necessary to support such recommendations.⁵⁴⁴ Judge Borrin confirmed in evidence that he would not hesitate to use that discretion in such a situation were it to arise.⁵⁴⁵ If this does not cover every situation, I would recommend that consideration be given to whether the bill could be further amended accordingly.

CHANGES TO THE POLICE COMPLAINTS AUTHORITY PROPOSED BY THE POLICE

- 4.107 During the inquiry process the police put forward a proposal outlining significant changes to the role of the PCA.⁵⁴⁶ In particular the police proposed changes to the PCA Act that would remove the secrecy provisions and that would enable the PCA to take a significantly greater role in the investigation of complaints against members of the police.⁵⁴⁷
- 4.108 The police contemplate that their proposal would result in an entirely new structure for the investigation of complaints against members of the police. In particular, primary responsibility for resolution of serious complaints would shift from New Zealand Police to the PCA, which would be able to make use of its power under section 27 of the PCA Act to investigate the complaint itself, and make recommendations as to the appropriate outcome. It would also enable the PCA to assume oversight of the investigation of less serious complaints. The police acknowledged in their proposal that the changes may need further policy work and that their proposal would require a substantial increase in PCA resources.⁵⁴⁸
- 4.109 The police outlined to me the reasons for their suggestions. The first is that, in their view, the PCA cannot function as originally intended because of the secrecy provisions contained in the PCA Act. The police explained that the secrecy provisions have resulted in the PCA deferring its consideration of complaints until an internal investigation (and possibly judicial proceedings) have been completed. The police believe that, as a result, the PCA has in practice become a body whose role is largely confined to reviewing investigations the police have already conducted. Thus the police are proposing that sections 32 and 25 of the Act be repealed. This would mean that information discovered by the PCA in the course of investigating or overseeing the investigation of a complaint would be available for all purposes including for use, where appropriate, in criminal or disciplinary proceedings.

⁵⁴⁴ Police Complaints Authority Act 1988, sections 27(2), 28(2)(b), and 32(2)(b).

⁵⁴⁵ Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 36.

⁵⁴⁶ As noted in paragraphs 4.7 to 4.12, I decided to consider this proposal despite the PCA's objection to my doing so.

⁵⁴⁷ New Zealand Police, “Outline of Police Position in Relation to the Police Complaints Authority Act 1988 and Changes to Professional Standards”, paper written for and presented to the Commission of Inquiry on Police Conduct on 15 November 2005.

⁵⁴⁸ New Zealand Police, “Outline of Police Position in Relation to the Police Complaints Authority Act 1988 and Changes to Professional Standards”, paper written for and presented to the Commission of Inquiry on Police Conduct, 15 November 2005, pp. 2 and 4.

- 4.110 The second reason given by the police is a matter of perception; that, in their view, no matter how independent and objective police inquiries are, the community remains sceptical about investigations conducted by the police themselves.⁵⁴⁹
- 4.111 Dr Young voiced his concern about the perceptions created where the police are the primary investigators of serious allegations against other police members:
- The use of police investigators, particularly in serious cases, produces a perception of a lack of independence in the investigative process, or at the least an investigation that is insufficiently thorough. That perception is likely to be enhanced when investigators from inside the local area are being used.⁵⁵⁰
- 4.112 A similar concern was raised by a number of the complainants who approached the Commission.
- 4.113 Dr Young supported the police proposal to change the role of the PCA. He explained that, because of the systemic problems involved with the PCA, such as the secrecy provisions, its entire structure and functions need to be revamped in order to inject a proper element of independence into the investigative process from the outset, at least in relation to those cases that are likely to cause significant public concern. He said in his view it is no longer appropriate to leave initial investigations almost entirely in the hands of the police.⁵⁵¹
- 4.114 The police also explained that they have already resolved to make a number of changes to their own procedures designed to achieve greater consistency in their handling of internal investigations. (These changes are outlined in more detail in Chapter 2.) For example, the appointment of investigators is now systematically monitored by Professional Standards at the Office of the Commissioner.⁵⁵² The police also told me that, as an interim measure, they are giving consideration to establishing a dedicated body of investigators, so that there is a centralised resource readily available to deal with serious complaints and to investigate intelligence that suggests the existence of illegal or other professional misconduct within a region.⁵⁵³

Views of the parties on the police proposal for changes to the PCA

- 4.115 As well as challenging my jurisdiction to consider the matter, during the course of the inquiry hearings Judge Borrin commented that the police proposal would require a major revamp of the statute, as well as of the PCA itself, and would have resourcing implications for the PCA.⁵⁵⁴ Judge Borrin also stated that he did not agree with the police that it was ever the intention of the PCA Act, and those who drafted it, that the PCA would play the sort of role the police are now suggesting. He said he was sure that the PCA Act would have been quite different in several respects, and certainly in relation to the secrecy provisions if this were what was intended.⁵⁵⁵

549 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 5.

550 Dr Warren Young, Law Commission, Brief of evidence, 22 November 2005, p. 11.

551 Dr Warren Young, Law Commission, Brief of evidence, 22 November 2005, p. 12.

552 This issue is discussed in Chapter 3 (see “Safeguarding the independence of investigations”).

553 New Zealand Police, “Outline of Police Position in Relation to the Police Complaints Authority Act 1988 and Changes to Professional Standards”, paper written for and presented to the Commission of Inquiry on Police Conduct, 15 November 2005, pp. 2 and 3.

554 Judge Ian Borrin, Transcript of hearing, 9 December 2005, pp. 31 and 32.

555 Judge Ian Borrin, Transcript of hearing, 9 December 2005, p. 31.

4.116 The New Zealand Police Association in its submission to me said that the instances presented to the inquiry did not, in their view, demonstrate a police force unable or unwilling to discipline their own. Accordingly the Police Association did not support the police proposal to increase the powers of the PCA. However, the association acknowledged that, if the public lacks confidence in the process, and perceives that the police cannot or will not discipline their own, then for the sake of maintenance of confidence in New Zealand Police the association would support an increase in the powers and resources of the PCA. The Police Association did not concede that there was an evidential basis for such a change to occur.⁵⁵⁶

My views on the proposal

4.117 The police put forward their proposed changes to the PCA as a way of addressing concerns about the perceived lack of independence in investigations, and also the concerns about the secrecy provisions under the current PCA Act. I certainly read and heard expressions of concern from complainants about the independence of the PCA, given that, in the main, the PCA only reviewed police files. It was also clear to me that some complainants were confused about the PCA's role. Both are matters that I consider could be ameliorated by better communication between the PCA and complainants.

4.118 As I have indicated above, the effect of the secrecy provisions on complainants' access to information needs reconsideration. The police have gone even further in proposing that the provisions be repealed, as part of their proposed reform of the role of the PCA. It is clear that the secrecy provisions have operated to keep the PCA effectively at arm's length from police investigations that may result in proceedings being taken. Accordingly, the need for such provisions should be reviewed.

4.119 I am not convinced of the wisdom of the police proposal for a much greater role for the PCA, effectively taking over all investigations into complaints of serious misconduct. I am in agreement with the Police Association that significant resourcing difficulties would arise from the police proposal.⁵⁵⁷ Economies of scale would strongly suggest that the police are best placed to be able to quickly task experienced staff to undertake an investigation anywhere in the country. The Police Association also submitted to me that the PCA acts effectively as a "review authority" or an "appeal authority" in respect to police investigations, and that it is important to maintain this function. The Police Association stated,

That any suggestion that the PCA should become the primary investigating and prosecutorial body of Police Officers should be resisted – due to resourcing and the effective removal of the PCA's appellate and review functions vis-à-vis the Police.⁵⁵⁸

4.120 In relation to complaints of criminal offending by police officers, in my view New Zealand Police is the appropriate organisation to conduct investigations. I do not support the notion of also giving that authority to a revamped PCA, as is proposed by the police. The police have the necessary skills and expertise to conduct criminal investigations, and I consider they should continue to be the organisation that has the sole responsibility for that role.

⁵⁵⁶ New Zealand Police Association, Opening remarks on behalf of the Police Association, 5 December 2005, p. 3.

⁵⁵⁷ New Zealand Police Association, Closing submissions, 16 December 2005, pp. 4–5.

⁵⁵⁸ New Zealand Police Association, Closing submissions, 16 December 2005, p. 5.

The accountability of the Commissioner of Police for the behaviour of his/her staff is stronger through having this responsibility.

- 4.121 I endorse the measures that the police are taking to strengthen their internal capacity to undertake independent investigations into serious complaints against police officers. My primary concern is that the communication issues between the PCA, New Zealand Police, and complainants, as outlined above, need improvement.

Recommendations

Handling of complaints by the Police Complaints Authority

- R21 The Police Complaints Authority should improve its accessibility to people who may wish to make a complaint, for instance, by publicising its newly established website and by wider distribution of its information pamphlet.
- R22 The Police Complaints Authority should, in conjunction with the police, the Ministry of Justice, and other relevant agencies, develop a communications strategy to increase the general awareness of the Police Complaints Authority and its work.
- R23 The Police Complaints Authority should actively facilitate the reception of complaints by accepting oral statements on the basis that the complainant will confirm the Police Complaints Authority's written record of the complaint.
- R24 The Police Complaints Authority should ensure it has more regular communication with those people whose complaints are under consideration.
- R25 The Police Complaints Authority should seek feedback from complainants by way of random sampling on their experience of the complaint process.
- R26 The Police Complaints Authority should develop strategies for addressing its current backlog of complaints, including seeking additional resources as appropriate.
- R27 The Police Complaints Authority should be encouraged to exercise its discretion in favour of accepting historic sexual assault complaints. If there is any doubt about this matter, a further legislative amendment should be included in the Independent Police Complaints Authority Amendment Bill.

The Police Complaints Authority and legislative requirements

- R28 The requirement for the police to notify the Police Complaints Authority of any complaints received by them "as soon as practicable" (section 15 of the Police Complaints Authority Act 1988) should be amended by adding the words "and in any case no later than 5 working days after receipt of the complaint", and compliance with this requirement should be monitored by the Professional Standards section at the Office of the Commissioner.

- R29** The discretion in section 29(2)(a) of the Police Complaints Authority Act should be removed so that the Police Complaints Authority is required to notify the Attorney-General and Minister of Police if, within a reasonable time after the Authority makes a recommendation to the police under sections 27(2) or 28(2), the police fail to take action that seems to the Police Complaints Authority to be adequate and appropriate.
- R30** The Ministry of Justice should review the secrecy provisions in the Police Complaints Authority Act, and make such recommendations as may be appropriate for those provisions to be repealed or amended (through the Independent Police Complaints Authority Amendment Bill) to ensure that the Act
- encourages the Police Complaints Authority to provide a reasonable level of communication with complainants on the progress of complaints
 - does not inappropriately prevent the Police Complaints Authority from investigating complaints that may result in criminal or disciplinary proceedings being taken against a member of the police.
- R31** On the enactment of the Independent Police Complaints Authority Amendment Bill, the Government should ensure that the majority of members of the Police Complaints Authority are from outside the legal profession. If this is not possible with a three-person Authority (if the Authority and the deputy are both lawyers), the Government should give consideration to promoting further legislative change to enable a five-person Authority to be appointed.
- R32** The Government should adopt a policy to ensure that those appointed as members of the Authority reflect community diversity and strengthen the community's perception of the Police Complaints Authority's independence.



– 5 –

POLICE DISCIPLINARY ACTION

- 5.1 This chapter considers the police disciplinary system as required by term of reference (2)(e), which requires the Commission to inquire into, and report upon
- (2) irrespective of the existence or adequacy of standards or procedures as a matter of Police policy, the practice of Police in the investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both, in particular, but not limited to,—
 - ...
 - (e) whether disciplinary action has been and is taken against members of the Police who engage in sexual activity that gives cause for concern or complaint or both, and, if not, why not:
- 5.2 The New Zealand Police disciplinary system is unique within the public sector context. It stems from the legislative base of the Police Act 1958 and the Police Regulations 1992, and operates as a very formal, and often time-consuming and complex process. Thus in addressing this term of reference I considered the following matters:
- the nature of the police disciplinary system, its legal foundation, and its relationship with performance management
 - issues arising in respect of the system
 - alternatives to the current system.

Background details of relevance to this chapter

Draft Code of Conduct for Sworn Members of the New Zealand Police. The draft code was issued by the Commissioner of Police in February 2002 with the agreement of the Police Association. This draft code was intended to replace the current disciplinary provisions in the Police Act 1958, Police Regulations 1992, and police general instructions.

Human Resources and Professional Standards sections at the Office of the Commissioner. During the period of interest to this Commission, the national headquarters of New Zealand Police (the Office of the Commissioner) had two separate sections involved with employment issues: Human Resources looking after performance management and appraisal, and Professional Standards dealing with complaints against staff members and any consequent disciplinary processes.

Police Amendment Bill (No 2). This bill was introduced to Parliament on 31 July 2001. It sought to do two things: first to strengthen police governance and accountability arrangements; second to improve police effectiveness in managing human resources. The bill sat low in the order paper for several years and was withdrawn in March 2006 when the Minister of Police announced that the Police Act 1958 was to be reviewed with the aim of having a draft Police Bill ready by November 2007, for introduction to Parliament in 2008.

Police Act 1958 and Police Regulations 1992. This legislation governs the present police disciplinary system. It is currently subject to a comprehensive review.

THE NEW ZEALAND POLICE DISCIPLINARY SYSTEM

- 5.3 With the exception of sexual harassment, inappropriate behaviour by sworn police officers is addressed by way of the police disciplinary system.⁵⁵⁹ (Sexual harassment is subject to separate policy directions. However, if dealt with formally, sexual harassment may also be addressed by way of the police disciplinary system.)
- 5.4 Separate disciplinary systems exist for sworn and non-sworn staff:
- The discipline of sworn staff is governed by the Police Act and the Police Regulations. Section 5(4) of the Act provides that the Commissioner of Police “may at any time remove any member of the Police from that member’s employment”, but that right is subject to the provisions of the Act, any general instructions issued, and any regulations made, as well as the conditions of employment set out in any contract of service.
 - The discipline of non-sworn staff is governed by a code of conduct, made under the Police Regulations. The code reflects standard procedure for public service employees under the State Sector Act 1988.

Disciplinary system for sworn staff

- 5.5 The disciplinary system for sworn staff is governed by the Police Act and the 1992 Regulations. Relevant, too, are the general instructions dealing with complaints (IA100–IA133). The system has two elements:

⁵⁵⁹ Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Brief of evidence, 17 November 2005, p. 10.

- lower level disciplinary sanctions, which can be imposed by police management
- more serious sanctions, which might result in dismissal, which must be dealt with by bringing a charge before the police disciplinary tribunal.

Management-level disciplinary action

- 5.6 General instruction IA122 describes two types of disciplinary sanctions that can be imposed by police management on sworn staff, apart from laying formal criminal or disciplinary charges. These are an adverse report and a reprimand. General instruction IA131 adds the option of counselling (that is, advice intended to improve a police officer's conduct or performance) as part of the performance appraisal process.
- 5.7 Under general instruction IA122(4), an adverse report can be issued by a district commander when a staff member's conduct falls below the required standard through attitude, behaviour, lack of judgment, or some other reason. The type of behaviour that gives rise to an adverse report is generally of a relatively minor nature that does not warrant a formal charge or reprimand. An adverse report remains on the member's file for four years⁵⁶⁰ and the associated investigation file is also referred to the PCA for its review. In this and all other cases, if the PCA disagrees with the action taken by police, it can recommend other action be taken, including disciplinary or criminal proceedings. I was told by the Professional Standards national manager that there are apparently no cases in recent times where the PCA has disagreed with the actions proposed by the police in this regard.⁵⁶¹
- 5.8 The next level of disciplinary sanction is a formal reprimand. A reprimand is very similar to an adverse report; however, reprimands are reserved for cases where the breach or misconduct is serious but does not warrant laying a charge. Reprimands remain on the member's file for seven years. They have to be signed by the police commissioner, a deputy commissioner, or an authorised delegate.⁵⁶² If a member disputes the allegations that led to the recommendation of a reprimand (and that allegation is of misconduct or neglect of duty), then a reprimand is not issued, and the member will instead be charged in a disciplinary hearing.⁵⁶³
- 5.9 Counselling is another management tool used to guide a staff member towards improving his or her conduct or performance where it has fallen below the standard expected. Counselling is administered by a commissioned officer and forms part of the performance appraisal process.⁵⁶⁴ No record of the counselling is attached to the officer's personal file.⁵⁶⁵

560 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 9.

561 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 9.

562 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, pp. 9 and 10.

563 New Zealand Police, General instruction IA122, "Disciplinary Action", last published July 2002.

564 The performance appraisal process involves an assessment of an employee's performance against both the functional requirements of their position and the police competency framework. The appraisal process is designed to consider not only the results produced by a particular employee, but also how those results have been achieved.

565 New Zealand Police, General instruction IA131, "Counselling", last published July 2002.

Police disciplinary tribunal

- 5.10 Misconduct too serious to be resolved by way of an adverse report or reprimand is dealt with by laying a formal charge before the police disciplinary tribunal. The tribunal consists of a retired judge or senior lawyer. If the charge is proven, the Commissioner of Police may impose the following penalties: reduction in rank, reduction in seniority, reduction in pay, a fine not exceeding \$500, or dismissal of the member.⁵⁶⁶
- 5.11 According to section 5A of the Police Act, the Commissioner of Police may institute the removal of a member of the police only “following an inquiry under section 12 of this Act into alleged misconduct”. Section 12(4) requires the person holding the inquiry to follow the procedure described in the regulations (although the rules of evidence can be relaxed to the extent that the inquiry may receive any relevant information whether or not this information would be admissible in a court of law). The regulations require the “investigation” to be carried out by the police disciplinary tribunal. The combined effect of the Act and regulations is therefore that the police commissioner cannot lawfully dismiss a member from his or her employment unless that member has first been found guilty of a disciplinary offence before the tribunal.⁵⁶⁷ The obligation to follow the procedure prescribed in the regulations means that what would otherwise be an independent but not necessarily formal disciplinary inquiry under section 12 of the Act becomes a highly regulated and formal process.
- 5.12 Indeed, as a result of the Police Regulations, the police disciplinary tribunal hearing process is very similar to the hearing of a criminal prosecution. Regulation 24 says that the procedure at the hearing “shall conform as far as practicable and with any necessary modifications to that followed in District Courts in their summary criminal jurisdiction”. A disciplinary matter is referred to as an “offence” rather than “misconduct”; the tribunal hears the “charge” as opposed to considers the “complaint”. Witnesses may be called to give evidence, and can be tested by cross-examination. If the charge is a serious one, the standard of proof required is high, in effect commensurate with the criminal standard of “beyond reasonable doubt”.
- 5.13 Regulation 9 sets out a full list of 42 offences of misconduct or neglect of duty on the part of sworn members of police. The offences listed include the following:
- being guilty of disgraceful conduct or conduct tending to bring discredit on the police (regulation 9(12))
 - using indecent, insulting, abusive, or threatening language in or upon police premises, or while on duty (regulation 9(11))
 - any act, conduct, disorder, or neglect to the prejudice of good order, morality, or discipline of the police, though not specified in the regulations (regulation 9(42)).
- 5.14 I was told that the charges most commonly laid are those of disgraceful conduct or conduct tending to bring discredit on the police, negligence, and excessive use of force.⁵⁶⁸

⁵⁶⁶ Police Act 1958 sections 5(7) and 5A.

⁵⁶⁷ New Zealand Police, Closing submissions, 16 December 2005, p. 31.

⁵⁶⁸ Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, pp. 10 and 11.

- 5.15 Numerous formal elements to the tribunal process are also specified in the regulations. They include the following conditions:
- A member of police cannot be charged with a disciplinary offence if the act or omission constituting the offence occurred 12 or more months previously, unless it can be shown that the charge could not reasonably have been proceeded with sooner (regulation 13).
 - The charge is to be in writing and contain such particulars as will fairly inform the member charged of the substance of the offence (regulation 14(1)).
 - The member is to be served with a copy of the charge and the summary of facts relating to the charge (regulation 14(2)).
 - Once charges are served on a police officer, that officer may seek an indication of the penalty in the event that he or she pleads guilty. The Commissioner of Police may give this indication if the proposed penalty would be no more than a fine.⁵⁶⁹ Such an indication is binding on the police commissioner if the member does so admit the charge (regulation 14(3) to 14(7)).
 - A member is to “plead” to the charge in writing (regulation 15).
 - If the member pleads not guilty then the matter goes to a hearing. At the beginning the charge is read (regulation 18(1)). The tribunal then hears the “prosecutor” and the prosecutor’s evidence, and then the member charged, and his or her evidence, followed by any rebuttal evidence (regulation 20(1)).
 - The parties may examine, cross-examine, and re-examine witnesses (regulation 20(2)).
 - The evidence is to be recorded (regulation 20(3)).
 - Where the charge is admitted or found to be established, oral or written submissions as to penalty are made by both the prosecutor and the member, either at or after the hearing (time frames apply) (regulation 21).
 - The tribunal is to forward to the police commissioner all submissions as to penalty and/or replies to those submissions and any comments based on the evidence or arising from the submissions or replies that the tribunal sees fit (regulation 26(2)).
 - Police officers can apply to have the charge dismissed by the tribunal where it appears a member has been unfairly prejudiced through not being informed as soon as practicable after the investigation that the member was to be reported (regulation 12(3)).
 - The Commissioner of Police may grant a rehearing of any charge if application is made within seven days of the member being notified that the charge has been proved (regulation 27).
- 5.16 The officer also has the right (under common law) to challenge the tribunal process by judicial review proceedings in the High Court.

Disciplinary system for non-sworn staff

- 5.17 As stated previously, the discipline of non-sworn staff is governed by a code of conduct, made under the Police Regulations. The code reflects standard procedure for public service employees under the State Sector Act 1988.

⁵⁶⁹ Regulations 9(12), 9(40), and 9(5) respectively; Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 11.

- 5.18 As far as I could establish, the discipline of non-sworn staff is handled effectively within the police and is not the subject of any significant ongoing concern. Thus I have focused my attention in the report on issues related to the discipline of sworn members.

POLICE DISCIPLINARY ACTIONS TAKEN

- 5.19 I was told that between 1995 and 2005 a total of 262 officers appeared before the tribunal (covering all misconduct cases). Of these, 129 resulted in guilty pleas, 25 were withdrawn, 55 did not proceed because the officer accused left the police before the tribunal hearing, and eight were ongoing in November 2005. Only 45 cases actually came before the tribunal, of which 28 were proven and 11 not proven; the remaining six were abandoned.⁵⁷⁰
- 5.20 I reviewed 313 complaints of sexual misconduct made against 222 police officers. Ninety-six of these complaints, made by 85 complainants against 51 members of police, resulted in some form of internal disciplinary action being taken against the member of police involved, or they were dealt with via the complaint resolution process prescribed under the New Zealand Police Sexual Harassment Policy. Of these 96 complaints, 62 complaints (against 21 officers) were referred for hearing before a disciplinary tribunal. The remainder were dealt with by some lower level sanction ranging from counselling to a reprimand. The outcomes of the disciplinary processes were as follows:
- There were 28 complaints from 28 complainants involving 10 officers that were proven at a tribunal hearing.⁵⁷¹ Of these
 - Three charges were proven in relation to complaints of indecent assault against two officers (two complainants).⁵⁷²
 - Numerous charges of misconduct were laid against one officer. Of these charges, 17 were of a sexual nature, 13 of which were proven (five complainants).⁵⁷³
 - Charges against four officers, based on complaints of sexual harassment by nine complainants, were proven.⁵⁷⁴
 - Of 19 charges of misconduct of a sexual nature laid against one officer, 11 were proven (eight complainants).⁵⁷⁵
 - Five charges against two officers relating to complaints of misconduct of a sexual nature were proven (four complainants).⁵⁷⁶
 - Three complaints against three officers were not proven.⁵⁷⁷
 - Three officers resigned prior to disciplinary hearings relating to seven complaints (seven complainants).⁵⁷⁸ Of these
 - One officer faced complaints from five complainants, in particular, that he indecently assaulted two of the complainants, that he indecently exposed himself

570 Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, Appendix 9.

571 Operation Loft files LT 80, LT 86, LT 94, LT 104, LT 131, LT 133, LT 142, LT 149, LT 163, and LT 187.

572 Operation Loft files LT 104 and LT 133.

573 Operation Loft file LT 86.

574 Operation Loft files LT 80, LT 94, LT 131, and LT 149.

575 Operation Loft file LT 187.

576 Operation Loft files LT 142 and LT 163.

577 Operation Loft files LT 149, LT 161, and LT 190. One of these officers also had a complaint against him proven (LT 149).

578 Operation Loft files LT 67, LT 96, and LT 138. (The officer who is the subject of LT 96 had also previously received an adverse report as a result of a sexual harassment complaint. He is also the subject of LT 116.)

- to two of the complainants, and that he used obscene language in requesting sexual acts from three of the complainants.⁵⁷⁹
- One officer resigned in 2001 after admitting three of six misconduct charges.⁵⁸⁰ This officer had previously received an adverse report in 1998 as a result of a complaint made by another complainant.⁵⁸¹
 - One officer resigned. He had been charged with a disciplinary offence after a complaint of rape was made against him.⁵⁸²
 - Six officers disengaged prior to disciplinary hearings relating to 24 complaints made by 24 complainants.⁵⁸³ Of these
 - One officer faced disciplinary charges based on 17 complaints of sexual harassment made by 17 complainants. A complainant had also alleged that this officer had raped her; however, this complaint was subsequently withdrawn.⁵⁸⁴
 - Three complainants made three complaints against three officers. Their allegations included sexual violation by rape, indecent assault, and sexual violation by coercion. Disciplinary charges were preferred against the officers after the completion of the investigations into these women's complaints.⁵⁸⁵
 - Three complainants made three complaints of sexual harassment against two officers.⁵⁸⁶
 - Four officers received an adverse report.⁵⁸⁷ Of these
 - One adverse report related to a police officer having sex in a public place. The complainant alleged that the officer had sexually violated her. The officer admitted having sex with the complainant but said that the sex was consensual.⁵⁸⁸
 - Two officers received an adverse report as a result of two sexual harassment complaints.⁵⁸⁹
 - One officer received an adverse report after the investigation into a complaint of indecent assault.⁵⁹⁰
 - Five officers received reprimands as a result of six complaints (made by six complainants).⁵⁹¹ One of the complaints involved an allegation of an officer having consensual sexual intercourse with an intellectually disabled woman.⁵⁹²

579 Operation Loft file LT 67.

580 Operation Loft file LT 96.

581 Operation Loft file LT 116. This officer is also the subject of LT 96.

582 Operation Loft file LT 138.

583 Operation Loft files LT 1, LT 91, LT 125, LT 126, LT 139, and LT 141. (The officer who was the subject of LT 91 had previously had a sexual harassment complaint made against him, which had been resolved.)

584 Operation Loft file LT 139.

585 Operation Loft files LT 1, LT 125, and LT 126.

586 Operation Loft files LT 91 and LT 141. (Another complainant had also made a complaint of sexual harassment against the officer who was the subject of LT 91. This complaint was resolved under the sexual harassment procedures.)

587 Operation Loft files LT 88, LT 116, LT 124, and LT 208. (The officer who was the subject of LT 116 is also the subject of LT 96, and is also included in the statistics relating to the number of officers that resigned before a disciplinary hearing.)

588 Operation Loft file LT 208.

589 Operation Loft files LT 88 and LT 116. (The officer who was the subject of LT 116 resigned prior to a disciplinary hearing into charges resulting from other complaints (LT 96).)

590 Operation Loft file LT 124.

591 Operation Loft files LT 30, LT 75, LT 120, LT 146, and LT 147. (The complainant in LT 30 also complained about the behaviours of another police member in LT 3 and as a result of this complaint the police member was counselled.)

592 Operation Loft file LT 75.

- Complaints of sexual harassment from two complainants resulted in a written warning for a non-sworn member of the police.⁵⁹³
- Twelve officers, four police recruits, and one non-sworn staff member were counselled as a result of 17 complaints made by nine complainants.⁵⁹⁴ Of these
 - Two officers, four recruits, and one non-sworn staff member were counselled as a result of complaints of sexual harassment by one police recruit.⁵⁹⁵ One was also transferred. Complaints against a further two officers are referred to in the next primary-level bullet point.
 - Two officers were counselled after a complaint was made that they were involved in a strip search of a minor (the complaint was upheld).⁵⁹⁶
 - One officer was counselled after removing a cigarette lighter from a woman prisoner's vagina.⁵⁹⁷
 - One complaint against an officer did not proceed to a formal charge because too much time had elapsed to lay disciplinary charges.⁵⁹⁸
 - Three officers were counselled as a result of three sexual harassment complaints made by two complainants.⁵⁹⁹
 - Two officers were counselled after the police investigated two complaints of indecent assault.⁶⁰⁰
 - One officer was counselled for having sexual intercourse at a police station.⁶⁰¹
- As mentioned in the bullet point above, a recruit at the Royal New Zealand Police College also complained about two officers at the college. These officers were cautioned as a result of the recruit's complaint.⁶⁰²
- Three complaints involving three officers were resolved under the Sexual Harassment Policy.⁶⁰³
- A further four police members subject to investigation as the result of five complaints (made by five complainants) disengaged or resigned during the course of the investigation.⁶⁰⁴

SUBMISSIONS RECEIVED ON ASPECTS OF THE DISCIPLINARY SYSTEM

5.21 I sought and received advice from counsel assisting the Commission, by way of submission, on the legal nature of the police disciplinary framework. This submission set out

593 Operation Loft file LT 87.
 594 Operation Loft files LT 3, LT 115, LT 136, LT 150, LT 167 (two officers were counselled as a result of one person's complaint), LT 169, LT 188 (six members of police were counselled as a result of one person's complaint), LT 212, and LT 216 (two officers were counselled as a result of one person's complaint).
 595 Operation Loft file LT 188.
 596 Operation Loft file LT 216.
 597 Operation Loft file LT 212.
 598 Operation Loft file LT 169.
 599 Operation Loft files LT 136 and LT 167.
 600 Operation Loft files LT 115 and LT 150.
 601 Operation Loft file LT 3.
 602 Operation Loft file LT 188.
 603 Operation Loft files LT 39, LT 91, and LT 201. (The officer who was the subject of LT 91 was also the subject of other sexual harassment complaints. He disengaged prior to a disciplinary hearing in relation to these complaints.)
 604 Operation Loft files LT 103, LT 123, LT 154, and LT 199. (These complaints are not included in the 96 complaints mentioned in the first sentence of the current paragraph because the members' resignation or disengagement was completed before any disciplinary action was taken.)

- the nature of the police disciplinary system for sworn officers
- the changes proposed by the Police Amendment Bill (No 2), which was withdrawn in March 2006
- the standard employment process where allegations of misconduct arise
- the appropriateness of the current police disciplinary system
- alternatives for consideration.

5.22 In summary, counsel assisting submitted to me that the current disciplinary regime for the police is “outdated and stands in the way of good employment practice”; and that, in relation to matters concerning this Commission, the regime neither facilitated fair dealing with complaints against the police nor promoted good performance management practices. Counsel assisting pointed out that a performance-based regime would have provided police management with the opportunity to shift poor performers more rapidly out of the police force if appropriate.⁶⁰⁵

5.23 Counsel for New Zealand Police submitted that, in general, the police supported the thrust of the submission from counsel assisting, and confirmed that it was largely in accordance with the position the police had advanced.⁶⁰⁶

5.24 The New Zealand Police Association, however, did not agree with the submission from counsel assisting. Counsel for the Police Association submitted that I should not accept the suggestion that the current regulations and policy framework are unworkable in relation to the management of poorly performing staff. In the association’s view, “the failings in the area of performance management are largely a result of a failure to implement the system that is currently in place.”⁶⁰⁷ Counsel for the Police Association explained that the tribunal was a more formal environment than that which would be encountered by most employees when dealing with issues of discipline, but that did not make the system bad.⁶⁰⁸

5.25 The Police Managers’ Guild agreed that sworn police staff should be subject to the provisions of employment law applicable to other employees in the public sector, based on a code of conduct. However, the guild submitted that the disciplinary tribunal should be retained for matters other than performance management (for example, matters of serious misconduct).⁶⁰⁹

5.26 What follows in this section of my report has been informed by the submissions I received from counsel assisting, taking into account also the submissions of the parties to the inquiry.

605 Ms Mary Scholtens QC, Counsel Assisting the Commission of Inquiry into Police Conduct, Submissions in relation to issues surrounding the police disciplinary framework, 8 December 2005, p. 13. (For comment on the provision of references to quotations, submissions, and other information provided by the parties, refer to “Notes for readers” in the Appendices.)

606 New Zealand Police, Transcript of hearing, 8 December 2005, p. 24.

607 New Zealand Police Association, Closing submissions, 16 December 2005, p. 6.

608 New Zealand Police Association, Closing submissions, 16 December 2005, p. 6.

609 Police Managers’ Guild, Submissions in response to draft report, 9 May 2006, p. 5.

THE WIDER EMPLOYMENT CONTEXT

- 5.27 The police disciplinary system needs to be placed in the wider context of employment relationships in New Zealand. These are governed by the Employment Relations Act 2000. That Act applies generally to the State sector. A large body of law developed over many years governs those relationships, including the way in which employers are to deal with disciplinary issues and termination of employment. The principles of natural justice, fair dealing, and good faith are at the heart of these.
- 5.28 These principles, applicable to all employment relationships, are applied by the police as employer where a member of the police takes a personal grievance claim under the Employment Relations Act (arguing, for example, unjustified dismissal). However, the disciplinary process within the police is subject to an additional formal investigation and quasi-judicial process under the Police Regulations; in contrast, in other workplaces, the body of law on employment relationships, including the requirements of natural justice, is regarded as sufficient.
- 5.29 Where misconduct or serious misconduct is alleged by an employer in a standard employment context the procedures to be followed by the employer must comply with the requirements of natural justice (as well as any agreed or published procedures). Natural justice depends very much on the particular circumstances; however, in the employment context it is tolerably clear what is required. The more serious the potential consequences for the individual, the more onerous are the requirements of natural justice.
- 5.30 As advised by counsel assisting,⁶¹⁰ in the normal employment context, case law confirms that natural justice will usually involve the following:
- The employee receives full and fair notice of the nature of the allegation(s) against him or her.
 - The employer or its agent must conduct a proper and sufficient inquiry.
 - A proper inquiry will necessarily include ensuring the employee sees all the information that is relevant to the allegation(s) held by the employer or obtained as a result of the investigation (unless there are proper grounds for withholding the information, which will be rare).
 - The employee must be given a proper opportunity to put his or her explanation or side of the story. Usually this will involve the opportunity to have counsel or an agent briefed. This will rarely, if ever, require formal cross-examination of witnesses, or even face-to-face questioning.
 - The employer must consider all the information fairly, with an open mind and without bias or predetermination, or regard to extraneous and irrelevant matters, weighing matters of credibility in the mix with all other information.
 - The employer must reach a decision that, on the information available, it is reasonably open to reach. The standard of proof is that the decision must be reasonably open to the employer, having regard to the gravity of the matter, and taking into account the information that the employer has.

610 Ms Mary Scholtens QC, Counsel Assisting the Commission of Inquiry into Police Conduct, Submissions in relation to issues surrounding the police disciplinary framework, 8 December 2005.

- Any penalty must be proportionate to the proven offending.
- 5.31 These obligations and protections provide a sound platform for governing how issues of misconduct are addressed in New Zealand workplaces. In my view, it is important to have very good reasons for supplementing these obligations and protections.

ISSUES ARISING IN RESPECT OF THE POLICE DISCIPLINARY SYSTEM FOR SWORN STAFF

- 5.32 On the basis of the files I have read and the evidence I have heard, it appears that discipline and the management of poor performance by sworn staff are very difficult matters within the police. The existing disciplinary system appears to me to be part of the problem. Its high degree of procedural formality is out of step with the prevailing approach for dealing with employee misconduct used by other employers, which often uses a code of conduct as the basis for determining whether misconduct has taken place and for dealing with it.
- 5.33 Several features give rise to my concerns with the system:
- It is cumbersome, time-consuming, and costly, requiring considerable resources at both national and district levels.
 - In many cases, particularly those involving complaints of sexual misconduct, disciplinary action can be initiated only when a complainant is prepared to be identified and, if necessary, give formal evidence at a disciplinary hearing. The formality of the process means that complainants may be reluctant to make this commitment (especially in cases of sexual harassment, where complainants may fear repercussions on their own career prospects).
 - The formal and procedurally complex setting of the tribunal acts as an obstacle to New Zealand Police in meeting the standard of proof required for an employer to take appropriate disciplinary action in serious cases.
 - Time limits on bringing disciplinary charges, and the need to await the outcome of criminal proceedings, mean that a high degree of care is needed in formulating disciplinary charges to ensure that disciplinary action can continue in instances where criminal charges are not proceeded with or an officer is acquitted of criminal offending.
 - The balance of protection in the process is overly weighted in favour of the individual police officer, and hence is detrimental to the interests of the person making the complaint and to the need for New Zealand Police to manage poor behaviour. Complainant dissatisfaction about this can bring the police into disrepute.
- 5.34 There are two further systemic concerns, which reinforce the unsatisfactory state of the discipline and performance management systems:
- the inappropriate and arbitrary separation between disciplinary matters and performance management issues
 - the incentive and opportunity, in the past, for police officers and managers to favour disengagement under the Police Employment Rehabilitation Fund (PERF) scheme as a means of avoiding disciplinary action, which left alleged victims of misconduct feeling aggrieved and created a perception that the police were “looking after their own”.

Cost and complexity of the system

- 5.35 Police Commissioner Robinson described the police disciplinary framework as “cumbersome”.⁶¹¹ Indeed, I was disturbed by the sheer volume of paperwork that the system generated and the amount of staff time involved in administering it. For example, I saw two investigations into officers that each comprised 19 files.⁶¹² Dealing with each of these officers spanned several years and would have involved extensive management time.
- 5.36 I accept that an effective system for investigating serious allegations will always be resource-intensive and will generate considerable paperwork. It is also clear to me that the police have struggled to find the best way of managing the disciplinary process. Because of its cost and complexity, taking disciplinary action against a sworn member often takes a long time to get under way and to be completed. The time frames are similar to those in the criminal courts. Those representing accused officers seek to have disclosure of statements and discovery processes completed. There is often a debate about availability of hearing dates, difficulty in appointing a tribunal, and for achieving agreement between the tribunal and the respective counsel as to an appropriate date for the hearing. All of this results in matters taking some time to be heard. Delays can be difficult for all those involved.
- 5.37 The need to use the formal disciplinary process for cases of sexual misconduct has clearly made it more difficult for the police to deal with such matters than is the case for other employers. This may lead to a reluctance to initiate formal disciplinary proceedings because of the significant cost (both monetary and in terms of the time and energies of senior police officers) of doing so.

Need for the complainant to be identified and to make formal complaint

- 5.38 In the normal employment context, employers can act upon complaints of misconduct even if the complainant is reluctant to be identified. Moreover, in cases involving the disclosure of serious wrongdoing under the Protected Disclosures Act 2000, an employer has an express duty to protect the confidentiality of the discloser as far as possible. However, the police told me that, because of the quasi-judicial nature of the police disciplinary process, they must have evidence to prove a charge before they can initiate disciplinary action.⁶¹³ In many cases, that evidence can be given only by the complainant, who must be willing to testify if necessary at a formal, defended hearing and face cross-examination.
- 5.39 Identifying the complainant is necessary in any employment situation where misconduct is alleged against an employee – for example, in a case of sexual misconduct of an identifiable individual. However, the additional requirement that the complainant be prepared to give evidence before a formally constituted tribunal may well be a factor in making victims (particularly fellow officers, but also those complainants who are aware of what the process involves) reluctant to come forward and/or to proceed with a complaint. If victims are reluctant to come forward there is greater risk that behaviour (such as offensive language or offensive behaviour) that may not in itself be considered serious enough to warrant the full

611 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, paragraph 32.

612 Operation Loft files LT 3 and LT 86.

613 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, pp. 7–8.

disciplinary process may not be picked up by the performance management process. Such behaviour may be a good predictor of a risk of more serious misconduct.

Formality of the process and the high standard of evidence and proof

- 5.40 In any disciplinary proceedings involving an employee, the employer must reach a decision that, on the information available, is reasonably open to the employer to reach. The nature and gravity of the issue necessarily determines the manner in which the employer reasonably satisfies itself of the truth of any allegations made against the employee.⁶¹⁴ This standard is commonly known as the “sliding scale” standard. Applying this approach, the police disciplinary tribunal determines the standard of proof required to prove a charge under the Police Regulations on the basis of the seriousness of the charge. Where a disciplinary charge is based on actions that are also (or have been) subject to a criminal charge then the appropriate standard of proof will usually equate to the criminal standard: proof beyond reasonable doubt.
- 5.41 This creates two risks for the disciplinary system. First, although a sliding scale standard of proof applies, the nature of the process means that more often than not those involved may assume that the criminal standard of proof applies to the tribunal. This type of assumption appears to be not uncommon among those involved in police disciplinary matters. That is to be contrasted with the more flexible approach taken in the usual employment situation where the employer is entitled to weigh conflicting information and come to a reasonable decision having regard to the nature and gravity of the matter. Secondly, there is a risk that acquittal of an officer on a criminal charge could inhibit management from bringing a disciplinary charge based on the same incident even if the conduct is deserving of action within a disciplinary framework. In my view this approach is too black and white. A jury in a criminal trial may be unlikely to convict for a range of reasons – for example, inconsistent evidence or witness credibility. But that should not preclude the police from forming a view as to the facts of the case for the purposes of disciplinary action, and acting accordingly. Sometimes an allegation may fall evidentially short of the criminal standard of proof for rape or other sexual offending but the conduct established is nonetheless entirely inappropriate and should be the subject of disciplinary action.
- 5.42 The risks arising from the formality of the process are greater where the complaint is one of sexual assault or harassment. The police disciplinary process, proceeding, as it does, like a criminal trial, has the same traumatic implications for the complainant. It is understandable that some complainants may not wish to put themselves through such a process, particularly after an acquittal in the criminal courts. This would not be necessary if the usual employment disciplinary processes could be followed.
- 5.43 The evidence before the Commission suggested that the criminal process mind-set of the police influences the investigation of complaints and the prosecution of disciplinary charges. This is not intended as any criticism. Police officers are required to undertake meticulous and rigorous evidential inquiries in order to successfully bring to justice those

⁶¹⁴ The leading legal authority for this proposition is *Khawaja v Secretary of State for the Home Department* [1983] 1 All ER 765, 784.

who have committed criminal offences. General instruction IA111(5) imposes the same high standards of evidence and proof in respect of the investigation of complaints against members under the Police Complaints Authority Act 1988. One can well understand that, being familiar with these processes, the police appear to see it as the only fair way to proceed in disciplinary matters as well.

- 5.44 However, this approach overlooks the fundamental difference between criminal prosecution, with its limited outcomes (guilty or not guilty), and a performance management system with its wider set of outcomes. An approach that draws upon the mind-set of criminal investigation is less likely to result in disciplinary action in response to information that is uncorroborated, such as a sexual assault complaint, than a less formal process would. I do not consider the fact that the police deal routinely with very difficult people, who are perhaps likely to make false complaints, as a reason justifying a more formal disciplinary process for the police than for other types of employee. The Commissioner of Police as employer should be well able to assess the reliability and credibility of the relevant evidence, after an independent (but not necessarily procedurally formal) inquiry where that is necessary or appropriate.
- 5.45 The current disciplinary system thus creates a confused amalgam of criminal prosecution and employment law. It implies that the disciplinary process imposes the same evidential obligations and standards as the criminal courts, and that disciplinary offences effectively mirror criminal offences. The tribunal applies the sliding scale standard of proof applicable in any employment situation but in a manner that effectively equates the standard in serious cases to the criminal standard of proof. The procedural formality of the tribunal process exacerbates this.
- 5.46 I believe this is conceptually wrong. It does not follow that an officer's ability to continue as a police officer should remain unquestioned, just because his or her behaviour does not meet the standard of proof of "beyond reasonable doubt" applied in the criminal courts or cannot be established by formal proof in an adversarial tribunal process. Under a modern performance management process, incorporating standard employment law obligations and protections, inappropriate conduct should be capable of investigation using a range of possible methods, and should be subject to the full range of possible sanctions, including dismissal.
- 5.47 The police submissions on a draft of my report said that cases are most commonly brought before the tribunal where the police wish to consider dismissal of the member. They did not agree that the police fail to distinguish appropriately between disciplinary and criminal matters, and rejected any suggestion of charges not being brought before the tribunal where it would have been appropriate to have done so. Rather, they stressed the need to be confident in a disciplinary situation about whether misconduct has been established to a level commensurate with the seriousness of an allegation (and the potential consequences, including dismissal), which is a common feature of the tribunal's processes and of employment law.⁶¹⁵

615 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 86.

- 5.48 There is no dispute about the need to establish whether the misconduct occurred to the necessary legal standard. My concern is that the high standards of formality and proof required by the tribunal process prevent disciplinary matters being pursued with the same degree of rigour and flexibility as happens in other employment situations.

Time limits on bringing charges

- 5.49 The 12-month limitation period on laying disciplinary charges, required by the Police Regulations (regulation 13), may give rise to practical difficulties, particularly where complaints have proceeded down a criminal path without disciplinary charges being laid in the meantime. The need to await the outcome of criminal proceedings means that a high degree of care is required in formulating the initial charges, as well as their timing, if there is to be any continuing disciplinary action after an acquittal of criminal offending.
- 5.50 The result is that if the officer is acquitted of the criminal charges, and if disciplinary charges have not been laid within the 12-month period, then police management has little option but to reinstate the officer despite the officer having behaved in a manner that may not meet acceptable standards of personal behaviour expected of a police officer. Again, this situation is an example of where, if the police had a disciplinary system based on a code of conduct, they would still be able to take disciplinary action based on a breach of professional behaviour, even if the criminal charges took time to proceed through the courts, and/or the police officer was acquitted.

Balance of protection

- 5.51 The balance of protection in the police disciplinary system is weighted in favour of the individual police officer and imposes on New Zealand Police obligations that extend well beyond the requirements of natural justice. The common explanation for this is that the police are in a similar position to other professions such as medical practitioners, lawyers, or chartered accountants. The disciplinary models of the police and these professions share a high degree of formality, but the police model has its own unique characteristics. Currently the police cannot dismiss a sworn police officer unless the matter goes to the police disciplinary tribunal.
- 5.52 In my view, there is no justification for the police to determine employment matters using a disciplinary process similar to professional disciplinary processes. The question at issue in professional disciplinary processes is whether a person is fit to hold a practising certificate and to be registered as a member of a particular profession. The loss of a practising certificate by an employed professional (for example, a doctor employed by a hospital) would almost certainly lead to termination of that individual's employment as well. But their employment could also be terminated for a range of other reasons related to performance problems rather than fitness to practise.
- 5.53 I am not aware of any other employment situation where such a requirement exists, that is where an employee cannot be dismissed unless charges are taken before a tribunal or disciplinary body. Although other employers wanting to dismiss an employee are required to ensure that their procedures comply with the rules of natural justice (thus the process

gives the employee the chance to be heard and to have representation), no other employer is required to follow a formal disciplinary process that is akin to a criminal trial.

- 5.54 In the policing context, it seems to me essential that a mechanism should exist for terminating the employment of those who fail to perform adequately, just as a hospital or law firm can terminate the employment of a doctor or lawyer who fails to meet standards of performance. Given that there is no parallel in policing to a professional practising certificate, it does not seem to me that a professional tribunal empowered to “deregister” police officers is necessary. The Police Association argued that, for a police officer, loss of his or her employment is tantamount to loss of his or her career. However, it is not an uncommon scenario in a small country for there to be only one employer of people with particular skill sets, and these situations do not elsewhere justify a separate professional disciplinary tribunal. Besides, there are many examples of former police officers (whether they have left the police voluntarily or been dismissed) using their police training and experience successfully in careers other than policing.
- 5.55 Were the separate police disciplinary system to be abolished, members of the police who believed they had been unfairly treated or unjustifiably dismissed would be amply protected by their ability to take a personal grievance to the Employment Relations Authority.⁶¹⁶

Separation of discipline from performance management

- 5.56 I was surprised to discover that between 1 January 1979 (the starting point for police investigations considered by this Commission) and 1 July 2006 the management of discipline was entirely separate from the human resource function within New Zealand Police. During this period, responsibility for the disciplinary process lay with the national manager of Professional Standards, who reported to the Deputy Commissioner of Police (Operations). Performance management and the annual performance appraisal system were the responsibility of the police general manager of human resources, who reported to the Deputy Commissioner of Police (Resource Management).
- 5.57 The separation of these functions is highly unusual. Mr Wayne Annan, New Zealand Police General Manager: Human Resources, who had previously worked in several private sector organisations, told me that he had never known an organisation where the disciplinary process was outside the human resource function.⁶¹⁷
- 5.58 This systemic disjunction between 1979 and 2006 has caused a range of difficulties associated with the police disciplinary process:
- divergent approaches to dealing with misconduct
 - division of responsibilities and the risk of inconsistency
 - information “silos” impeding effective performance management.

⁶¹⁶ The Employment Relations Authority is an investigative body that operates in an informal way to resolve employment relationship problems. It looks into the facts and makes a decision based on the merits of the case, not on legal technicalities. Before conducting an investigation the authority will consider whether it is possible to resolve the problem by mediation. (Refer <http://www.ers.dol.govt.nz/problem/authority/>)

⁶¹⁷ Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 33.

Divergent approaches to dealing with misconduct

- 5.59 The split between the functions of Professional Standards and Human Resources has encouraged two divergent philosophies and approaches around dealing with misconduct. The Professional Standards section, headed by a senior detective, approaches discipline from within a criminal investigative framework that focuses on whether the allegations are sufficiently supported by credible, admissible evidence to meet a standard of proof equivalent to that of “beyond reasonable doubt” so as to obtain a conviction.
- 5.60 By contrast, human resource specialists generally prefer to take a problem-solving approach of “let’s understand the problem and deal with the problem.”⁶¹⁸ Mr Annan told me that the human resources approach involves “having some dialogue, listening, understanding what the problem is, looking at the collective patterns that exist, and then without perfect information make some decisions and act on those.”⁶¹⁹

Need for consistency in dealing with misconduct

- 5.61 Also associated with the responsibility for disciplinary matters is the issue of national consistency. Under the disciplinary system, district commanders have authority to administer discipline for their own staff and operate their own Professional Standards units. Each district has a Professional Standards group, which carries out its function in various ways. I heard from one district commander who has taken control of the complaint process and manages it himself to ensure that it is done to his requirements.⁶²⁰
- 5.62 The Professional Standards section at the Office of the Commissioner seeks to ensure that there is a consistent approach to dealing with similar misconduct across the country. It reviews the district commanders’ recommendations to issue a reprimand or lay a disciplinary charge before these are submitted to the Commissioner of Police.
- 5.63 As noted in Chapter 2, in November 2005, in response to concerns raised by my inquiry, I was informed by the police of a proposal to enhance the Professional Standards section, increase its resources, and give it more control over the complaints process at a district level.⁶²¹ I was also informed of a direction given by Police Commissioner Robinson that in all future investigations of complaints against police (other than reasonably minor matters deemed appropriate for the District Complaint Resolution⁶²² process), district commanders were required to consult with the Professional Standards national manager regarding the appointment of an investigating officer. The purpose of this directive was to achieve consistency across districts and to ensure that the principles of independence were appropriately applied.⁶²³

618 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 28.

619 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 28.

620 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 5.

621 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 6.

622 The District Complaint Resolution system was developed by the Police Complaints Authority as an effective means of resolving a problem arising between a member of the public and the police. It is used where a complaint of a non-serious nature is made, for example a complaint of poor attitude as opposed to criminal behaviour. This is discussed in Chapter 4.

623 New Zealand Police, Memorandum from Police Commissioner Robinson to Office of the Commissioner executive and district commanders, 24 November 2005.

Dealing with persistent poor behaviour

- 5.64 I questioned Mr Annan regarding how the police might deal with an officer who consistently behaved in an unsatisfactory manner. He told me that the tribunal is a poor forum for dealing with persistent low-level misconduct, which is far more appropriately addressed by the performance management system. Although it would be possible to draft a charge of “disgraceful conduct”, he said, in reality that would be unlikely to occur because “the energy and efforts that go into these things are so significant that it’s unlikely to happen for those things that would be considered not serious.”⁶²⁴
- 5.65 There is also the issue of the obvious lack of fit between discipline and the performance management process. At present the police have no fair and proper means to dismiss a person who is unsuited for police work save by categorising their actions as misconduct and proceeding with the full force of the disciplinary tribunal process. I have already commented on the disincentives that exist to taking this approach. This appears to have resulted in reliance, instead, on informal processes, such as the Police Association persuading unsuitable officers to leave the organisation. I accept the police’s comment that the two organisations work cooperatively in this regard. But the extent of the police’s reliance on the Police Association to persuade unsuitable staff members to leave is extremely unusual in my experience. It is also undesirable, because it results in a perception that the police union has been ceded the power of the employer; that should belong to the Commissioner of Police.
- 5.66 These issues will need to be addressed as the integration of the discipline and human resources functions proceeds on from the establishment of a single management structure on 1 July 2006.

Development of an early warning system

- 5.67 The separation between the disciplinary and performance management systems may also have impeded the development of an effective early warning system (discussed in Chapter 6). I was told in November 2005 that the police were implementing a national early warning system whereby routine assessments are undertaken to determine whether an officer is at risk of doing something that could embarrass the organisation and harm other police members or members of the public.
- 5.68 Having an integrated approach to human resource management and staff discipline will assist the technological development and operation of the early warning system. At the moment the complaints database is not part of the human resources database so the human resources staff do not have access to it.⁶²⁵
- 5.69 The police did not accept that the separation of human resource management and discipline had impeded the development of early warning systems. However, they confirmed that the integration of the two sections will include amalgamating the relevant databases and developing appropriate strategies for early intervention.

624 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 30.

625 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 17.

Letters of appreciation sent to officers facing disciplinary charges who disengage

5.70 The Commission heard evidence of another matter caused by the separation of human resources and professional standards data into separate information “silos”. Human resources staff had sent out standardised letters of appreciation generated from the human resources database to police officers who had resigned or disengaged from the police while disciplinary charges were in train (disengagement is discussed further below).

5.71 In some cases I reviewed, officers who were referred for disciplinary charges after an investigation into alleged sexual misconduct but who disengaged before the hearing were subsequently sent standard letters from police management thanking them for their years of “dedicated” or “faithful” service; in reality, they were leaving under a cloud because of their alleged misconduct.⁶²⁶ For example, an officer who faced four disciplinary charges for alleged sexual misconduct under the provisions of the Police Regulations and who disengaged before the tribunal hearing received a letter from the police expressing appreciation:

On behalf of the Commissioner and Headquarters staff, I extend my sincere appreciation for the years of dedicated service you have given to the Police. I wish you and your family good health and every success.⁶²⁷

5.72 These letters caused me two points of concern. The first was that the message they gave to the departing officers was one of tolerance of their inappropriate conduct. Such letters could be used in a retiring officer’s curriculum vitae and give misleading information to other employers. My second concern was that, had the complainants seen these letters, they could have inferred from them a cultural or institutional lack of appreciation of the seriousness of the situation under which these officers were disengaging.

5.73 After having drawn attention to these letters during this inquiry, I was told in November 2005 that the police were now no longer sending standard letters of thanks to people who were disengaging or retiring with disciplinary or criminal matters pending.⁶²⁸ I was informed that the alert system for avoiding these standardised letters being sent out was still a manual one because the human resources staff did not have access to the complaint database held by Professional Standards.⁶²⁹ I would be very concerned if this practice were still continuing because of lack of administrative oversight and poor human resources systems.

Views on division of responsibilities and their integration

5.74 In its submission on my draft report, the Police Managers’ Guild accepted that there is inconsistency in the police about who is responsible for performance matters involving sworn staff. The guild commented that some districts see it as a Human Resources

⁶²⁶ For example, Operation Loft file LT 126.

⁶²⁷ Operation Loft file LT 1.

⁶²⁸ I note that in their June 2006 submissions in response to the draft report, New Zealand Police submitted the following: “It is far from uncommon for employees who are leaving a job, even under difficult circumstances, to receive kind words and thanks from their employer, especially where they have held their position for many years.” (New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 96) I did not receive any evidence in support of this assertion, and my experience in the public sector suggests otherwise.

⁶²⁹ Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 17.

responsibility, others as a Professional Standards responsibility. The guild does not have a view either way, but asked whichever group was given responsibility for that group to develop and promulgate clear guidelines.⁶³⁰

- 5.75 The Police Association strenuously opposed any move to bring discipline of sworn members under the responsibility of the human resources general manager, on the basis that sworn members are not simply employees and, presumably, that they should not be disciplined by non-sworn staff. The association considered that disciplinary matters should remain the responsibility of the Professional Standards section, which should be given better resources, skills, and procedures for the task.
- 5.76 My view is that the separation of functions has done little to assist the police to deal effectively with poor performance or misconduct amongst officers. Although a formal, adversarial approach may be satisfactory for the criminal jurisdiction, it is not effective in an employment context when dealing with misconduct.
- 5.77 The police themselves accepted the need for the two functions to be integrated. The first stage in remedying the separation of function occurred on 1 July 2006, when the Professional Standards national manager began to report to the Human Resources general manager. The police noted that integration of the Human Resources and Professional Standards sections would have occurred earlier had the proposed code of conduct been introduced as a consequence of the Police Amendment Bill (No 2).
- 5.78 The police told me that the integration will lead, in time, to greater sharing of information between the human resources and disciplinary sections, and will ensure that Human Resources retains oversight of the steps taken after internal inquiries – whether performance-based or disciplinary.⁶³¹ Although I am pleased to note this development, I regard it as only a start. I remain concerned about the effectiveness of the police performance management and disciplinary system processes. The two functions will need to be fully integrated in all aspects of their operations and systems to ensure the integration is truly effective.
- 5.79 In my view the police would benefit from an independent review of the two functions to ensure that the integrated systems and processes are adequate, standardised, and managed to a standard that is consistent with best practice in the public sector. I believe that the State Services Commission, as the agency with overall responsibility for public sector management, should undertake this review.

Disengagement

- 5.80 “Disengagement” is the term used within New Zealand Police to refer to a member’s retirement from the police because of medical or psychological unfitness. This has been referred to colloquially as “PERFing” – (a reference to the Police Employment Rehabilitation Fund). Section 28 of the Police Act covers disengagements. That section enables a member of police who is certified by two medical practitioners nominated by the Commissioner of Police to be declared substantially unfit to perform the duties of a constable.

630 Police Managers’ Guild, Submissions in response to draft report, 9 May 2006, p. 5.

631 New Zealand Police, Submission re Integration of Professional Standards and Human Resources, August 2006.

- 5.81 The Government Superannuation Fund (GSF) scheme provides for contributions to be made by a member's employer as well as the member. Until 1992, the ability of a member to gain access to the commissioner's contribution upon leaving the police depended on the manner in which the member left. Members aged 49 years or younger, who disengaged under section 28, were entitled to receive their superannuation as a lump sum, including the commissioner's contribution. If these members resigned or were dismissed they were entitled only to their own contributions plus interest (at about 3 percent). Alternatively, they could elect to freeze their contributions and receive a pension (which would include the commissioner's contribution) from the age of 50. Accordingly there was an incentive for police officers who were under 50, who met the criteria for disengagement, and who wished to obtain immediate access to their superannuation funds, to disengage rather than resign or remain in the police force and risk dismissal. Police members aged 50 years or older received a pension regardless of whether they resigned, retired, or were dismissed.
- 5.82 The use of disengagement prior to a tribunal hearing has been an area of particular sensitivity in the past because disengagement tended to be dealt with as an employment issue, without any formal link to the disciplinary process. This created a perception among complainants that police officers could use the disengagement process as a means of leaving the police to avoid disciplinary action being taken against them, and that New Zealand Police as employer tacitly approved such action. I was told that changes to police processes, and also changes to the police superannuation schemes in 1992, now mean that this is no longer an issue.
- 5.83 The position is different for a member of the Police Superannuation Scheme (PSS), which replaced the GSF as the superannuation scheme for police members joining after 1992. Under the PSS a member who resigns is treated in the same way as one who retires. The fact that PSS members can leave the police with their full superannuation entitlement, whenever they wish, is seen by the police as almost certainly the reason why applications to disengage have decreased significantly in recent years.⁶³² Disengagements under section 28 fell from 244 in 1999 to 95 in 2005. At the same time resignations increased steadily over this period from 49 in 1999 to 205 in 2005.
- 5.84 For those members who are still members of the GSF, all applications for disengagement are now considered by the human resources general manager, who has the delegated authority to accept or decline applications to disengage. I was told by Mr Annan that when he considers an application for disengagement under section 28 from a member who is also under investigation for a disciplinary or criminal matter, he is advised of concurrent disciplinary action by Professional Standards, and takes into account whether the application was made before the applicant knew he or she was being investigated, and whether the application is in any way linked with the complaint that has been made about the member. Where it is apparent that either situation exists, Mr Annan said that the application would ordinarily be declined.⁶³³

632 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Brief of evidence, 18 November 2005, p. 13.

633 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Brief of evidence, 18 November 2005, p. 13.

- 5.85 I was also told that this has not always been the case,⁶³⁴ and that was apparent from a number of the files I studied. The files indicated that, provided medical certificates properly supported the application, the member was generally able to disengage and claim full pension entitlements and severance pay. I saw examples on the files where members disengaged prior to the tribunal hearing, particularly when they realised that they were likely to face a significant penalty such as dismissal.⁶³⁵
- 5.86 The Police Association pointed out that disengagement is a right that any officer who joined the police before 1992 can claim provided that there is proper supporting evidence (for example, medical certificates). I accept that. However, officers could disengage on medical or psychological grounds such as stress arising from or exacerbated by the officer's own misconduct and/or its reporting. For example, one officer who was the subject of a rape allegation, and was then served disciplinary charges, disengaged on the same day the disciplinary charges were served on him. Counsel for the police made a submission on this case:
- In short, the stress associated with the rape inquiry, followed by the disciplinary proceedings, brought him to a state where he was psychologically unfit to continue to serve as a Police officer.⁶³⁶
- 5.87 Complainants in such cases could be left with a sense of injustice when advised the disciplinary matter could not be taken further because the alleged offender had disengaged and was no longer a member of police (criminal proceedings not being in contemplation).
- 5.88 The police pointed out that, in the cases in question, disciplinary proceedings had been launched with a view to dismissing the offending members from the police. If those members chose to leave of their own accord, then the objective of the exercise was achieved. The police said that there was nothing inherently objectionable about resolving applications for disengagement on their merits, and permitting members who had demonstrated that they were unfit to continue in the police to leave before the disciplinary process had run its course. Every disengagement had to be supported by proper documentation, including certificates from independent medical practitioners. Nevertheless, the police said that in each of these cases the formal complaints made were still determined (and inevitably upheld) by both the police and the PCA, thereby vindicating the complainants.⁶³⁷
- 5.89 I accept that police members who appeared to have left with large sums through disengagement were in fact receiving payments that represented capitalisation of many years of contributions. The payments were not any form of bonus or golden handshake. Police members of the GSF, as with other public servants who leave before their retirement date, are entitled to receive back their contributions plus interest, and (depending on their length of service) are entitled to the employer's contribution as well.
- 5.90 My concern is that allowing the voluntary departure of the members (as opposed to their dismissal), and the consequent abandonment of disciplinary proceedings, gave complainants the message that their complaints were being swept under the carpet and

634 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Brief of evidence, 18 November 2005, p. 13.

635 For example, Operation Loft files LT 1, LT 91, LT 139, and LT 141.

636 For example, Operation Loft file LT 1; Submission from Ms Kristy McDonald QC, Counsel for New Zealand Police, 12 July 2005, p. 7.

637 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 94 and p. 96.

that the officers were incurring no penalty at all for their misconduct. In many instances, the timing of the disengagement and the fact that it was permitted on the grounds of stress arising from or exacerbated by the disciplinary charges themselves gave the appearance that the police management was relieved at the departure of a troublesome officer and avoidance of a time-consuming and costly tribunal process; meanwhile, the officer concerned was able to take with him superannuation contributions from the commissioner and other benefits. I do not wish to suggest that there was anything improper about this. However, it created a perception that the outcome was mutually beneficial for the police and the officer concerned, and in some cases, a perception of collusion – the police “looking after their own”. Two of the submitters who appeared before me were very concerned that the alleged offender in each of their cases had been able to disengage from the police without going through the disciplinary process.⁶³⁸ The message to complainants from all of this was a harsh and hurtful one.

- 5.91 I do not agree that it is an acceptable outcome for a member facing disciplinary proceedings to disengage rather than face the tribunal on the sole basis that he or she meets the test for disengagement. The fact that a complaint under the Police Complaints Authority Act 1988 (PCA Act) may later be upheld will be small comfort to a complainant in the absence of any disciplinary penalty. In my view, when an employee who has been accused of serious misconduct seeks to resign, the employer should have the option of declining to accept the resignation in order to see a disciplinary process through to formal dismissal – on the basis that the misconduct is too serious not to have some sanction. In my experience, that is common practice in the public sector and some professions.⁶³⁹

ADEQUACY OF THE CURRENT DISCIPLINARY SYSTEM

- 5.92 Witnesses appearing for the police laid much of the blame for the problems of managing poor performance on the police disciplinary system. In his evidence to me, Police Commissioner Robinson stated,
- the Police have for many years regarded the current disciplinary framework as cumbersome and anachronistic. In order to take serious disciplinary action against a member of the Police, a Tribunal must be convened, and the member charged with a disciplinary offence.⁶⁴⁰
- 5.93 New Zealand Police said that the reasons for the present arrangement were unclear. It was likely that it had its origins in the nature of the office of constable, by which police officers are not “normal” employees but enjoy considerable independence. However, the police submissions during the hearings confirmed that the present arrangements are not necessary to preserve the independence of the office of constable.⁶⁴¹
- 5.94 More importantly the police said that the disciplinary system draws no distinction between misconduct that reflects bad behaviour and that which reflects poor performance. They told me that there are disciplinary options that do not require the tribunal’s involvement,

⁶³⁸ Submitters D and E, Operation Loft files LT 1 and LT 126.

⁶³⁹ For example, the Institute of Chartered Accountants of New Zealand has a rule to deal with such circumstances.

⁶⁴⁰ Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 11.

⁶⁴¹ New Zealand Police, Closing submissions, 16 December 2005, p. 31. Constabulary independence is discussed in more detail in Chapter 3, paragraphs 3.263 to 3.266.

that performance issues can be addressed as part of routine supervision, and that the police have always been attuned to the possibility that conduct perhaps falling short of provable criminal conduct may nonetheless indicate entirely inappropriate behaviour and need to be dealt with accordingly. But they accepted that the tribunal is a poor forum for addressing persistent low-level misconduct because, no matter how badly a police officer performs and how many warnings he or she receives, under the present law he or she cannot be sacked for incompetent performance alone.⁶⁴²

5.95 The police submitted that there appeared to be little justification for the continuation of such an anomalous employment regime, and that very few other employment relationships provided such a significant additional safeguard to employees, or such a steep additional hurdle for an employer.⁶⁴³ Employment-based mechanisms for dealing with issues of performance are therefore an essential reform.⁶⁴⁴

5.96 Several witnesses from the Police Association and New Zealand Police who appeared before this Commission argued, on the other hand, that the current disciplinary system was justified. Their arguments for its retention can be summarised as follows:

- There is a significant right at stake – a person’s livelihood and reputation – and the likely difficulty of obtaining any similar employment.
- There is the nature of policing (including the persons the police must deal with on a day-to-day basis, who can be quick to complain, and situations where the use of force may be necessary, readily resulting in a complaint of assault).
- Where criminal proceedings are not pursued, but the complaint is a serious one (such as one of improper use of force), a police officer should have the benefit of a quasi-criminal testing of the complaint against him or her.
- Concerns about the veracity of witnesses require a forensic exercise including the full testing of the evidence and, essentially, meeting the criminal standard of proof before a charge should be found proved.

5.97 The Police Association submitted that the disciplinary tribunal system is appropriate for the police environment because police officers occupy a particularly difficult position in society in that their employer is also an investigator and prosecutor. For these reasons the association believes that it is imperative that those who know and understand the issues that confront police officers deal with matters of discipline. Mr Greg O’Connor, President of the New Zealand Police Association, maintained that it is a matter of natural justice for someone who faces a career-ending allegation to have that allegation properly investigated, particularly if the allegation is strenuously denied.⁶⁴⁵ The current disciplinary system is “a framework to ensure that Police follow a process that provides natural justice for the employee”.⁶⁴⁶

5.98 The association also made the point that the Commissioner of Police has a very low level of dismissal of non-sworn staff in the organisation, despite the fact that for non-sworn staff

642 New Zealand Police, Closing submissions, 16 December 2005, p. 32.

643 New Zealand Police, Closing submissions, 16 December 2005, p. 31.

644 New Zealand Police, Submissions in response to draft report, 20 June 2006, pp. 85–86 and 89.

645 Mr Greg O’Connor, President, New Zealand Police Association, Transcript of hearing, 5 December 2005, pp. 85–86.

646 New Zealand Police Association, Closing submissions, 16 December 2005, p. 6.

the police do not need to go through the tribunal process.⁶⁴⁷ Evidence presented by the association suggested that the problem lay as much with poor performance management practices by supervising officers as with any deficiency in the tribunal process. In its evidence the association also told me that there is an understandable and logical way in which trained detectives conduct investigations, and these officers find it difficult to distinguish between criminal investigations and employment investigations because sometimes they are the same thing in the sense that an employment investigation arises out of a criminal investigation.⁶⁴⁸

My views on the system

- 5.99 In my view, the current disciplinary system has no place in a modern police human resources strategy. It is not working and has not worked adequately during the period of interest to the Commission. The system for sworn members is not based on a code of conduct, which would allow the police to take prompt action when that code is breached by an employee behaving unprofessionally.
- 5.100 I agree with Police Commissioner Robinson that the need to charge the member with a disciplinary offence under the Police Regulations, and have the charge heard before the disciplinary tribunal, is both cumbersome and anachronistic. The formality of the tribunal process reinforces the difficulties caused by the standard of proof, and appears to lead some of those involved in the system to assume that the standard of proof applying for proving any breach of the regulations is the same as it is in the criminal law. The fact that cases of sexual assault and abuse are particularly difficult cases to prove in the criminal court does not mean that they should not be pursued for disciplinary purposes.
- 5.101 It may well be the case, as suggested by the Police Association, that those who manage the performance of front-line police are not particularly adept at following best practice. If so, I would suggest that the disciplinary process exacerbates this situation, because, whereas normal employment law requires an employer to follow a fair process when dealing with poor performance (for example, in giving clear instructions about the expected level of performance, giving timely warnings about poor performance, and providing opportunities for staff to respond with improved performance), the police system requires only that management prove a single “charge” in a formal setting, typically to a high standard of proof. In other words, the system is punitive and adversarial, and works against performance management that is based upon constructive and facilitative processes.

OPTIONS FOR REFORM

- 5.102 I firmly believe that the present disciplinary system should not remain in place. It should be replaced by a system based on standard employment law procedures using a code of conduct.
- 5.103 Police Commissioner Robinson suggested to me in evidence that even under a system governed by a code of conduct there would be scope to retain a formal disciplinary tribunal for some cases, for instance for serious allegations of misconduct where there

⁶⁴⁷ Mr Ross Crotty, Barrister, Brief of evidence, 5 December 2005, pp. 3–5.

⁶⁴⁸ Mr Ross Crotty, Barrister, Transcript of hearing, 5 December 2005, p. 28.

are significant factual disputes and/or credibility issues, or where there are allegations of criminal offending.⁶⁴⁹ The draft code of conduct for sworn members included provision for a national disciplinary panel that would make classification decisions when a matter first surfaced, for instance whether the officer's behaviour was a performance issue, a misconduct issue, or an issue that involves criminality. If the matter were classified as serious, with dismissal as a possible penalty, the officer concerned would have the ability to make representations to a decision-maker and independent person.⁶⁵⁰

5.104 The Police Association supported the introduction of a code of conduct. But it also favoured retaining the tribunal, with various procedural reforms, to provide an avenue for independent inquiry into allegations of conduct that is not plainly criminal but that might, if established, give rise to criminal charges – for example, complaints about the use of excessive force. The association proposed the following procedural reforms:

- a panel of prospective members, selected by agreement between employer and employee representatives
- strict timetabling, to ensure that matters can be dealt with promptly (within 60 days of complaint)
- changed evidential requirements
- tribunal decisions binding on the police commissioner, to avoid further delay and uncertainty
- appeals no longer involving a hearing *de novo* (that is, a complete reconsideration of the evidence).⁶⁵¹

5.105 Despite these proposals, it is my firm view that retaining the police disciplinary tribunal in any form would be a retrograde step. Retaining the tribunal only for the most serious matters would add nothing but further complication to the process for managing serious misconduct by sworn members. The well-established principles of employment law provide more than adequate protections for employees of the police, including in cases where misconduct is sufficiently serious to warrant the intervention of the criminal law. The question of criminality is for the courts; the employment-related consequences of the conduct are a matter for the Commissioner of Police as employer.

Safeguarding procedural integrity and fairness

5.106 In their submissions on a draft of this report, the police accepted that the requirements in the regulations that an adversarial hearing be convened, and that the proceedings resemble a criminal trial, are unnecessary in the employment context and should be abolished. They also agreed that the 12-month limitation for disciplinary proceedings could no longer be justified. Their only concern was to preserve the legal obligation to establish misconduct to a level commensurate with the seriousness of the allegation. To this end, they urged retention of independent involvement (albeit without any of the formal trappings of the existing system) in those cases where it would prove to be a help rather than a hindrance.⁶⁵²

649 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, pp. 12 and 13.

650 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002].

651 New Zealand Police Association, Submission in response to draft report, 14 June 2006, p. 5.

652 New Zealand Police, Submissions in response to draft report, 20 June 2006, pp. 3–7, 11–12, 92–93.

- 5.107 In my view, a well-functioning human resources system operating within the normal employment law context would ensure both a due level of inquiry into allegations of misconduct, so that the public can have confidence in all members of the police force, and a procedure that is fair to the employee and meets the requirements of natural justice. Abolishing the tribunal would enable a more flexible approach to such inquiry, while still enabling the Commissioner of Police, as employer, to have the necessary independent factual assurance before taking serious action against a member (as is required by section 12 of the Police Act in a case involving dismissal).

Interface with the complaints system

- 5.108 The integration of the Human Resources and Professional Standards sections of the police will mean that disciplinary matters are dealt with by the same staff who are responsible for performance management. I see no reason why the functions of these two sections cannot be fully integrated in all aspects of their operations and systems. However, there are some implications for the management of complaints.
- 5.109 The existence of a complaint against a member under the PCA Act, or an allegation of criminal conduct, is a separate matter from a disciplinary investigation, which will need to be investigated under a parallel process involving police investigators and/or the PCA. But a complaint can have employment implications for the member at an early stage too – for example, where there is a need to consider suspension pending determination of a complaint or a criminal charge. There are standard procedures under employment law to address the timing issues that can arise in respect of those matters.
- 5.110 I also note, in respect of complaints, that the PCA has the power under sections 27(2) and 28(2)(b) of the PCA Act to recommend to the police commissioner that disciplinary proceedings be taken against a member after a complaint investigation.

The case for interim reform

- 5.111 The Police Amendment Bill (No 2) was intended to streamline and strengthen disciplinary processes for police staff who fall short of the required standards.⁶⁵³ The bill provided for the abolition of the tribunal, and the police told me that it would have given them a legal base for a code of conduct and the means of tackling poor performance using modern human resource practices.
- 5.112 In explaining the changes that would have arisen from the new system under the bill, Police Commissioner Robinson told me,
- The new system will provide for a number of new measures that the organisation may take if these conventional performance management techniques fail, including, ... the dismissal of the member for ongoing poor performance.⁶⁵⁴
- 5.113 The Police Association told me that it had made representations to the Minister of Police in November 2005 on the bill. In its submission to the minister, the association stated that its view was unchanged since 2001, when the bill was first introduced; in particular,

⁶⁵³ Explanatory note, Police Amendment Bill (No 2) , p. 2.

⁶⁵⁴ Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 12.

the association believed the bill was “an exaggerated response” to the four specific issues of concern that the bill addressed.⁶⁵⁵ The association told me in December 2005 that it believed that the bill should be abandoned and had made a submission to the Minister of Police to that effect.⁶⁵⁶

- 5.114 In March 2006 the bill, which had been before Parliament since 2001 was withdrawn, after the announcement by the Minister of Police that the Police Act 1958 and the Police Regulations 1992 were to be reviewed.⁶⁵⁷
- 5.115 I am very concerned that the review of the Police Act will take a long period of time and will delay the vitally urgent reform that is needed of the current disciplinary system. The review of the Act is comprehensive, and will not be finalised until at least 2008. I believe it is imperative that interim changes are made, pending the outcome of the review.
- 5.116 The interim changes I propose would involve Government revoking (by executive action) those provisions of the Police Regulations that establish the disciplinary tribunal system, and adopting in its place a system based upon a code of conduct. I believe that a suitable code of conduct should govern the discipline of sworn staff, as it does for non-sworn staff. (The issue of the need for a code of conduct for sworn staff is addressed in more detail in Chapter 6 and gave rise to recommendation R38.) Dealing with misconduct by non-sworn staff is more straightforward because they have a code of conduct in place.
- 5.117 Revoking the relevant regulations would allow discipline to be dealt with by the Commissioner of Police under his general powers as an employer, as envisaged by sections 5(4) and 5A of the Police Act. Pending completion of the review of the Act, those sections would remain subject to the obligations in the Act itself in relation to termination. Importantly, those obligations include section 12(2), which provides that dismissal of a member can occur only after an independent (but not necessarily procedurally formal) inquiry. In short, it would enable the police to adopt a best practice State sector disciplinary process.
- 5.118 It appears, then, that my proposal for interim reform largely accords with the police views, because an independent (but not formal) inquiry could continue to occur in serious cases as required by the Police Act. The process would be more straightforward, and would better integrate with performance management processes. I would expect, as a result, better performance management within New Zealand Police and the ability for the organisation to more appropriately discipline sworn members of the police who engage in sexual activity that gives cause for concern.

655 New Zealand Police Association, Memo from Greg O'Connor, President, to the Hon Annette King, Minister of Police, on the Police Amendment Bill (No 2), 28 November 2005, p. 1.

656 New Zealand Police Association, Closing submissions, 16 December 2005, p. 7.

657 Hon Annette King, Minister of Police, news release, “Police Act to be reviewed”, 7 March 2006.

Recommendations

Police disciplinary system and procedures

- R33** Those provisions of the Police Regulations 1992 that establish the disciplinary tribunal system should be revoked as soon as possible to enable a more efficient system to come into force.
- R34** New Zealand Police should implement a best practice State sector disciplinary system based on a code of conduct in keeping with the principles of fairness and natural justice as part of the employment relationship.
- R35** The new disciplinary system should allow independent investigation of alleged misconduct where necessary or appropriate (in accordance with sections 5A and 12 of the Police Act 1958) but should not include the use of a formal disciplinary tribunal.
- R36** New Zealand Police should ensure that the human resource and professional standards functions are fully integrated in all aspects of their operations and systems.
- R37** The Commissioner of Police should invite the State Services Commissioner to review the police approach to performance management and discipline to ensure their systems and processes are adequate, standardised, and managed to a standard that is consistent with best practice in the public sector.



– 6 –

STANDARDS AND CODES OF CONDUCT IN RELATION TO PERSONAL BEHAVIOUR

INTRODUCTION

- 6.1 This chapter addresses term of reference (4):
- (4) the standards and codes of conduct in relation to personal behaviour for members of the Police and, in particular, but not limited to,—
 - (a) whether the applicable standards or codes of conduct within the Police in relation to personal behaviour, including sexual conduct, have been and are adequate and effective, and, if they have not been or are not adequate and effective, the respects in which they are inadequate or ineffective:
 - (b) whether action has been taken or is taken if standards or requirements of codes of conduct are not met:
- 6.2 Term of reference (4)(a) refers to “applicable standards or codes of conduct” relevant to personal behaviour, including sexual conduct. I identified the following applicable standards or codes:
- the standards imposed by the disciplinary system for sworn members
 - the code of conduct for non-sworn members
 - the competency framework and core values, applicable to all members
 - the New Zealand Police Sexual Harassment Policy.
- 6.3 I have discussed the adequacy and effectiveness (or otherwise) of the police disciplinary system in Chapter 5. The first part of this chapter, therefore, discusses the code of conduct for non-sworn members, the competency framework and core values, and the police policy on sexual harassment.
- 6.4 The chapter then discusses two areas where the adequacy or effectiveness of standards of personal behaviour has been brought into question: sexual conduct towards members of the public (including the formation of consensual sexual relationships); and the misuse of computer technology within the police organisation. The latter topic was the subject of an internal police investigation and became a matter the Commission was asked to consider.
- 6.5 Turning to term of reference 4(b), the chapter then considers how the police address situations where inappropriate behaviour, including sexual behaviour and repeat breaches of standards, has occurred.

Background details of relevance to this chapter

Draft Code of Conduct for Sworn Members of the New Zealand Police. The draft code was issued by the Commissioner of Police in February 2002 with the agreement of the Police Association. This draft code was intended to replace the current disciplinary provisions in the Police Act 1958, Police Regulations 1992, and police general instructions.

Parties to the inquiry. The Commission formally recognised four parties to the inquiry: New Zealand Police, Police Complaints Authority (PCA), Police Association, and Police Managers' Guild.

Submitters. Of those who approached the Commission directly about the police investigations into their complaints, 10 submitters were considered to fall within the terms of reference.

Witnesses. The Commission heard evidence from Police Commissioner Robert Robinson, a range of other New Zealand Police staff, the Police Complaints Authority, the president of the Police Association, and various specialist witnesses.

Time frame. The period of interest to the inquiry was determined in March 2004 to be the 25 years from 1 January 1979. The Commission considered police investigations of relevant complaints that had been made since January 1979.

Operation Loft. Staff from the New Zealand Police Professional Standards section at the Office of the Commissioner carried out a comprehensive search of police records to identify all cases that related to the Commission's terms of reference (known as Operation Loft). As part of Operation Loft, Professional Standards staff members were asked to locate and retrieve any files that related to allegations of sexual offending by police or associates of the police since 1 January 1979. All these files were provided to the Commission for review.

Human Resources and Professional Standards sections and the EEO Unit at the Office of the Commissioner. During the period of interest to this Commission, the national headquarters of New Zealand Police (the Office of the Commissioner) had two separate sections involved with employment issues: Human Resources looking after performance management and appraisal, and Professional Standards dealing with complaints against staff members and any consequent disciplinary processes. Matters of equal employment opportunities (EEO) have, since 1994, been the responsibility of the EEO Unit at the Office of the Commissioner, now integrated into the Human Resources section.

Police Amendment Bill (No 2). This bill was introduced to Parliament on 31 July 2001. It sought to do two things: first, to strengthen police governance and accountability arrangements; second, to improve police effectiveness in managing human resources. The bill sat low in the order paper for several years and was withdrawn in March 2006 when the Minister of Police announced that the Police Act 1958 was to be reviewed with the aim of having a draft Police Bill ready by November 2007, for introduction to Parliament in 2008.

Police Act 1958 and Police Regulations 1992. This legislation governs the present police disciplinary system. It is currently subject to a comprehensive review.

- 6.6 Finally, the chapter discusses recent initiatives taken by New Zealand Police to enhance standards of personal behaviour:
- police leadership and management development initiatives
 - ethics training
 - recruit training
 - the development of ethics committees
 - the Integrity Project
 - the development of an early warning system
 - the development of a code of conduct for sworn members of police.

EXISTING CODES OF CONDUCT

- 6.7 There is, at the time of writing this report, no single code of conduct governing all members of New Zealand Police. Instead, a distinction must be made between sworn members and non-sworn members.
- 6.8 It came as a surprise to me that, notwithstanding the terms of reference, there is currently no code of conduct in place for sworn police officers. A draft code of conduct was prepared in 2002.⁶⁵⁸ I discuss this later in this chapter.
- 6.9 Non-sworn staff are subject to a code of conduct specifically authorised by regulation 30 of the Police Regulations 1992, which states,
- Non-sworn members of the Police shall be guided by and obey the Code of Conduct for Non-sworn Members of the Police as prescribed by the Commissioner in general instructions.
- 6.10 The code of conduct for non-sworn members came into force in 1994. The current general instruction C301 provides that all non-sworn staff will be issued with the code, and C302 provides that they are to be familiar with its contents.⁶⁵⁹ In this respect the disciplinary process for non-sworn staff is similar to that applying to public servants under the State Sector Act 1988.
- 6.11 An update of the code of conduct for non-sworn members was prepared in 2002. Implementation of this update is pending implementation of the conjoint code of conduct for sworn members.⁶⁶⁰ This, in turn, was treated as dependent upon the passage of the now withdrawn Police Amendment Bill (No 2).

CORPORATE EXPRESSIONS OF STANDARDS OF PERSONAL BEHAVIOUR

- 6.12 Other material that sets out expected standards of behaviour of members of New Zealand Police includes the core values in the competency framework; expressions of values and expectations in corporate accountability documents; and the ethics training module and recruit training material (discussed later in relation to enhancing the standards of behaviour).

658 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 18.

659 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 18.

660 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 18.

- 6.13 These expressions of values and expectations do not compensate for the lack of a formal code of conduct for sworn police staff.

Police competency framework and core values

- 6.14 The New Zealand Police Competency Framework is a document that sets out the knowledge, skills, behaviours, attributes, and characteristics that are required of all police staff. The competency framework has been developed by the Human Resources section in the Office of the Commissioner, with input from staff across the organisation. The framework was first issued in July 2003. The purpose of the framework is to provide the foundation for future human resource work in the areas of staff selection, training, assessment, performance management, and career planning.⁶⁶¹
- 6.15 The framework includes
- *Core values* and *Core competencies* common to all police staff
 - *Functional competencies* specific to a particular work group or area
 - *Technical competencies*, the technical skills required for particular positions.
- 6.16 I was told that the framework is designed to state clearly the expectations that the organisation has of its staff and to provide a clear reference point describing the expectations of individual performance. It is intended to clearly define the standards of behaviour, and thus to provide “the basis for performance management conversations”.⁶⁶²
- 6.17 There are four core values defined as part of the police competency framework. These are described by the police as “the key things that this organisation says are important”.⁶⁶³ The core values are as follows:
- *Integrity*. All police members are committed and loyal to the vision, values, and goals of the organisation. They inspire trust and behave honestly and ethically.
 - *Professionalism*. All police members are aware of the impact of their behaviour at all times. They maintain self-control, are resilient, and present a professional image. They uphold the rule of law and maintain the guidelines, standards, policies, and procedures set by the organisation.
 - *Respect*. All police members understand that their role is to acknowledge and to respond to our diverse society and to serve all people with dignity. In doing so they recognise the rights, values, and freedoms of all people.
 - *Commitment to Māori and Treaty*. New Zealand Police has a commitment to the Treaty of Waitangi principles and thus is responsive to Māori needs and aspirations. All police members recognise this commitment and follow through by integrating Māori values and principles into their work. They recognise that by being responsive they are promoting good police practice.⁶⁶⁴

661 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, attachment 3.

662 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, attachment 3.

663 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, attachment 3.

664 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, attachment 3.

- 6.18 For each of these four values there is a description of the desirable and undesirable behaviours. For instance under the “Integrity” value, seven undesirable behaviours are listed:
- “turns a blind eye” to unethical or unprofessional behaviour
 - knowingly makes promises that can’t be kept
 - avoids taking personal responsibility
 - blames others for mistakes
 - deliberately misleads
 - uses police position for gain
 - considers some tasks beneath him or her regardless of the impact on service levels.⁶⁶⁵
- 6.19 Under “Professionalism” there are seven undesirable behaviours listed:
- easily provoked to inappropriate behaviour
 - reacts defensively or with hostility when given constructive feedback
 - makes inappropriate or unauthorised public comments about the police or stakeholders
 - deliberately ignores policies and procedures
 - allows emotions to show inappropriately when communicating
 - undermines colleagues, individuals, and teams
 - uses police connection as a platform for expressing personal views and opinions.⁶⁶⁶
- 6.20 In my view, describing the behaviours under each of the values is good practice, and helps to make it clear what the expected standards of behaviour are. However, it will be important that the core values are in due course aligned with the proposed code of conduct for sworn police staff.

Expressions of values in corporate accountability documents

- 6.21 In addition to the four core values included in the competency framework, the police values are also listed in their planning and accountability documents (the statement of intent and strategic plan).
- 6.22 When I reviewed these documents during my inquiry I was concerned to note that there was at that time a mismatch between key documents such as the competency framework and the organisational planning documents. My impression from reviewing the documents at that time was that there was confusion within the police around these different lists of values and how they may function together. In my view the delay in moving to a formal code of conduct has no doubt contributed to this confusion.
- 6.23 For instance, the New Zealand Police *Statement of Intent 2005/2006* listed seven values (as opposed to the four core values of the competency framework). These were as follows:
- Maintain the highest level of integrity and professionalism.

665 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, attachment 3.

666 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, attachment 3.

- Respect individual rights and freedoms.
 - Consult with, and be responsive to, the needs of the community.
 - Uphold the rule of law.
 - Consult with, and be responsive to, the needs, welfare, and aspirations of all police staff.
 - Be culturally sensitive.
 - Integrate Treaty of Waitangi principles and Māori values into policing.⁶⁶⁷
- 6.24 The *Police Strategic Plan to 2006*, which was referred to by the Commission at the time of drafting the report, also listed the seven values as set out above.
- 6.25 The *People in Policing: A Five Year HR Strategy to 2006* lists six of the seven values included in the statement of intent and strategic plan. It excludes the second value (“Respect individual rights and freedoms.”).
- 6.26 The four core values in the police competency framework were taken from the seven listed values in the strategic plan and statement of intent. I was told by one of the police witnesses that he was unsure “Why our HR group chose those four without reference to the seven ...”. In his view the seven stated values in the statement of intent “lack definition and examples of undesirable and desirable behaviours.”⁶⁶⁸
- 6.27 I was pleased to see that in the most recent New Zealand Police *Statement of Intent 2006/2007* and *Strategic Plan to 2010* the values listed in both these documents are now the same as the four core values in the police competency framework (namely Integrity, Professionalism, Respect, Commitment to Māori and Treaty).
- 6.28 To be effective, organisational values must be consistent in all key documents. They need to be repeatedly communicated in clear, simple messages. They also need to be well defined at the behavioural level, with regular monitoring of how well they are understood and how well they are practised across the organisation.⁶⁶⁹
- 6.29 I also note that the draft *Code of Conduct for Sworn Members of the New Zealand Police* sets out 10 standards of conduct (see paragraph 6.240). Once again, it will be important to ensure that the values set out in the corporate accountability documents are fully aligned with the standards set out in the code of conduct.

SEXUAL HARASSMENT

- 6.30 This section addresses the development of standards of conduct in relation to sexual harassment within the police workplace. Although the discussion that follows involves women as the recipients of male sexual harassment, it is important to acknowledge that sexual harassment is not defined by gender.
- 6.31 Sexual harassment encompasses a wide range of possible offending behaviour associated with matters of employment, membership, participation, and access. At one extreme

⁶⁶⁷ New Zealand Police, *Statement of Intent 2005/2006*, p. 6.

⁶⁶⁸ Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 70.

⁶⁶⁹ Mr David Butler, Commissioner of Inland Revenue, Transcript of hearing, 7 December 2005, p. 9.

the behaviour may be criminal offending and give rise to formal police investigations. Policies and practice for such investigations have already been discussed in relation to the Commission's terms of reference (1), (2), and (3). In this section I consider the complete spectrum of personal behaviour that might amount to sexual harassment, as required by term of reference (4).

- 6.32 I describe police policy on sexual harassment and how complaints are recorded in a national database; outline the patterns revealed by cases of sexual harassment in the Operation Loft files; discuss a particular case examined during the inquiry; and consider the improvement in police practices over time and areas for future improvement.

Sexual harassment policy and procedures

- 6.33 There is no code of conduct as such relating to sexual harassment. However, the current police policy on sexual harassment developed during the 1990s is a detailed policy with clear descriptions of the expected standards of conduct, the available options to deal with breaches, and the procedures to be followed. In these respects the policy has many of the elements of a code of conduct as contemplated by term of reference (4)(a).

Development of the policy

- 6.34 Several statutes provide the legislative basis for the development of the police policy on sexual harassment. In 1989 a description of sexual harassment in the context of the police organisation was inserted as section 89 of the Police Act 1958 by the Police Amendment Act 1989. Sexual harassment was included in the Police Act as a potential personal grievance in relation to sworn members of the police. In 2000 the Police Act was amended so that personal grievances by sworn members of the police were dealt with using Part 9 of the Employment Relations Act 2000. The relevant definition of sexual harassment for the personal grievance procedure is provided in section 108 of the Employment Relations Act.
- 6.35 The earliest document provided to the Commission specifically concerning a sexual harassment policy for the police is dated 19 March 1991. This was a commissioner's circular issued to all region and district commanders and the commandant of the Royal New Zealand Police College. The circular outlined that, under the Human Rights Commission Act 1977 (now repealed), employers were legally liable for sexual harassment of employees. In the circular the Commissioner of Police expressed his views on sexual harassment in forceful terms: "I will not tolerate any such denigration of personnel within the police service. Neither will I tolerate any form of recrimination against a member who properly brings any such misconduct to notice."⁶⁷⁰
- 6.36 Some of the EEO policies of the early 1990s, including the policy on sexual harassment, were developed incorporating Australian police policies and training. The process of drafting a new national sexual harassment policy for New Zealand Police began in 1994 and continued for 18 months. During that period the draft policy was repeatedly tested and redrafted to incorporate proposed improvements. I was told that there had been approximately 15 drafts of the policy.⁶⁷¹

⁶⁷⁰ New Zealand Police, Commissioner's circular, to region and district commanders and commandant of the Royal New Zealand Police College, "Sexual Harassment Policy", 19 March 1991.

⁶⁷¹ Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 6.

6.37 In December 1996, at the conclusion of the extensive process of drafting and consultation, the New Zealand Police Sexual Harassment Policy was ratified by the Police Executive Committee. The current policy has not been significantly altered since then apart from some minor alterations in 2001 to take into account the Employment Relations Act 2000.⁶⁷²

6.38 The Sexual Harassment Policy sets out the relevant legislation, and the roles and responsibilities of supervisors and managers; provides for district sexual harassment coordinators, sexual harassment contact officers, and sexual harassment mediators; sets out procedures for the resolution of sexual harassment complaints (including formal and informal processes); explains the associated principles of confidentiality and natural justice; and sets out reporting requirements.⁶⁷³

6.39 The policy is very clear about the seriousness of sexual harassment:

Sexual harassment is unlawful. It affects morale, individual dignity, the effective functioning of a member at work and the right of that member to a safe and supportive work environment. It is a form of employment discrimination and contravenes the Human Rights Act 1993 and the Police Act 1958.

*The New Zealand Police will not tolerate sexual harassment and all levels of management in the police are committed to eliminating such discrimination.*⁶⁷⁴

6.40 The police policy on sexual harassment contains a useful list of the criteria to use in deciding whether behaviour or language is sexual harassment:

- Was the behaviour, language, or visual material of a sexual nature?
- Was it unwanted by the recipient?
- Was it repeated OR of a significant nature?
- Did the behaviour have a detrimental effect on the recipient?⁶⁷⁵

I also note that the police sexual harassment training material contains some useful descriptions of the type of behaviour that might constitute harassment and the effect it can have on complainants.⁶⁷⁶

6.41 The policy emphasises that it is the responsibility of all managers and supervisors to set appropriate standards of behaviour and to ensure that those standards are met. The policy states that managers and supervisors are responsible for dealing with any sexual harassment of which they become aware, and that failure to do so will be regarded as a failure to fulfil the responsibilities of their position. Managers and supervisors are advised to be familiar with the policy, and the procedures relating to dealing with sexual harassment complaints. They are advised that any complaint that is brought to their attention is to be dealt with appropriately, confidentially, and in accordance with the principles of natural justice.⁶⁷⁷

⁶⁷² Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 7.

⁶⁷³ Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 7.

⁶⁷⁴ New Zealand Police, "Sexual Harassment Policy", 10 December 2001, p. 2.

⁶⁷⁵ New Zealand Police, "Sexual Harassment Policy", 10 December 2001, p. 5.

⁶⁷⁶ Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, Attachment 6B: "Sexual Harassment Training Material".

⁶⁷⁷ Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, pp. 7–8.

- 6.42 The New Zealand Police Sexual Harassment Policy is nationally mandated and consistent across the country. I believe this approach ensures the policy is effective.

Resolving sexual harassment complaints

- 6.43 In terms of resolving a sexual harassment complaint, the options available to a complainant under the policy may be by way of an informal or a formal process:

Informal process

- to take no action
- to deal with the matter themselves
- to request a mediated outcome.

Formal process

- to make a formal complaint with a specific request for resolution, including mediation
- to request an investigation
- to take a personal grievance
- to take the matter directly to the Human Rights Commission (under the Human Rights Act).⁶⁷⁸

- 6.44 Complainants may use as many of the options available to them as necessary. However, they may not take a personal grievance and also take the matter to the Human Rights Commission (by virtue of section 79A of the Human Rights Act and section 112 of the Employment Relations Act).⁶⁷⁹
- 6.45 One of the options available for resolving a sexual harassment complaint is the use of mediation. At present the police train staff to conduct sexual harassment mediations. Mediators (who must already be trained sexual harassment contact officers) receive two days of mediation training at a Royal New Zealand Police College course.⁶⁸⁰
- 6.46 I consider that the success of mediation frequently depends on the mediator being highly skilled in mediation practices and having a degree of independence from the parties involved. I was told that if there were problems resolving a complaint within a particular district, the EEO Unit would usually recommend using skilled mediators (or contact officers or district coordinators as appropriate) from another district.⁶⁸¹

Processes for criminal offences

- 6.47 When the alleged behaviour could amount to a crime such as rape, sexual violation, assault with intent to commit sexual violation, or a serious assault, the complaint is required to be the subject of a criminal investigation. The complainant has no choice about this. Professional Standards section and the Police Complaints Authority (PCA) are then

⁶⁷⁸ New Zealand Police, "Sexual Harassment Policy", 10 December 2001, p. 9.

⁶⁷⁹ Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 10. Note section 79A of the Human Rights Act 1993 was inserted by section 4 of the Human Rights Amendment Act 2004.

⁶⁸⁰ Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, pp. 13–14; and Attachment 11: "Sexual Harassment Prevention: A Workbook for New Zealand Police Harassment Mediators", 2004.

⁶⁸¹ Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 12.

involved, in accordance with the Police Complaints Authority Act 1988, the Police Act, the Police Regulations, and the police general instructions.⁶⁸²

- 6.48 Where the member is convicted of a criminal offence as a consequence of a sexual harassment complaint, he or she may be liable to internal disciplinary proceedings in addition to any sentence imposed by the court.⁶⁸³
- 6.49 If the behaviour could constitute a criminal offence but is at the lower end of the scale in terms of seriousness, the matter can still be dealt with as a sexual harassment matter under the Sexual Harassment Policy if the complainant so chooses.⁶⁸⁴
- 6.50 If the lower-level complaint is substantiated, internal disciplinary procedures can follow, as set out in the Police Regulations and the Police Act for sworn staff, or the code of conduct for non-sworn staff. The member may face dismissal, a reprimand, or an adverse report (which would be filed on the member's personal file for a period of four years, as specified in the general instructions).⁶⁸⁵

Police records of sexual harassment complaints

- 6.51 Before 1995 there was no centralised register of sexual harassment complaints within New Zealand Police. The regional management structure was largely autonomous, and issues, incidents, and files relating to sexual harassment were often kept within the region and not brought to the attention of the national manager of human resources or the EEO unit.⁶⁸⁶
- 6.52 The implementation of the Sexual Harassment Policy is now monitored through the assessment of advice notices and incident notification forms. Since April 1995, details of all complaints have been recorded on the national sexual harassment database. The records are kept primarily for Government reporting purposes, not for tracking individuals. However, the records are also used for identifying district trends in complaints, such as an increase in complaints from a specific station.⁶⁸⁷
- 6.53 I was informed that there were 76 sexual harassment complaints recorded by New Zealand Police for the period from 1 July 1995 to 17 July 2001.⁶⁸⁸ These included both formal and informal complaints. The outcomes reported for each of these complaints are shown in Table 6.1.
- 6.54 In the first year of recording details of sexual harassment complaints (July 1995–June 1996) the police database documented only four complaints filed. In the three successive years numbers were higher (17 to 22 complaints a year), but thereafter the numbers declined again.⁶⁸⁹ In her evidence to me, former New Zealand Police Senior Advisor EEO, Ms Alison

682 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 11.
 683 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 12.
 684 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 11.
 685 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 11.
 686 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 17.
 687 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 17.
 688 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, Attachment 12: "Sexual Harassment Complaints New Zealand Police as Recorded Nationally".
 689 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, Attachment 12: "Sexual Harassment Complaints New Zealand Police as Recorded Nationally".

Table 6.1: Outcomes of 76 sexual harassment complaints, 1 July 1995–17 July 2001

Outcomes	Number of complaints
Take no action	6
Withdrawn	1
Complaint not found	3
Complaint not substantiated	1
Investigated, not resolved	1
Respondent unknown	4
Complaint taken to Human Rights Commission	2
Complaint ongoing	1
Statement taken	1
Complainant dealt with it themselves	19
Resolved (by mediation, apology, conciliation, transfer)	21
Management action taken	4
Fined/transferred	1
Counselled	4
Adverse report	2
Formal written warning	4
Formal charges laid	1
Total	76

Source: Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, Attachment 12: “Sexual Harassment Complaints New Zealand Police as Recorded Nationally”.

Gracey, acknowledged that an increase or decrease in the reporting of sexual harassment complaints could be explained both positively and negatively:

For example, an increase in the level of complaints may be explained positively as a result of increased awareness, and increased confidence in Police as an organisation, to deal with sexual harassment. Conversely it could be explained as increased levels of inappropriate behaviours and actions. ... My genuine belief is that the increase in the numbers of staff making complaints in the years following the development, ratification and implementation of the Sexual Harassment Policy were a positive result of increased awareness, and increased confidence in the organisation to deal with the issues. However I do believe that

the reduction in complaints in the latter years of my employment demonstrated a lower incidence of such behaviours.⁶⁹⁰

Review of sexual harassment complaints in Operation Loft files

- 6.55 The statistics in Table 6.1 are drawn from the police database records of formal and informal complaints over six years from July 1995. In contrast, my own review of sexual harassment complaints within the police was based on complaints that had been the subject of a formal police investigation and formed part of the Operation Loft files. These files spanned the period 1979 to 2005. Of the 313 complaints I reviewed in the Operation Loft files, there were 76 complaints involving allegations of sexual harassment by 39 police members. The outcomes of these complaints are shown in Table 6.2.
- 6.56 The 76 sexual harassment complaints reviewed fell into the following time periods:
- Two complaints were made against two police officers in 1979 (one complainant).⁶⁹¹
 - Eight complaints were made against five police members in the 1980s (seven complainants).⁶⁹²
 - Thirty-one complaints were made against 25 members in the 1990s (22 complainants).
 - Thirty-five complaints were made against eight members between 2000 and 2003 (35 complainants).
- 6.57 The files show a clear progression in terms of how sexual harassment was viewed within the police and what response it elicited.

Sexual harassment complaints in the 1980s

- 6.58 In the early years of the period under review, women experienced considerable problems in having sexual harassment complaints upheld. A case in the early 1980s in which a police officer was alleged to have touched a woman's bottom and breasts and followed her around the workplace was investigated in two parts. It does not appear that the totality of the conduct was ever considered. Instead, the alleged indecency element of her complaint was classified as a criminal offence and was cleared as inconclusive. The second part of the complaint did not, in the district commander's view, amount to a disciplinary breach and was classed as "trivial".⁶⁹³
- 6.59 Various other issues emerged from the 1980s cases that I reviewed. One file recorded that the officer had a "bad attitude to women", which was apparently tolerated for some time, with colleagues unwilling to complain. In the event a complaint from a civilian eventually led to disciplinary charges being laid.⁶⁹⁴ This case was a good example of how more rigorous supervision of inappropriate behaviour could have prevented more serious incidents.

690 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, pp. 18–19.

691 Operation Loft file LT 113. Further complaints were made against one of the police officers by other complainants in 1988.

692 In Operation Loft file LT 136 the complainant makes two complaints, one in 1988 and another in 1991.

693 Operation Loft file LT 150.

694 Operation Loft file LT 149.

Table 6.2: Outcomes of investigations into 76 sexual harassment complaints in the Operation Loft files, 1979–2005

Outcomes	Number of members	Number of complaints
Internal discipline – cautioned	2	2
Internal discipline – written warning	1	2
Internal discipline – reprimanded	3	4
Internal discipline – adverse report	2	2
Internal discipline – proven ^a	5	14
Internal discipline – not proven	1	1
Internal discipline – counselled	10	10
Dismissed ^b	2	3
Internal discipline – resolved under Sexual Harassment Policy ^c	3	3
Internal discipline – disengaged prior to tribunal hearing	3	21
Internal discipline – resigned or disengaged during investigation	2	3
Not upheld	6	9
Complaint withdrawn	2	2
Total	42	76

The total number of police members in terms of outcomes (42) is greater than the number of individuals involved (39) because three police members fall into three categories of outcome.

- a Operation Loft file LT 149. One complaint by one complainant was proven, and one complaint by another complainant was not proven.
- b Operation Loft file LT 44: one officer was charged and discharged under section 19 of the Criminal Justice Act for the same complaint before being dismissed. Operation Loft file LT 145: one officer was charged and acquitted for the same complaints after being dismissed under the code of conduct for non-sworn staff.
- c Operation Loft file LT 91. One officer later disengaged prior to a tribunal hearing regarding complaints by other complainants.

6.60 In another 1980s case the Deputy Commissioner of Police, in a letter to a district commander, said that the fact that the complainants had allowed time to pass before making the allegations “must seriously weaken the complaint”.⁶⁹⁵ Such a complaint would be better handled today. In their submissions on the subject the police told me,

The particular problem with that file was the administration’s lack of understanding regarding the good reasons why complainants may delay

⁶⁹⁵ Operation Loft file LT 113.

before making a complaint, and that is certainly not a factor that would be held against them today.⁶⁹⁶

Sexual harassment complaints since 1990

- 6.61 During the 1990s attitudes to the investigation of sexual harassment complaints gradually began to change. The Operation Loft files reveal increasing recognition by police officers of the existence of unacceptable attitudes and efforts to combat them.

Recognition of problem areas

- 6.62 An inspector's report from 1991 recognised the need to prevent further instances of sexual harassment occurring:

I believe that the [complainant] enquiry is the "tip of the iceberg". I cannot help but wonder how many other females have been subjected to such behaviour and declined to come forward. I am committed to introducing a framework that will prevent a re-occurrence of what [the complainant] had to undergo. I have already introduced some interim measures, and would appreciate an opportunity of discussing some major policy changes which I believe are necessary if we are to treat this matter with the concern it deserves.⁶⁹⁷

- 6.63 In another example that demonstrated how senior police officers viewed sexual harassment complaints in the 1990s, Assistant Police Commissioner Wilson in a letter to the personnel officer wrote,

This particular case of sexual harassment ... is a classic example of the underground nature of sexual harassment in the New Zealand Police. Here is a case where this officer had sexually harassed other female police officer victims in [place name] in 1991, but none of the victims officially reported the matter or took action. All later explained the failure to report over a range of perceptions including fear, stigma, confusion, not wanting to get brother officers into trouble and lack of understanding of the organisation's policies.

The offending officer in this case developed a proclivity for sexual harassment and had it not been for the courage of the [place name] victim, he may well have gone on to pursue such behaviour for years to come.

This particular case and its history is very strong anecdotal evidence pointing to an internal police culture of discrimination by male officers on female officers, with indications that it is probably deep seated and relatively common.⁶⁹⁸

- 6.64 The commitment of the police to recognising and acting to prevent instances of sexual harassment occurring was similarly reflected in a letter from an assistant commissioner after the 1996 investigation of a sexual harassment complaint:

We are a modern organisation with responsibilities under legislation to ensure that sexual harassment does not flourish within. The Commissioner is committed to being a good employer and does not

⁶⁹⁶ New Zealand Police, Submissions in response to draft report, 20 June 2006, pp. 129–130.

⁶⁹⁷ Operation Loft file LT 188.

⁶⁹⁸ Operation Loft file LT 146.

regard favourably inappropriate behaviour from his commissioned officers who should know better.

...

Accordingly, I refer this file to you in order for [the alleged offender] to be reprimanded for his misconduct on this occasion. [The alleged offender] is to be left in no doubt that his behaviour was totally inappropriate and will not be tolerated in future.⁶⁹⁹

Persisting negative behaviour

6.65 Despite the increased determination by senior police to stamp out sexual harassment, there were still unsatisfactory attitudes demonstrated within the organisation.

6.66 In 1997 a woman police officer complained of sexual harassment and detailed a number of instances, one of which was the hanging of commercial posters of a woman modelling a sports bra and a lingerie poster in the gym; these were taken down when she complained, and then rehung anonymously. The police report described the reaction of another policewoman at the station: “[She] could not understand what [complainant policewoman’s] problem was in respect of the commercial posters of a woman modelling a sports bra. They did not concern her at all.”⁷⁰⁰ During the investigation, the police welfare officer said that he had been told by other women leaving the station that a contributing factor to their leaving had been “attitudes of some staff to women and working with them”.⁷⁰¹ He could not be more specific because he had been told in confidence.

In a police report on this case, a legal adviser wrote,

It seems to me from the file that, from the outset, the attitude has been taken that the problem was that of the complainant, rather than that of the Police or those complained of. ...

I am of the very clear view that this file contains material which reflects a marked lack of objectivity on the part of many involved in the matter.⁷⁰²

6.67 In 2002 an entire team made a formal complaint of sexual harassment against their supervising officer.⁷⁰³ During the course of the investigation it was established that he had been displaying sexually inappropriate behaviour since 1994 and his reputation was well known. An officer who had worked with the alleged offender for a number of years was interviewed during the investigation. He had told the interviewer that it was a well known fact that the alleged offender “had a huge reputation for being a ladies man and for being responsible for acts of sexual harassment”.⁷⁰⁴

The officer went on to say,

Without a doubt, everybody who had worked at [police station] for any period of time and who knew [the alleged offender] would have been well aware of his reputation and some of his antics.⁷⁰⁵

699 Operation Loft file LT 147.
700 Operation Loft file LT 59.
701 Operation Loft file LT 59.
702 Operation Loft file LT 59.
703 Operation Loft file LT 139.
704 Operation Loft file LT 139.
705 Operation Loft file LT 139.

Another officer said that the alleged offender, with whom she had worked in 1994–1995, had acted in an inappropriate manner to her on several occasions. She explained that she did not report these incidents at the time because she “didn’t really want to rock the boat”. She said, “I was just one person, I thought I could deal with it.”⁷⁰⁶

A different officer, who worked with the alleged offender in 1996–1997, said,
[Police Officer] had told me that any female on section that wore a dark coloured bra under her Police shirt got their bra strap pinged and I didn’t think anything of it. One day during line up he came up behind me and pinged my bra and told me that I was wearing a dark coloured bra.⁷⁰⁷

When asked if she thought that was unusual she replied,

No. For the short time I was on section I just took it to be part of his personality and that’s how he sort of dealt with or what he did with the women on section. I wasn’t singled out. It was across the board. It was his general behaviour towards the female Constables.⁷⁰⁸

After the officer’s promotion to supervisor the area controller called his predecessor in for a meeting and commented that “[Officer] was a bit sleazy and a bit of a lad”.⁷⁰⁹ When the formal complaints were laid, the officer was stood down and disengaged so that the police were unable to proceed with any internal disciplinary charges.

Submitter J’s allegation of sexual harassment

- 6.68 As mentioned earlier I held private hearings into the police investigation of 10 individual complaints in total. I discussed nine of these investigations (concerning Submitters A–I) in Chapter 3. I will discuss the tenth, a sexual harassment complaint from the 1990s, in this section of the report.
- 6.69 Submitter J had a number of complaints with the police. Only one of those was within my terms of reference; that related to the handling of her complaint of sexual harassment. The family of Submitter J presented this matter on her behalf because she had since died.
- 6.70 In 1994, Submitter J, a probationary police officer, made a complaint that she was sexually harassed by her sergeant. She was given the option of following the formal complaint process or resolving the complaint informally. She selected the informal process and expressed a strong desire not to have to work with the subject of the complaint again.
- 6.71 The police told me that the informal resolution process used in 1994 appears to have been a draft or interim policy, though it was a reasonably comprehensive document that provided a range of options for complainants. They said that the policy that guided the police was very similar to the draft published later that year.⁷¹⁰ They produced a copy of that for me. According to the policy the informal process involved a discussion of the issues; a clear statement by the complainant and/or the mediator to the harasser on the impact the

⁷⁰⁶ Operation Loft file LT 139.

⁷⁰⁷ Operation Loft file LT 139.

⁷⁰⁸ Operation Loft file LT 139.

⁷⁰⁹ Operation Loft file LT 139.

⁷¹⁰ New Zealand Police, Submissions, 18 August 2005, pp. 2–3; New Zealand Police, “Policy and Procedure for Dealing with Complaints of Sexual Harassment” (draft), 30 December 1994. References made to the police policy at the time of dealing with Submitter J’s complaint are drawn from the latter document.

behaviour has had; and appropriate action as determined and agreed upon by the parties in full resolution of the matter. The role of the person handling the mediation was to mediate between the parties to effect a resolution of the complaint. If the alleged harasser did not admit to the allegation, the matter could not be informally resolved and should be referred back to the complainant for a decision on the future direction of the complaint. The complainant could then either pursue a formal investigation or decide not to pursue it.⁷¹¹ This ensured that the complainant kept control of the process.

- 6.72 I have two concerns with the police actions in respect of compliance with the policy.
- 6.73 My first concern is that the policy states that the role of the person handling the mediation is “to mediate between the parties to effect a resolution of the complaint”. In this case I could find no evidence of any real mediation attempts. When the subject of the complaint was interviewed by the sexual harassment officer, the subject was advised that he would be “transferred as soon as expedient to other duties off section”. The subject responded that that was “a bit onesided” and that he was “being used for some goal that [Submitter J] has”.⁷¹² Submitter J wrote later that she had wanted the subject to be transferred to another station and she was unhappy with the final decision to transfer him to another section in the same station.
- 6.74 The informal resolution process was supposed to result in “Appropriate action as determined and agreed upon by the parties in full resolution of the matter”. The material presented to me did not suggest to me that either party was satisfied with the outcome even if at the time they appeared, to some at least, to accept the situation.
- 6.75 My second concern was that the policy said, “If the alleged harasser does not admit to the allegation or behaviour, the matter cannot be informally resolved and should be referred back to the complainant for a decision on the future direction of the complaint.” This seems to be a logical step where the subject does not admit the allegation.
- 6.76 At the interview dealing with Submitter J’s complaint, the subject denied the allegation.
- 6.77 The police submitted that transferring the subject of the complaint was preferable to placing the submitter in the position of “having to choose between dropping her complaint and pursuing the formal process she had been adamant she wished to avoid”.⁷¹³ I can see some sense in this approach in an appropriate case. However, it is clear that in this case it in fact led to other difficulties for Submitter J, which were obviously not within the thinking of the police when they made this decision.
- 6.78 Regardless of the subject’s denial, it was decided at an early stage to transfer him to another section in the same station. He said that he was angry and upset about the complaint. I read evidence in the files that there were times when the subject would ignore the submitter when their paths crossed for example in the muster room. I also read a constable’s account that the subject had been “spreading it around the [place name] station that [Submitter J]

711 New Zealand Police, Submissions, 18 August 2005, pp. 2–3; quoting from New Zealand Police, “Policy and Procedure for Dealing with Complaints of Sexual Harassment” (draft), 30 December 1994, pp. 11–12.

712 Operation Loft file LT 201. Unless otherwise referenced, all material in this passage is drawn from my review of Operation Loft file 201.

713 New Zealand Police, Submissions, 18 August 2005, p. 4.

had made it up – that it was all a complete fabrication”. Further, I read that Submitter J commented to a fellow officer that she wished she had never made the complaint and she was treated “as if she was worse than the person she complained against for complaining”.

- 6.79 I could see no evidence in the files of any substantive follow-up to monitor Submitter J’s satisfaction with the resolution. The police told me that the replacement sergeant was selected because she was an appropriately sensitive person with full knowledge of the complaint and was available to keep an eye on Submitter J’s wellbeing. She remained as supervisor until Submitter J left the station later in the year.⁷¹⁴ However, I read that this sergeant was relieving a sergeant at another station for the first four to six weeks so would not have seen the submitter or been aware of the submitter’s situation in the station for something in the region of half the three-month period she was “monitoring”.
- 6.80 A further concern I have with this case is the differing accounts of the submitter’s indicated preference for resolution and also the different accounts of the actual resolution.
- 6.81 Submitter J met with two members of the sexual harassment committee to discuss what action to take. She indicated that she preferred the informal resolution process and that she would like the subject of the complaint to be transferred. The unsigned minutes of that meeting reflect that the transfer was to be to other duties. In preparing for her employment mediation (which did not occur until two years after this incident), Submitter J, however, wrote that she understood the transfer was to be to another station. She felt let down when he was transferred only to a different section within the same station. She still had to see this officer at the change of shifts. She wrote, “This was the sort of situation I had wanted desperately to avoid. Another sergeant (x2) that had let me down.” She expressed dissatisfaction to her family and to some police colleagues.
- 6.82 One account (written about three years after the event) of the meeting to resolve the complaint was from a participant who recalled it being discussed that the subject of the complaint could not stay at the station because it was not fair when the submitter would still have to have some dealings with him. She went on to say that as far as she was aware the subject was moved immediately to another station (the subject was, in fact, transferred to another station some four months later for reasons unrelated to the sexual harassment). Another account (11 years later) was that the decision was that shown in the minutes: that the subject was to be transferred from one section to another in the same station. This person’s account went on to say that there was “no doubt that [Submitter J] would be comfortable with the decision; the only concern that she expressed to me was that she not have to work with [the subject] again, and [Submitter J] had herself raised the possibility of this being achieved by a change of Section”.⁷¹⁵
- 6.83 Had the resolution of the complaint been evidenced in writing at the time and signed by all participants it would have been clear as to what was the correct account and prevented the later misunderstandings and unpleasantness. Even though it was an informal process, I believe that it would be advantageous to all concerned to have any resolution of sexual harassment complaints finalised in writing and signed by both parties.

714 New Zealand Police, Submissions, 18 August 2005, p. 5.

715 New Zealand Police detective sergeant, Affidavit re Operation Loft file LT 201, 4 August 2005, p. 4.

- 6.84 I note that in the current Sexual Harassment Policy there is no requirement for a mediated resolution to be in writing. I recommend that the policy be amended to include this requirement to ensure clarity.
- 6.85 In summary, the police are to be commended for acting promptly in response to Submitter J's complaint. However, the areas where the police failed to comply with the policy at the time meant that the submitter lost control of the process. It was determined from the outset that the subject of the complaint would be transferred to another section. Contrary to policy, when the subject denied the allegations, the submitter was not given the option of proceeding with a formal investigation or withdrawing the complaint. These facts, combined with the lack of a comprehensive monitoring of Submitter J, led to a stressful working environment for her. It is clear that, rightly or wrongly, she felt let down by her superiors and by the organisation as a whole.
- 6.86 This file showed how the police dealt with one particular complaint when the Sexual Harassment Policy was in its formative (and draft) stage. It reveals some important lessons, particularly the need to record decisions and outcomes in an unambiguous way. As I note below, I have seen some great improvements since this time.

Improvements over time

- 6.87 There is evidence that since the mid-1990s there has been significant change in the culture within New Zealand Police about attitudes towards sexual harassment.⁷¹⁶ Since the late 1990s, several cases have emerged that demonstrated that women within the police were beginning to have the courage to stand together to complain.⁷¹⁷ Several officers who were the subject of numerous sexual harassment complaints were ousted from the police.⁷¹⁸
- 6.88 In reading the sexual harassment complaint files I was able to trace significant improvement that took place after the appointment of Ms Gracey as Senior Advisor EEO in 1994.⁷¹⁹ In her evidence to me Ms Gracey noted, "I believe that over time there was a far greater commitment by all staff to dealing with inappropriate behaviour at the time it arose."⁷²⁰ She described the changing attitudes she had observed:

In the early years (1994 to about 1998) Sergeants' courses were the most difficult; my impression was that some Sergeants regarded some aspects of EEO and the Sexual Harassment Policy as being imposed for the sake of political correctness rather than as having any relevance to policing. However that changed over time. Sergeants started to approach me about possible inappropriate behaviours they had become aware of, and expressed a desire to put in place realistic boundaries and expectations on their staff. I would describe those changes as a 'maturing' and an acceptance of good management practices.⁷²¹

716 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 25.

717 For example, Operation Loft files LT 86, LT 87, LT 94, and LT 139. The complaints date from 1997 to 2002.

718 For example, Operation Loft files LT 86, LT 94, LT 131, and LT 139. The complaints date from 1999 to 2002.

719 Noted in transcript of hearing, 11 November 2005, p. 64.

720 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 26.

721 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 15.

- 6.89 Ms Gracey noted the effects of increasing awareness of the policy and confidence in its application:

my perception ... at the time of my retirement [2004] was that most staff were well aware of sexual harassment and the implications of a complaint. The number of staff who dealt with sexual harassment matters themselves (at the time of the incident) became more common as their confidence increased. I believe this had the effect of reducing the number of sexual harassment complaints made under the Sexual Harassment Policy because issues were being resolved, at the time, by those involved. That has to be viewed positively.⁷²²

- 6.90 Another long-serving police officer, Inspector John Mitchell, Policing Development Manager, Auckland City Police District, offered his view on change in police culture:

7. When I first joined Police [1975] I witnessed overt sexual harassment (in terms of unwelcome verbal or minor physical approaches) of some female staff, and I heard openly racist or sexist remarks. ...
8. By the late 1980's and early 1990's, in my opinion, the Police culture had changed significantly and it was quite clear that such behaviour was not widely tolerated. Police recruiting policies had changed to remove the artificial cap on the employment of women, so that large numbers of younger women were recruited. By 1995, when I was a shift inspector, over half of the frontline constables on my shift (section four) across the district were female. A great deal of equality of work practices and culture was occurring naturally.
9. That is not to say that everything was perfect. In my experience there has always been extreme reluctance by staff to formally report sexual harassment. I understand from the literature that this is common in many workplaces.⁷²³

Reluctance to take formal action

- 6.91 Despite the improvements in attitudes to sexual harassment, there are, as indicated by Inspector Mitchell's remarks above, persistent difficulties in encouraging potential complainants to make official complaints.
- 6.92 Inspector Mitchell told me that from 1995 to 2003 he was informally made aware of about eight complaints of sexual harassment, two of them quite serious although falling short of criminal behaviour. He said, however, that in none of these cases were the complainants prepared to make formal complaints or statements despite personal assurances from senior staff up to and including the district commander that they would receive total support. He explained that in two cases mediation was arranged with a favourable outcome, and three of the alleged offenders were spoken to and transfers arranged. In the other cases no formal action was taken at the insistence of the complainants.⁷²⁴

722 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, pp. 31–32.

723 Inspector John Mitchell, Policing Development Manager, Auckland City Police District, Brief of evidence, 14 November 2005, 14 November 2005, paragraphs 7–9.

724 Inspector John Mitchell, Policing Development Manager, Auckland City Police District, Brief of evidence, 14 November 2005, paragraphs 9 and 10.

- 6.93 Professor David Bayley, an international expert on police culture and practices, suggested to me that merely looking at the number of complaints from staff about possible sexual harassment could be misleading. He said,

there is a tendency ... in Police for people to conclude that if there aren't any complaints everything must be okay and I think that's not right.

He also said that there are many reasons why women may be hesitant to complain about behaviour that makes them uncomfortable or is indeed outright abusive because of the stigmatisation that happens. He added,

We have surveys in the United States that show that 60 percent of policewomen believe they have been harassed at some point. 95 percent of them have never complained.

... what I am suggesting here is that it may be important to find other ways of auditing the comfort level of policing in the occupation⁷²⁵

- 6.94 I agree with these comments by Professor Bayley. Based on my experience in management I believe that women sometimes do not want to create conflict in their work environment; and based on the police files I read, I could see the difficulties involved in policewomen speaking up about sexual harassment in the workplace. One policewoman summed it up well on a file from the late 1990s:

I didn't want to be seen as a nark and I didn't want the staff to feel they had to tread carefully around me. I felt very uncomfortable in making a complaint against a [police officer of a superior rank] as they have power over you and the ability to affect your appraisal and work generally.⁷²⁶

- 6.95 At this point I would reiterate that sexual harassment is not defined by gender. Indeed, evidence provided to the Commission indicated that men in the police force had complained of sexual harassment from women and from other men.⁷²⁷ Nevertheless, it is the safety of women in the work environment that tends to be the focus of attention.

Current and future safety of women in the police workplace

- 6.96 The changes to the policy and processes for dealing with sexual harassment since the mid-1990s appear to have been effective. I heard evidence from several officers and some female staff who assured me that the work environment within New Zealand Police is now a safe one for women. One female officer, who had made a complaint of sexual harassment at the start of her police career but who had persisted with her choice of career, described the work environment and police culture as being now a very positive one.

- 6.97 The Hyman report, *Women in the CIB*, which was provided to me during the inquiry, outlined issues of concern by women police officers in the Wellington CIB.⁷²⁸ This

725 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, pp. 15–16.

726 Operation Loft file LT 86.

727 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, Attachment 12: "Sexual Harassment Complaints New Zealand Police as Recorded Nationally".

728 Associate Professor Prue Hyman, *Women in the CIB: Opportunities for and Barriers to the Recruitment, Progress, and Retention of Women in the Criminal Investigation Branch (CIB)*, July 2000, available at <http://www.police.govt.nz/resources/2000/women-in-cib/>, accessed 19 September 2006.

report was produced at the request of the New Zealand Police in response to concerns expressed by the National Women's Consultative Committee.⁷²⁹ The report reflected the variations in experiences of individual staff in the CIB, from having women very happy with their work environment to those experiencing a range of behaviours that were acknowledged by Police Commissioner Robinson to be inappropriate and in need of immediate change.⁷³⁰ The Police Executive Committee accepted the report as a working document in order to assist staff and managers in implementing the necessary changes.⁷³¹

- 6.98 I note, however, that one of the officers appearing on behalf of the police told the Commission that the report reflected the views of people who were negative about the organisation and that it did not reflect her views.⁷³² Another witness for the police also commented that the study was not “fully balanced” in that some people who had been reported extensively had self-selected to be interviewed rather than being part of a representative sample.⁷³³ Nevertheless, I consider that the Hyman report indicates a need for careful monitoring of the work environment for women police officers.
- 6.99 The police are to be commended for the way in which they have worked to ensure that their workplace is safer in terms of freedom from sexual harassment. It is essential that these gains be sustained over time. To ensure this, there should be continued monitoring of the Sexual Harassment Policy. I suggest that this monitoring take the form of an annual audit of the safety of women staff members (at least until such time as the numbers of men and women in the New Zealand Police force are in closer balance, as is recommended later in Chapter 7, recommendation R50).

ISSUES ABOUT THE ADEQUACY OR EFFECTIVENESS OF STANDARDS

- 6.100 In this section of the chapter I discuss two areas where the adequacy or effectiveness of standards of conduct in relation to personal behaviour of members of the police has been brought into question.

Standards of sexual conduct towards members of the public

- 6.101 I am concerned that no policy or guidelines exist about sexually inappropriate conduct by police officers towards members of the public, including the forming of relationships between officers and people with whom they come into contact in the course of their work. This contrasts with the issue of sexual conduct towards colleagues in the police workplace (discussed in the preceding section), in respect of which there are comprehensive policies and procedures.

⁷²⁹ The National Women's Consultative Committee was established by the assistant commissioner for human resources as an EEO initiative. It was described as the primary adviser to police management on the issues facing women in the organisation by Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 28.

⁷³⁰ Police Commissioner Robert Robinson, Foreword of *Women in the CIB* (see footnote 728), July 2000.

⁷³¹ Police Commissioner Robert Robinson, Foreword of *Women in the CIB* (see footnote 728), July 2000.

⁷³² Senior Sergeant Andrea Jopling, Transcript of hearing, 9 November 2005, p. 6.

⁷³³ Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Transcript of hearing, 11 November 2005, p. 50.

Personal vulnerability and power imbalance

- 6.102 By the very nature of their duties police officers deal with a wide range of people, including many who may be in a vulnerable state either because of their personal circumstances generally or as a result of having been recently affected by a crime or other trauma (such as a death in the family). Members of the public often have no choice but to place high levels of trust in police officers in these circumstances.
- 6.103 Moreover, police officers hold a position of authority in our society. They are given significant coercive powers for the benefit of the community, and thus there will always be a power differential in their dealings with members of the public.
- 6.104 As with others who have professional dealings with the public, members of the police must apply the highest standards of conduct and take extreme care to avoid taking personal advantage of any situation of vulnerability or power imbalance, such as those arising from an individual
- being the victim of a crime or suffering a recent trauma (such as the death of a family member)
 - being a suspect in a criminal investigation
 - having limited means or lacking family support networks
 - having some form of disability (intellectual, psychological, physical, sensory, or neurological) that might affect their ability to give free and full consent to a sexual relationship and which also may mean that their credibility is doubted
 - having previous convictions or criminal associations, which may mean their credibility or truthfulness is doubted
 - being subject to (or a family member being subject to) legal processes (for example, being on probation, having the prospect of diversion,⁷³⁴ or fearing the loss of their children owing to care and protection issues)
 - being held in custody
 - being a young person.
- 6.105 Inappropriate sexual behaviour in a professional capacity such as the use of sexual banter, the making of sexual advances, or attempting to form a sexual relationship can bring the police into disrepute in any circumstance, but is especially inappropriate in relation to individuals in these types of situation.

Evidence of abuse of trust

- 6.106 The evidence I considered demonstrates that there have been instances when police officers have abused the trust placed in them by members of the public by engaging in these forms of behaviour.

Unwanted advances and sexual assaults

- 6.107 I saw some cases where police conduct resulted in allegations of sexual assault. For example, the complainant in a 1993 case had been stopped for a minor traffic offence. The officer

734 For information on diversion, see footnote 22.

initially denied the woman's complaint of indecent assault, but eventually admitted the incident and resigned from the police. The police decided not to prosecute on the basis that the complainant did not want to give evidence in court.⁷³⁵

- 6.108 In a case from 1995, the complainant met the police officer when she called the police as a result of a domestic incident with her husband. The police officer later returned to her home, while on duty, and indecently assaulted her. The complainant did not want the matter dealt with in open court and as a result it was put before a disciplinary tribunal. The tribunal found the police officer guilty of the charges and he was subsequently dismissed from the police. The tribunal stated,

His relationship with the Complainant commenced in circumstances in which he as a Police officer was dealing with her to all intents and purposes as a victim with the particular emotional and other vulnerabilities associated with that status.⁷³⁶

- 6.109 In this case the complainant said that the unwanted advances of the police officer led her to have her ex-husband come back into the home in order to provide her with some security:

I took the step of having [complainant's ex-husband] come back into the house because at this point, Constable [name] actions had gone to the point where I was concerned that he would return. I didn't know whether he would or not or what he would do if he ever returned. I have always trusted Policemen and had trusted Constable [name], right up to the point where he had made advances. My distrust for him came about when he refused to accept no for an answer and was persistent in his visits and in sexually touching me, after I had made it clear to him that he was not to do this. I didn't know what he was going to do next and had no choice but to get [complainant's ex-husband] to come back into the home. At one stage during the last incident when he was trying to undo my jeans, I actually thought whether or not I should give into him just to get it over and done with so that he would leave me alone. By giving in to him I actually thought that by giving him sex he would go away and leave me alone.⁷³⁷

- 6.110 Several cases involved women held in custody in police cells. In 2001 a police officer was convicted of indecent assault and sexual violation after he forced a woman who was being held in the cells and faced arrest for theft to perform a sexual act on him. The officer had told the woman that she would go to prison and lose custody of her son if she did not comply with his wishes.⁷³⁸

- 6.111 In 1984 there were two cases within a few days of each other regarding the same station and involving allegations of indecencies against two women who were being held in the cells.⁷³⁹ Neither of these complaints was upheld because there was insufficient evidence to lay charges. However, the investigating officer in the first case offered an opinion on the veracity of the complaint:

Bearing in mind the complaint against the Police made by [the second complainant], alleging indecency in the cells by a male Constable on [date],

735 Operation Loft file LT 123.

736 Operation Loft file LT 104.

737 Operation Loft file LT 104.

738 Operation Loft file LT 64.

739 Operation Loft files LT 166 and LT 137.

two days after this incident, and the same shifts were on duty, I have no hesitation in saying this complaint is genuine.

...

I conclude the acts complained of did happen but the likelihood of the offender being discovered is remote.⁷⁴⁰

- 6.112 In respect of the second complaint, the Deputy Commissioner of Police wrote to the district commander giving his assessment of the evidence:

I reject the conclusion that the complaint of indecency is unfounded. There is insufficient evidence to support such a clearance and until the identity of the 'male officer' who visited the complainant's cell is established the result must remain inconclusive.⁷⁴¹

Inappropriate consensual relationships

- 6.113 I also saw cases where apparently consensual sexual relationships were formed in circumstances that were clearly inappropriate. For example, when her husband was facing charges arising from a domestic dispute in 1996, Submitter E met with the diversion officer to discuss diversion. Subsequently she had a sexual relationship with him. After her complaint to the police that the officer had used his position to engage in sexual activity with her, an internal investigation was undertaken. Because the actions complained of were taken as consensual there was no opportunity for criminal charges to be laid. However, the police told me, "Had [police officer] not elected to retire, he would have undoubtedly faced serious internal disciplinary charges."⁷⁴² The officer retired on medical grounds.⁷⁴³ Counsel for the police submitted in this case, "Though [the relationship] was entirely consensual, the Police immediately recognised the inappropriate nature of the liaison ...".⁷⁴⁴ An internal police report on the same case stated that the police officer had misused his position.⁷⁴⁵
- 6.114 In another case involving diversion from the mid-1990s, two complainants who were subject to the diversion process had sexual relations with a police officer. In a police report on the case, a detective inspector said that although both complainants alleged a sexual relationship with the police officer ("the genesis of which was the diversion process"), only the second complainant alleged that sexual intercourse was consented to because of the position of authority and control the officer had over her.⁷⁴⁶ Although this case was dismissed, the detective inspector concluded that the central detail alleged against the police officer was in all probability true and that the officer was being untruthful in denying his alleged sexual relationship with both complainants.⁷⁴⁷
- 6.115 In other files the complainant was particularly vulnerable because of his or her youth or disability, or because of difficult personal circumstances. The case of Submitter B (discussed at paragraphs 3.130–3.135 and 3.191–3.198) involved a young woman

⁷⁴⁰ Operation Loft file LT 166.

⁷⁴¹ Operation Loft file LT 137.

⁷⁴² Submitter E, Operation Loft file LT 126; New Zealand Police, Submissions, 8 July 2005, p. 3. This case is also discussed in paragraphs 3.150–3.153.

⁷⁴³ Operation Loft file LT 126.

⁷⁴⁴ Submitter E, Operation Loft file LT 126; New Zealand Police, Submissions, 8 July 2005, p. 8.

⁷⁴⁵ Submitter E, Operation Loft file LT 126; New Zealand Police, Submissions, 8 July 2005, p. 7.

⁷⁴⁶ Operation Loft file LT 168.

⁷⁴⁷ Operation Loft file LT 168.

who in 1982 was placed in the home of a police officer, who subsequently had a sexual relationship with her over a period of some years. The young woman complained of sexual abuse and sexual assault which began when she was a teenager living in the police officer's house in his care. The officer was investigated but never faced disciplinary charges in relation to the sexual relationship he had with her. The police now accept that the complainant's complaints were handled inadequately at the time, the police having failed to pursue internal charges arising from the complaints of ongoing abuse and having failed to give closer consideration to criminal charges arising from the allegations of indecent assault before the complainant turned 16. The police also accept that it was unfortunate that no proper consideration was given to bringing charges when it became clear that the police officer had lied about the sexual relationship. The police have said that the police officer's conduct in the 1980s should have resulted in his facing serious charges before the disciplinary tribunal.⁷⁴⁸

- 6.116 A file from 1991 involved a 14-year-old male. The young complainant met the police officer concerned when he laid a complaint of indecent assault against another man (who was charged and convicted). The police officer established a close friendship with the boy, which subsequently led to incidents of indecent assault, for which the officer was arrested and charged. The alleged offender committed suicide before the matter went to court; however, the Police Complaints Authority subsequently upheld the complaint.⁷⁴⁹
- 6.117 In another file from the early 1990s, a young woman with an estimated mental age of 12 was assigned through a service organisation to do voluntary work for the Ministry of Transport, before the merger of the ministry's Traffic Safety Service with New Zealand Police. The officer in charge commenced a sexual relationship with the woman, which continued after the merger. The woman subsequently laid a complaint, saying that although she verbally consented to having sex, she did not feel that she could say no. The officer eventually admitted to having oral sex with the woman, but argued that he had not contravened any law or standard of conduct. Although no disciplinary charges were brought, the officer was strongly reprimanded for his unacceptable and exploitative conduct.⁷⁵⁰
- 6.118 The apparently consensual nature of a relationship does not mask its inappropriate nature if it arises from a power imbalance or one party's vulnerability. Three cases show how this became clear when an allegation of sexual assault was made at a later stage.
- 6.119 In a complaint arising from the mid-1980s, an officer investigating a road fatality entered into a sexual relationship with the wife of the deceased after supporting her through the trauma and its aftermath. This relationship developed into one allegedly involving group sex. The complainant subsequently made allegations of sexual offending but there was insufficient evidence to establish the complainant's lack of consent and/or the lack of the police officer's reasonable belief in her consent. Nevertheless, there seems little doubt that,

⁷⁴⁸ Operation Loft file LT 148; New Zealand Police, Submission, 10 August 2005, pp. 2 and 12; New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 124.

⁷⁴⁹ Operation Loft file LT 106.

⁷⁵⁰ Operation Loft file LT 75.

assuming the allegations are true, this police officer abused his position of trust and took advantage of the complainant's vulnerability.⁷⁵¹

- 6.120 In 1984 a schoolgirl who wanted to be a police officer had arranged through her school that for work experience she would go out on patrol with two police officers. She did this three or four times. She said that one weekend one of the officers called and asked her to a house to go out on patrol. Once at the house he had sexual intercourse with her while a second officer allegedly watched. Afterwards she said that she blamed herself for going to the address in the first place, and that she was discouraged from speaking about what had happened because, as she understood what was said, it would be embarrassing for her and her family. When she did eventually complain in 2004 she had difficulty recalling the detail because she had tried to block it out, and said that she could not remember how she ended up in the bedroom, but felt as if the officer took advantage of the situation. She said she did not mean for it to happen, but she was not forced. The officer admitted the sexual intercourse occurred and said it was purely consensual. There was not enough evidence of the complainant's lack of consent to prosecute the officers.⁷⁵²
- 6.121 Submitter D (whose case is discussed at paragraphs 3.88, 3.143–3.149, and 3.199–3.201) was going through a bitter custody dispute with her children's father in 1993 when she became involved with a police officer who worked on an aspect of her case. In 1995 Submitter D made a complaint of rape by the police officer. After an investigation by the police, and on the basis of legal advice, it was determined that a conviction was unlikely, and as a result no criminal charge was laid. Disciplinary proceedings were then commenced but the officer retired on medical grounds before the disciplinary charges were heard.⁷⁵³ The police commented that he would most certainly have been dismissed had he not disengaged.⁷⁵⁴

Effects of such conduct

- 6.122 I found these cases, and others like them, very disturbing. I saw evidence of the devastating effect on the people involved from the officers' conduct. For instance, Submitter E said,

My primary complaint was that I was abused by [police officer] at a time when I was in a vulnerable state, emotionally unstable and in need of support. I had regarded [police officer] as a senior member of the police and I had understood that he was helping me. ... Because of his role and seniority I had trusted him.

My mental and physical health was seriously affected ... for some time afterwards.⁷⁵⁵

Submitter B said that a doctor told her that she was suffering from post-traumatic stress disorder.⁷⁵⁶ Another complainant said that she has "fearful and petrifying flashback memories which make me worked up, tense and stressed out, often every few days".⁷⁵⁷ The complainant who was a schoolgirl on work experience said that after having sex with

751 Operation Loft file LT 219.

752 Operation Loft file LT 218.

753 Operation Loft file LT 1.

754 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 125.

755 Operation Loft file LT 126; Submitter E, Statement of evidence, May 2005, pp. 4 and 5.

756 Operation Loft file LT 148; Submitter B, Statement of evidence, 15 August 2005, p. 10.

757 Operation Loft file LT 75.

the officer she no longer wanted to join the police. Looking back at the impact of the incident she observed,

I didn't really give a shit about school after this happened to me. I went to eat my lunch and see my friends and play sport. I remained an average student.

I no longer held the police in high regard. I have never stressed to my children that going to a policeman is a safe option if they were in trouble, which is something that every parent would like to be able to do.

I never told any one at home about what happened to me – I was too embarrassed and ashamed about what had happened.

I was also shocked about what they had done to me, I didn't go there with the intention of anything like this happening.⁷⁵⁸

The need for standards on sexual conduct towards members of the public

6.123 The police unreservedly accepted that any breach of the professional trust the community places in the police is wholly unacceptable. However, they submitted that lapses are generally the result of bad judgment or an arrogant conviction that the officer could “get away with” the conduct in question, rather than any lack of awareness of the behaviour the police expect.⁷⁵⁹

6.124 I consider that two forms of response are needed to the types of cases summarised above. The first is the need for the police to clearly specify the types of actions or behaviour that a member of the public could reasonably interpret as sexually inappropriate or unprofessional. I was very surprised to find that none of the 42 listed offences set out in regulation 9 of the Police Regulations explicitly addresses the misuse of an officer's position of power to have sexual relations, particularly with vulnerable people with whom they come into contact in the course of their work. Nor is there any reference to this aspect of misconduct in the draft code of conduct for sworn members.

6.125 The trust that members of the public place in the police is well placed in the majority of instances. I also acknowledge the police submission that said,

The evidence shows that (again with very isolated exceptions, such as [Submitter B's] case) the Police have responded appropriately when alerted to professional misconduct of this kind.⁷⁶⁰

However, I believe that a proper response to cases of inappropriate sexual conduct requires the expected standards of conduct to be spelt out very clearly. A policy is needed that would clearly specify the boundaries for appropriate sexual conduct for police officers and describe any words, actions, or behaviour that could reasonably be interpreted as sexually inappropriate or unprofessional.⁷⁶¹

6.126 Secondly, there is the question of whether it is ever appropriate for a police officer to become involved in a sexual relationship with a member of the public with whom the

⁷⁵⁸ Operation Loft file, LT 218.

⁷⁵⁹ New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 126.

⁷⁶⁰ New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 126.

⁷⁶¹ See paragraphs 6.228 to 6.232 for an outline of the New Zealand Public Service Code of Conduct.

officer has come into contact in the course of his or her work, even if this follows an initially professional form of contact. I believe there is also a need for clear direction on this issue. The problems associated with such relationships are not limited to the police. It is well known that vulnerable people can be susceptible to sexual advances from those they trust to help them through a difficult period in their lives, and that when a relationship develops the participants can have differing perceptions about the extent to which it is consensual. To my knowledge, a number of professions now have rules and guidelines about the formation of relationships with clients where power differentials exist (for example, those of health professionals, lawyers, and social workers).⁷⁶²

6.127 I outlined my concerns about this issue on several occasions during the hearings, and as my inquiry progressed, I was informed that Police Commissioner Robinson had decided that there should be in future a direction to all officers regarding sexual relations with certain people they encountered in the course of their duties. Before his retirement Police Commissioner Robinson directed that the necessary policy work be undertaken to enable future police commissioners to direct that certain personal associations be prohibited, consistent with similar restrictions that apply to other areas, for example the medical profession.⁷⁶³

6.128 Police Commissioner Robinson explained that he had in mind “a direction that will ensure that Police members do not engage in personal relationships with vulnerable members of the community, especially where the nature of the association results in a power differential, or might give rise to a suggestion that the other party has been the victim of exploitation”.⁷⁶⁴

6.129 Police Commissioner Robinson’s approach was supported by Professor Bayley. He commented on the issues associated with power differentials in the particular context of sexual abuse:

Very often in that situation, and this has to do with trainers in the Police College, it also has to do with Police investigators dealing with vulnerable females in the public, what sometimes happens is that the person will say I had consent, the person consented to whatever took place. The Police in New York are now saying that is never an acceptable excuse for sexual abuse and sexual activity when there is a power differential.

That’s the rationale that underlies this rule, that you cannot come back and say, “But she consented” if there’s a power differential ... by definition a person cannot consent if there is a constraint as a result of the person being an instructor, as result of the person being a uniformed Police Officer. It is inherently constraining and eliminates the possibility for consent⁷⁶⁵

6.130 Professor Bayley suggested that there need to be very clear guidelines in place about sexual relationships between people in positions of authority and those with whom they come into contact in the course of their work.⁷⁶⁶

⁷⁶² See for example *Sexual Boundaries in the Doctor-Patient Relationship: A resource for doctors*, Medical Council of New Zealand, Wellington, updated October 2006, available at <http://www.mcnz.org.nz>, accessed February 2007.

⁷⁶³ Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 13.

⁷⁶⁴ Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 13.

⁷⁶⁵ Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 22.

⁷⁶⁶ Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 22.

- 6.131 In developing their policy and directive, the police should draw upon relevant examples of sexual ethics guidelines in professions such as health and social work. One of the key questions is whether the approach to be adopted should be one of “zero tolerance” of relationships with any member of the public with whom a police officer has come into contact in the course of his or her duties. I noted that in the case involving Submitter D, the police disciplinary tribunal contemplated that the formation of relationships does not always amount to “disgraceful conduct” in the context of the current disciplinary system:

In a theoretical sense at least the issue is not without some difficulty. It is not difficult to conceive of circumstances where a personal relationship of an intimate kind might develop between a Police officer and a member of the public from what is initially professional contact arising from the Police officer’s duty which will not amount to disgraceful conduct within Regulation 9(12). However, I do not believe that is the situation here. The Defendant, as I have already said, clearly had in mind a sexual liaison with the Complainant.

... the Defendant was using his position as a Police officer and the opportunity that position afforded him to have contact with her in order to pursue a sexual relationship with her. In those terms his conduct as I have found it to be is disgraceful within the meaning of Regulation 9(12).⁷⁶⁷

- 6.132 This contrasts with the evidence given by Professor Bayley, who believed that there should be a rule: “... those in positions of authority should not be permitted to have sexual relations with any person over whom they are in a position of authority and where there is a power differential.”⁷⁶⁸ I favour this approach, and note that a “zero tolerance” approach is evident in guidance issued by other organisations to address the same sorts of power imbalance situations as those which exist for the police. For example, the guidance that the Medical Council of New Zealand has given to doctors about sexual boundaries in the doctor–patient relationship identifies the following rationales for its “zero-tolerance” position on doctors who breach sexual boundaries:

- trust in the relationship
- harm to the patient and doctor
- power imbalance
- impairment of clinical judgment.⁷⁶⁹

- 6.133 The Police Association expressed reservations about Police Commissioner Robinson’s initiative (see paragraph 6.127). The association cautioned against a prescriptive approach to defining inappropriate sexual relationships, although it agreed that there are some very clear-cut situations, for instance relationships with witnesses or complainants.⁷⁷⁰ The association told me that, in its view, the best method of ensuring that inappropriate relationships do not occur is through supervision, and that there are already disciplinary

⁷⁶⁷ Operation Loft file LT 104.

⁷⁶⁸ Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 22.

⁷⁶⁹ *Sexual Boundaries in the Doctor-Patient Relationship: A resource for doctors*, Medical Council of New Zealand, Wellington, updated October 2006 (available at <http://www.mcnz.org.nz>, accessed February 2007), pp. 4–5.

⁷⁷⁰ Mr Greg O’Connor, President, New Zealand Police Association, Transcript of hearing, 5 December 2005, p. 79.

provisions in place to deal with situations where individuals failed to heed the advice of their superiors.⁷⁷¹

- 6.134 I cannot agree that a matter as serious as this can be left solely to the oversight and discretion of supervisors. Of course any policy to prevent police officers from engaging in sexual relationships with people with whom they come into contact in their professional capacity should encourage officers to talk to their supervisors if they have any concerns about a developing relationship. Therefore supervisors would inevitably play a key part in applying and enforcing any policy. However, I believe that a direction is clearly needed to prescribe the boundaries of acceptable conduct.
- 6.135 I note in this respect that instructors at the Royal New Zealand Police College are already subject to guidelines that provide specific directions in relation to sexual conduct within the college. In particular the guidelines say that instructors are expected to maintain their professional role by not engaging in any sexual contact with recruits. ("This includes situations where the contact is initiated by the recruit.")⁷⁷²
- 6.136 I agree with the approach taken to give direction to police instructors to avoid sexual relationships with recruits given that there is a clear power differential in this situation. Any breaches of this direction should continue to be treated seriously.

Recommended approach

- 6.137 There is a need for standards and policies dealing with conduct of a sexual nature by police officers in relation to those members of the public with whom they come into contact in the course of their work. The standards and policies should
- specify actions and types of behaviour of a sexual nature that are inappropriate or unprofessional
 - prohibit members of police from entering any relationship of a sexual nature with a person over whom they are in a position of authority or where there is a power differential
 - provide guidance to members and their supervisors about how to handle concerns about a possible or developing relationship that may be inappropriate
 - emphasise the ethical dimensions of sexual conduct, including the need for police officers to avoid bringing the police into disrepute through their private activities.
- 6.138 I would expect to see standards and policies addressing these issues to result from the policy work initiated by Police Commissioner Robinson in response to the Commission of Inquiry into Police Conduct. Once developed, they should be integrated into all relevant management and human resource documents such as the code of conduct, the core values, and the national ethics training, and also be communicated and implemented consistently across the country.
- 6.139 In doing this work the police should seek advice from someone outside the police with expertise in professional ethics.

771 Mr Greg O'Connor, President, New Zealand Police Association, Brief of evidence, 5 December 2005, pp. 26 and 27.

772 New Zealand Police, "Professional Guidelines for Instructors", [Output of workshop 21 September 1995], p. 2.

Misuse of email and Internet by police

6.140 In this section I address the issue of the behaviour of members of the police in relation to misuse of New Zealand Police computer technology with email and Internet usage. Consideration of this matter began in April 2005 with the announcement by the Attorney-General, Hon Dr Michael Cullen, that the Commission's mandate had been changed. The subject of misuse of police information technology involves standards of personal behaviour by members of the police and therefore fits well with term of reference (4).

6.141 On 21 April 2005 Police Commissioner Robinson announced that an audit of the police email system had revealed that several hundred staff had been misusing the system by sending, receiving, and storing inappropriate and potentially obscene images.⁷⁷³ In his media release on how New Zealand Police intended to examine and amend its organisational culture, the police commissioner said that he welcomed the Government's announcement that it was extending the term of the Commission:

Dame Margaret Bazley has many years experience in the public sector and is widely regarded by many of us in Police as someone who will critically question, examine and make recommendations relating to our plans and actions to fix the issues before us⁷⁷⁴

6.142 As part of the Attorney-General's announcement (also on 21 April 2005) that the mandate of the Commission of Inquiry into Police Conduct had been changed, he outlined how the Commission would "have regard to a separate examination of police culture led by the Police Commissioner". He said the inquiry would provide a source of external advice and reference to the Commissioner of Police on his parallel investigations "into behaviour by a number of police staff which is not consistent with police expectations and may in some cases be criminal".⁷⁷⁵

6.143 The Government requested that Police Commissioner Robinson keep me informed of the action he was taking, and proposed to take, in connection with his review of police culture so that I might take that into account in shaping my recommendations.⁷⁷⁶

Computer use policies, procedures, and monitoring

6.144 Subsequently I sought information from the police about their policies and procedures related to the use of email by police, and also on the technical infrastructure the police use to assist them with the control of objectionable material. I received a comprehensive set of material from the police in response to my queries. I also received briefings from Police Commissioner Robinson on police progress on the investigations into the misuse of email. I reviewed the material supplied by the police and I retained an independent information technology (IT) adviser, Optimisation NZ Ltd's Principal Consultant, Mr Jim Shaw, to review the material provided to me by the police. Mr Shaw's response was also made available to the parties.

773 New Zealand Police, "Police seize opportunity to examine culture", news release, 21 April 2005.

774 New Zealand Police, "Police seize opportunity to examine culture", news release, 21 April 2005.

775 Hon Dr Michael Cullen, Attorney-General, "Commission of Inquiry into Police Conduct, media statement, 21 April 2005.

776 Cabinet minute, "Commission of Inquiry into Police Conduct", 18 April 2005, CM (05) 14/16, p. 2.

- 6.145 The expert advice confirmed my assessment of the police approach. I was told that the technical infrastructure being used to monitor use of and block objectionable material was generally consistent with industry best practice. In particular,
- Police have deployed quality products to support their IT security requirements.
 - These products are backed up by policies that in general terms provide a clear statement of expectations and limitations of staff use of computer systems. The material provided for staff on the use of Internet and email is also available on the New Zealand Police intranet.⁷⁷⁷
- 6.146 However, the effectiveness of any technical solution depends not only on its initial design and implementation, but also on its ongoing monitoring and management, and I believe this is where improvements could be made to avoid inappropriate email and Internet use in New Zealand Police.
- 6.147 For instance, I was informed that the police Information and Technology Group did not provide regular reports on staff Internet usage, but did so in response to specific requests. In my experience, for an organisation the size of New Zealand Police this is not best practice. I agree with the advice received that regular reports on Internet usage should be provided to management as a routine matter. Such reports should cover staff with the highest World Wide Web (www) and related usage, and sites associated with that usage. These reports enable managers to see at a glance where possibly anomalous usage occurs and allow for early intervention and verification if required. Regular reports can provide an early awareness of potential issues and prevent more serious situations developing.
- 6.148 In the context of the police such information could also form part of the early warning system discussed later in this chapter. Where police officers are required to access sites that may appear to be unsuitable (for instance, if they are working on an investigation into child pornography), then prior approval could be obtained.
- 6.149 It is also considered best practice to have staff sign a document to confirm that they have read and understood the acceptable use policies. Staff should also sign to acknowledge reading and accepting changes to policies. This is not something currently being done within New Zealand Police. I was told, “The use of *Ten-One* to notify policy updates ... does not guarantee that all staff read and understand the updates.”⁷⁷⁸
- 6.150 I concur with Mr Shaw’s view that to be fully effective these policies and procedures, and any changes to them, must be disseminated through channels that ensure 100 percent coverage of all staff, and must be supported by training where necessary. For instance, information of acceptable use policies should be a component of induction and training for all new employees. Staff should be able to access these policies in their entirety at any time. Staff should also be regularly reminded about the key points in them, for instance, through the use of pop-up messages during the log-in process.⁷⁷⁹

⁷⁷⁷ Mr Jim Shaw, Principal Consultant, Optimation NZ Ltd, Memorandum of advice on police email and Internet usage, 8 September 2005.

⁷⁷⁸ Mr Jim Shaw, Principal Consultant, Optimation NZ Ltd, Memorandum of advice on police email and Internet usage, 8 September 2005, p. 5.

⁷⁷⁹ Mr Jim Shaw, Principal Consultant, Optimation NZ Ltd, Memorandum of advice on police email and Internet usage, 8 September 2005, p. 5.

- 6.151 It is also essential that all police staff understand that appropriate use policies are mandated and supported from the highest levels of management. I was provided with a “fax alert” from the acting Commissioner of Police that presented a strong senior management view to reinforce messages about appropriate computer use.⁷⁸⁰ However, I was concerned that this communication also left some room for individual discretion by its use of the phrase, “While accepting that individual standards may vary in terms of what constitutes offensive material ...”. I agree with Mr Shaw’s advice that more careful wording be used in future to avoid any implication that individual discretion may be appropriate in this context and to ensure that the full impact of the communication is achieved.
- 6.152 The New Zealand Police Association supports having a clear policy as to how email and Internet breaches are to be regarded. However, it does not support any process that is rigidly applied. In its view a “one size fits all” approach does not give sufficient opportunity to consider the circumstances of individual offending. Although I accept that police management should give consideration to all the relevant circumstances, when it comes to taking some sort of disciplinary action, this should not preclude it taking a very definite line on what constitutes acceptable and unacceptable use of email and the Internet.

Police investigations of misuse of information technology

- 6.153 As mentioned earlier in my report, Police Commissioner Robinson provided me with regular updates on his investigations into the inappropriate images on the police computer system. He told me that 351 sworn and non-sworn staff were found to have sent inappropriate images on more than one occasion, to have stored more than 10 inappropriate images, or to have stored one or more moving images. (Images were categorised as inappropriate if they were sexually explicit and/or might be objectionable for the purposes of the Films, Videos, and Publications Classification Act 1993.⁷⁸¹)
- 6.154 Police Commissioner Robinson told me that, in cases where the images were potentially objectionable under the Act, criminal inquiries were commenced. Thirteen images were submitted to the Chief Censor for classification; 12 of those images, held by 28 people, were classified as objectionable. The police commissioner sought advice from the Crown Law Office as to whether these matters should be resolved in the criminal jurisdiction, or using the disciplinary provisions of the Police Act and Police Regulations. Crown Law advice was that these matters should be dealt with under the disciplinary provisions.⁷⁸²
- 6.155 In respect of the remaining 323 police members who were identified as storing or sending inappropriate images on the police computer system, 320 were offered, and took advantage of, an alternative resolution process. That process required attendance at a programme run by an Auckland Internet safety group called NetSafe. The remaining three staff members were to be subject to the normal disciplinary processes.⁷⁸³

780 New Zealand Police intranet, “Think before you push SEND”, Fax alerts, 19 September 2002.

781 Police Commissioner Robert Robinson, Brief of evidence, 5 September 2005, pp. 3 and 4.

782 Police Commissioner Robert Robinson, Brief of evidence, 5 September 2005, p. 4.

783 Police Commissioner Robert Robinson, Brief of evidence, 5 September 2005, pp. 4 and 5.

ACTIONS IF STANDARDS AND CODES OF CONDUCT ARE NOT MET

6.156 As noted earlier, in the absence of a code of conduct for sworn staff, there is nothing enforceable that specifies acceptable standards of sexual behaviour by police officers in their professional role. None of the 42 listed offences set out in regulation 9 of the Police Regulations explicitly cover this area of personal behaviour. At present there are two essentially separate paths for the police to take action if they have concerns about a police officer's personal behaviour, or if there are complaints made against an officer for sexual misconduct:

- the performance management process
- the police disciplinary process.

6.157 Clearly there is also the ability to charge officers with a criminal offence, if appropriate.

Performance management

6.158 Performance issues are currently managed within the police performance appraisal system. I was told that the appraisal process involves an assessment of an employee's performance against the competency framework, in addition to an assessment of their performance against the functional requirements of their position. The appraisal process is designed to consider not only the results produced by a particular employee, but also how those results have been achieved. The achievements are assessed against the competencies and values set out in the framework.⁷⁸⁴

6.159 I was told that at the moment an underperforming police officer cannot be dismissed for poor performance alone and that police management is forced to "work around" the officer's inadequacies, or to try to fit the underperformance into a regulatory framework that is not designed to address this kind of issue. The new regime, which was to have been introduced after the enactment of the now withdrawn Police Amendment Bill (No 2), would have drawn a distinction between matters that could properly be described as issues of discipline, and matters that go to issues of performance.⁷⁸⁵

6.160 As discussed in Chapter 5, I was told by the police that, in practice, they rely heavily on the Police Association to help them "manage" unsuitable employees out of the police. The association and police management cooperate to persuade non-performing officers to explore other career options. This approach relies on non-performing officers appreciating that policing is not for them. If non-performing officers cling stubbornly to their jobs there is little the police management can do.⁷⁸⁶ The police have long recognised the difficulties that the present regime poses as a performance management system.⁷⁸⁷ I was very concerned to learn of the reliance on the police union for its assistance with arranging the departure of unsuitable members from the police. In my view this should be the role of the employer.

⁷⁸⁴ Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Brief of evidence, 18 November 2005, p. 9.

⁷⁸⁵ Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 12.

⁷⁸⁶ For example, Operation Loft file LT 168.

⁷⁸⁷ New Zealand Police, Closing submissions, 16 December 2005, p. 32.

6.161 The Police Association told me that it believes the police have excellent performance management policies and processes in place for the management of underperforming sworn members. However, in the association's view, in the vast majority of cases the police do not have the commitment to the process that is required to achieve the desired results. This is because performance management requires a significant commitment from the supervisor or manager to follow through the process required and this process requires consistent feedback to the employee about the level of performance required, where the employee is not meeting that level.⁷⁸⁸ Mr David McKirdy, New Zealand Police Association Field Officer, told me,

I am regularly contacted by supervisors who have issues with staff under their control and who wish to commence performance management processes. In the majority of these cases there is no record of any poor performance having been brought to the member's attention in the past, and in the vast majority of cases their most recent performance appraisal documents contain highly favourable and complimentary assessments.⁷⁸⁹

6.162 In my view being able to deal effectively with poor performance is critical if the police are able to ensure that sexual misconduct cases by police officers are kept to a minimum. I observed from some of the files I read that police supervisors and managers have endeavoured to document performance issues in relation to sexual misconduct. I saw a variety of examples of performance improvement plans and appraisals on the files I read and it appeared that the performance management processes had improved in recent years.

6.163 For example, the performance appraisal documentation I saw on a 1995 file was particularly extensive and lacked the clarity of later examples. It also reflected the difficulty in securing the police officer's agreement to the appraisal or to the proposed performance improvement plan.⁷⁹⁰ By contrast, a performance improvement plan written in 2004 (in conjunction with an adverse report) contained a copy of the core values referred to earlier in this chapter and noted in relation to the core values, "These are the specific areas where you need to ensure all future behaviour more closely reflects that described in the overall definition."⁷⁹¹ The plan had been written at the completion of a disciplinary investigation into the police officer's behaviour, in particular, his having "had a sexual encounter in a public place while under the influence of alcohol in a small rural town where [he was] known at the time to be an off-duty member of the New Zealand Police."⁷⁹² Although I see it as a positive step that reference is being made to the core values in a document such as this, my concern is whether the importance of the values is adequately communicated through this process and whether the performance improvement plan is regularly followed up and monitored by the officer's supervisor.

6.164 Many of the behaviours that I saw on the files gave me indications of the quality of police officers' performance and could be classed as poor performance rather than serious offending of the sort that might attract criminal investigation. To that extent it has been necessary for me to consider how the type of sexual behaviour that could be classed as non-performance or poor performance might best be dealt with as part of the performance management

788 Mr David McKirdy, Field Officer, New Zealand Police Association, Brief of evidence, 5 December 2005, p. 3.

789 Mr David McKirdy, Field Officer, New Zealand Police Association, Brief of evidence, 5 December 2005, pp. 3–4.

790 Operation Loft file LT 201.

791 Operation Loft file LT 208.

792 Operation Loft file LT 208.

process, rather than invoking the full rigour of the police disciplinary tribunal process. In my view the performance management system needs to be able to effectively address this lower level undesirable behaviour to avoid it continuing to fester in the organisation or in an individual.

Disciplinary action

- 6.165 As discussed in Chapter 5, the police do not have access to standard employment law and the processes associated with it in order to deal effectively with misconduct, particularly at the lower level of seriousness. They have an outdated tribunal system that requires courage and tenacity by management to deal successfully with behaviour requiring discipline. I was told that an officer may be involved in a series of incidents early in his or her career that are not in themselves serious enough to warrant disciplinary charges, that supervising officers may need to wait for a serious episode to occur before they can take disciplinary action, and that the behaviour may continue and escalate in the meantime.⁷⁹³
- 6.166 My reading of the files confirmed this impression. It was clear that some officers who committed serious offences or serious misconduct had been engaging in low-level misconduct for years before the serious incident. Sometimes they went on to bring New Zealand Police into disrepute over a long period before they eventually did something serious enough to justify the police bringing a disciplinary charge before the tribunal.⁷⁹⁴
- 6.167 Counsel for the Police Association reminded me that the police have available to them a range of disciplinary penalties, including counselling, adverse report, reprimand, and dismissal. However, as discussed in Chapter 5, I do not believe this sufficiently takes into account the procedural formality and complexity involved in removing an offending staff member.
- 6.168 The ability of officers to disengage from the police on medical grounds has also been an obstacle to achieving disciplinary outcomes. I have already commented about the practice of allowing officers to disengage on medical grounds before the disciplinary process has taken its course (particularly those who joined the force before 1992 and were members of the Government Superannuation Fund, who had a financial incentive to disengage).⁷⁹⁵
- 6.169 My proposals for reforming the disciplinary system are discussed in detail in Chapter 5.

Repeat breaches of standards

- 6.170 In the course of my inquiry I examined the geographical spread of alleged offences in the police files supplied to me and found no evidence to suggest that particular localities were more prone to these than others. The complainants in the Operation Loft files were distributed around the country in a pattern that accorded generally with the number of officers stationed in different locations. There did not seem to be any particular geographical “black spots” in this respect.

793 Detective Superintendent Malcolm Burgess, Transcript of hearing, 29 November 2005, pp. 7–8.

794 For example, LT 86.

795 See Chapter 5, paragraphs 5.80 to 5.91.

- 6.171 However, one point of note arising from the files is that a small number of alleged offenders appeared in multiple files. They were often characterised by active sexual exploits of a kind that could be seen by the community as inappropriate behaviour for a member of the police to engage in. Such conduct could be reasonably well known because of boasting, lack of discretion, or the involvement of others in their behaviour, including group sexual activities. In their closing submission to me the police said that about 15 of the Operation Loft files⁷⁹⁶ disclosed a police member whose systematic conduct would place him in this category of what they would describe as a “womaniser”.⁷⁹⁷
- 6.172 I saw an example of an officer who was the subject of allegations in one district (whether they were upheld or not) then transferred to a different district where he was subsequently the subject of fresh allegations. A similar pattern emerged from a few of the sexual harassment files, where disciplinary action uncovered incidents going back years and occurring in several locations.⁷⁹⁸
- 6.173 Inspector Mitchell told me that, although favourable outcomes were achieved in some cases after complaints were made, complainants in many cases were unwilling to make a formal complaint despite being given personal assurances from senior staff that they would receive protection should they do so. He told me of one case that stood out in his mind:
- it involved a large number of staff complaining about the behaviour of a Sergeant. No formal complaint was forthcoming and he was most uncooperative when spoken to. He was transferred to another work area where the pattern was repeated and again no complaint was forthcoming. He was transferred to another work area where his behaviour manifested itself once more, but in that case the complainant did make a stand which resulted in his conviction at a disciplinary tribunal and his dismissal.⁷⁹⁹
- 6.174 Although the above case eventually resulted in the officer’s dismissal via the disciplinary process, the police witnesses who appeared before me noted in their evidence that the existing disciplinary framework makes it difficult for them to properly manage individuals whose behaviour and performance is a concern.⁸⁰⁰ The police face a high standard of proof in disciplinary proceedings, especially when the charge is a serious one where dismissal could be an option. Because of this, they can have great difficulty in taking appropriate action against an officer where there is insufficient evidence to succeed in a disciplinary charge but, nevertheless, a clear prima facie case of some lesser level of misconduct.
- 6.175 From my examination of the files, it is clear to me that the risk to both the public and New Zealand Police’s integrity arises from problem people rather than within particular geographical areas. Those instances in which individuals have been able to stay in the police force despite repeated allegations of misconduct with apparent substance appear

796 The police said that this number represents no more than one police officer in a thousand over the relevant period.

797 New Zealand Police, Closing submissions, 16 December 2005, p. 6.

798 For example, Operation Loft files LT 86, LT 131, and LT 146.

799 Inspector John Mitchell, Policing Development Manager, Auckland City Police District, Brief of evidence, paragraph 11.

800 For example, Detective Superintendent Malcolm Burgess, Transcript of hearing, 29 November 2005, pp. 7–8.

to have been a result of both poor management practices and an inadequate disciplinary framework.⁸⁰¹ My view is that this risk needs careful management through

- an overhaul of the police disciplinary procedures for dealing with misconduct (see Chapter 5)
- introduction of a code of conduct for sworn staff
- development of the directive outlining the boundaries for sexual relationships between police officers and those with whom they come into contact in the course of their work (this directive should give examples of the words, actions, and behaviours that are sexually inappropriate or unprofessional)
- a national early warning system that alerts police management when individual officers begin to demonstrate behaviours that may indicate a risk of future offending
- careful human resources practices regarding the appointment and oversight of officers who are the subject of allegations that appear to have some substance, or whose behaviour causes concern (particular care should be taken when appointing officers to smaller or rural stations where risky behaviour may go unnoticed).

POLICE INITIATIVES TO ENHANCE STANDARDS OF PERSONAL BEHAVIOUR

6.176 In this section I discuss recent initiatives taken by the police in the areas of organisational and staff development, the development of a national early warning system, and moves towards a code of conduct for sworn police staff. Organisational and staff development and training can be an important influence in establishing standards of behaviour within a large organisation. Various recent training initiatives within the police are relevant broadly to the question of standards regarding sexual behaviour. These will be enhanced by the development of a national early warning system and the existence of codes of conduct for all staff and systems to monitor performance.

Police leadership and management development initiatives

6.177 In April 2004 the police appointed Ms Susan Christie as Human Resources Manager: Organisational and Employee Development; her brief was to “develop a framework for leadership and management development within the organisation ... as a means of developing outstanding leadership and management capability in what is a changing environment.”⁸⁰² The framework is designed to assist New Zealand Police by equipping its members with the appropriate leadership and management skills and capabilities, to enable them to

- demonstrate effective leadership and management at all levels
- work within an ethical and values-based context
- develop and reach their full potential both individually and as members of a team
- contribute to increasing the levels of work satisfaction and commitment.⁸⁰³

801 For example, Operation Loft files LT 118 and LT 28.

802 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, p. 2.

803 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, p. 3.

- 6.178 A key principle for the police investing in leadership and management development is articulated as follows: “The core values will underpin and support professional and ethical Police practices; this will provide a common language and expectations of common and consistent leadership behaviours.”⁸⁰⁴
- 6.179 At November 2005, the leadership and management development framework was in the first year of a five-year cycle. The framework aims to assist the police to ensure that they have the required capability to achieve their strategic objectives, to identify how senior members can be supported by further development, and to identify and develop emerging leaders.⁸⁰⁵
- 6.180 Although I believe the aims of the police leadership and management development initiatives are laudable and consistent with good management practice in this area, I was concerned to note that in the first 18 months of the establishment of the organisational development manager’s position, no further resources were attached to the position. I understand that for the 2005/06 financial year, a small national budget was made available for leadership and management development that was to be used to resource the organisational development team as well as to supplement some of the training budgets, which are currently funded from district budgets.⁸⁰⁶

Ethics training

- 6.181 Before 2002 there was no national approach to ethics training. Instead, ethics training was developed and delivered at district level by a variety of different presenters.⁸⁰⁷
- 6.182 In 2002 the Royal New Zealand Police College commissioned the development of a national training package in ethics, entitled “Making Ethics Real”. The package is designed to be delivered to two separate and specific groups. One is to all police staff, who attend a two-and-a-half hour training session, and the other is to supervisors and managers, delivered in a four-hour session.⁸⁰⁸
- 6.183 The national ethics training package aims to help police officers develop three key qualities involved in ethical decision-making:
- the competencies to recognise ethical issues and to think through the consequences of alternative resolutions
 - the self-confidence to seek out different points of view and decide on the right course of action
 - the strength of mind and willingness to make decisions and follow them through.⁸⁰⁹

804 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, p. 11.

805 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, pp. 11–12.

806 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, p. 14.

807 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 74.

808 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Brief of evidence, 14 November 2005, p. 3.

809 New Zealand Police, “Ethics, Integrity & Professionalism Recruit Training, Facilitator’s Guide”, Introduction by Superintendent Olly Beckett to “Ethics, Integrity & Professionalism Workbook”, May 2005.

- 6.184 The training covers topics such as the subjective nature of what might constitute “ethical” behaviour in any given situation, and practical techniques for identifying ethical conduct in the range of difficult situations that staff are likely to confront in practice.⁸¹⁰
- 6.185 To assist individuals in assessing their own behaviours the training package includes a decision-making checklist called the “SELF” test. This test suggests that individuals consider the following questions before making decisions:
- Would your decision withstand Scrutiny (from the community, police service, and the media)?
 - Will your decision Ensure compliance (with policy and with the general instructions)?
 - Is your decision Lawful (with laws, regulations, rules)?
 - Is your decision Fair (to your community, colleagues, family, others)?
- 6.186 At November 2005 the national ethics training package had been delivered to 400 supervisors in the Wellington, Central, and Eastern Police Districts, as well as to all training service staff based at the police college. The training package is delivered on a district-by-district basis.⁸¹¹ I was told that it is for each district to determine whether the ethics training package is delivered and if so to whom, and that essentially it is a decision for the district commander and his or her management team as to whether a package will be mandated within the district. It is not mandatory for districts to participate in the new training package.⁸¹²
- 6.187 I was told in November 2005 that it was likely that it would take 18 months from that time to get everybody trained, assuming that all districts took up the new package. District commanders can choose to deliver their own ethics training programmes if they prefer. It is possible that districts will choose to use their own trainers, or their own packages, rather than this one, but the expectation from Mr Phillip Weeks, the police manager responsible for the national package, after he gave a presentation to the Police Executive Committee in September 2005, was that district commanders were likely to favour using the new package.⁸¹³
- 6.188 Superintendent Mark Lammas, District Commander, Central Police District, told me that he considers ethics training to be an important priority in terms of overall training. Such training, he said,
- has become even more important with the events of the last 18 months and the waning of public confidence in the police, so I would expect that whereas maybe two years ago some people might wonder whether it was a priority because we have a huge amount of training, I would expect that the vast majority of police staff now can see the benefits of it and the necessity for it.⁸¹⁴

810 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Brief of evidence, 14 November 2005, p. 3.

811 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Brief of evidence, 14 November 2005, p. 3.

812 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, pp. 66–67.

813 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 74.

814 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 15 November 2005, p. 63.

- 6.189 I think that the development of the ethics training package is an excellent initiative; however, I am concerned that it is not mandatory in all districts. I believe it should be mandatory for district commanders to implement the ethics training throughout their districts. In my view this training is as important as training in firearms and first aid, and like those mandatory courses, should be rolled out to all staff on a nationally consistent basis.
- 6.190 I also understand that there has not been any evaluation of the effectiveness of this training, and that none is planned. I suggest that this would be a useful exercise as part of the monitoring required to ensure consistency of values and expected behaviours throughout the organisation. I also suggest that the police consider regular refresher courses in ethics in order to ensure that the understanding of the issues and principles and values discussed in the training remains fresh in people's minds, and as a way of evaluating the effectiveness of the initial training course.

Recruit training

- 6.191 I was told that police recruit training emphasises the need to maintain complete integrity as a police officer, and this is considered by the police to be the single most important feature of a recruit's training. Personal ethics are emphasised in various ways. The key theme stressed throughout the training is that, in joining the police, recruits become part of an organisation with very high standards, and they are expected to uphold those values at all times.⁸¹⁵ I was told that this material has been part of the recruits' training course since April 2002.⁸¹⁶
- 6.192 The first section of the Recruit Induction Book contains the competency framework referred to earlier, and lists the police core values and core competencies, of which the first is integrity. The examples of desirable and undesirable behaviours for each core value are listed in the book.⁸¹⁷
- 6.193 I was told that ethics training occupies a large part of the recruits' first week and that it is stressed throughout the training that the police organisation derives a significant part of its credibility from the fact that it does not tolerate any improper conduct on the part of its members. I was also informed that part of this training confronts the risk that members' natural loyalty to each other may spill over into a "code" by which they may turn a blind eye to, or even cover up, another's wrongdoings. Recruits are told that every action they take has an impact upon the reputation of New Zealand Police as a whole, and that the public does not view members of the police as individuals, but rather as "the police" in general. It is stressed to recruits that they are "on show" 24 hours a day, and that they do not cease to be members of the police when they return home from their shifts; almost any action they take, whether in their private or professional lives, is open to scrutiny. Recruits are asked whether they would feel comfortable having to explain any particular action they have taken to the media, in court, to their parents, or to any other person whose opinion they value.⁸¹⁸

815 Sergeant Andrea Cooke, Recruit Instructor, Royal New Zealand Police College, Brief of evidence, 10 November 2005, p. 2.

816 Sergeant Andrea Cooke, Recruit Instructor, Royal New Zealand Police College, Transcript of hearing, 10 November 2005, p. 61.

817 Sergeant Andrea Cooke, Recruit Instructor, Royal New Zealand Police College, Brief of evidence, 10 November 2005, p. 2.

818 Sergeant Andrea Cooke, Recruit Instructor, Royal New Zealand Police College, Brief of evidence, 10 November 2005, pp. 3–4.

- 6.194 A summary of the New Zealand Police Sexual Harassment Policy (discussed earlier in this chapter) is also included in the recruit's induction material. During the first week of the recruits' training the human resources manager and the welfare officer explain the sexual harassment complaints procedures, and emphasise what constitutes unacceptable conduct.⁸¹⁹
- 6.195 Recruits also receive training on communication with victims of sexual assault. This section of the course is currently under review, but it stresses guidelines for dealing with victims, such as the need to listen carefully, to give victims the opportunity to vent their feelings, and to accept that they are telling the truth (unless there is clear evidence to the contrary). This area is covered to assist recruits in their awareness of sexual offending. However, it is stressed to the recruits that skills associated with handling sexual complaints are specialist skills, and that it will almost always be the job of Criminal Investigation Branch (CIB) to undertake the initial contact with sexual assault victims.⁸²⁰
- 6.196 The training given to recruits on the need to maintain appropriate standards of behaviour is a good starting point for new people joining the New Zealand Police. I was pleased to see it included a section on ethics, and also that it introduced recruits to the police core values.

Ethics committees

- 6.197 Some district commanders told me about initiatives to establish ethics committees in their districts. These are a relatively new initiative. I was told that although every district has an ethics committee, they all operate differently. Some police districts have very active ethics committees; others use their management team as their ethics committee, and have ethics as a standing item on their usual monthly management meeting.⁸²¹
- 6.198 The purpose of the ethics committees, as described by Superintendent Grant Nicholls, District Commander, Eastern Police District, is to discuss matters of concern, or to discuss the issues and implications of a new policy. The committee deals with issues presented to them and interprets policy. The Eastern Police District committee also includes one external member, the Crown solicitor from the area.⁸²² Another district, however, is having difficulty establishing terms of reference for its ethics committee and has brought in outside help to build a framework for the committee.⁸²³
- 6.199 By comparison, Superintendent Mark Lammas, District Commander, Central Police District, has not established an ethics committee and has taken a different approach. He has a monthly management meeting at which a regular item on the agenda is discussion of an ethical dilemma. I was told that this discussion can be hypothetical or it can be based on an actual situation occurring in the district. The issue is debated and then each of the

819 Sergeant Andrea Cooke, Recruit Instructor, Royal New Zealand Police College, Brief of evidence, 10 November 2005, p. 4.

820 Sergeant Andrea Cooke, Recruit Instructor, Royal New Zealand Police College, Brief of evidence, 10 November 2005, p. 5–6.

821 Superintendent Grant O'Fee, Integrity Project Manager, Transcript of hearing, 21 November 2005, p. 12.

822 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 5 November 2005, pp. 36 and 37.

823 Superintendent Gavin Jones, Acting District Commander, Auckland City, Transcript of hearing, 17 November 2005, p. 7.

area commanders and other managers takes that issue back to their management teams for discussion. The managers also bring fresh issues back for discussion.⁸²⁴

- 6.200 Establishing these committees was not made mandatory by Police Commissioner Robinson, although I was told that he encouraged districts to set them up.⁸²⁵ Superintendent O’Fee, leader of the Integrity Project, stated, “Our recommendation ... to the Commissioner is there needs to be mandated processes that the Ethics Committees need to go through, not to the extent of making all the districts the same ... but certainly to the extent of having parameters that they have to operate around.”⁸²⁶
- 6.201 I commend the move to establish these ethics committees and consider that they should be standardised across districts. At the moment there is no nationally agreed approach to defining the purpose, operation, or membership of the ethics committees. I suggest that having a national approach would enhance the credibility of the ethics committees within the police. A nationally mandated approach would also ensure that police practices and community standards and expectations do not diverge too widely.
- 6.202 The ethics committees should provide a good means to reinforce the messages contained in the ethics training. They are also a mechanism to raise and discuss difficult ethical issues facing the police in their day-to-day work. The understanding of issues around inappropriate sexual relationships would benefit from wide discussion. Such committees also provide a good opportunity for community input by having non-police members involved.
- 6.203 I consider it imperative for such committees to have external, non-police members in order to ensure they obtain a wide perspective on the ethical issues being discussed. External members should come from a representative cross section of people in the local community who are active in some area of the community, but not necessarily in the justice sector. For instance, representatives from the local school, business community, or retail sector may have a useful contribution. I was told by Superintendent O’Fee that involving members of the community in their ethics committees would certainly be feasible because all the districts have their community contacts, and that this is something they could do more work on before submitting their recommendations in relation to how ethics committees should operate nationally.⁸²⁷

Integrity Project

- 6.204 As noted elsewhere in my report, Commissioner Robinson had put a number of new initiatives in train as a result of the establishment of the Commission of Inquiry into Police Conduct. One of these was the Integrity Project in 2005. The purpose of this project was to review the police Professional Standards function, including the way that internal investigations are conducted and overseen, and the way that internal investigators are selected. The project was also to look at ways to encourage the reporting of corrupt or inappropriate behaviour.

824 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 5 November 2005, p. 60.

825 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 5 November 2005, p. 53.

826 Superintendent Grant O’Fee, Integrity Project Manager, Transcript of hearing, 21 November 2005, p. 12.

827 Superintendent Grant O’Fee, Integrity Project Manager, Transcript of hearing, 21 November 2005, pp. 13 and 14.

National early warning system

- 6.205 In an early warning system a police force undertakes routine assessments to determine whether an officer is at risk of doing something serious that would embarrass the organisation and harm people within the service or outside it.
- 6.206 Professor Bayley explained that the use of an early warning system is expanding around the world; American police forces have them, and soon all United Kingdom forces will have them (Northern Ireland is developing one). Although Professor Bayley had seen lists of 30–40 indicators for routine assessment, he suggested that careful choice of 10–15 indicators of potentially problematic behaviour could give a workable system. He commented that there was much evidence to show that 85–95 percent of the complaints of misbehaviour were caused by the actions of about 5 percent of the officers.⁸²⁸
- 6.207 Police managers need to be able to monitor and manage the performance of all staff, and take appropriate action. Ideally, a positive approach to managing staff, together with the ability and willingness to make sensible and timely interventions, will lead to more transparency and reinforce ethical behaviour. This provides an opportunity for the police to take a more strategic approach to complaints. It should also foster better relations between management and police members.
- 6.208 I noted in the report by Hon Sir David Tompkins QC on the Counties Manukau Police District that he made an attempt to analyse officers with a history of complaints. A list of staff in the Counties Manukau Police District with more than five complaints was prepared and analysed. The analysis was apparently inconclusive, other than showing that most of the complaints were for assault, attitude, and language. Sir David Tompkins said, “The limited nature of the data stored in the Professional Standards data base meant that a more detailed analysis could not be made.”⁸²⁹
- 6.209 The project manager for the Integrity Project, Superintendent O’Fee, told me that the project team would make a strong recommendation that an early warning system based on the recently developed “Wellington model” be implemented nationally. This system would involve identifying a range of behaviours that would be recorded on a central database. If there were three complaints received the supervisor would be notified; likewise, if an officer misses all mandatory training over several days (without good reason), this would be recorded. Managers could then access the information to identify, for instance, whether the member has a history of complaints, excessive force reports, or lack of attendance at mandated training.
- 6.210 I was told that currently all districts in New Zealand operate such systems; however, they are largely ad hoc, and when members transfer between districts the information is not always carried with them.⁸³⁰ For instance Inspector Neil Banks, Manager, Professional Standards, Canterbury Police District, explained to me how different districts monitor complaint trends and members who attract complaints in various ways. The Canterbury District has a database that can generate information on individuals, groups, and areas as to the number

828 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, pp. 17 and 18.

829 Hon Sir David Tompkins QC, *Report of the Hon Sir David Tompkins QC to the Commissioner of Police concerning the Counties-Manukau Police District*, 29 September 2005, p. 34.

830 Superintendent Grant O’Fee, Integrity Project Manager, Brief of evidence, 21 November 2005, p. 6; and Transcript of hearing, 21 November 2005, p. 19.

and nature of complaints. This database also holds complaint information.⁸³¹ Inspector Banks told me that he could not think of any reason why a nationally mandated process acceptable to all the districts is not put in place.⁸³²

- 6.211 The development by districts of several alternative early warning systems for police officers who are not meeting certain standards illustrates how useful data can be collected and, if integrated and analysed, can have wider application. For instance, Mr Wayne Annan, New Zealand Police General Manager: Human Resources, described how police database information would in future be made more accessible:

The Police currently maintain a number of different databases that hold information about staff, namely the sexual harassment database, the professional standards database, the health and safety issues database and the appraisal process database. Over time, and in a managed way, these parts of the system will be consolidated into a single database, which will be available to supervisors and managers as required.⁸³³

Development of a nationally consistent early warning system for identifying concerns with an individual officer's behaviour should, in my view, be an important priority for police human resources management.

- 6.212 When I asked Police Commissioner Robinson if the early intervention model proposed by the Integrity Project would be adopted as a national initiative he was unable to confirm that such a system would be nationally mandated. He explained to me,

It's essentially spread as a Johnny Appleseed beneficiary ... and many districts have already adopted it.

The Integrity Project will codify that and equally provide behind it the database that allows all that information to be collected and available to management.⁸³⁴

- 6.213 In my view implementation of an early warning system is a key initiative and should be nationally mandated by the Commissioner of Police. I saw several examples where police officers inappropriately remained in the police force over a period of years despite clear indicators that there were concerns about their behaviour.⁸³⁵ Some examples follow:

- An officer, who was first subject to an internal investigation because of sexual behaviour in the late 1980s, was then the subject of a complaint of disgraceful conduct in 1990. In 1995 he was charged with sexual violation by rape, but resigned from the police before the trial (at which he was acquitted).⁸³⁶
- Another officer was charged before the police disciplinary tribunal in 2000 with numerous incidents of misconduct, including making sexually offensive statements to members of the public. He had previously been the subject of a sexual harassment complaint in 1998 in which he allegedly made a sexually offensive remark to a colleague. He subsequently resigned, after having admitted three of seven charges.⁸³⁷

831 Inspector Neil Banks, Professional Standards, Canterbury, Brief of evidence, 14 November 2005, p. 5.

832 Inspector Neil Banks, Professional Standards, Canterbury, Transcript of hearing, 14 November 2005, p. 28.

833 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Brief of evidence, 18 November 2005, pp. 9 and 10.

834 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, p. 66.

835 For example, Operation Loft files LT 3, LT 91, LT 96/LT 116, LT 97/LT 198, and LT 101.

836 Operation Loft files LT 97 and LT 198.

837 Operation Loft files LT 96 and LT 116.

- An officer who was the subject of a series of both sexual and non-sexual complaints starting in 1992 was finally subject to charges of disgraceful conduct and dismissed in 1997.⁸³⁸
 - A Youth Aid Officer was the subject of numerous complaints over a 10-year period. The first complaint against him was made in late 1991 and related to the inappropriate touching of a 17-year-old in 1989. A charge was laid in the District Court and dismissed in 1992. In 1999 he was charged with an historical offence of indecently assaulting a male, a charge that was not upheld (the alleged offending dated from the 1980s). There was evidence on the file of various concerns about this officer's behaviour in relation to young people.⁸³⁹
- 6.214 I also saw several cases involving sexual harassment that could have benefited from having an effective early warning system in place.⁸⁴⁰ Three examples follow:
- A complaint was made of sexual harassment against an officer in later 1999. In the course of investigation it emerged that he had been the subject of previous sexual harassment complaints that had been dealt with by transferring him to different stations.⁸⁴¹
 - A complaint of sexual harassment was made against a police officer, resulting in the complaint being mediated. After the complaint was dealt with by mediation, a further three complaints arose.⁸⁴²
 - During investigation of one case of sexual harassment it became apparent that the officer complained about had a three-year history of complaints relating to a variety of matters, including careless driving causing injury and threatening to kill.⁸⁴³
- 6.215 An early warning system would reduce the opportunity for such staff to remain in the police force. It would also reduce the possibility of poorly performing staff changing positions within the police, which was described by a Police Association witness as “dressing for export”.⁸⁴⁴ Moreover, it would enable appropriate mentoring and training to be targeted to particular individuals.
- 6.216 To be effective I believe that an early warning system should be centrally organised and implemented on a consistent basis across the country. It must capture all the information currently held in the separate databases for performance appraisal, health and safety, professional standards (including complaints), and sexual harassment.⁸⁴⁵ It should also cover other information that may indicate a problem with an officer, for example improper use of the Internet for private purposes while at work. Information on the database would need to be collected, held, and used in accordance with the Privacy Act 1993 and the requirements of employment law in respect of monitoring and surveillance of employee conduct. This ought to enable the information to be made available to managers and supervisors for performance management purposes, and to complaint investigators for use in investigations when appropriate.

838 Operation Loft file LT 142.

839 Operation Loft files LT 28 and LT 118.

840 For example, Operation Loft files LT 61, LT 86, LT 88, LT 91, LT 131, and LT 139.

841 Operation Loft file LT 131.

842 Operation Loft file LT 91.

843 Operation Loft file LT 86.

844 Mr David McKirdy, Field Officer, New Zealand Police Association, Brief of evidence, 5 December 2005, p. 3.

845 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Brief of evidence, 18 November 2005, pp. 9 and 10.

- 6.217 A nationwide approach is particularly important in the context of this inquiry in order to ensure that early intervention occurs when information comes to light of inappropriate sexual behaviour and that information should be available notwithstanding an officer's movements across districts. It is also important that the information available to managers, supervisors, and complaint investigators is both comprehensive and cumulative, giving a picture of the officer's full record of service.
- 6.218 I was told that it costs \$200,000 to put a new police officer into the force, and \$500,000 to develop a detective.⁸⁴⁶ This is a major investment for the taxpayer, and every effort should be made to look after this investment, ensuring that new recruits are being counselled at the first sign of behaviour that is not acceptable so that they reach their full potential and remain in the force.

Development of a code of conduct for sworn members of police

- 6.219 I have discussed in Chapter 5 the need for a code of conduct for sworn staff that would form the basis of an integrated discipline and performance management system. In this section of the report I discuss in more detail the benefits of this approach, particularly in managing cases of sexual misconduct, and the issues that will need to be addressed in its implementation.
- 6.220 Other State servants in New Zealand work under codes of conduct and I see no reason why sworn police should be treated any differently in this respect. There is nothing inherent in the role and status of a police officer that justifies a different approach. On the contrary, the issues addressed in my inquiry have satisfied me that the police are in urgent need of a code of conduct for sworn members, and that introducing one as soon as possible will assist in restoring public confidence in the police.
- 6.221 Constabulary independence (a concept discussed in Chapter 3) is sometimes cited as a reason for differentiating between police officers and other State servants. I was interested in the implications of constabulary independence for the way misconduct by police officers is handled within the police. Dr Warren Young of the Law Commission explained to me that in its extreme form, the original doctrine held that a constable was "answerable to the law and the law alone". In his view, this is no longer applicable to a modern police force that is located within a statutory framework and subject to many of the same accountabilities as other state agencies.⁸⁴⁷ For instance, the Commissioner of Police is responsible to the Minister of Police for the administration and control, and financial management and performance, of the police (regulation 3 of the Police Regulations); New Zealand Police is treated as a department of State for the purposes of the Public Finance Act 1989; the Commissioner of Police is required to ensure that police officers discharge their duties to the Government and the public satisfactorily, efficiently, and effectively (police regulation 3); and individual police officers are required to obey general instructions and the lawful commands of a supervisor.⁸⁴⁸ Dr Young explained that constabulary independence should not prevent accountability for police conduct:

Claims that constabulary independence means that individual officers cannot be held to account other than through formal and regulated

⁸⁴⁶ Mr Wayne Annan, General Manager, Human Resources, Transcript of hearing, 18 November 2005, p. 36.

⁸⁴⁷ Dr Warren Young, Brief of evidence, 22 November 2005, p. 6.

⁸⁴⁸ Dr Warren Young, Brief of evidence, 22 November 2005, pp. 6–7.

judicial processes misunderstand the fundamental changes that modern police forces have necessarily undergone. It is important that constabulary independence be retained to ensure independence from executive control in the exercise of coercive powers. But it should not be used to prevent adequate accountability for police conduct and the police use of public resources, both internally and externally.⁸⁴⁹

Benefits of a code of conduct

- 6.222 A code of conduct would provide for a more flexible range of disciplinary and performance-related responses than is available at present. The issue of misuse of computer technology is a good example of how having a code of conduct would have provided the Commissioner of Police with a more flexible range of disciplinary and performance-related responses than available at present. Police Commissioner Robinson told me,

The number of members involved in the email enquiry meant that if they had not accepted the alternative process [of participating in a facilitated session on the appropriate use of email and the Internet], the formal police disciplinary structures (which have a rigid, quasi-judicial process of charging and determination of guilt and punishment) would have been overwhelmed.

The Code of Conduct would provide for lower-level misconduct, or performance issues, to be the subject of a less formal investigation and a forward-looking response that is tailored to the individual member which is delivered in a timely fashion.⁸⁵⁰

- 6.223 The leader of the project relating to ethics and integrity in the New Zealand Police, Superintendent Grant O'Fee, also discussed the benefits of dealing with non-serious complaints outside the formal disciplinary system:

We will also recommend that there is an urgent need to implement a Code of Conduct for all Police staff and for steps to be taken to differentiate between serious and non-serious complaints. The non-serious category would include attitude and behaviour complaints that do not amount to serious misconduct. It will be our recommendation that these non-serious matters not be dealt with as disciplinary matters. Overseas experience indicates that adopting this sort of process allows minor complaints to be dealt with quickly, efficiently and to the satisfaction of all parties.⁸⁵¹

Overseas experience: code of ethics for the police in Northern Ireland

- 6.224 Professor Bayley was brought to the Commission by New Zealand Police in the light of his expertise in working on the reform of police culture in a wide range of countries. For the past five years Professor Bayley has been part of an international commission overseeing the reform of the police in Northern Ireland.
- 6.225 Professor Bayley presented the code of ethics developed for the Northern Ireland police service as an example of an effective code of conduct. This code sets out the general principles that police conduct should be judged by. The code has 10 articles on 14 pages.

849 Dr Warren Young, Brief of evidence, 22 November 2005, p. 8.

850 Police Commissioner Robert Robinson, Brief of evidence, 29 June 2005, p. 11.

851 Superintendent Grant O'Fee, Integrity Project Manager, Brief of evidence, 21 November 2005, p. 6.

In Northern Ireland the code of ethics has been made the disciplinary code of the police service by statute.

- 6.226 Professor Bayley described it as “wonderfully simple”. He explained, “In training you don’t bore the life out of people by going through volumes and volumes of regulation, but what you try to instil in them is a sense of value of what they’re supposed to do, and you then guide them when it comes to operations”⁸⁵²
- 6.227 I agree that *Code of Ethics for the Police Service of Northern Ireland* provides an excellent template for a code of conduct.

Other State sector codes of conduct in New Zealand

- 6.228 Section 57 of the State Sector Act provides for the State Services Commissioner to set minimum standards of integrity and conduct for employees in “the public service” and to apply those minimum standards by way of a code of conduct. Those standards currently find expression in *New Zealand Public Service Code of Conduct*, which describes the standards of conduct required of public servants. New Zealand Police is not part of the public service, which means that *New Zealand Public Service Code of Conduct* does not apply to either sworn or non-sworn police members.⁸⁵³
- 6.229 The introduction to the code of conduct explains why a code is necessary for the public service. Key reasons include the fact that the strength of any government system lies in the respect it earns and holds from its citizens. That respect comes from the confidence that people have in the integrity of Government and the services it provides: “Everyone employed in the State Services has a part to play in earning public respect for government and maintaining confidence in the institutions of government.”⁸⁵⁴
- 6.230 The code also explains how the public service has extensive influence over people’s lives:
- Mismanagement or abuse can have serious and far reaching effects. ...
New Zealanders are entitled to the high expectations they have of the staff in government agencies. ...
They expect that public servants will always behave ethically, and be conscientious and competent in their work.⁸⁵⁵
- 6.231 The code describes the following three principles of conduct, which encompass the minimum standards of integrity and conduct expected of all public servants:
- Public servants should fulfil their lawful obligations to the Government with professionalism and integrity.
 - Public servants should perform their official duties honestly, faithfully and efficiently, respecting the rights of the public and their colleagues.
 - Public servants should not bring the public service into disrepute through their private activities.⁸⁵⁶

852 Professor David Bayley, State University, New York, Transcript of hearing, 4 December 2005, p. 30.

853 State Sector Act 1988, sections 2, 27(1), and Schedule 1; Police Act 1958, section 96.

854 State Services Commission, *New Zealand Public Service Code of Conduct*, February 2005, p. 5.

855 State Services Commission, *New Zealand Public Service Code of Conduct*, February 2005, p. 5.

856 State Services Commission, *New Zealand Public Service Code of Conduct*, February 2005, p. 2.

6.232 As this report was being finalised the State Services Commissioner published a draft of a new code of conduct for all agencies of the State services (including, but not limited to, the public service).⁸⁵⁷ The draft code is built on the values of being fair, impartial, responsible, and trustworthy, recognising,

The State Services is made up of many agencies with extensive powers to carry out the work of government. Although we have many different roles, we must meet high standards of integrity and conduct in everything we do.

6.233 In Chapter 8 of this report I suggest that the State Services Commission would be well placed to provide advice and guidance to the police on several of its ongoing initiatives, including in respect of codes of conduct, and that involving it in this way would be consistent with the direction of the State Sector Act reform. (See also recommendation R59.)

Development of a code of conduct for sworn police staff

6.234 In December 2001 New Zealand Police and the Police Association signed a heads of agreement relating to the development of a code of conduct for sworn members of police. The agreement said,

The new *Code of Conduct* will replace the current disciplinary provisions in the Police Act 1958, Police Regulations 1992 and *General Instructions*.⁸⁵⁸

Process used for developing the draft code of conduct

6.235 In February 2002 a draft code of conduct for sworn members was prepared in anticipation of the changes to the Police Act 1958.⁸⁵⁹

6.236 In May 2002 Police Commissioner Robert Robinson issued a memorandum to staff explaining the code and seeking feedback on the draft. The commissioner's memorandum said that the purpose of the code was to

- promote trust and confidence in the police
- ensure the police have communicated to staff and stakeholders a clear message about the paramount importance of ethics and integrity and expected standards of behaviour
- outline responsibilities of staff and the police
- be part of a programme of reform to improve human resources practices and organisational performance
- build capability to address poor performance in a timely way
- more effectively manage disciplinary procedures.⁸⁶⁰

6.237 The memorandum set out the ways that this would be achieved:

- bringing the procedure into line with general employment law and practice

857 *Strengthening Trust, Making a Difference: A [draft] code of conduct setting minimum standards of integrity and conduct for agencies of the State services*, issued under section 57 of the State Sector Act 1988, 23 February 2007.

858 New Zealand Police, New Zealand Police Association, Heads of Agreement: Code of Conduct for Sworn Staff, 3 and 4 December 2001.

859 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 18.

860 New Zealand Police, Memorandum from the Office of the Commissioner, 29 May 2002.

- promoting resolution at the lowest level between supervisors and staff
- empowering police districts to manage performance and non-serious misconduct
- ensuring consistency through a clearing house, a national disciplinary panel for serious misconduct (70–100 cases a year)
- applying a principle of proportionality (that is, the procedure will reflect the seriousness and nature of the issue)
- bringing together the Internal Affairs (now Professional Standards), Human Resources, and legal groups.⁸⁶¹

6.238 The memorandum explained the next steps in the processes, saying that feedback would be assessed and would inform the final product, which would then be issued as a draft for final comment. The memorandum also allowed for action in the event of legislative delay:

The *Code* is largely but not totally dependent on the enactment of the PAB [Police Amendment Bill (No 2)]. In the event of any extensive delay in that enactment we will consider how, and how much of the *Code* can be implemented.⁸⁶²

6.239 After a formal round of consultation in June and July 2002 various changes were proposed to the draft and some amendments made accordingly.⁸⁶³

Standards in the draft code of conduct

6.240 The draft code of 2002 set out 10 standards of conduct expected of all police officers at all times:

- honesty and integrity
- fairness and impartiality
- respect for people
- respect for property
- respect for confidentiality
- obedience to the law and lawful orders
- reasonable exercise of discretion
- efficient performance of duties
- political neutrality
- not damaging the reputation or relationships of the police.

The draft code said that these standards of conduct were expected of police officers while they were on duty, and also extended to off-duty behaviour that reflected on the individual's ability to hold the office of constable.⁸⁶⁴

861 New Zealand Police, Memorandum from the Office of the Commissioner, 29 May 2002.

862 New Zealand Police, Memorandum from the Office of the Commissioner, 29 May 2002.

863 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 19; and New Zealand Police, "Suggested amendments to the draft sworn *Code of Conduct* following the formal consultation round in June/July 2002".

864 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002], inside front cover.

- 6.241 The draft code explained the wider context for police officers and their unique position in society. In particular it noted,
- Because of ... their ability to exercise coercive power on behalf of the state – New Zealanders rightly expect police to display the highest standards of ethics, integrity and conduct. There is, and must be, a higher degree of scrutiny of on- and off-duty behaviour for police officers than for many other types of employees.⁸⁶⁵
- 6.242 The document set out the immediate context for introducing a code of conduct, noting,
- the disciplinary system for sworn members of Police involved a court-like process that was written into legislation. These complex procedures often placed Police staff and managers in adversarial roles, rather than helping them to work together on identified issues. To overcome these difficulties, it was agreed that Police needs to move towards a simpler and more modern performance management framework, such as a *Code of Conduct* environment.⁸⁶⁶
- 6.243 The draft code stated, at paragraph 11.2, that an officer's behaviour would be classified according to whether it represented a performance issue, a misconduct issue, or an issue that may involve criminality:
- A key function of this classification phase is to keep the increased formality of serious misconduct and criminal processes for the few cases where such heavy-duty procedures are really needed, thus allowing pure performance and low-level misconduct issues to be swiftly identified and resolved as employment issues within Police districts.⁸⁶⁷
- 6.244 Under the draft code, different categories of cases would have different investigation processes. For performance and minor misconduct matters, police districts would follow standard employment processes. If criminal issues were raised the member would be placed before the courts. For non-criminal serious misconduct, the draft code stated,
- ... Police will ensure that officers are advised from the start if allegations against them are serious (ie., potentially job-threatening), and they will apply investigative procedures that are more rigorous and objective than may be used by other employers.⁸⁶⁸
- 6.245 The process for dealing with cases in this category was outlined in the draft code. It included provision for a national disciplinary panel that “confirms apparent cases of serious misconduct, channels out possible criminality, and refers back any residue of less serious misconduct or performance”.⁸⁶⁹
- 6.246 Under this process, where dismissal is a possible penalty, the officer would have the ability to make representations to the decision-maker and an independent adviser.⁸⁷⁰
- 6.247 I was told by Mr Wayne Annan, New Zealand Police General Manager: Human Resources, that the draft code required updating in the light of developments that had occurred since

865 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002], p. 2.

866 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002], p. 2.

867 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002], p. 6.

868 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002], p. 6.

869 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002], p. 8.

870 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002], p. 8.

it was first drafted in 2002, such as the development of the core values and the competency framework (discussed earlier), in order that “they mesh nicely”.⁸⁷¹

Current status of the draft code of conduct

- 6.248 Promulgation of the code had been awaiting the passing of the Police Amendment Bill (No 2). This bill was withdrawn by the Minister of Police in March 2006.
- 6.249 The bill had sought to achieve two things: to strengthen police governance and accountability arrangements; and to improve police effectiveness in managing their human resources, in particular by offering more options in dealing with staff who perform poorly.⁸⁷²
- 6.250 Had the bill been enacted, a new section 16 of the Police Act would have enabled the Commissioner of Police to issue codes of conduct for all or any groups of members of the police⁸⁷³, after consultation with service organisations and the State Services Commission.⁸⁷⁴
- 6.251 A new section 16A would have empowered the Commissioner of Police to deal with unsatisfactory performance or misconduct in accordance with the relevant code of conduct. A range of options was laid out in the bill, including dismissal. These options could have been used if the Commissioner of Police was satisfied that, in accordance with the code of conduct, a member was unsuited to continue in their present role, or as a member of the police.⁸⁷⁵
- 6.252 Notwithstanding the withdrawal of the Police Amendment Bill (No 2), the draft code of conduct now stands ready to be implemented, subject to any amendments necessary to take into account developments since 2002.⁸⁷⁶

Views on the need for a code of conduct

- 6.253 The Police Association told me that it fully supported the concept of a code of conduct for sworn staff when it was initially considered in 2001. The association was also actively involved in the preparation of the draft code in 2002. The association now believes, however, that before it can be implemented, the draft code will have to be reassessed in the light of any recommendations that the Commission of Inquiry into Police Conduct makes. The association also agrees that the recently developed integrity values need to be integrated into the draft code.⁸⁷⁷
- 6.254 The Police Association also believes the code of conduct should be brought into operation in conjunction with the existing disciplinary tribunal system. It considers that the tribunal system offers important protections for the individual employee that should be retained. I addressed this issue earlier in Chapter 5.

871 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 21.

872 Explanatory note, Police Amendment Bill (No 2), pp. 1 and 2.

873 The term “member” includes both sworn and non-sworn members: Police Act 1958, section 5.

874 Police Amendment Bill (No 2), clause 4.

875 Police Amendment Bill (No 2): explanatory note, pp. 6 and 7; clause 4.

876 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 21.

877 Mr Greg O'Connor, President, New Zealand Police Association, Brief of evidence, 5 December 2005, p. 15.

- 6.255 The police agreed that a code of conduct for sworn members is desirable but cautioned that, because a code of conduct is usually expressed in non-prescriptive terms, adoption of a code for sworn officers is unlikely to make any significant difference to the manner in which issues of sexual misconduct are both highlighted within the police and resolved.⁸⁷⁸
- 6.256 In August 2006 the police informed me that negotiations were under way with police service organisations about the development of a code of conduct as part of the collective employment agreement.⁸⁷⁹
- 6.257 In my view implementation of a code of conduct for sworn police is a critical requirement for the effective management of sexual misconduct. A code of conduct sets out the organisation's standards and expectations. It can then be used as the basis for taking action if those standards are not met.
- 6.258 But I agree that a code of conduct does not stand on its own. It is only one of a number of measures, which have been discussed in this chapter, that are needed to provide consistent, clear, and accessible messages about acceptable standards of personal behaviour and sexual conduct. There also need to be simple human resource management processes to deal with poor performance and breaches of the code, which may or may not lead on to misconduct, and may or may not point towards a person's suitability for remaining as a police officer.

Effect of introducing a code of conduct without legislative change

- 6.259 During the course of the Commission hearings the question was raised as to whether the code of conduct for sworn members could be introduced without the passing of legislation to amend the provisions in the Police Act concerning the disciplining of sworn members. In his evidence to me, Police Commissioner Robinson said,

In one sense this is correct – the Code itself could be promulgated tomorrow if the Police wished to do this. That said, it would have no effect in terms of the organisation's ability to take action against under-performing sworn members. The disciplinary regime is set out in the Act and Regulations, and the Commissioner's powers under s 5 and 5A of the Act are, at present, dependent on a breach of Regulation 9 being proved before a Tribunal.⁸⁸⁰

As noted in paragraph 6.256, I was later informed that negotiations were under way with police service organisations about the development of a code of conduct as part of the collective employment agreement.

- 6.260 My understanding is that Police Commissioner Robinson was correct in this summary of the situation; that is, as long as the Act and regulations remain in force any code of conduct for sworn members would have little practical impact.
- 6.261 However, as discussed in Chapter 5, it is also my understanding that interim changes could be made to the disciplinary process for sworn members, without the need to await changes

878 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 121. (For comment on the provision of references to quotations, submissions, and other information provided by the parties, refer to "Notes for readers" in the Appendices.)

879 New Zealand Police, Submission re Integration of Professional Standards and Human Resources, August 2006.

880 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 12.

to the Police Act, to enable the process to be made much simpler and, moreover, to give full effect to a code of conduct as the basis for managing all disciplinary and performance matters. This would require revocation of the relevant parts of the Police Regulations, but that could be achieved as a matter of Government decision (and action by the Executive Council) rather than having to wait for amending legislation to go through Parliament. In my view serious consideration should be given to this step being taken now, in advance of completion of the review of the Act and Regulations announced by the Minister of Police when she withdrew the Police Amendment (No 2) Bill in March 2006.

6.262 This is addressed by my recommendation in Chapter 5 concerning codes of conduct in the context of the police disciplinary system:

R34 New Zealand Police should implement a best practice State sector disciplinary system based on a code of conduct in keeping with the principles of fairness and natural justice as part of the employment relationship.

My other recommendations follow.

Recommendations

Code of conduct for police officers

- R38** A code of conduct for sworn police staff should be implemented as a matter of urgency. Subsequently, the existing code of conduct for non-sworn staff should be brought into line with the new code for sworn members.

Police Sexual Harassment Policy

- R39** New Zealand Police should amend its Sexual Harassment Policy to include a requirement that any mediated resolution of a complaint of sexual harassment be finalised in writing and signed by both parties.

Police policy on inappropriate sexual conduct and relationships

- R40** New Zealand Police should develop standards, policies, and guidelines on inappropriate sexual conduct towards, and the forming of sexual relationships with, members of the public. These should be incorporated into all codes of conduct and relevant policy and training materials. The standards, policies, and guidelines should be developed with the assistance of an external expert in professional ethics and should

- specify actions and types of behaviour of a sexual nature that are inappropriate or unprofessional
- prohibit members of police from entering any relationship of a sexual nature with a person over whom they are in a position of authority or where there is a power differential
- provide guidance to members and their supervisors about how to handle concerns about a possible or developing relationship that may be inappropriate
- emphasise the ethical dimensions of sexual conduct, including the need for police officers to avoid bringing the police into disrepute through their private activities.

Police email and computer use policies

- R41** Directions given by New Zealand Police management on what constitutes inappropriate use of police email and the Internet should not allow for any individual interpretation of appropriateness by police officers.
- R42** New Zealand Police should introduce a requirement that all staff sign a document to confirm that they have read and understood the acceptable use policies for the Internet and email. These requirements should be fully explained to all recruits during their training.

R43 All police officers should be required to acknowledge that they have read and understood any changes to police computer use policies. These requirements should also be fully explained to all recruits during their training.

R44 New Zealand Police managers should receive regular reports on the use of the Internet by their staff. This reporting requirement should be built into the early warning system that the police are developing (see recommendations R47, R48).

Ethics training and ethics committees

R45 All New Zealand Police districts should implement a nationally consistent ethics training programme that all police officers are required to attend. Police officers should also be required to attend regular refresher courses on ethics.

R46 New Zealand Police should ensure that the establishment of ethics committees is mandatory for all police districts. There should be a national set of guidelines to guide police districts on the purpose, operation, and membership of their ethics committees.

Early warning system and performance management

R47 New Zealand Police should implement a nationally mandated early warning system in order to identify staff demonstrating behaviour that does not meet acceptable standards and ensure such behaviour does not continue or escalate.

R48 The early warning system should ensure that all relevant information, sufficient to give a complete picture of an officer's full record of service, is captured in a single database, and is accessible to police managers and supervisors when making appointments and monitoring performance, as well as to complaint investigators when appropriate.

R49 New Zealand Police should review its approach to performance management, including the training provided to supervisors and managers, the performance appraisal process and documentation, and the methods in place to ensure that the follow-up identified in the performance improvement plans actually occurs.



– 7 –

POLICE ATTITUDES TO INVESTIGATIONS AND DISCLOSURE OF WRONGDOING

7.1 This chapter considers the attitude (or “culture”) of the police organisation in relation to the investigation of complaints of sexual assault against members of the police or associates of the police. This is required by term of reference (2)(f), which requires the Commission to inquire into, and report upon

- (2) irrespective of the existence or adequacy of standards or procedures as a matter of Police policy, the practice of Police in the investigation of complaints alleging sexual assault by members of the Police or by associates or the Police or by both, in particular, but not limited to,—

...

- (f) whether the attitude of the Police has been, and is now, conducive to the effective and impartial investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both:

7.2 The chapter also addresses reporting wrongdoing within New Zealand Police. Such “whistle-blowing”, when related specifically to knowledge within the organisation of sexual offending by police members or police associates, is the subject of two of the terms of reference of the Commission:

- (1)(c) whether there have been, and are now, Police procedures adequately supporting and encouraging members of the Police who know of allegations that sexual assault has been committed by Police colleagues or by associates of the Police or by both to report the allegations to an appropriate senior member of the Police (or other appropriate person):

and

- (2)(g) whether Police practice that has been in place, and is now in place, adequately supports and encourages members of the Police who know of allegations that sexual assault has been committed by Police colleagues or by associates of the Police or by both to report the allegations to an appropriate senior member of the Police (or other appropriate person):

7.3 Term of reference (2)(f) recognises that police attitudes are a critical success factor in the investigation of complaints against police members or police associates, especially those alleging sexual assault. Achieving an “attitude of the Police ... conducive to the effective and impartial investigation of complaints” requires attention not only to personal values

Background details of relevance to this chapter

Parties to the inquiry. The Commission formally recognised four parties to the inquiry: New Zealand Police, Police Complaints Authority (PCA), Police Association, and Police Managers' Guild.

Witnesses. The Commission heard evidence from Police Commissioner Robert Robinson, a range of other New Zealand Police staff, the Police Complaints Authority, the president of the Police Association, and various expert witnesses.

Time frame. The period of interest to the inquiry was determined in March 2004 to be the 25 years from 1 January 1979. The Commission considered police investigations of relevant complaints that had been made since January 1979.

Operation Loft. Staff from the New Zealand Police Professional Standards section at the Office of the Commissioner carried out a comprehensive search of police records to identify all cases that related to the Commission's terms of reference (known as Operation Loft). As part of Operation Loft, Professional Standards staff members were asked to locate and retrieve any files that related to allegations of sexual offending by police or associates of the police since 1 January 1979. All these files were provided to the Commission for review.

and mindsets of individual officers (discussed under the heading of “Importance of independence” in Chapter 3) but also to the collective attitudes of the organisation as a whole – recognising the significant potential of the one to influence the other over time. The focus of the discussion in the first part of this chapter is on those collectively held attitudes, which are best described using the term “police culture”.

- 7.4 The expert evidence that has been put before me suggests that although some features of police cultures (for example, strong “bonding”) can have a positive effect, those same features can inhibit the effective and impartial investigation of complaints of sexual misconduct (for example, a code of silence). The expert evidence also makes it clear that the negative effects of those features of police culture may not be limited to the quality of investigations (which is the focus of term of reference (2)(f)) but may also have wider effects.
- 7.5 Accordingly, although the primary focus of the discussion of police culture in the first part of this chapter is on its effect on complaint investigation, as required by term of reference (2)(f), it also addresses the more general impact of cultural factors on standards of conduct within the police – including the reporting of wrongdoing. This takes the discussion beyond the strict requirements of term of reference (2)(f) and also results in something of an overlap with the second part of the chapter which, as required by terms of reference (1)(c) and (2)(g) respectively, discusses the reporting of wrongdoing but only in respect of the “procedures” and “practices” of the police that support and encourage it. It is necessary to recognise that the need for those procedures and practices may have its roots in features of police culture.
- 7.6 To avoid doubt, I consider these wider dimensions of the issue of police culture to be covered by term of reference (5) of the inquiry, which directs me to inquire into and report

upon “any other matter that may be thought by [me] to be relevant to the general or particular objects of the inquiry”.

7.7 The complete terms of reference are provided in Appendix 1.

POLICE CULTURE

7.8 In general the police, both individually and collectively, take their obligation to investigate complaints against their members and associates of their members very seriously, especially in cases involving allegations of sexual assault. But it is clear that certain elements of police culture have adversely affected New Zealand Police’s ability to investigate complaints against police members and associates effectively and impartially. I am concerned that they may continue to do so, and therefore sought to ascertain the following:

- the features of police cultures generally
- the implications of these features for practices within police forces
- to what extent such features have been observed in New Zealand Police
- whether the files revealed evidence of attitudes that, among other things, are not conducive to the disclosure and/or effective investigation of complaints about sexual misconduct
- what practical steps the police could take to ensure that police culture fosters attitudes that support fair and rigorous investigation of such complaints.

7.9 The evidence I received about current police culture came to a large extent from witnesses called by the police during the hearings, including a number of serving police officers. It was not possible, for example, for the Commission to undertake its own survey of attitudes and opinions across the police as a whole. The evidence of the police witnesses was thoroughly tested by counsel assisting during the hearings, and I am confident that it represents the informed and genuinely held views of well-placed individuals. Nevertheless I am acutely conscious that it should not be taken as anything other than that.

Features of police culture generally

7.10 Counsel for the police called two independent expert witnesses to outline general aspects of police culture: Professor David Bayley and Dr Jan Jordan. Professor Bayley is an international adviser on police culture and practices and has worked with several overseas police forces in the area of culture change. He provided an international perspective on police culture. Dr Jordan is a senior lecturer in criminology at Victoria University of Wellington and a member of the Curriculum Development Group for the police training courses in adult sexual assault investigations. For more than 12 years her particular research focus has been the experience of women reporting rape offences to the police in New Zealand. This research involved studies conducted with women victims, an analysis of police rape files, and interviews with senior detectives involved in sexual assault investigations. She described to me her observations of the culture of the New Zealand Police drawn from her research.

7.11 The two experts commented to varying degrees on common aspects of police cultures including

- strong bonding amongst colleagues

- a male-oriented culture
- attitudes towards the use of alcohol
- dual standards with respect to on-duty and off-duty behaviours.

Strong bonding amongst colleagues

- 7.12 Professor Bayley outlined to me how there are both positive and negative features that make the police culture distinct. He explained that, on the one hand, police officers' alertness to danger and orientation to physical force enables them to be effective in dealing with threats to the general public, and to be alert to suspicious circumstances and risks. Professor Bayley said that because police officers are conditioned to deal with dangerous situations and to rely upon each other in circumstances where their lives may be in danger there is a strong bonding that develops between them.
- 7.13 Although this makes the police more effective in such situations, it can mean that officers are more loyal to their colleagues than to the organisation at large or to the broader public interest. Thus, in a situation where an officer is accused of criminal behaviour or misconduct, collegial bonding may lead to a "code of silence" in which fellow officers resist efforts to investigate allegations.⁸⁸¹ Professor Bayley suggested that the closer the work group is, the harder it is for colleagues to "tell on" each other regardless of whether they are members of the police or members of another organisation.
- 7.14 Dr Jordan outlined very similar views to those of Professor Bayley:
- This culture has been analysed and described by many police researchers as characterised by a variety of both positive and negative traits – for example, loyalty, and camaraderie are two positive traits which, if developed to excess, can lead to blind allegiance and the potential for engaging in 'cover-ups'.⁸⁸²

A male-oriented culture

- 7.15 Both experts noted that police culture has traditionally been one dominated by men. Dr Jordan said to me that the beliefs of the police culture have been shaped by its origins as a male-dominated organisation, established initially to enforce male-defined laws.⁸⁸³ Professor Bayley offered his view of a police organisation dominated by males, suggesting that males in general "bring certain attitudes and I'm afraid sometimes customary behaviours that women find uncomfortable."⁸⁸⁴
- 7.16 As an indicator of one such customary behaviour, Professor Bayley had noted the number of times policewomen had said to him, "I wish when I'm introduced to a new partner that he would look at my face before he looks at my chest". That type of behaviour he classed as "male baggage".⁸⁸⁵

881 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, pp. 11 and 36.

882 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 14.

883 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 14.

884 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 13.

885 Professor David Bayley, State University, New York, Transcript of hearing, 4 December 2005, p. 13.

- 7.17 Professor Bayley outlined how police cultures in general need to change both their treatment of women in the force and their treatment of women generally, especially in the context of criminal investigations related to sexual assault. He said that elements of police life and culture could contribute to the sexist treatment of women, as well as attitudes brought to the job (the “male baggage”).⁸⁸⁶

Attitudes towards the use of alcohol

- 7.18 Professor Bayley told me of the need to “deglamorise” drinking within the police. He said that many of the problems that women complain about in relation to police culture had their roots in drinking too much, and in the bonding ritual that drinking provides.⁸⁸⁷ He recommended that police organisations work to discourage drinking as a bonding ritual. I support Professor Bayley’s recommendation in that area. He also suggested that there be a mandatory requirement for all officers to report drug and alcohol abuse.⁸⁸⁸

Dual standards with respect to on-duty and off-duty behaviour

- 7.19 It seems that many police forces struggle with the issue of dual standards with respect to appropriate on-duty and off-duty behaviour. Officers frequently attempt to draw a very clear line between the two, and argue that what an individual does off duty, in terms of sexual behaviour or other moral issues, is no business of the police management. Professor Bayley told me that in America a sworn police officer is a police officer at all times, and his or her behaviour should always be able to withstand public scrutiny.⁸⁸⁹ This principle also applies in other parts of the State sector in New Zealand.⁸⁹⁰ Application of this philosophy may be seen to curtail the freedom of police officers to engage in activities that are legal but, if widely known, would bring the police into disrepute; however, in my view that is part of the price police officers pay in their choice of career.

Implications of these features

- 7.20 As noted above, the expert evidence suggests there can be a positive side to some of these features. However, it also makes clear that they can have significant negative effects. For example, they may create an environment that encourages some officers to engage in sexual misconduct while off duty, and for others to condone or turn a blind eye to, or be reluctant to report, sexual activity of an inappropriate nature by police officers and their associates.
- 7.21 As a consequence, or in other ways, these features of police culture may not be conducive to the effective and impartial investigation of complaints. For example, they may
- encourage attitudes that reflect stereotyped views of complainants and scepticism about complainants of sexual assault, causing a perceived or actual loss of independence

886 Professor David Bayley, State University, New York, Talking points, 4 November 2005, p. 3.

887 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 22.

888 Professor David Bayley, State University, New York, “Talking Points for the New Zealand Commission of Inquiry”, 4 November 2005, pp. 6–7.

889 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, pp. 60–61.

890 *New Zealand Public Service Code of Conduct* states, as one of the minimum standards, that public servants should not bring the public service into disrepute through their private activities (see paragraph 6.231).

- produce a tendency to “protect one’s own”, meaning that investigators are confronted with a wall of silence from the colleagues of the officers against whom complaints have been made.

Features of the New Zealand Police culture

7.22 As well as examining the attitudes reflected in the files themselves (which are discussed below), I drew upon four further sources of evidence to ascertain whether the culture of New Zealand Police was a concern, having regard to the expert evidence set out above about the effects of police culture, particularly on the investigation of allegations against police officers:

- First, I questioned several serving police officers (particularly women officers) on their observations of police culture.
- Secondly, I examined the attitudes reflected in the files themselves.
- Thirdly, I read with interest the September 2005 report of the Hon Sir David Tompkins QC concerning the particular culture of the Counties Manukau Police District.
- Fourthly, I heard evidence from senior police managers about formal programmes aimed at promoting an ethical culture within the police.

Serving police officers’ views

7.23 The police officers I spoke to were unanimous in their belief that the current culture of the organisation is a very positive one, and that it has become progressively more supportive of women staff. They freely acknowledged that the situation now is in contrast to what it was 10 or more years ago, but described a period of positive change starting in the 1990s and continuing to this day.

7.24 I heard evidence from some senior policewomen who told me of their experience of changes in police culture. In the 1980s women began to enter the police in significant numbers. At this time police culture included elements they found negative; however, the senior policewomen who appeared before me spoke of positive changes throughout the 1990s in attitudes toward women and their employment in the police. Those changes are attributed to various factors:

- changes in social attitudes, with, for example, greatly reduced tolerance of sexual harassment and of the use of sexually offensive language
- changing recruitment practices, which have led to increasing numbers of women throughout the organisation in both sworn and non-sworn capacities
- the implementation and use of policies such as the equal employment opportunities policy, the flexible employment policy, and the introduction of the National Women’s Consultative Committee in 1995.⁸⁹¹

7.25 One senior woman police officer told me that she did have a challenging time when she started in the police in 1992. She said that she was aware of and experienced sexist attitudes, and at first questioned her choice of career. However, she now finds the culture in the

891 Senior Sergeant Freda Grace, Brief of evidence, 8 November 2005, p. 4.

police to be much healthier. She told me that the changes have been incremental rather than dramatic, as might be expected in an organisation the size of New Zealand Police.⁸⁹²

- 7.26 Another senior policewoman told me that in her 24 years in the police she had observed an improvement in police behaviour which reflected changes in society's attitudes and behaviours. She told me that when she first joined the police there was a significant emphasis on being part of the team and joining in team social interactions, much of which was centred on police clubs or canteens.⁸⁹³ This policewoman told me about a type of team social interaction involving alcohol. At one such occasion the team members went to the police bar and sat at a table while a "jug master" went through a "jug book" listing everyone's mistakes. People had to drink for each mistake that they had made. She said that when she first graduated there was a lot of pressure to drink but nowadays there is not that pressure and people sometimes sit and have non-alcoholic drinks.⁸⁹⁴
- 7.27 I was encouraged to hear from the same policewoman that nowadays most social interaction takes place away from police stations, and the drinking associated with being one of the team does not pervade the organisation as it once did. She felt that, although there may still be isolated examples of inappropriate behaviour by individuals, such behaviour is not the norm.⁸⁹⁵
- 7.28 Other witnesses confirmed the change in attitudes towards drinking. For instance a newly recruited constable told me that he does not drink alcohol, and although "jug sessions" still happen, there is no pressure to drink alcohol at them. He said that they have jug sessions at the police stations about every four weeks, and that having them at the station seems quite a safe environment rather than going to a bar.⁸⁹⁶ Mr Greg O'Connor, President, New Zealand Police Association, also told me that there has been a major change in this aspect of police culture over the 29 years he has been associated with the force. He said that police bars are scarcely used by the younger officers who are more likely to engage in physical training after work than to go to a police bar.⁸⁹⁷
- 7.29 A female constable who has been a police officer for eight years told me that being a member of the police is like being a member of a family and that she has always felt safe in that culture. She said that in her experience most police officers do not tolerate bad behaviour by colleagues, including bad behaviour towards women colleagues. The constable explained to me that she has attended jug sessions and that in her experience they are very tame events and she has never felt unsafe at them, nor has she felt pressured to drink alcohol.⁸⁹⁸
- 7.30 As was explained in the section on sexual harassment in Chapter 6, the police have made concerted efforts since the mid-1990s to create a safe environment for women staff and these efforts continue. I heard evidence that showed that there has been a gradual change in police culture over the years and in particular since the mid to late 1990s. A key factor

892 Detective Sergeant Tusha Penny, Brief of evidence, 3 November 2005, p. 6.

893 Senior Sergeant Andrea Jopling, Brief of evidence, 9 November 2005, p. 5.

894 Senior Sergeant Andrea Jopling, Transcript of hearing, 9 November 2005, pp. 8–9.

895 Senior Sergeant Andrea Jopling, Brief of evidence, 9 November 2005, p. 5.

896 Constable Gregory Cater, Brief of evidence, 8 November 2005, p. 7.

897 Mr Greg O'Connor, President, New Zealand Police Association, Brief of evidence, 5 December 2005, p. 18.

898 Constable Andrea Mather, Brief of evidence, 8 November 2005, pp. 2 and 3.

that has helped drive this shift in attitude is the development and implementation of a nationally mandated Sexual Harassment Policy. I heard evidence that a greater awareness of, and confidence with using, this policy has reduced the number of serious complaints received because issues are being resolved at the time by those involved.⁸⁹⁹ I have no doubt that there has been a flow-on effect on the quality of police investigations of sexual misconduct involving officers and police associates.

Evidence from the files

7.31 I am aware from comments I saw on the files that development of an appropriate culture that does not tolerate sexual misconduct or sexual harassment is an ongoing process in New Zealand Police. The files provided examples of inappropriate attitudes which I consider to be evidence of police culture existing at the relevant time. Much of this evidence related to cases of sexual harassment in the workforce, which I have discussed in Chapter 6.

7.32 Further evidence emerges from two other cases. First, a letter of January 1994 in a police report on a sexual harassment complaint said that the particular case and its history “is very strong anecdotal evidence pointing to an internal police culture of discrimination by male officers on female officers, with indications that it is probably deep seated and relatively common”.⁹⁰⁰

7.33 Secondly, in 2001 a key issue addressed by a disciplinary tribunal was the culture of the police. During the disciplinary hearing a policewoman gave evidence that she had been upset by sexual comments made to her by the alleged offender when she joined the police in 1998. However, in her statement made two and a half years later (in 2000) she said,

Looking back I don’t think I was offended by the way [Police Officer] spoke to me but perhaps unfamiliar with the culture of the Police, and 2½ years later, I am only just getting used to the “culture”.⁹⁰¹

Another police officer, from a religious background, talked about having grown in the career having to accept that “swearing, sexual banter amongst staff and throughout the ranks from commissioned officers through to NCOs and constables” was a part of the culture of the New Zealand Police.⁹⁰² In the tribunal hearing he said that he was by that time more tolerant towards the use of sexual banter and swearing. He explained that before joining the police he had been in a culture or an environment where he very rarely heard swearing.⁹⁰³ Several police officers gave evidence to the same tribunal that swearing and jokes of a sexual nature were common in the police.⁹⁰⁴

7.34 My concern with these cases and those covered in the discussion of sexual harassment is that they indicate that sexually inappropriate attitudes and behaviours have been present in the police in the past. Some police officers have regarded swearing and sexual banter as a normal part of the police culture. I also saw in the files use of sexual nicknames (for example, “Shag” and “Stag”). The police submitted that inappropriate language and sexual

899 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 32.

900 Operation Loft file LT 146; see also paragraph 6.63.

901 Operation Loft file LT 86.

902 Operation Loft file LT 86.

903 Operation Loft file LT 86.

904 Operation Loft file LT 86.

banter is often seen as a manner in which staff manage the stressful and dangerous situations they are regularly forced to confront.⁹⁰⁵ But I believe that a culture that tolerates excessive swearing and sexual banter creates an environment where the line between appropriate and inappropriate behaviour is blurred. Sexual harassment can start as a form of sexual banter and when someone crosses the line into harassment it is often difficult to detect.⁹⁰⁶ Blurring of lines can in turn affect the perceived objectivity of an investigation and create risks to the independence of the investigating officer. The police need to be proactive in discouraging swearing and sexual banter as a form of stress management, and promote alternatives.

Report by Hon Sir David Tompkins

7.35 Notwithstanding the evidence that police culture is now more welcoming towards women staff, there are indications that bonding amongst officers can still inhibit both the disclosure and the investigation of alleged misconduct by police officers. Women officers are now included within that strongly bonded community. This was highlighted by Hon Sir David Tompkins QC in his report concerning the Counties Manukau Police District. He outlined how evidence from his inquiry illustrated a “blue code of silence”. For example, he reported that at least six officers identified by his inquiry team saw photographs that were inappropriate and demeaning to the persons photographed, but none of the six ever took any action.⁹⁰⁷ He also referred to a study of new recruits by J.B.L. Chan, entitled *Fair Cop: Learning the Art of Policing*,⁹⁰⁸ which found that new recruits were quickly socialised into a culture of not telling, and discovered that, unless the offence was very serious, it was extremely inadvisable to blow the whistle on one’s colleagues.⁹⁰⁹

7.36 During his inquiry process Sir David contacted all the officers in Counties Manukau who were previously from the United Kingdom to obtain a comparative view from those officers. He reported,

In general the respondents agreed the culture was positive and many note the demanding environment in which they are working. They provide evidence of unnecessary aggressiveness by patrol officers involving minor assaults. None of these occasions were reported, another example of the “blue code of silence”. The incidents relate to ER staff or to senior NCOs with a history of complaints.⁹¹⁰

Ethical culture within the police

7.37 The police have made significant progress in developing a structure that provides staff with clear guidelines and definitions of what is ethical conduct. In 2003 the Human

905 New Zealand Police, Submission (“Comments on seven new extracts (circulated on 8 September 2006), and on proposed interim report regarding police disciplinary system”), 27 October 2006, p. 29. (For comment on the provision of references to quotations, submissions, and other information provided by the parties, refer to “Notes for readers” in the Appendices.)

906 Sexual harassment is discussed in more detail in Chapter 6.

907 Hon Sir David Tompkins QC, *Report of the Hon Sir David Tompkins QC to the Commissioner of Police concerning the Counties-Manukau Police District*, 29 September 2005, pp. 8 and 42.

908 Professor Janet B.L. Chan, *Fair Cop: Learning the Art of Policing*, University of Toronto Press, Toronto, 2003.

909 Hon Sir David Tompkins QC, *Report of the Hon Sir David Tompkins QC to the Commissioner of Police concerning the Counties-Manukau Police District*, 29 September 2005, p. 8.

910 Hon Sir David Tompkins QC, *Report of the Hon Sir David Tompkins QC to the Commissioner of Police concerning the Counties-Manukau Police District*, 29 September 2005, p. 28.

Resources section defined the core competencies and the core values, and a clear list of desirable and undesirable behaviours is now attached to each core value. Similarly, a national ethics training package was developed in 2002, which, I was told, “has had the effect of standardising training in this area”.⁹¹¹ In particular the new ethics training package focuses on providing clear and practical guidance for identifying what constitutes ethical behaviour in any given situation.⁹¹² Although it is designed to standardise training in this area, I note that each district has the discretion to determine whether the training is delivered, and if so, when and to whom.⁹¹³ This discretion is undesirable for such a valuable training package. These initiatives are discussed in more detail in paragraphs 6.181 to 6.190. The contribution that ethical training can make to awareness of the need for independence in police investigations, especially those involving allegations of sexual misconduct or offending by police members or associates, is discussed in paragraphs 3.39 to 3.105.

Evidence of inappropriate attitudes

7.38 My reading of the files disclosed evidence of certain types of attitudes that, taking account of the expert evidence discussed earlier, cannot be said either to encourage the reporting of sexual misconduct by police officers and associates or to be conducive to its effective and impartial investigation. The examples come primarily from the 1980s, although isolated incidents suggest that the attitudes continued into the 1990s and beyond. The major areas of concern were

- attitudes that reflect stereotyped views of complainants and raise general doubts as to whether police officers may have been prejudiced in their approach to complaints
- evidence of a culture of scepticism in dealing with complainants of sexual assault
- evidence of other officers condoning or turning a blind eye to sexual activity of an inappropriate nature by police officers and their associates
- evidence that when senior police officers came to investigate complaints they were confronted with a wall of silence from the colleagues of the officers against whom complaints had been made.

7.39 I also record that there was evidence on the files of senior officers who were concerned about the sexual misconduct of which they became aware, took steps to ensure that it was addressed, and undertook thorough investigations into the complaints received. It is unfortunate that the good work of these officers at the time was undermined by the behaviour of a small minority of recalcitrant officers.

Stereotyped views of complainants

7.40 Once again, the pattern that emerges is that up until the 1990s there were prevalent within the police attitudes that would now be regarded as inappropriate. Although one might argue that these attitudes were more acceptable at the time, I was concerned that a number

911 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 106.

912 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Brief of evidence, 14 November 2005, p. 3.

913 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Brief of evidence, 14 November 2005, pp. 3 and 4.

of officers were dismissive towards the people making complaints of sexual assault against a police officer or police associate.

- 7.41 The review by an assistant commissioner of a 1983 rape allegation reflects a judgmental attitude that was also apparent in other respects during the investigation. After extensive inquiries into her character, the complainant decided she did not want to testify at disciplinary proceedings.⁹¹⁴ The assistant commissioner, when recommending that the members accused be counselled, commented,

In making this recommendation I am mindful that their conduct was discreditable. However, this loose woman, notorious in the neighbourhood as a sex mad woman, apparently enticed the policemen into her home for a sexual frolic. The evidence is hazy as to what exactly occurred but I believe the policemen – who were naïve in extreme – are now regretful of their actions in going to this woman's home. Both the members are said to be worthwhile members of the Police.⁹¹⁵

- 7.42 These attitudes were not generally present in the investigations undertaken during the 1990s. However, attitudes can creep back into an organisation if there is insufficient vigilance. For this reason I was very concerned by remarks in a police email from 2004, referring to a woman who had allegedly been sexually assaulted by a police officer in 1989:

There was never any question about consent except for the possible coercion side of things as the alleged root happened in a patrol car ... [The complainant] would be looking for a money train. If you can prove her wrong lock the bitch up for making a false complaint. I hate people who cause shit like this.⁹¹⁶

- 7.43 Despite the fact that the file containing this email had been reviewed as part of the Professional Standards system and as part of Operation Loft, the police had not recognised the inappropriateness of either the wording or sentiments expressed until they were brought to the police's attention by this Commission. The police explained, "No-one had taken the time to concentrate on the email, perhaps because [Officer] had also placed a job sheet on the file that recorded his evidence in a more comprehensive (and appropriately expressed) way."⁹¹⁷ The officer was disciplined after the police considered the contents of the email. However, it is of concern to me not only that certain officers with the police may continue to hold inappropriate attitudes towards complainants (even in 2004) but also that these attitudes were not picked up by police management. I am also concerned that the officer responsible for the email failed to disclose to the investigating officer important details about the case at the time it came to light in 1991. This officer provided significantly more detail in his 2004 statement than he did in 1991.⁹¹⁸

- 7.44 Alongside the dismissive attitudes towards external complainants that I have discussed, some of the files concerning internal complaints of sexual harassment indicate similarly dismissive

914 For example, I believe that the level of investigation into her character (which involved amongst other things interviewing all her neighbours and trying to establish if she had had a relationship with a traffic officer) was unnecessary even given the legal requirements of the time.

915 Operation Loft file LT 134.

916 Email contained in Operation Loft file LT 200. I also saw evidence of a "wall of silence" in this file (see paragraph 7.50).

917 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 109.

918 Operation Loft file LT 200; New Zealand Police, Submissions in response to draft report, 7 September 2005, p. 8.

attitudes. In 1997 a sexual harassment case involved the display of lingerie posters, which were taken down when the complaint was made, and then rehung anonymously. A legal adviser in the case noted, “from the outset, the attitude has been taken that the problem was that of the complainant rather than that of the Police or those complained of.” She went on to observe, “I am of the very clear view that this file contains material which reflects a marked lack of objectivity on the part of many involved in the matter.”⁹¹⁹ In their submissions on my draft report the police noted, “the complainant received a full apology, compensation, and an acknowledgement that, as a result of her complaint, the Police were committed both to underlining the unacceptable nature of the offending officers’ conduct and to improving both the speed of their response to sexual harassment cases.”⁹²⁰ The police argued that the problems appeared to stem, however, from a general lack of understanding regarding what can constitute sexual harassment, rather than any lack of sympathy for the complainants.⁹²¹ I accept this lack of understanding may have been the underlying cause, and that steps were taken in later years to address this, but nevertheless it is evident that dismissive attitudes were present. I also note a sexual harassment case from 1984 where the deputy commissioner, in finding that there was not enough evidence to lay charges, wrote that “we now have a situation where junior female staff are seeking some disciplinary action against a Senior Sergeant.”⁹²²

Culture of scepticism in dealing with complainants

7.45 One area where police attitudes have been a cause of concern is the matter of warning complainants about making a false complaint. I discussed this in Chapter 2 in the context of the policies that have applied over the years to sexual assault investigations. Dr Jordan, on the basis of her research into women’s experiences of reporting rape offences to the police in New Zealand, told me,

It is well-recognised internationally that what has been termed ‘a culture of scepticism’ typically surrounds police responses to rape allegations. At a recent training course on Adult Sexual Assault Investigations (September, 2005), a detective commented that their station received so many false complaints that now one of the first questions they ask of rape complainants is: “Are you telling the truth?” The likely impact such a line of questioning could have on a genuine complainant, and the ripple effects from this, seemed not to be appreciated.⁹²³

7.46 She went on to say that most detectives can provide examples of cases that initially appeared highly “dodgy” but later transpired to be genuine – including “those where victims were disbelieved in ways that effectively allowed the perpetrators to victimise many more women until their final apprehension”.⁹²⁴

7.47 I was pleased to see, however, that in the majority of cases throughout the period in question the matter was properly investigated even where the investigator had some concerns over the veracity of the complainant.

919 Operation Loft file LT 59.

920 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 102.

921 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 110.

922 Operation Loft file LT 113.

923 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 8.

924 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 9.

Condoning or ignoring inappropriate sexual behaviour

7.48 Several files provided examples that were of concern for their toleration of inappropriate sexual behaviour:

- In a case in the mid-1980s an officer's sexual harassment was tolerated for some time without any complaint from his colleagues. This behaviour came to light only after a civilian complained of indecent assault.⁹²⁵
- In another case a constable and a sergeant were made aware in 1994 of an alleged incident in which an officer was said to have coerced a woman into having sex with him in return for arranging diversion for her husband on an assault charge. Despite this, neither officer took the matter any further; and, after the complaint eventually came to light, both were counselled.⁹²⁶ I note that the police submit that the constable's decision not to take the matter further was made in the context of the woman's firm refusal to formalise her complaint. They argue this can be seen as an error of judgment, but not "condoning" or "turning a blind eye" to the offending. Nevertheless, the failure to take any action is of concern.
- In two similar cases in 2000⁹²⁷ and 2002⁹²⁸ officers engaged in serial sexual harassment that did not come to light for several years. In the latter instance, a complaint of rape precipitated the revelation of the long history of harassment. When the rape charge did not proceed and the officer concerned disengaged, a former police officer familiar with the case made a formal complaint that no action had been taken despite the considerable damage the officer had caused.

7.49 Such instances, although relatively few, can have a disproportionate impact upon the public's view of accountability within the police, and work to undermine public confidence. These instances may also adversely affect the working environment. Even though the files disclosed only a few officers who displayed sexually inappropriate conduct, the cases that I noted illustrate that a significant number of other officers were involved in condoning the inappropriate sexual conduct. Although the police do not accept this point, I am concerned that the sum of the evidence I heard may point to a culture where ongoing inappropriate behaviour has been tolerated. For that reason, I consider it imperative that police take a "zero tolerance" approach to the concealment of misconduct within their ranks.

A wall of silence from colleagues

7.50 In contrast to the findings of Sir David Tompkins noted above, I have identified no recent cases in which police officers appear to have sought to shield a colleague from investigation. I did note several such cases dating from the 1980s and early 1990s in which investigators undertaking internal investigations had difficulty in obtaining evidence from other staff members or encountered behaviour that sought to undermine their investigations:

- In an example from 1981, the officers of a section indicated to the investigating officer that they were unhappy with the decision to charge the subject of a complaint with indecent assault and that they were arranging for the defence of the subject, making

925 Operation Loft file LT 149.

926 Operation Loft file LT 45.

927 Operation Loft file LT 86.

928 Operation Loft file LT 139.

their own enquiries about the character of the complainant, and agreeing to pay \$10 per pay to their colleague until it was over.⁹²⁹ What is of particular concern about this file was the change in evidence given by one police member. As the Crown Solicitor stated,

The inference I drew from this unsolicited evidence was that the Officer was endeavouring to lay the necessary factual basis for the Defendant to assert that he had good grounds [for the action he took].

...

It is my opinion that the circumstances I have outlined would justify an investigation into this member's conduct.⁹³⁰

- During an investigation into an allegation of sexual violation by rape in 1983 an officer interviewing police members who could potentially have provided evidence noted,

I get the impression that Constable [name] had convenient memory lapses where the two suspects are concerned. 10 marks for loyalty but when the watchhouse keepers for the relevant days are known they may be able to refresh his memory.

...

He thinks that the complainant [name] is a mad 'bitch' and cannot be trusted.⁹³¹

- In a 1984 case, the investigating officer himself complained of a "closing of the ranks" in an allegation of inappropriate strip searching of a female prisoner. The investigating officer's report said,

I have no doubt some member/s know something of what is trying to be established. ... The Policeman's unethical 'code of silence' of the 'blue curtain' has come down, effectively stifling the enquiry.⁹³²

- Finally, in the 1989 case mentioned earlier, where an officer allegedly sexually assaulted a woman in a police car, a constable on duty at the time withheld important information from the officers who were later investigating the matter. It was not until 2004 that the constable admitted that he had excluded these details from his 1991 statement. (I understand that this officer is the subject of a disciplinary investigation arising from this file.)⁹³³

7.51 Once again, these cases are few, but each can have life-long impacts upon complainants and their families, and also a significant impact upon public confidence in the police. We have a right as citizens to expect that police officers will place a concern with justice and the interests of members of the public ahead of their loyalty to their fellow officers when it comes to matters of possible misconduct.

Fostering attitudes supportive of fair and rigorous investigations

7.52 There have been many positive changes in police culture and attitudes over the past 25 years, as illustrated by the way in which sexual harassment has been discouraged (see

929 Operation Loft file LT 160.

930 Operation Loft file LT 160.

931 Operation Loft file LT 134.

932 Operation Loft file LT 166.

933 Operation Loft file LT 200; Submission of New Zealand Police, 7 September 2005, p. 8.

Chapter 6). There are, I believe, four practical steps that can be taken to ensure that such positive changes are firmly embedded in the organisation:

- positive leadership
- recruitment and advancement of more women staff
- a periodic external audit of police culture
- continuing development of effective whistle-blower mechanisms, reinforced by promoting a culture that supports and encourages the reporting of misconduct.

The first three are discussed immediately below, the fourth in the next section of this chapter. Although much of the following discussion focuses on the interaction of male police with women (either in the police workforce or members of the public), changing the organisational attitudes in this respect will, in turn, foster police attitudes that are conducive to the effective and impartial investigation of complaints.

Positive leadership

7.53 Professor Bayley's experience was that effective leadership is crucial in improving organisational attitudes, and that the signals sent from the senior leadership level make all the difference. He said,

unless the rank and file and especially middle rank supervisors understand that the policies are a matter of priority and are taken seriously by senior leaders, they won't happen. And the people further down will think of these policies, however enlightened they may be, as the flavour of the month but are ignorable and the only people that can make them not ignored is the Commissioner.⁹³⁴

7.54 He also said that as well as changing police attitudes, it is important to have standardised routines in place that minimise potential areas of risk. For instance, in the United States special policing routines must be followed when arresting a female. Professor Bayley said that as a result of having the arresting processes so standardised, some of the behaviour that used to happen when women were taken into custody does not happen any more.⁹³⁵

7.55 Professor Bayley said, however, that just as the police have learned that there is no single solution to crime, so also there will be no single solution to the issue of culture change. He said that it is important to look at all varieties of things that may make women uncomfortable and are the basis of complaints, and then focus on solutions.⁹³⁶

7.56 Professor Bayley also suggested that the police should ensure that they eliminate all overt displays of sexism or chauvinism in language, jokes, and pictures and that this should include the inappropriate use of email. I agree that it is important that the police keep up with the changing social attitudes in these areas and ensure that their work environment reflects what is now socially accepted in a professional workplace.

7.57 I am aware from my own experience that changing the culture of an organisation is very difficult and can be done only over time. In my experience the key to effective change of

934 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 15.

935 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 8.

936 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 9.

culture is to have clear and consistent messages that are reinforced regularly throughout the organisation. This view was confirmed in the evidence given to me by Mr David Butler, Commissioner of Inland Revenue. He said that having clear, consistent messages ensures that staff know how to approach dealing with difficult situations they may face in their work.⁹³⁷

- 7.58 The police recognise the importance of effective leadership and have recently begun to develop leadership and management development programmes as a means of developing outstanding leadership and management capability in a changing environment (see paragraphs 6.177 to 6.180). “Influential leadership” is one of the six core competencies common for all police staff and is defined as follows:

Effective performers communicate a vision, provide direction, co-ordinate and develop individuals and teams. They inspire and motivate others through personal example, while enabling colleagues to maximise potential. They use a combination of authority and influence at all levels of the organisation.⁹³⁸

Recruitment and advancement of women

- 7.59 Dr Jordan argued that further increases in the numbers of high-ranking women in the police are necessary to ensure that the culture and values of the police reflect those of society at large. She explained that this is difficult to achieve when individual women may feel pressured to over-adapt to the male environment rather than risk challenging it.⁹³⁹
- 7.60 Professor Bayley noted that police managers ought to aim at creating an internal culture where “females in the Police service feel that they belong to the organisation and are fully valued members of that organisation and that women in the general public are respected regardless of their status ...”.⁹⁴⁰ He told me that, in his view, if 50 percent of the police force were female, a lot of the problem attitudes and behaviour would go away. Indeed, he noted that some research into organisational cultures suggested that there is a “tipping point” at which an organisational culture changes markedly to recognise and accommodate the concerns of a minority.
- 7.61 He also referred favourably to the fact that 15 percent of the New Zealand police force is female, which is very good by international standards.⁹⁴¹ He said that a key step in changing the culture of the police would be to give high priority to the recruitment and retention of women and minority groups. In his view that was absolutely fundamental.⁹⁴²
- 7.62 For this reason I am of the view that it is critical that the police give high priority to the recruitment and retention of women. They also need to give greater attention to the

937 Mr David Butler, Commissioner of Inland Revenue, Transcript of hearing, 7 December 2005, pp. 9 and 10.

938 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, p. 6.

939 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 11.

940 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 10.

941 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 7.

942 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 15.

recruitment of staff from minority groups to ensure that they have the capability in place to interact effectively with the wider New Zealand community.

- 7.63 I heard evidence that the police have targeted the recruitment of staff from minority communities with considerable success. For instance in Auckland City Police District 9.7 percent of its staff are now identifying as Māori, the proportion of Pacific peoples has increased from 3.9 percent to 11.45 percent in four years, and the proportion of Asian staff from 0.55 percent to 3.85 percent in two years. I was told that there are now more than 50 Asian men and women currently going through the recruiting process.⁹⁴³

A periodic external audit of culture

- 7.64 The work being undertaken by the police in relation to the ongoing development and implementation of their Sexual Harassment Policy and the development of a national training package on ethics are important initiatives. They demonstrate the progress being made by the police in ensuring that any negative aspects of police culture in relation to their attitudes and behaviour towards women are being addressed.
- 7.65 In order to ensure that the momentum created by these initiatives and by this Commission of Inquiry into Police Conduct is not lost, I am of the view that an annual independent “health of the organisation” audit should be undertaken. The audit should be overseen by an independent body such as the State Services Commission. It would benchmark and monitor progress being made by the police. In particular it would
- canvass the views and experience of members of the police to determine how they rate their safety as employees and the safety of members of the public who come in contact with the police
 - monitor and assess the representation and distribution of women in the police
 - record and monitor the numbers of instances of sexual harassment and/or discrimination.

REPORTING KNOWLEDGE OF WRONGDOING

- 7.66 Accessible, clearly understood policies and processes are vital to an organisational culture that encourages wrongdoing to be reported by staff and to be dealt with appropriately by management. I sought information on the policies and procedures established by New Zealand Police to deal with reporting by members of the police of wrongdoing by colleagues or by associates.
- 7.67 In this section of the chapter I examine the early police whistle-blower policy, the changes that occurred as a result of the enactment of the Protected Disclosures Act 2000, and other relevant policies that could allow or encourage the reporting of wrongdoing in the police and support members in doing so. I then review the evidence concerning cases where police members did report allegations of sexual offending concerning colleagues and how such reporting was supported.

943 Inspector John Mitchell, Policing Development Manager, Auckland City Police District, Brief of evidence, 14 November 2005, paragraph 17.

Police policies on whistle-blowing

General instruction IA 131

7.68 The earliest police policy for encouraging and protecting whistle-blowers that was drawn to my attention was set out in general instruction IA 131 published in *Ten-One* on 28 April 1995:

- 1 Where, a staff member:
 - (a) believes he or she has material information which will show that a serious deficiency or error has been made in the execution of a Police duty or function, and
 - (b) has grave fears that any disclosure locally of that information will expose himself or herself to some physical, psychological or vocational harm;
 that staff member may approach his or her district commander, region commander, or the O/C Internal Affairs, directly with that information.⁹⁴⁴

7.69 The policy enables staff members with a certain restricted type of information, and who have a high level of concern for their own personal welfare if they disclose an allegation locally, to “go to the top” with the information. IA 131 directs the senior officer concerned to take such steps “as are necessary and appropriate in all circumstances” to protect the identity and welfare of the whistle-blower.

7.70 I did not hear of any instances where this policy was used during the years since its introduction, nor see it in effect on any of the files I considered from 1995 onwards. It seems to have offered limited, discretionary protection in certain restricted circumstances.

Protected Disclosures Act 2000

7.71 The Protected Disclosures Act 2000 came into force on 1 January 2001. It has the dual purpose of facilitating the disclosure and investigation of serious wrongdoing in or by public and private sector organisations (including the police) and protecting from retaliatory action those who bring that information forward in accordance with the procedures under the Act. The Act requires those who receive disclosures to use their best endeavours to protect the identity of those who make disclosures, except where

- (a) that person consents in writing to the disclosure of that information; or
- (b) the person who has acquired knowledge of the protected disclosure reasonably believes that disclosure of identifying information—
 - (i) is essential to the effective investigation of the allegations in the protected disclosure; or
 - (ii) is essential to prevent serious risk to public health or public safety or the environment; or
 - (iii) is essential having regard to the principles of natural justice.⁹⁴⁵

⁹⁴⁴ New Zealand Police, General instruction IA 131, “Protection for Whistleblowers”, *Ten-One*, No 90b, 28 April 1995, p. 17.

⁹⁴⁵ Protected Disclosures Act 2000, section 19(1).

“Serious wrongdoing” under the Act includes matters such as criminal acts, and acts by public officials that are oppressive, improperly discriminatory, grossly negligent, or constitute gross mismanagement.

- 7.72 The Act requires every public sector organisation, including the police, to have in operation appropriate internal procedures for receiving and dealing with information about serious wrongdoing in or by that organisation. Information about these procedures, and how to use them, must be published widely in the organisation and republished at regular intervals.⁹⁴⁶
- 7.73 In accordance with the Protected Disclosures Act, general instruction IA132 was promulgated by the police in 2002.⁹⁴⁷ It explains the scope of the Act, and specifies the persons to whom disclosures may be made and what action will be taken in response to a disclosure. It also requires “the appropriate level of support” to be provided to a discloser.
- 7.74 None of the investigations I considered were undertaken as a result of a disclosure being made using the process created by general instruction IA132.

Police Complaints Authority Act 1988

- 7.75 The Police Complaints Authority Act 1988 can also be seen as containing some protections for internal whistle-blowers. One of the core functions of the PCA is to receive complaints of misconduct against any member of the police.⁹⁴⁸
- 7.76 The PCA is obliged to keep secret all information coming to its knowledge except for the purpose of carrying out its functions under or giving effect to the Act,⁹⁴⁹ and cannot be required to give evidence in any judicial proceedings.⁹⁵⁰ This means a police officer could trigger an investigation by the PCA and potentially have his or her identity kept secret.

General instructions IA121 and IA121A

- 7.77 Other general instructions are also relevant to the issue of disclosure of wrongdoing. General instruction IA121 requires any suspicion of criminal offending, misconduct, or neglect of duty to be reported to the district commander (who shall then cause an investigation to be carried out).⁹⁵¹ Superintendent Trappitt described this instruction as providing for “an investigation to be carried out where a staff member is suspected of having committed a criminal offence or misconduct or neglect of duty”.⁹⁵²
- 7.78 General instruction IA121A, entitled “Integrity Reporting”, provides for an on-duty member of the police to report to his or her supervisor the circumstances of any incomplete enforcement action initiated against another police member. If there has been

946 Protected Disclosures Act 2000, sections 11(1) and 11(3).

947 New Zealand Police, General instruction IA132, “Protection for Whistleblowers – Protection [sic] Disclosures Act 2000”, 12 June 2002.

948 Police Complaints Authority Act 1988, section 12(1)(a)(i).

949 Police Complaints Authority Act 1988, section 32.

950 Police Complaints Authority Act 1988, section 33.

951 New Zealand Police, General instruction IA121, “Investigation”, 22 May 2002.

952 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 15.

any attempt to evade the law enforcement process, the district commander shall set up an investigation.⁹⁵³

Adequacy of police instructions and policies on disclosure

- 7.79 Only one of the general instructions dealing with disclosure of wrongdoing (IA121) appears to require, rather than encourage, suspected wrongdoing to be reported. But I heard nothing that would indicate that the police viewed this provision as a mandatory reporting requirement for all types of suspected misconduct. Indeed, I was told by a senior police staff member that, in his view, there was currently not really any avenue within the police for a staff member to blow the whistle for wrongdoing that did not constitute serious wrongdoing under the Protected Disclosures Act in circumstances where his or her identity would be kept confidential.⁹⁵⁴
- 7.80 Despite this, the sentiment of the police policies is well intentioned. However, they need to be followed through to an outcome that encourages, or even requires, reporting of all misconduct and that guarantees safeguards and support for the whistle-blower when reporting misconduct, and confidentiality as to their identity when possible.
- 7.81 I also believe that police employees need to have a reasonable idea of what steps might be taken once a disclosure has been made. Without this knowledge it is less likely that they will report wrongdoing. It is understandable that making a complaint or disclosing an allegation of sexual assault against a fellow police officer or police associate may cause some ill feeling in the workplace. For this reason, it would be sensible for there to be a review of the policies to cover practical matters, including the way in which whistle-blowers are given support by managers, so that the policy is as comprehensive as possible and employees know what to expect if they take the step of disclosing wrongdoing.
- 7.82 The policy should also reflect the police's obligations under the Protected Disclosures Act to remind their staff about the procedures that apply for making a protected disclosure and about the need to protect the confidentiality of disclosers' identities where possible.
- 7.83 I was also concerned that the policies did not recognise the need to provide a process to report sexual assault allegations against an associate of the police. There seems to me to be a real gap in the police policies in this regard, which is based on a failure to recognise the potential difficulties for a police member who wishes to report an allegation that he or she is aware of against a family member or close friend of a colleague.
- 7.84 The key issue seems to be that a policy of "report and be protected" is not actively promoted. The Protected Disclosures Act requires organisations to remind their staff at regular intervals about the procedures that are in place for making protected disclosures.⁹⁵⁵ The New Zealand Police General Manager: Human Resources, Mr Wayne Annan, who has responsibility within the police for the Protected Disclosures Act, was not sure if this

953 New Zealand Police, General instruction IA121A, "Integrity Reporting", 19 July 2002.

954 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, 14 November 2005, Transcript of hearing, p. 72.

955 Protected Disclosures Act 2000, section 11.

regular reminder had been done in the organisation; he also told me that the legislation has rarely been used.⁹⁵⁶

- 7.85 I was surprised that there was little detail about how often this procedure had been used because I would expect a formal register to be kept on the incidence of complaints under the Protected Disclosures Act. Furthermore, there was no process of checking back with any disclosers as to whether, from their point of view, the process and protections inherent in it worked well for them. It is important for organisations to adopt such auditing processes in order to be able to assess the impact of the legislation and their internal policies. Mr Annan reported that work had started on implementing systems for protected disclosures within the police.⁹⁵⁷ This is a positive step, and this work should be continued.

Police practice on reporting of sexual misconduct

- 7.86 I examined the Operation Loft files for evidence on the reporting of sexual misconduct within New Zealand Police, and considered other evidence submitted to the Commission.

Limitations of the evidence

- 7.87 The only files that have been provided to me are those where allegations were in fact reported, albeit some at a later stage than others.
- 7.88 I acknowledge that there may be unrecorded allegations of which I am unaware. However, short of administering a survey to all police officers asking whether they have ever been aware of allegations of sexual assault that they decided not to report, and the reasons for this, I will never fully know the extent of non-reporting of allegations of sexual assault within the police. Certainly, in the files I read there were examples of inappropriate sexual behaviour (particularly sexual harassment) that went unreported for several years.

Where a member knows of conduct that could amount to a criminal offence

- 7.89 I was told by counsel for the police that a police member who learned that a colleague or associate of the police had committed a criminal offence is under an obligation to report that offence to his superiors at the first opportunity.⁹⁵⁸ However, in practical terms it is difficult to determine with any accuracy (in the cases that I have reviewed) the extent to which a police member knew or should have known of potentially criminal behaviour in a particular case.
- 7.90 I asked Detective Superintendent Nicholas Perry whether he thought that behaviour that has become evident in the investigation of several historic files would have been widely known. He replied,
- There were clearly those who were identified as womanisers and that was relatively well-known, their reputations, if you like, from that

956 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 23.

957 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 23.

958 New Zealand Police, Submission, 19 August 2005, p. 5.

perspective were apparently well-known amongst their work colleagues in the stations but in terms of the actual, shall we say, behaviour which was verging on criminal, I don't believe that was widely known.⁹⁵⁹

Police practice regarding allegations and rumours

7.91 It is apparent from my reading of the cases identified by Operation Loft that some potential complaints came to the police's attention as a result of a member of police becoming aware of a rumour that a colleague (or an associate) had sexually assaulted someone.

7.92 The response of the police member who became aware of the rumour appears generally to be appropriate; the potential complainant is approached to establish the basis of the rumour and whether he or she wishes to lay a formal complaint, and the matter is referred to a senior member of staff. Two examples follow:

- In one file a police officer, upon being told by another staff member that she had engaged in inappropriate sexual behaviour, organised for that staff member to speak with another officer, and then contacted the senior sergeant in charge of the section.⁹⁶⁰
- In another instance, a police matron became aware of rumours that a police officer had made inappropriate sexual suggestions to a member of the public. The police matron spoke with the complainant immediately upon hearing the rumours and notified the senior sergeant as soon as it became apparent that there was some veracity to the rumours.⁹⁶¹

7.93 In another case that I read, the report of the investigating officer shows a similar approach was taken:

In accordance with our local Sexual Abuse Team policy, I was directed to approach [the potential complainant] to ascertain whether in fact these rumours were true or otherwise.

I spoke with [the potential complainant] ... I told her that it had been brought to my attention that she may have been sexually abused. She indicated that this was in fact correct. I made it clear that we were prepared to take a complaint, however, I was not allowed to solicit a complaint. I told her to take her time about deciding what to do and to contact me if and when she wanted to make a complaint.⁹⁶²

7.94 Counsel for the police informed me that the policy referred to in this case was not a written policy. Nevertheless, this directive appears to me to be useful for two reasons. First, it ensures that complainants who may have been unable to access the police complaints system (for whatever reason) are given an opportunity to do so. Secondly, it provides police officers with guidance as to what course of action they should pursue when they become aware of an allegation or rumour. I believe that this direction should be incorporated into national policy.

7.95 The situation is more difficult where members of police become aware of informal or less precise allegations that do not amount to criminal misconduct, or where the reputation of the

959 Detective Superintendent Nicholas Perry, Transcript of hearing, 20 October 2005, p. 11.

960 Operation Loft file LT 103.

961 Operation Loft file LT 198.

962 Operation Loft file LT 36.

officer suggests he or she may be engaging in inappropriate sexual behaviour. For example, it is apparent in one file from 2000 that several officers were aware that the complainants were uncomfortable with a particular officer's actions; however, it is not clear that they knew of the substance of the complainants' concerns (which amounted to allegations of indecent exposure and inappropriate advances). As a result, it was not until the sergeant in charge of the station overheard a conversation between the complainants and another member of police that the complainants were approached regarding the rumour.⁹⁶³

Encouraging and supporting the reporting of allegations

- 7.96 As mentioned above, it is important that general instructions and policies encourage members who know of allegations to report the allegation to an appropriate senior member of police. But of equal importance is the need for managers and supervisors to create a culture where people are willing to stand up and challenge unethical or criminal behaviour, and are supported in doing so.
- 7.97 Detective Inspector Stephen Rutherford told me that, practically speaking, it was very difficult for people to report allegations against colleagues, although he believed the situation had improved. He also commented, "A lot of people have difficulties, they don't want to be seen as the whistleblower ...". He told me that once a staff member has had the courage to take the step, however, it is very important that they are looked after. Detective Inspector Rutherford said that he takes active steps to ensure such people are supported.⁹⁶⁴
- 7.98 I also saw examples on the files where police officers said that they did not want to raise issues related to a colleague's inappropriate sexual behaviour, for a variety of reasons as discussed in the first section of this chapter. That evidence reinforces the views of the expert witnesses, also discussed in the first part of this chapter, that some features of police culture mean that police officers may find it difficult to effectively "whistle-blow" on a colleague.
- 7.99 I was told that the police use ethics training to encourage members of police to report allegations of sexual assault by police colleagues or associates of the police. The training also emphasises the need for managers and supervisors to create a culture within their own groups where people are willing to stand up and challenge unethical or criminal behaviour.⁹⁶⁵ Moreover, the ethics committees are providing another avenue to enable people to report misconduct, and are fostering an awareness of the importance of police officers adhering to high standards of conduct.
- 7.100 Professor Bayley provided an international perspective on this issue, and explained to me that certain overseas police services have considered creating a disciplinary offence where officers who are in a position to know of misbehaviour (or in a reasonable position to have known) choose not to report that misbehaviour. This approach creates a positive obligation on colleagues and peers to report what they know. It has been partly implemented in Northern Ireland, where there is a positive obligation on supervisors under the police

963 Operation Loft file LT 101 (second complaint).

964 Detective Inspector Stephen Rutherford, Transcript of hearing, 17 November 2005, p. 30.

965 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 72.

disciplinary code to report misbehaviour.⁹⁶⁶ This is considered a new and somewhat controversial development.

- 7.101 I am also concerned that the existence of the current disciplinary process may further discourage whistle-blowing within the police because a whistle-blower is likely to be aware that they may have to give evidence before the police disciplinary tribunal and be subject to the formalities of that process. I acknowledge that the rule of evidence known as “informant privilege” can enable an informant’s identity to be protected in a court or tribunal situation. However, counsel assisting has advised me that it is unlikely that the identity of an informant could always be kept confidential in disciplinary proceedings, as envisaged by the Protected Disclosures Act.⁹⁶⁷
- 7.102 Encouraging a “report and be protected” approach is a challenge for any organisation. Among the important projects that the police have commenced since 2004 (discussed elsewhere in this report and tabulated in Appendix 4) is the Integrity Project, which aims to ensure New Zealand Police remains free of corruption. I was told that the Integrity Project was proposing to recommend to the Commissioner of Police that several policy options be considered to encourage confidential disclosures. One such option was a confidential telephone line, which appears to work well in Australian jurisdictions (where it is known in some Australian states as the “Blue Line”), and also in the London Metropolitan Police and the Manchester Police. I was told in 2005 that the project team proposed recommending that the policy stipulate that officers who come forward with information are provided with support by another nominated officer.⁹⁶⁸
- 7.103 In summary, police policy is well intentioned, and although there are certain formal policies amounting to “report and be protected”, they do not appear to be rationalised in one place, well understood, actively promoted, or used within the police. Moreover there is a distinct disjuncture between the developing policy and ethics training, and past and current practices regarding reporting misconduct.
- 7.104 In my view there should be two elements of a police strategy to support and encourage the reporting of allegations of inappropriate behaviour and sexual misconduct. First, New Zealand Police must continue to foster an organisational culture that encourages and supports internal reporting of inappropriate behaviour and sexual misconduct. The cases I have described, where misconduct went unchallenged for months or years, undoubtedly had a dampening effect upon the morale of female and male officers. Policies on disclosing wrongdoing should continue to be integrated into ethics training both for officers and for supervisors and managers.
- 7.105 Secondly, an effective whistle-blower mechanism is an essential component in a culture of openness. The police should design and actively promote a single stand-alone policy of “report and be protected” for all disclosures of wrongdoing, designed to ensure that staff feel safe coming forward to report any issue of concern. Other internal police policies should similarly reflect this intention. Although the policies should recognise

⁹⁶⁶ Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, pp. 18 and 19.

⁹⁶⁷ Ms Mary Scholtens QC, Counsel Assisting, Commission of Inquiry into Police Conduct, Submission, 8 December 2005, p. 10.

⁹⁶⁸ Superintendent Grant O’Fee, Integrity Project Manager, Brief of evidence, 18 November 2005, p. 2.

the special status of disclosures of “serious wrongdoing” under the Protected Disclosures Act, it would in my view be mistaken to limit the scope of the applicable policies to those types of disclosures. As the Police Association pointed out, the Act’s focus on serious wrongdoing of an organisational kind does not fit well with the nature of police operational activities.⁹⁶⁹

- 7.106 My recommendations on dealing with matters related to police attitudes to investigations and disclosure of wrongdoing are presented overleaf.

969 New Zealand Police Association, Submission in response to draft report, 14 June 2006, p. 2.

Recommendations

Police culture

- R50** New Zealand Police should continue its efforts to increase the numbers of women and those from ethnic minority groups in the police force in order to promote a diverse organisational culture that reflects the community it serves and to enhance the effective and impartial investigation of complaints alleging sexual assault by members of the police or by associates of the police.
- R51** The Commissioner of Police should invite the State Services Commissioner to carry out an independent annual “health of the organisation” audit of the police culture (in particular, whether the organisation provides a safe work environment for female staff and staff from minority groups). The need for the audit should be reviewed after 10 years.

Reporting of allegations of sexual misconduct

- R52** New Zealand Police should review its current policies, procedures, and practices on internal disclosure of wrongdoing, and actively promote a single stand-alone policy for all disclosures, including (but not limited to) those made under the Protected Disclosures Act 2000. The policy should ensure that proper inquiry is always made where information received indicates that a police member or associate may have committed a sexual offence.
- R53** New Zealand Police should ensure that the policy and the approach of “report and be protected” are well understood and implemented nationally.
- R54** New Zealand Police should ensure that all other relevant policies, procedures, and practices are consistent with the stand-alone policy on the reporting of serious wrongdoing and the approach of “report and be protected”.
- R55** The New Zealand Police ethics training programme should aim to foster a culture which encourages reporting of allegations of wrongdoing by police members or police associates and provide support to those who make disclosures, consistent with the “report and be protected” approach.
- R56** New Zealand Police managers and supervisors should actively communicate to police members the expectation that they will report any allegations of sexual misconduct made against a colleague or a police associate. Police managers and supervisors should encourage and support members to report such allegations.



– 8 –

THE FUTURE

8.1 This concluding chapter of my report focuses on the responses of New Zealand Police to the establishment of this Commission of Inquiry into Police Conduct, and how they will be taken into the future. It also discusses police interaction with their communities and other agencies in the public sector. These matters are covered by term of reference (5):

- (5) any other matter that may be thought by you to be relevant to the general or particular objects of the inquiry:

POLICE RESPONSES TO THE ESTABLISHMENT OF THE COMMISSION

8.2 Counsel for New Zealand Police told me that the establishment of the Commission of Inquiry into Police Conduct has operated as a significant catalyst for review and change within the police. The police have launched a range of initiatives since the Commission was established in 2004, without waiting for the Commission's report.⁹⁷⁰ These initiatives include the following:

- A governance project is addressing the role of the Police Executive Committee, examining the possibility of community input into police governance, and examining the governance of certain functions within the police. This project is also looking at the way police manage emerging risks, both operational and administrative.
- A culture review will make recommendations on ways to minimise improper behaviour and improve job satisfaction within the police.
- A service delivery project is under way, overseen by an advisory board with three external representatives. This project is designed to enhance services to members of the public who interact with the police, including a key focus on implementing the recommendations from the 2005 *New Zealand Police Communications Centres Service Centre Independent External Review* ("the 111 Review"), and also on enhancing delivery of services to the victims of crime.
- The Integrity Project, designed to ensure that the police remain free of corruption, encompasses a review of the Professional Standards function, including the way internal investigations are conducted and overseen.⁹⁷¹

8.3 Other initiatives by the police, as outlined by Police Commissioner Robert Robinson in his evidence to the Commission on 29 June 2005, included the following undertakings:

970 New Zealand Police, Closing submissions, 16 December 2005, p. 2. (For comment on the provision of references to quotations, submissions, and other information provided by the parties, refer to "Notes for readers" in the Appendices.)

971 Police Commissioner Robert Robinson, Brief of evidence, 29 June 2005, pp. 8–10.

- a drive to increase diversity within the police, including the recruitment and retention of more women and ethnic minorities
- developing and implementing a further protocol for cooperation with the Police Complaints Authority that clarifies the respective roles of the police and the Police Complaints Authority investigators when they are investigating the same matter
- developing guidelines for the Police Prosecution Service on the use of Crown solicitors in operational and prosecutorial contexts (including consideration of the circumstances in which external advice should be taken when police are considering laying charges against police staff)
- developing a code of conduct to provide for lower level misconduct, or performance issues, to be the subject of a less formal investigation and a forward-looking response that is tailored to the individual member and delivered in a timely manner
- developing mechanisms for keeping the Adult Sexual Assault Investigation Policy under review, and ensuring appropriate compliance with it in practice.⁹⁷²

8.4 In early 2005 Police Commissioner Robinson established a project known as the Corporate Instrument Review Project designed to review and streamline all police policies and procedures. This project is a comprehensive review of all aspects of police policy-making and the various documents in which police policy is recorded. I was told that there had been recognition for some time that a review of this kind would be desirable, and the establishment of the Commission of Inquiry into Police Conduct brought the need for this review into sharp focus.⁹⁷³

8.5 In November 2005 Police Commissioner Robinson told me of some of the insights gained from the internal police review of the structures around internal investigations and the police relationship with the Police Complaints Authority:

Several issues emerged during that process, including the difficulties associated with perceptions surrounding internal investigations and the fact that the PCA, because of the legislative framework within which it works, is unable to make a significant contribution to the investigative process.⁹⁷⁴

8.6 In November 2005 as a result of his internal review of the Professional Standards function, Police Commissioner Robinson issued a directive that in future the police districts must consult with the national manager of Professional Standards regarding the appointment of internal investigators in all but minor cases.⁹⁷⁵ The police also submitted a proposal to me in November 2005 outlining suggested changes to the Police Complaints Authority, particularly that complaints of serious misconduct be managed outside the police.⁹⁷⁶ This proposal is discussed in detail in Chapter 4.

8.7 Police Commissioner Robinson told me in November 2005 of another key initiative that he had taken concerning potentially inappropriate relationships by police officers:

972 Police Commissioner Robert Robinson, Brief of evidence, 29 June 2005, pp. 10 and 11.

973 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 22 November 2005, p. 2.

974 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 4.

975 New Zealand Police, Memorandum from Police Commissioner Robinson to Office of the Commissioner executive and district commanders, 24 November 2005. See also paragraph 5.63.

976 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 7.

I have recently directed that the necessary policy work be undertaken to enable the Commissioner to direct that certain personal associations will be prohibited. ... I have now received new advice indicating that it is possible for me to give this kind of direction, consistent with similar restrictions that apply in other areas, for example within the medical profession.⁹⁷⁷

- 8.8 Also, as a result of information that came to light during the inquiry process, the police general manager of human resources told me in November 2005 that police officers facing criminal or disciplinary charges who resign no longer received standard commendation letters thanking them for their service and wishing them all the best for their futures; every attempt was being made to ensure that any letter sent was appropriate to the individual to whom it was addressed.⁹⁷⁸ This issue is discussed further in Chapter 5, in relation to term of reference (2)(e).
- 8.9 Another police initiative outlined to me in November 2005 was that the police had undertaken a survey of their one-, two-, and three-person police stations. The survey focused on identifying the risks associated with small station policing and generated the establishment of a specialised focus group to discuss issues of interest. I was told at that time that the focus group had met in December 2004 and was due to meet again in December 2005.⁹⁷⁹
- 8.10 A further area of change related to the integration of the Human Resources and Professional Standards sections within New Zealand Police. In their June 2006 submission on my draft report, the police stated that the integration of Human Resources and Professional Standards was something that the police had been working towards for some time and would have accompanied the proposed code of conduct for sworn members.⁹⁸⁰ Integration of the two sections had been identified in 2002 as part of the implementation of the draft code of conduct.⁹⁸¹ However, in 2004 the draft code of conduct and the associated integration of the Human Resources and Professional Standards sections had still not been implemented pending the anticipated change to the Police Act 1958.⁹⁸²
- 8.11 In August 2006 the police provided me with a submission to update me on developments regarding the integration of their Human Resources and Professional Standard sections. The police submitted that, in the light of the withdrawal of the Police Amendment Bill (No 2),⁹⁸³ they have resolved to do what they can to achieve the objectives envisaged under the draft code, subject to the limitations of the existing legislative framework. In their submission the police said that negotiations are under way with the police service organisations about how a code of conduct can be developed in the absence of legislative amendment. The police stated that the integration of Professional Standards and Human

977 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 13.

978 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 17.

979 Inspector Dawn Bell, New Zealand Police Human Resources Manager: Recruitment and Appointments, Brief of evidence, 9 November 2005, pp. 18–22.

980 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 93, paragraph 267.

981 New Zealand Police, Memorandum from the Office of the Commissioner, 29 May 2002.

982 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 18.

983 This followed from the 2006 announcement that the Police Act 1958 was to be reviewed.

Resources was one move that was possible without legislative change and that this had been done with effect from July 2006.⁹⁸⁴

- 8.12 A full summary of the various initiatives and projects that the police told me that they had under way since the establishment of the Commission is set out in Appendix 4.
- 8.13 Many of these initiatives complement the work of this inquiry. In addition, the announcement by the Minister of Police on 7 March 2006 that the Police Act is to be reviewed to reflect changes in communities and policing practices over the many decades it has been in force will be likely to lead to further initiatives. That review, for which New Zealand Police is the responsible agency, encompasses some of the new initiatives mentioned above, but also others. The issues include
- the principles of policing
 - governance arrangements for police
 - human resource management
 - creation of a code of conduct for all police staff
 - more effective public input into national and local policing priorities
 - maximum scope for flexibly deploying police nationally and internationally
 - facilitating better use of forensic and technological tools to aid crime prevention and investigation.⁹⁸⁵

COMMUNITY ENGAGEMENT

- 8.14 Several witnesses commented to me on the interaction the police have with their communities and how there is now much more opportunity for feedback, both positive and negative, from those outside the police, through both formal and informal mechanisms.⁹⁸⁶ I see this as a very positive and important development, particularly in the area of dealing with sexual misconduct. Feedback from the community is currently received from many avenues via neighbourhood support groups, community patrols, intelligence-led policing, and community support groups.⁹⁸⁷
- 8.15 However, although these mechanisms contribute to better policing, they do not directly address the question of how well New Zealand Police is meeting community expectations as a service organisation. In my view the police should go considerably further. The police would agree that effective links to the community are essential to achieving and maintaining a high quality of police service delivery. The community is both the client of New Zealand Police, and also a very valuable resource for providing feedback. I have been impressed by the efforts some district commanders and other officers have made to establish regular contact with a range of people within their communities. This provides helpful information on how the police can use their limited resources most effectively, and also provides a channel for early warning of problems or potential for problems with the behaviour of particular officers or groups of officers.

984 New Zealand Police, Submission re Integration of Professional Standards and Human Resources, August 2006.

985 Minister of Police, media release, 7 March 2006.

986 Superintendent Mark Lammas, District Commander, Central, Brief of evidence, 15 November 2005, p. 9; and Superintendent Grant Nicholls, District Commander, Eastern, Brief of evidence, 15 November 2005, p. 8.

987 Police Managers' Guild, Submissions in response to draft report, 9 May 2006, p. 10.

- 8.16 Conversely, some of the cases I have examined of serious misconduct by police officers were not helped by what I see as an insular culture within New Zealand Police at the time the incidents occurred. I have discussed in Chapter 3 the particular issues with oversight of smaller and rural stations, and the value of having people from outside the police contribute to internal discussions on ethics. (On this latter point, I understand that most other professions regard external input as essential to formal processes for examining ethical issues, so as to avoid “group-think” within the profession.)
- 8.17 I believe that, as a service organisation, New Zealand Police needs to adopt an open approach to assessing the quality of its service delivery, and draw upon the resources within the community in both formal and informal ways. From his international research on police cultures, Professor Bayley in his evidence noted that police generally have a tendency to distrust “outsiders”.⁹⁸⁸ He described a range of benefits of having external input into police management:
- First, outsiders can help to ensure that problems are not over-simplified and that the organisation does not move prematurely to solutions that suit it.
 - Secondly, outsiders can audit the problem-solving process within the police and ensure that the police are being searching in their analysis of problems and possible responses.
 - Thirdly, outsiders can assist the police to identify best practices and good thinking from a variety of sources, some of which may not have been apparent to police.
 - Fourthly, outsiders can assist with undertaking spot checks verifying that policies and practices that are recommended are in fact put into operation.
 - Fifthly, outsiders can help in the long-term determination of whether practices as recommended and implemented do in fact have the desired outcomes.⁹⁸⁹
- 8.18 I am aware that the police governance project is examining the possibility of community input to police governance and I see this as a positive step. I consider it would be beneficial for the police to strengthen their dialogue with the wider New Zealand community about such things as the number of complaints against members and how mainstream New Zealand views the services offered by the police. They could build on the research undertaken annually to gauge public satisfaction with police services. Community feedback provides a chief executive and managers with a very useful additional source of information about how their organisation is operating at the grassroots level, and could be a component of the early warning system referred to in Chapter 6.
- 8.19 I do not want to be prescriptive regarding how best to achieve a more fruitful interchange with the community; nor do I wish to suggest that many, and perhaps most, district commanders do not already give a high priority to seeking community feedback. However, I believe that a consistent and visible set of mechanisms for involving the community in policing is important for improving public confidence in New Zealand Police.
- 8.20 In my view, this should involve in some form a group of community representatives in each police district, chaired by a recognised community leader, which meets regularly to

988 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 11.

989 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, pp. 27 and 28.

provide comment and feedback on police service delivery and policing issues within the area. Having an external chair would give the community a greater sense of ownership over the process, and would minimise the risk that the group is perceived as being “captured” by the police.

- 8.21 The membership, appointment process, and modus operandi are otherwise matters the police themselves can best determine.
- 8.22 I am aware that many public sector departments have mechanisms in place at different levels in the organisation in order to obtain feedback from the communities they serve. Such mechanisms include reference groups, consultative groups, and project teams that involve external members. These mechanisms are in addition to the formal surveys often undertaken by organisations (including the police). The police will find some useful models within the wider State sector.

OTHER EXTERNAL INPUT AND OVERSIGHT

- 8.23 The Commissioner of Police should be primarily responsible for giving effect to my recommendations and implementing the various other changes referred to above. However, it is also important that the police do not undertake the work on their own. There is a large amount of knowledge and expertise in the public sector that can be drawn upon in devising and implementing the various reforms.

Involving other central government agencies

- 8.24 It is for the Government to decide which agencies should be invited to work with the police on these matters. However, I make two comments.
- 8.25 First, I note that the mandate of the State Services Commission was extended in 2004 to enable the State Services Commissioner to set minimum standards of integrity and conduct, including by issuing codes of conduct, for the wider State services as well as the core public service.⁹⁹⁰ (As mentioned in Chapter 6, the State Services Commissioner has very recently issued a draft code of conduct for the State services.⁹⁹¹) At the same time the principal functions of the State Services Commissioner were extended to enable the provision of
- advice and guidance to employees within the State services [which term includes New Zealand Police] ... on matters, or at times, that affect the integrity and conduct of employees within the State services.⁹⁹²
- 8.26 Such guidance may be requested at any time by the chief executive of a State sector agency or the responsible Minister, or directed by the Prime Minister.⁹⁹³
- 8.27 I note that the now withdrawn Police Amendment Bill (No 2) would have had the effect of making codes of conduct issued by the State Services Commissioner applicable to all police members (sworn and non-sworn) unless the Commissioner of Police issued codes of

990 State Sector Act 1988, section 57 (as amended by the State Sector Amendment Act (No 2) 2004).

991 *Strengthening Trust, Making a Difference: A [draft] code of conduct setting minimum standards of integrity and conduct for agencies of the State services*, issued under section 57 of the State Sector Act 1958, 23 February 2007.

992 State Sector Act 1988, section 6(ha) (inserted by the State Sector Amendment Act (No 2) 2004).

993 State Sector Act 1988, section 11 (as amended by the State Sector Amendment Act (No 2) 2004).

conduct in respect of all or any groups of police members. It would also have enabled the State Services Commissioner's review and advisory powers to be exercised in relation to New Zealand Police.⁹⁹⁴ Although that reform did not proceed, and the wider reforms mentioned above do not extend to New Zealand Police because of the Police Act, I understand that the current relationship between the State Services Commission and New Zealand Police does allow for informal advice and review of aspects of the police by invitation, including advice on the proposed code of conduct for sworn staff.

- 8.28 I therefore suggest that the State Services Commission would be well placed to provide advice and guidance to the police on several of the new initiatives, particularly those dealing with human resource management, ethics, codes of conduct, and the avoidance of conflicts of interest. I would support the removal of any legislative impediment to the State Services Commissioner providing more formal advice and guidance on such matters.⁹⁹⁵
- 8.29 Secondly, I do not question the Government's decision that the police be responsible for the review of the Police Act. But when it comes to legislative change resulting from that review it will be vital for constitutional reasons to have the Ministry of Justice involved – to remove any inference that the police are driving a process that may affect the nature and extent of their powers. Other Government departments should be involved in other aspects of the reforms relevant to their expertise.
- 8.30 As an aside, I believe there is risk in the view that New Zealand Police is a unique organisation whose management challenges therefore cannot be compared with those facing other Government agencies. Although the particular combination of roles may be unique, I have no doubt that New Zealand Police has much in common with a range of other Government service agencies. I have noted a tendency within the police to look to overseas police jurisdictions for ideas to solve their management problems rather than sharing good practice ideas with other New Zealand Government service delivery agencies. The police challenge the accuracy of this perception, but I am convinced that it is valid. To the extent that it is true it represents a risk that the police are overlooking the wealth of knowledge and experience available in this country. New Zealand has been a world leader in managing change in the public service, and there is much that the police can learn from the experiences of other public service organisations, as well as looking to good overseas models.

Implementing the reforms

- 8.31 I am also concerned that the workload of implementing all the initiatives and projects referred to earlier will prove unmanageable, and that some of the important initiatives arising from this Commission of Inquiry into Police Conduct will not be given the priority they need or will be abandoned before completion. A number will need lengthy consideration and consultation. Some will also require major change over a long time in order to be effective. Culture and system change is not a rapid process.
- 8.32 I consider it is very important that the changes that I have recommended and the various police initiatives already under way proceed in a considered and orderly way. I consider two steps are needed to achieve this.

⁹⁹⁴ Police Amendment Bill (No 2), clause 4, proposed new sections 9 and 16A of the Police Act 1958.

⁹⁹⁵ Under section 96 of the Police Act 1958, nothing in the State Sector Act 1988 applies to people employed as members of the police.

- 8.33 First, it is important to ensure “buy in” from throughout the police organisation when implementing significant change. Police Commissioner Robinson told me how he liked to have an innovative organisational culture where operational staff could pick up good ideas and “Johnny Appleseed them across the organisation”. He said that, in his experience of police, there would be “a problem with a good idea, if it is handed down from on high, because it’s come from upstairs” and that there would be “a degree of compliance but it will be sufficient to tick the box”.⁹⁹⁶
- 8.34 Secondly, the full range of initiatives and projects needs to be rationalised, with proper planning to ensure that interdependencies between projects are identified, priorities are assigned, and adequate resources are made available to do the work. Where projects need to be prioritised, I recommend this be done by the Commissioner of Police in consultation with the Minister of Police as part of the process of preparing an annual statement of intent.

Monitoring the implementation of change

- 8.35 Finally, I also believe it is important that the changes I have recommended, and the various police initiatives, are carried through to implementation. In my view an external body should undertake an independent oversight role and report regularly to Parliament over the next decade on progress with implementing the recommendations in my report (assuming they are adopted by Government) as well as progress on the various projects the police have initiated in response to the establishment of this Commission of Inquiry into Police Conduct. I have carefully considered the nature and form of the external oversight that is needed, and acknowledge this is a matter for the Government to determine. I am aware of the operational independence of the Commissioner of Police, and the importance of not limiting that independence by imposing external supervision or control of police operations. As noted above, I am also aware that New Zealand Police is not a part of the core “public service” which comes under the primary jurisdiction of the State Services Commissioner.⁹⁹⁷ However, it is part of the public sector, and is a Government department for the purposes of the Public Finance Act 1989. The Commissioner of Police, as chief executive of New Zealand Police, is responsible to the Minister and, through her, to Parliament for its administration and control, and financial management and performance.⁹⁹⁸ As Dr Warren Young explained in his evidence, a modern police force is subject to many of the same accountabilities as other state agencies.⁹⁹⁹
- 8.36 I suggest the appropriate agency to undertake this external oversight and reporting role is the Office of the Auditor-General. The Controller and Auditor-General already has oversight of the police under the Public Audit Act 2001, with responsibilities that include performance auditing as well as annual financial audits. The Auditor-General is also an Officer of Parliament, and his staff regularly advise select committees of the House for the purpose of their annual financial reviews of public sector organisations including New Zealand Police. His office would be well placed to perform the monitoring and reporting role I envisage. The annual financial review of New Zealand Police by a select committee would be the appropriate forum in which his report could be considered.

⁹⁹⁶ Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, p. 24.

⁹⁹⁷ New Zealand Police is not a department listed in Schedule 1 of the State Sector Act 1988.

⁹⁹⁸ Police Regulations, regulation 3.

⁹⁹⁹ Dr Warren Young, Law Commission, Brief of evidence, 22 November 2005, paragraph 14.

- 8.37 I record that the Police Association and the Police Managers' Guild do not support an external agency reporting to Parliament on the performance of the police. The Police Association believes that this is a task appropriately and exclusively the purview of the Commissioner of Police. Likewise, the guild does not believe this is necessary because the Police Project Management Office also has responsibility for monitoring in this area. For the reasons given above, I am not dissuaded from my view.

CONCLUDING COMMENT

- 8.38 This report has presented a series of “snapshots” of police standards and practices over a 25-year period. Much of the Commission's focus was necessarily on historical matters. The snapshots, especially those from the earlier years, are sometimes ugly. But my report also notes the significant improvements in standards and practices over the period.
- 8.39 The risk with a long-running inquiry such as this is that the picture of “current” standards and practices obtained through evidence early in the Commission's existence will be out of date, and overtaken by events, by the time the Commission produces its report. Yet in another sense, the longevity of this Commission of Inquiry into Police Conduct is one of its strengths, because it has provided a stimulus for reform. As described above, it acted as a catalyst for the police to develop and test new initiatives over the three-year period the Commission was running.
- 8.40 It might then be asked what ongoing significance has the Commission's report, and its snapshots of current and past practice, for the future development of police standards and practices. The answer is a great deal of importance and ongoing relevance. I repeat my observations in Chapter 1 that the historical examples used in this report involved real people. They are not forgotten. The evidence from the police investigations of their complaints provide valuable lessons from the past, and for future practice.

Recommendations

Community engagement and feedback

- R57** Each police district should establish groups of community representatives, chaired by recognised community leaders, which meet regularly to provide comment and feedback on police service delivery and policing issues throughout the district. Relevant information obtained from the feedback from the community should be incorporated into the police early warning system (see recommendations R47, R48).

Implementation and monitoring of police initiatives

- R58** New Zealand Police should rationalise the projects and initiatives currently in train (including those started in response to this Commission of Inquiry into Police Conduct, and the review of the Police Act 1958) and any further projects arising out of the Government's response to this report, to ensure that overlaps between projects are addressed, interdependencies are identified, priorities are assigned, and adequate resources are made available to do the work. New Zealand Police should address these issues in its annual statement of intent, and consult with the Minister of Police in respect of the priority to be given to projects.
- R59** New Zealand Police should consult with and involve the State Services Commission and other public sector agencies, where appropriate, to ensure that the projects and initiatives of the type described in recommendation R58 take account of best practice in the public sector. The Government should take steps to remove any statutory impediment to such consultation and involvement.
- R60** The Government should invite the Controller and Auditor-General to monitor, for the next 10 years, the New Zealand Police implementation of all the projects and initiatives of the type described in recommendation R58, and also the police implementation of the recommendations of this Commission of Inquiry into Police Conduct as approved by Government. The Controller and Auditor-General should report regularly to Parliament on this matter during the ten-year period.



INDEX OF OPERATION LOFT FILES

The following is an index of references in the report to Operation Loft files. (This was the name given to the search of police records by staff of the Professional Standards section at the Office of the Commissioner to identify all cases that related to the Commission's terms of reference.) In the report, these files are coded LT 1 etc; for the purposes of this index, the files are assigned three-digit code names (hence LT 001 etc).

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