POLICE INTEGRITY COMMISSION

OPERATION ABELIA

RESEARCH AND INVESTIGATIONS INTO
ILLEGAL DRUG USE BY SOME NSW POLICE OFFICERS

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6. NSW POLICE POLICIES, PROCEDURES AND PRACTICES: DESCRIPTION, OBSERVATIONS AND ASSESSMENT

6.1 OVERVIEW

This chapter examines the effectiveness of relevant NSW Police policies, procedures and practices that could potentially impact on the use of illegal drugs by officers. In line with the objectives of Operation Abelia, the examination of effectiveness is confined to an assessment of how useful these policies, procedures and practices are in minimising illegal drug use by its officers. No attempt is made to examine the overall effectiveness of these policies and procedures against a broader set of aims.

The NSW Police policies, procedures and practices that are examined in this chapter were selected for their relevance to illegal drug use and/or their potential to minimise illegal drug use by NSW Police officers. Some of these, such as the Drug and Alcohol Policy, are initiatives that specifically focus on minimising alcohol abuse and illegal drug use. Others, such as recruitment and training, are practices that have the potential to assist in minimising illegal drug use. While these policies, procedures and practices are interrelated, for simplicity each one is examined separately in the material that follows.

The chapter commences with an overview of the NSW Police Drug and Alcohol Policy (see Section 6.2). Following this, the major components of the Drug and Alcohol Policy are discussed separately:

- self-reporting illegal drug use under the amnesty provision (Section 6.3)
- targeted drug testing (Section 6.4)
- random drug testing (Section 6.5)
- mandatory (or critical incident) drug testing (Section 6.6).

The NSW Police 'Code of Conduct and Ethics' is examined in Section 6.7. This code was selected for specific examination primarily because an extract from this code is used within the Drug and Alcohol Policy to describe acceptable behaviour in this area. The Code of Conduct and Ethics is also of interest because it is a tool that NSW Police uses to provide guidance concerning acceptable behaviour for its officers. A second and separate code, the 'Code of behaviour', which was established as part of the *Police Regulation 2000* specifically in regard to the consumption of alcohol and the use of prohibited drugs, is examined in Section 6.8.

The other policies, procedures and practices that the PIC regards as having potential to assist in minimising illegal drug use that are examined in this chapter are:

- recruitment procedures (Section 6.9)
- education, training and communication (Section 6.10)
- supervision and support for officers (Section 6.11)

- those that apply to managing officers who have been found to have used prohibited drugs (Section 6.12).

In each of the following sections of this chapter, the following information is provided:

- a *description* of the current policy, procedure and/or practice
- *observations* during Operation Abelia
- *assessments* and, where appropriate, recommendations for enhancement which are made based on these observations.

Given that such policies, procedures and practices are under frequent review, it should be noted that the descriptions provided in this chapter were current as at the time this report was being drafted in early 2005.

The observations about these policies, procedures and practices are based on an analysis of information from a broad range of sources including:

- written materials provided by NSW Police, such as the actual policy documents, training materials, statistical reports and publications
- interviews with members of NSW Police working in key policy areas
- policy-related evidence given by the NSW Police Director of Health Services and by the Manager of the Employee Management Branch in public hearings held as part of Operation Abelia
- evidence by those NSW Police officers and former officers, who had admitted illegal drug use, given at public and private hearings about their experience with and the effectiveness of policies, procedures and practices
- responses from local area commanders and commanders of specialist units when interviewed about their experiences with different policies and procedures
- comments by officers and students, who participated in Operation Abelia focus groups, concerning their awareness of and perceptions of the effectiveness of these policies and procedures
- round table discussions held with representatives of NSW Police, the Police Association of NSW, the NSW Ombudsman and the Ministry of Police
- interviews with experts in the drug and alcohol, drug testing, criminology and crime prevention areas
- approaches taken by other law enforcement agencies within and beyond Australia, and
- relevant literature.

As a result of the interrelationships between the different policies, procedures and practices examined in this chapter, there is overlap between some of the issues discussed and the recommendations made in the individual sections of this chapter.

The material from this chapter is consolidated in Chapter 7 to provide an overview of the nine-part strategy for strengthening NSW Police's approach to minimising illegal drug use. A consolidated list of the recommendations made can be found at the end of Volume 1.

6.2 DRUG AND ALCOHOL POLICY - OVERVIEW

The purpose of this section is to provide an overview of the NSW Police Drug and Alcohol Policy. The major components of the Drug and Alcohol Policy that pertain to illegal drug use are described and assessed separately in more detail in Sections 6.3 to 6.6 that follow.

DESCRIPTION

In March 1997 NSW Police introduced a comprehensive Drug and Alcohol Policy that has a health and safety focus clearly articulated in its aims. The stated aims of this policy are:

> to facilitate the health, safety and welfare at work of all Service employees and to enhance the safety of members of the general community.
>
> It also aims to formally identify support mechanisms by which employees experiencing alcohol or other drug problems can obtain help.

In relation to illegal drug use, the policy states:

> No officer of the Police Service is permitted to use any prohibited drug.

To provide further guidance on appropriate behaviour the 'Drugs and Alcohol' section of the NSW Police Code of Conduct and Ethics is incorporated within the Drug and Alcohol Policy. It states:

> You must not perform your job, remain at work or undertake any Police Service related activity if you are impaired by alcohol or other drugs, including drugs prescribed by your doctor. This includes training functions and seminars. If you are off duty and impaired, you are not permitted to visit the workplace. If you are responsible for driving a car, working machinery or carrying a gun, you must tell your supervisor if you are taking any drugs which carry a warning.

The Drug and Alcohol Policy provides for alcohol and other drug testing, as well as providing information on support services available to officers and their families. This policy outlines that NSW Police can drug test officers under three types of situations:

1. following a shooting or a high speed pursuit that results in a death or serious injury, or a death in custody (This type of testing is known as 'Mandatory Drug Testing' and commenced in July 1998.)
2. when there is reason to suspect that an officer may be using illicit drugs (This type of testing is known as 'Targeted Drug Testing' and commenced in November 1998.), and

3. a broader-based form of drug testing known as 'Random Drug Testing' which commenced on 1st September 2001.

The Drug and Alcohol Policy lists the roles and responsibilities of each of the following: supervisors/commanders; all officers; and the Healthy Lifestyles Branch. It also provides the following confidentiality guarantee:

> All referrals to the Service Drug and Alcohol Counsellors will be treated in strict accordance with the non disclosure provisions of the Policy Statement Section of this document and with the 'Code of Practice for Drug and Alcohol Counsellors'.

Both the Drug and Alcohol Policy and the regulations governing the administration of the drug and alcohol testing program came into effect on 7 April 1997.[890]

Drug and alcohol testing, drug and alcohol counselling and some aspects of drug and alcohol education are coordinated through the Healthy Lifestyles Branch of the NSW Police Health Services Directorate.

Education was a key feature of the implementation process that included training current officers and all new recruits about this policy. The Drug and Alcohol Policy was initially published in the *Police Service Weekly* on 12 May 1997. In the foreword to that article, Christine Nixon, the then Executive Director of Human Resources and Development, wrote:

> The Policy clearly sets out the Service's expectations of all employees concerning their use of alcohol and other drugs and provides detailed information about the random and targeted testing procedures which have now been published.

The policy was also promoted in a July 1997 article in the *Policing Issues and Practice Journal* that identified the key features of the policy as:

- provision of professional support, at the Service's expense, for individuals experiencing dependency problems
- the introduction of a formal Code of Practice for drug and alcohol counsellors
- amnesty provisions for officers who voluntarily disclose and seek help for dependency problems
- random and targeted drug and alcohol tests.[891]

This *Policing Issues and Practice Journal* article also drew attention to the 'Code of behaviour' which is provided in Clause 49 of the *Police Regulation 2000*.[892]

890 G. Jackel, & M. Shiels, Police, drugs and alcohol. *Policing Issues and Practice Journal, July 1997*, p. 67

891 G. Jackel, & M. Shiels, Police, drugs and alcohol. *Policing Issues and Practice Journal, July 1997*, pp. 67 - 68.

892 G. Jackel, & M. Shiels, Police, drugs and alcohol. *Policing Issues and Practice Journal, July 1997*, p. 68. The 'Code of behaviour' is discussed in more detail in Section 6.8 of this chapter.

The Drug and Alcohol Policy was implemented in three phases. The three phases of implementation have been described as follows:

> Phase 1: An extensive six-month education program, designed to promulgate the Service's new expectations to all staff, was implemented in March 1997. During this phase:
>
> - every non-commissioned officer was required to complete a Drug and Alcohol Policy Workshop as part of their incremental salary progression
> - the policy was published in several internal publications
> - wall posters were issued to every Police Station
> - external publicity was given to the program via the media
> - ongoing workshops were commenced for supervisors, as well as recruits.
>
> Phase 2: Random and targeted alcohol testing was commenced at the conclusion of the education phase. During this phase Westmead Hospital conducted, on the Service's behalf, an independent research study into the extent of illicit drug usage by police.[893] Also during this phase, mandatory drug and alcohol testing of police involved in critical incidents was commenced, as was targeted drug testing.
>
> Phase 3: The final phase of the policy, random drug testing, was introduced in September 2001.[894]

NSW Police has advised the PIC that the Drug and Alcohol Policy implementation strategy also involved:

- including the policy in the Mandatory Continuing Police Education Program since 1997/98 whereby 11 905 officers have received training under this program
- introducing the policy into the Police Recruit Education Program which every student is required to complete
- including the policy in the Pre-Qualifying Assessment process
- including the policy in Peer Support Officers' training since 2000 whereby 584 officers have received this training
- referring to the policy in the Duty Officer's Manual, and
- employing a full-time Drug and Alcohol Educator who conducts workshops on a range of drug and alcohol issues on an ongoing basis.[895]

NSW Police has further advised the PIC that 1707 people have received training about the Drug and Alcohol Policy as part of the BAS course.[896]

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893 The results of the Westmead Study were reported in 1998. The Westmead Study is described in Section 2.5 of Chapter 2 of this report.

894 G. Jackel, Workplace drug and alcohol policy and testing – The NSW police experience. *Paper presented at the 2nd Australasian Conference on Drugs Strategy, May 2002*, p. 2.

895 Letter from the Commissioner of Police to the PIC Assistant Commissioner dated 27 April 2005.

OBSERVATIONS

Observation 1:	**The NSW Police Drug and Alcohol Policy has been used as a model by other jurisdictions.**

One of the recommendations made by the Criminal Justice Commission in its report examining drug use by Queensland police was that the Queensland Police Service should consider adopting the core elements of the NSW Police Drug and Alcohol Policy.[897]

Through its contact with officers from law enforcement agencies in other states, the PIC is aware that representatives from some other law enforcement agencies have sought to benefit from NSW Police experience when developing a drug and alcohol policy for their own jurisdictions.

Observation 2:	**The NSW Police policy has the features that commentators propose as the characteristics of a good drug and alcohol policy.**

While the NSW Police Drug and Alcohol Policy is unusual in its adoption of a health and safety model, this is the approach that is currently advocated by those providing advice in this area. In her examination of responses to illegal drug use by police departments in six jurisdictions in the USA, Mann (2003) observed that she was usually referred to the Internal Affairs section of each law enforcement agency and that drug testing was usually seen as a disciplinary issue in the USA. She contrasted this with the NSW Police approach, where the drug testing policy originates from the Healthy Lifestyles Branch.[898] In its 2004 report, the Independent Inquiry into Drug Testing at Work in the UK stated that the key to successful implementation of a drug and alcohol policy is that it is conceived as an aspect of a broader health and welfare policy and not exclusively as a disciplinary matter.[899]

A number of other commentators have offered guidance for those who are developing a drug and alcohol policy with a drug testing provision. Some of the features that have been identified as characteristics of good policies by these commentators include:

- drug and alcohol testing should be considered as only one part of a comprehensive drug and alcohol policy and program that should also incorporate education and counselling

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896 Breathalyser training course.

897 Criminal Justice Commission, *Police and drugs: A report of an investigation of cases involving Queensland Police Officers. Criminal Justice Commission*, October 1997, p. 72.

898 K. Mann, Substance use in a police workplace: emerging issues and contemporary responses. Queensland Police Service, 2003, p. 58.

899 K. Mann, Substance use in a police workplace: emerging issues and contemporary responses. Queensland Police Service, 2003, p. 70.

- the policy should be agreed to by employers, workers and unions
- the aim of any workplace policy and procedures should be prevention, education, counselling and rehabilitation and should be part of an organisation's overall occupational health and safety strategy. [900]

The NSW Police Drug and Alcohol Policy has these features.

Observation 3: While commanders are aware of the existence of the NSW Police Drug and Alcohol Policy, some officers appeared not to know of the policy and others are not clear about the main messages in relation to illegal drug use.

Each of the commanders interviewed as part of Operation Abelia said that he was aware of the NSW Police Drug and Alcohol Policy.[901]

Officers and students who participated in focus groups as part of Operation Abelia were asked about the Drug and Alcohol Policy.[902] When asked *Do you know the NSW Police Drug & Alcohol Policy?* participants in one focus group responded with silence. In most groups only a small number of comments were made confirming or denying awareness of the policy, for example:

> Broadly.
>
> Sure. There is one [policy].
>
> Don't know.

One participant said 'I know it well', and then explained that it was part of his role to provide information on the policy.

When asked *What are the main messages of the Drug and Alcohol Policy?*, focus group participants identified the following main messages of the Drug and Alcohol Policy:

900 For example: R. Stothard, Drugs and alcohol abuse in the workplace: The union's perspective. *Paper presented to the Alcohol and Other Drugs in the Mining & Allied Industries Conference, Newcastle, 4th June 1998*; WorkCover Corporation of South Australia, Guidelines for drugs, alcohol and the workplace. WorkCover Corporation of South Australia, February 2001; K. Heiler, Drugs and alcohol management and testing standards in Australian workplaces: avoiding that 'morning-after' feeling. *Sydney: ACIRRT University of Sydney Working Paper 81 – presented at breakfast briefing on 5 December 2002 at Masonic Centre Sydney. Reprinted in AWU Seminar Papers: Testing the limits: An exploration of drug and alcohol testing in the Workplace, Friday May 2nd 2003*; Professional Resource Screening Inc (PRSI) Drug testing: Integrated employment screening and drug testing. PRSI Screening News, September 2002; P. Mogridge, Workplace drug and alcohol programs. *Paper presented at the Australian Workers' Union Testing the limits: An exploration of drug and alcohol testing in the workplace, Melbourne, 2nd May 2003*; G. Tweedly, *Testing the limits. Paper presented at the Australian Workers' Union Testing the limits: An exploration of drug and alcohol testing in the workplace, Melbourne, 2nd May 2003*.

901 Refer to Appendix 2 for more information about the interviews with local area commanders and commanders from specialist units.

902 Refer to Appendix 4 for more information about the focus groups with officers and students.

- prohibition of (certain kinds of) drug and alcohol use
- drug testing
- staff health and welfare.

Examples of some of the comments made in focus group discussions concerning the main messages of the Drug and Alcohol Policy include:

> No drugs. No alcohol on duty.
>
> Oh-two [.02] alcohol whilst at work. No drugs in your system.
>
> Thou shalt not come to work pissed. [New speaker:] And drug affected.
>
> Don't come to work whilst affected. [New speaker:] On duty. The biggest message that's coming to us is, 'don't be affected by anything while on duty'.

ASSESSMENT

When considering this policy it is important to be aware of the context in which it was introduced. NSW Police introduced its Drug and Alcohol Policy to improve employee health and safety generally and to enhance the safety of members of the general community. Alcohol abuse by officers was a major concern for NSW Police at the time the policy was introduced. While evidence has been provided that the policy has had some success in bringing about 'a cultural shift in the organisation' in relation to alcohol abuse[903], this is not the focus of Operation Abelia. The focus of Operation Abelia is on the use of illegal drugs by some NSW Police officers. Accordingly, the focus of the assessment of the Drug and Alcohol Policy is on its effectiveness in minimising illegal drug use by officers.

As mentioned at the beginning of this section, the purpose of this section is to provide an overview of the NSW Police Drug and Alcohol Policy rather than a detailed examination of the policy.

As part of this overview, the PIC acknowledges the comprehensive nature of the NSW Police Drug and Alcohol Policy. It also acknowledges that this policy has been, and continues to be, used as a model by other law enforcement agencies. By adopting a focus on health and welfare rather than considering drug use exclusively as a disciplinary matter and by incorporating drug testing as only one component of a much broader policy which also incorporates education and counselling, the NSW Police Drug and Alcohol Policy is consistent with international best practice in this area.

903 Operation Saigon Phase 1, PIC Transcript, G. N. Jackel, 2 March 2000, p. 574; Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, pp. 155-156.

However, the information collected for Operation Abelia suggests that there may be scope for improving the clarity of the message received by officers and the retention of these messages. For any policy to have a chance of being effective the staff affected by the policy need to be aware of the policy. They need to understand and retain the main messages of the policy. This issue, and related issues, are discussed further in subsequent sections of this chapter.

The major components of the Drug and Alcohol Policy that pertain to illegal drug use are examined separately and in more detail in the sections that follow. These major components include:

- Amnesty which provides for self-reporting illegal drug use (see Section 6.3)
- Targeted drug testing (Section 6.4)
- Random drug testing (Section 6.5)
- Mandatory (critical incident) drug testing (Section 6.6).

While no specific recommendations are made within this overview, recommendations relevant to the NSW Police Drug and Alcohol Policy are made in Sections 6.3 to 6.6 as well as in the sections that examine the Code of Conduct and Ethics (Section 6.7), the Code of behaviour (Section 6.8) and education, training and communication strategies (Section 6.10). The PIC is of the view that NSW Police should review and update the contents of its Drug and Alcohol Policy after considering the assessments and recommendations made later in this chapter.

6.3 SELF-REPORTING ILLEGAL DRUG USE

DESCRIPTION

As noted in the previous section, the NSW Police Drug and Alcohol Policy includes a provision that aims to encourage officers to come forward to seek help if they have an alcohol or other drug problem. This is consistent with recommendations of the Royal Commission into the NSW Police Service that proposed that 'police officers with problems' be encouraged to seek assistance and that confidential welfare support be provided for such officers.[904] This provision of the NSW Police Drug and Alcohol Policy is referred to as the 'amnesty'.

With regard to the amnesty, the NSW Police Drug and Alcohol Policy states:

> … it is recognised that it is in the interests of the community, the organisation and the individual to take all reasonable steps to rehabilitate officers with substance abuse problems. In accordance with this view, as well as advice received from the Wood Royal Commission, no adverse action will be initiated against any officer as a result of personal admissions of past abuse made to Service Drug and Alcohol Counsellors, subject to the disclosure provisions contained in the Counsellors Code of Practice.

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904 J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Interim Report*, February 1996, p. 129; J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Final report. Volume II: Reform*, May 1997, p. 509.

> Confidentiality is offered to any officer who voluntarily seeks assistance from a Service Drug and Alcohol Counsellor. Drug and Alcohol Counsellors employed by the Service will not disclose information about clients without their informed consent, except in cases where:
>
> - Disclosure of the information is necessary to prevent harm or lessen a serious threat to public or individual health and/or safety
> - Disclosure is required by law, or
> - Positive random drug or alcohol test results of police officers require the preparation of rehabilitation reports. In such cases, the only information provided will relate to compliance issues. Specific details related to personal counselling advice and treatment will not be disclosed.
>
> The amnesty will apply only while the officer is a current client of a Service Drug and Alcohol Counsellor, and they are complying with the rehabilitation program agreed to by the counsellor.
>
> Police officers who choose not to voluntarily seek help and who subsequently test positive to either an alcohol or drug test must expect to be dealt with in a more formal manner.

The amnesty provision of the Drug and Alcohol Policy was promoted at the time the policy was initially published in the *Police Service Weekly* on 12 May 1997. In the foreword to that article, Christine Nixon, the then Executive Director of Human Resources and Development, wrote:

> An important component of the Policy is the provision of confidential and non-judgemental support for any officer who voluntarily seeks assistance from a Service drug and alcohol counsellor. A stringent Code of Practice for our counsellors has been incorporated in the Policy and any officer experiencing a dependency problem is strongly encouraged to seek professional help, without fear of reprisal action being taken against them, before testing positive to a random or targeted test.

The amnesty was further publicised four years later, prior to the introduction of random drug testing, in the *Police Service Weekly* issues of 23 July 2001 and 27 August 2001:

> The Service continues to offer all employees the opportunity to seek professional help for dependency problems (including illicit drug use) without the fear of disciplinary action being taken against them …
>
> The amnesty places an emphasis on rehabilitation, without the fear of discipline, however, to take advantage of it, you must voluntarily seek help prior to testing positive to either a random, targeted or mandatory drug test.
>
> The Service will provide all reasonable support, including financial assistance with treatment costs, without the fear of disciplinary action for those officers who voluntarily come forward to one of our Drug & Alcohol counsellors.

> However, to remain covered by the amnesty, you must comply with the rehabilitation program developed for you. If you choose not to seek help under the amnesty, and subsequently test positive, then you must expect to be treated in a more formal manner.[905]

Compliance with amnesty conditions

Those on amnesty are required to:

- comply with all drug testing requirements, as organised by Healthy Lifestyles Branch
- attend psychological/psychiatric assessment, as required by Healthy Lifestyles Branch
- attend counselling sessions, as required by Healthy Lifestyles Branch
- comply with any other rehabilitation or counselling requirements as determined by the NSW Police drug and alcohol counsellors.

When the PIC sought information about what, if any, follow-up counselling or testing is provided to an officer after he or she comes off the amnesty, NSW Police said that the officer is invited to contact the Health Services Directorate if they need further assistance in the future. Furthermore NSW Police advised that the Health Services Directorate does not systematically conduct follow-up drug testing on every officer who has sought assistance for their illegal drug use. NSW Police advised that after completing the amnesty, officers are not singled out in any way and are as likely to be drug tested as any other officer at any time.

In early September 2004, NSW Police proposed to modify the amnesty provision for officers who seek assistance for drug-related matters. This proposal included the following changes:

- no longer using the term 'amnesty'
- notifying the officer's commander or manager on a confidential basis that the officer has sought amnesty
- subjecting the officer to a lengthier period of drug testing than in the past, and
- requiring the officer to present for a drug test within 24 hours of being notified by Health Services Directorate irrespective of whether or not they are on duty at that time.

905 NSW Police, *Police Weekly*, 27 August 2001, p. 5.

These changes to the amnesty provision were proposed after a serving officer provided evidence in a private PIC hearing to the effect that he had used illegal drugs (cocaine, heroin and ecstasy) after seeking assistance through the amnesty primarily for alcohol-related problems.[906]

OBSERVATIONS

Observation 1:	**It has been suggested that by providing a means to encourage officers to come forward to admit their drug use, amnesty prevents the problem from being driven underground.**

In his evidence on 15 December 2003, the NSW Police Director of Health Services expressed the opinion that if there was not a mechanism such as the amnesty to encourage officers to come forward, it would simply make the problem bigger by driving it underground.[907] He also said that the amnesty was a creation of the Royal Commission:

> The Royal Commission took the view that it was in the greater community interest for police to come forward for help because if there wasn't a mechanism for that, it would simply drive the problem underground.[908]

The need to provide assistance for those who do come forward to admit their illegal drug use has been recognised elsewhere since the Royal Commission. For example, the President of the Police Superintendents' Association in the UK was quoted in the report of the Independent Inquiry into Drug Testing in the Workplace as suggesting that drug testing needs to be balanced by providing programs to assist and treat officers:

> Police personnel are put through some pretty stressful things and they are not given counselling on every occasion', he explained, 'the force has a responsibility to make sure they are looked after. It is not just a case of testing them and convicting them. [We are also proposing that] there are programs there to help them and to treat them.[909]

The Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO), which is the main police policy development body in the UK, has discussed the need for an 'initial supportive line' or amnesty to reduce the risk of the police illegal drug use being driven underground in its 'Substance Misuse by Police Personnel – Policy and Guidance Document':

> It would be incongruous for a law enforcement agency to deal leniently with law breaking amongst its own staff. However, if a hard line of dismissal for any substance misuse (perhaps excluding alcohol) is taken, there is a significant risk of driving the issue underground. If this happened, it would make dealing with substance misuse much more difficult as

906 Operation Abelia, PIC Transcript, Private hearing, APC, 30 August 2004, p. 58. Please note that the transcript from this private hearing and the transcript from other private hearings or from records of interview are not available for public distribution.

907 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 165.

908 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 165.

909 Independent Inquiry into Drug Testing at Work (IIDTW) *Drug testing in the workplace: The report of the Independent Inquiry into Drug Testing at Work*. York, UK: Joseph Rowntree Foundation, June 2004, p. 50.

> individuals, colleagues and even some managers would be reluctant to take action that would result in dismissal of a colleague.
>
> To try to balance these two conflicting interests, the initial supportive line of treatment in this policy could be considered as an amnesty to allow existing substance misusers to be identified, treated and hopefully rehabilitated. After a reasonable period (according to the level of success in identification and treatment of substance abuse) the amnesty will cease and a 'hard line' policy would be introduced.[910]

As mentioned in Chapter 3[911], it is not uncommon for policing agencies to seek to encourage officers to voluntarily disclose their drug use by treating them differently from the way they treat officers whose drug use is detected through other means (such as through internal investigation or a positive result to a drug test). In many of the policies examined by the PIC, officers who voluntarily disclose their drug use are offered rehabilitation. In contrast, officers whose drug use comes to notice through other means are disciplined, typically resulting in resignation or dismissal.

Many policing agencies offer a range of support programs such as employee assistance programs and counselling for officers with substance abuse problems.[912] The PIC is unable to assess how common the provision of programs to encourage officers to voluntarily disclose their drug use is across policing agencies as the information provided by some agencies to the PIC specifically focused on their drug testing arrangements and did not make reference to whether or not they provide support programs. Only one agency specifically mentioned that officers would not be eligible to participate in its employee assistance program in connection with any problems they might have with illegal drugs.[913]

Observation 2: Few NSW Police officers have come forward to report their personal illegal drug use under the amnesty.

While the amnesty has been available since the commencement of the Drug and Alcohol Policy in 1997, NSW Police has informed the PIC that, for the most part, officers did not commence seeking such assistance for drug use (other than alcohol use) until after random drug testing commenced in September 2001. Figure 6.1 illustrates the rate at which officers have come forward to report their personal illegal drug use under the amnesty.

As at the end of May 2005, a total of 24 officers had come forward under the amnesty. Thirteen of these officers accessed the amnesty prior to the commencement of Operation Abelia, eight accessed the amnesty in the first three months after the PIC's

910 Association of Chief Police Officers of England, Wales and Northern Ireland, Substance Misuse by Police Personnel – Policy and Guidance Document, October 2000, Section 10.4.

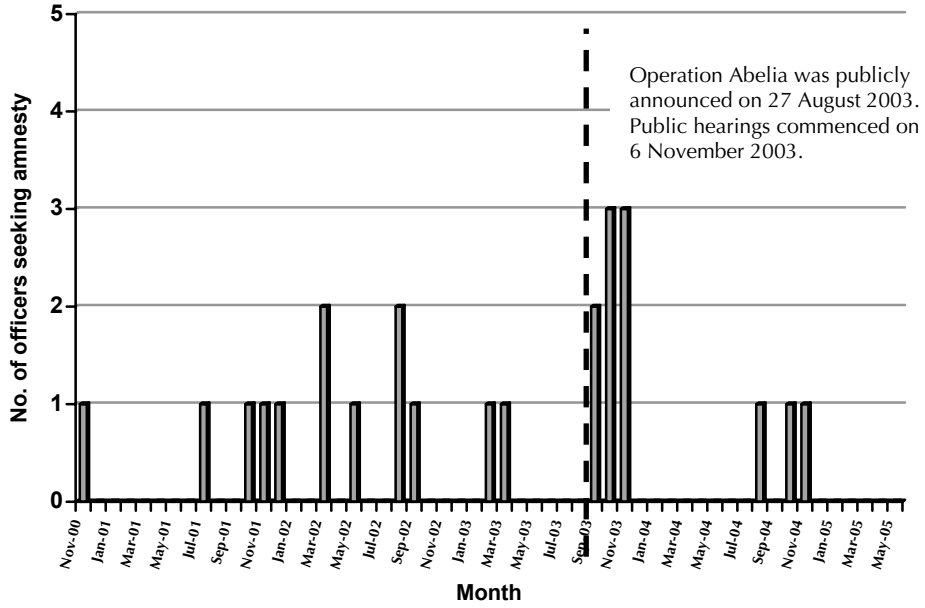
911 Examples of agencies encouraging officers to voluntarily declare their illegal drug use as well as the support programs provided are described in more detail in the discussion of the individual policies of different policing agencies in Appendix 14 and 15.

912 Appendix 14 provides additional information on the support provided by other Australian agencies such as Queensland Police Service, Victoria Police, Western Australia Police Service, Australian Federal Police, South Australian Police, while Appendix 15 provides additional information on the support provided by overseas agencies such as Toronto Police Service (Canada), the Federal Bureau of Investigation (United States), New York City Police Department (United States), Metropolitan Police Service (United Kingdom), and West Midlands (United Kingdom).

913 Charlotte-Mecklenburg Police Department, CMPD Directive 300-009: Drug Testing, December 1998, pp. 2-3.

Operation Abelia was announced in late August 2003 and three accessed the amnesty approximately 12 months later.

FIGURE 6.1: MONTHLY NUMBER OF OFFICERS ACCESSING AMNESTY, NOVEMBER 2000 - MAY 2005



As can be seen from Figure 6.1, other than an increase in numbers soon after the announcement of the PIC's Operation Abelia, there are no other clear groupings of officers coming forward at a similar time. Without asking each of the officers who accessed the amnesty, it is not possible to determine what was the catalyst for these officers to come forward when they did. The lack of apparent patterns in the numbers accessing the amnesty in different months may suggest that (other than perhaps the PIC's Operation Abelia and possibly the introduction of random drug testing in September 2001), there were no specific external triggers for officers to come forward. Rather, it may be the case that their accessing the amnesty was the result of individual circumstances.

NSW Police officers are not the only employees who seldom come forward to admit illegal drug use. The Independent Inquiry into Drug Testing at Work in the UK was told:

> …in reality, it is very rare for employees to come forward on a voluntary basis. When they come forward at all, this is almost always precipitated by a crisis – often because someone is convinced that their substance problem is about to be exposed anyway'.[914]

However, as noted above, without asking them it is not possible to know what acted as a catalyst for those NSW Police officers who have accessed the amnesty to decide to come forward when they did.

914 Independent Inquiry into Drug Testing at Work (IIDTW) *Drug testing in the workplace: The report of the Independent Inquiry into Drug Testing at Work*. York, UK: Joseph Rowntree Foundation, June 2004, p. 51.

Observation 3: Officers who have come forward to report their own prior illegal drug use under the amnesty have come from a cross-section of ages, ranks and duty types within NSW Police.

While the numbers who have reported their personal drug use have been small, they correspond to a broad range of NSW Police officers. NSW Police has provided the PIC with non-identifying demographic information (age at time of accessing amnesty, gender, rank and nature of drug for which assistance was sought) for officers seeking assistance for drug problems under the amnesty provision. Both male (17) and female (7) officers have come forward to report their drug use. The age of the officers who have come forward has ranged from 20 to 48 years old. Half of those who have come forward under the amnesty provision were older than 30 years of age.

The rank of the officers who have come forward to report their personal drug use has ranged from probationary constable to sergeant, with three probationary constables, seven constables, eleven senior constables and three sergeants coming forward. The distribution of these ranks of officers declaring their personal drug use under the amnesty approximately reflects the distribution of officers holding these ranks within NSW Police.

Thirteen of the officers, who have come forward under the amnesty, performed a 'general duties' role and eleven worked in specialist roles.

These officers reported having used a range of illegal drugs including cannabis (8 officers), ecstasy (7), cocaine (3), amphetamine (1) and in five cases the drug type was unknown as these officers said that they had sought assistance after accidentally ingesting substances.

Observation 4: Some of the officers who admitted using illegal drugs were either unaware of the amnesty or did not know how to access it.

In private hearings officers and former officers, who had previously admitted illegal drug use, were asked about their knowledge and understanding of the amnesty provision. They were also asked about their understanding of how it works, whether they had ever considered accessing the amnesty and if so, what happened; or if not, why they had not accessed the amnesty. They were also asked what would the amnesty have to provide to encourage them to apply for it.[915]

When asked about the amnesty some of the officers and former officers who had admitted illegal drug use said that they had not heard of it.[916] One of these officers told the PIC that he did not recall the amnesty for drugs being discussed:

915 For further information about the purpose of these private hearings and the nature of the questions asked refer to Appendix 3.

916 For example, Operation Abelia, Transcript of Record of Interview, 13 September 2004, p. 14; Operation Abelia, PIC Transcript, Private hearing, APF, 16 August 2004, p. 13; Operation Abelia, PIC Transcript, Private Hearing, ANL, 10 May 2004, p. 14: Operation Abelia, PIC Transcript, Private hearing, ANX, 13 May 2004, p. 12; Operation Abelia, PIC Transcript, Private hearing, ANM, 10 May 2004, pp. 14-15.

> We probably talked about the gun amnesty for the general public, but never talked about the drug amnesty at all.[917]

Some of those who said they had heard of it either did not think it was still operating, thought that they would not have satisfied the criteria for the amnesty or had other misconceptions as to how it operated. Some examples of these misconceptions include:

- Former Officer N2 joined NSW Police when he was 19 years old and left after more than 20 years service. He said that 'when the amnesty came in, I wasn't smoking drugs'. By the time he was using drugs he thought that the amnesty was over. He said that he was sure that the amnesty had only lasted for a fixed period of a time. This was a misconception because the amnesty has been available continuously since it was introduced as part of the Drug and Alcohol Policy in 1997.
- Former Officer M2, who was aged 19 when he joined NSW Police and served for less than two years prior to resigning, said that he was aware of the amnesty. He mistakenly understood that the amnesty offered less protection to probationary constables than others.[918] This was a misconception because, as can be seen from Observation 3, several probationary constables had come forward under the amnesty.
- Officer D3's description of how he thought the amnesty works illustrated his lack of understanding of the amnesty. Officer D3, who joined NSW Police aged 19 years and had been serving in NSW Police for 14 years at the time he gave evidence to the PIC, said that from what he understood, 'if you think you have a problem, or you want to make use of the amnesty you come to either a supervisor, or, or, or someone in authority or even the PIC and just tell 'em but I don't have that much of an understanding of it'.[919] This was a misconception because there is no need to report the drug use through these channels. NSW Police advocates that officers should seek amnesty by reporting their drug use to a drug and alcohol counsellor in the Healthy Lifestyles Branch.

Some other officers said that they were not aware of how to access the amnesty, for example:

- Officer K4, who joined NSW Police when she was 19 years old, told NSW Police that while she was aware that there was some assistance available she did not know its name or how to get in contact with this assistance:

> I knew, I didn't know the name of it, but and I didn't know how to get in contact and still I don't know the number of who to contact for that.

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917 Operation Abelia, PIC Transcript, Private hearing, ANX, 13 May 2004, p. 13.

918 Operation Abelia, PIC Transcript, Private hearing, ANV, 12 May 2004, pp. 12, 13, 17.

919 Operation Abelia, Transcript of Record of Interview, 13 May 2004, p. 12.

Observation 5: **The most common reason given for not coming forward under the amnesty by officers who admitted using illegal drugs was that they did not consider that they were an 'addict' or that they had a 'drug problem'.**

Current and former NSW Police officers who had admitted illegal drug use gave a variety of reasons when they were asked why they had not accessed the amnesty. Some of these officers gave more than one reason. The reason most frequently given by those who gave evidence to the PIC was that they did not consider that they were an 'addict' or a 'drug user' or that they did not consider that they had a drug problem, for example:

- Former Officer P1 joined the police when he was 22 years old and left after 20 years service. He said that although he was aware of the amnesty he did not consider that it was relevant to him. He did not regard himself as being drug dependent at the time. He added that he thought that most drug dependent people do not see themselves as drug dependent. But in retrospect he agrees that he was 'dependent on the uppers: amphetamines, cocaine and ecstasy'. He also suggested that he thought that young police officers who use ecstasy or cocaine socially on their days off would be unlikely to access assistance under the amnesty. He said 'I think you are going to find that their testosterone levels at that age are going to make them think they are impervious and bulletproof'.[920]
- Officer G2 joined NSW Police in his late 20s. He said that he had been aware of the amnesty at some stage. He said that he had never considered seeking amnesty 'because I don't think I have a drug problem'.[921]
- Officer D3, who joined NSW Police when he was 19 years old, said he had not considered applying for the amnesty. He said that:

  > I probably didn't consider myself to be a, what I would term, a drug user … I never considered myself personally someone who would need an amnesty … I mean in my situation I never really thought that I had a problem or anything like that. It wasn't like I would think I need to go out and get some eckies tonight. Yeah, like I could quite happily go out and even if offered it say 'Oh no I've got an early day tomorrow, thanks but no thanks'.[922]

- Former Officer M2, who was aged 19 when he joined NSW Police and served for less than two years prior to resigning, said that he was aware of the amnesty. He heard about the amnesty at a time when he was not using drugs and did not intend to use drugs so he did not bother looking into amnesty at that time. He did not think that he would apply for amnesty even with the benefits of hindsight:

920 Operation Abelia, PIC Transcript, Private hearing, ANP, 11 May 2004, pp. 14, 26-27.

921 Operation Abelia, Transcript of Record of Interview, 7 May 2004, pp. 14-15.

922 Operation Abelia, Transcript of Record of Interview, 13 May 2004, pp. 12, 13 & 20.

> Well, at the time I didn't believe that I was an addict. I didn't have much of an idea about being an addict. But if I'd known I was a drug addict before I joined the Police Service and then joined and there was an amnesty, I would have used it.[923]

- Former Officer A2, who joined NSW Police aged 24 years and resigned after less than three years service, said that he had not heard of the amnesty for police who had used illegal drugs.[924] After the amnesty was explained to him, this former officer said that he did not think that he would have applied for assistance had he known about the amnesty at the time.[925] He said that he did not regard himself as having a drug problem. He saw himself as a 'recreational drug user – just at functions and parties'. He explained that 'it wasn't every day or once a week'.[926] He also said that he was not sure how amnesty should be changed to attract more officers.[927]

Observation 6: **Another commonly given reason for not coming forward under the amnesty was that officers were concerned about the confidentiality of the process and about the potential detrimental impact on their career.**

Some of the current and former officers who admitted illegal drug use said that they did not come forward under the amnesty because of concerns about the confidentiality of the process, for example:

- Former Officer G6 who joined NSW Police when he was 20 years old and resigned after eight years service, said that he had heard of the amnesty. He recalled that it had to do with seeking help for alcohol or drugs and that it was confidential.[928] However, he had doubts as to the confidentiality of the amnesty:

> I know people in the past that have worked on those things, and I know that it's not 100 per cent confidential when they do those sorts of things. They pin you down to either your region or your command, or whatever, because they use that – they use that data then to go on for various things in the future.[929]

When asked whether he had ever considered seeking amnesty he said that he had not 'because of the fear of being then identified, whether it was personally or by station or command, or whatever'.[930] He was also asked whether if that fear could be eliminated would he have ever considered seeking an amnesty. He replied that he would have liked to

923 Operation Abelia, PIC Transcript, Private hearing, ANV, 12 May 2004, pp. 12, 13, 17.
924 Operation Abelia, PIC Transcript, Private hearing, APF, 16 August 2004, p. 13.
925 Operation Abelia, PIC Transcript, Private hearing, APF, 16 August 2004, p. 14.
926 Operation Abelia, PIC Transcript, Private hearing, APF, 16 August 2004, p. 14.
927 Operation Abelia, PIC Transcript, Private hearing, APF, 16 August 2004, p. 14.
928 Operation Abelia, PIC Transcript, Private hearing, APH, 13 August 2004, p. 19.
929 Operation Abelia, PIC Transcript, Private hearing, APH, 13 August 2004, pp. 19-20.
930 Operation Abelia, PIC Transcript, Private hearing, APH, 13 August 2004, p. 20.

> have talked to someone about it, 'but, as a police officer, I just wouldn't trust anyone. I wouldn't trust an independent agency on that'.[931]

- Former Officer C2, who joined NSW Police when he was 23 years old and resigned just under 18 months later, incorrectly thought the amnesty began operating after he resigned. He said he was not aware of the amnesty at the time he was using drugs. He also said that he did not think that the amnesty would be likely to be attractive to other police officers because 'police officers may feel that it could be detrimental, even though it is an amnesty, to their career, or the way people would perceive them, I suppose'.[932]
- Former Officer B2, who joined NSW Police when he was aged 19 years and was dismissed after approximately 10 years service, said he did not recall having heard about the amnesty. However, when it was explained to him he said that 'I can say I probably wouldn't have done it'. He said that he would not have been sure that 'people were going to remain [true] to their word'.[933]
- Former Officer R3, who had said that he had not been aware of the amnesty, told the PIC that he thought that if he did come forward he would be kicked out. When asked whether he thought other officers would share this view, he said that he thought that there is a general distrust amongst police with everything.[934]

When asked about the amnesty program, some officers and students who participated in the Operation Abelia focus groups[935] also raised concerns about the confidentiality of the process. Participants in all but one focus group discussed their concerns about the confidentiality of the amnesty provision. In most focus groups participants were asked explicitly about this topic, but participants also spontaneously offered comments on the topic at other points in the discussion. The number and extent of comments suggest that this is an issue of concern to many focus group participants. Most comments indicate uncertainty or scepticism about the confidentiality of the amnesty, and the potential effect on an officer's subsequent career, for example:

> [Facilitator:] Do people trust the confidentiality of the amnesty? [Participant:] People tend to be sceptics.
>
> I don't think the amnesty gives guarantees of confidentiality.
>
> Of course confidentiality is a worry.
>
> [Facilitator:] How confident would you be about the confidentiality of the amnesty? [Doubtful expressions by several participants. Participant:] It would have to get back to the commander if you were on the amnesty.
>
> [Facilitator:] One thing about [the amnesty] is that it's supposed to be confidential. [Laughter from several participants.]

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931 Operation Abelia, PIC Transcript, Private hearing, APH, 13 August 2004, p. 20.

932 Operation Abelia, PIC Transcript, Private hearing, ANL, 10 May 2004, p. 14.

933 Operation Abelia, PIC Transcript, Private hearing, APJ, 16 August 2004, pp. 17, 18.

934 Operation Abelia, PIC Transcript, Private hearing, ANX, 13 May 2004, p. 12.

935 For further information about the focus groups that were conducted as part of Operation Abelia, refer to Appendix 4.

> [Participant:] I think there's an inherent distrust of the top bench. 'No, no, nothing's going to happen to you, smirk, smirk.' Next thing you're washing cars in traffic waiting for them to find someone else to sack you.

A session of the Police Association of NSW Biennial Conference held in May 2004 was devoted to the discussion of issues pertaining to Operation Abelia. The issue of whether or not coming forward under the amnesty would be 'used against' an officer was also raised in the discussion at this conference.[936]

Observation 7: Officers and former officers who admitted using illegal drugs gave a variety of other reasons for not coming forward under the amnesty including:

- **knew from previous experience that he could stop using without assistance from others**
- **prepared to take the chance of getting caught**
- **belief that the drug was good for him/her**
- **not the type of person who asks for help**
- **just did not care**
- **embarrassment.**

Some examples illustrating these other reasons for not seeking assistance under the amnesty provision include:

- Former Officer G4, who joined NSW Police when he was 19 years old and was dismissed after more than 10 years service, said while he had considered seeking amnesty one of the reasons he did not do so was because he knew from previous experience that he could stop using by himself.
- Former Officer N2 had joined NSW Police when he was 19 years old and left after more than 20 years service. Former Officer N2 said that he had not been aware that the amnesty was operating at the time he was using illegal drugs. When told about the amnesty he said that even if he had known about it he did not think that he would have used it because he believed that the cannabis was good for him. He also said that it never 'entered his head' to ask for help, and that he was not 'a person who asks for help'.[937]
- Former Officer V1 was aged 19 years when he joined NSW Police and resigned after almost four years service. He told the PIC that he saw his use of drugs as self-destructive. He said that he had not heard of the amnesty. When the amnesty was explained to him, he said he did not think he would have accessed the amnesty even if he had been aware of it because he 'just wasn't thinking straight at the time' and 'just didn't care'. He said that he was using drugs to 'just get away from all my problems and – I don't know – I was pretty screwed up and that was like

936 For further information about the discussion at this conference, refer to Appendix 8.

937 Operation Abelia, PIC Transcript, Private hearing, ANM, 10 May 2004, pp. 14-15, 23.

my way of dealing with it, and like I wouldn't have to think about anything else'.[938]

- Officer F4, who joined NSW Police when he was aged 31, provided evidence in a PIC hearing shortly before his resignation after six years of service. He said he had heard of the amnesty. He said that he 'didn't come forward because of embarrassment really, essentially because of embarrassment. I knew it would have opened up a can of worms and I was just prepared to take the chances'. He thought it would be 'very hard for a police officer to come forward. I think it would be exceptionally hard'. He also said that:

> If you come forward and say 'Look, I've got a cannabis problem. I've got a problem in my life with my girlfriend, whatever, virtually all they would do is take your gun off you ... and you'd be put into a police station to answer phones. So you're on restricted duties straight away. So all your colleagues know you are on restricted duties. The police want to know everything. They want to know why you're on restricted duties. Eventually they'll find out you're on restricted duties because you were smoking cannabis'.[939]

Observation 8: Officers and former officers who had admitted illegal drug use suggested improved publicity and confidentiality as ways of encouraging officers to come forward under the amnesty.

When asked what the amnesty would need to provide to encourage them to access it or what NSW Police could do to improve the current amnesty provision, these officers and former officers gave a range of different suggestions. Most commonly these suggestions referred to improved publicity and confidentiality:

- Former Officer R3 suggested that he thought that some officers would be encouraged to come forward if they received a letter about the amnesty that assured them that they would receive counselling and not lose their job, though he was not sure that that would have been enough to convince him to seek assistance under the amnesty because he chose to use illegal drugs because he wanted to:

> Yeah, I think if – if I received a letter, a signed letter or some document saying there was an amnesty and that if I came forward of my own free will there would be no charges and no, you know, loss of job and, you know, instead there would be counselling, and whatnot, I don't know whether I'd take it still because at the time I was just – I did it because I wanted to. But some police might, I think, yeah, if you had a document that said that you'd know that you were pretty well covered, that if you did come forward.[940]

Former Officer R3 also suggested that if NSW Police had made the amnesty 'a lot more known, [he] might have considered stopping'.[941]

938 Operation Abelia, Transcript of Record of Interview, 13 September 2004, pp. 14-15.

939 Operation Abelia, PIC Transcript, Private hearing, ANS, 12 May 2004, pp. 14-15.

940 Operation Abelia, PIC Transcript, Private hearing, ANX, 13 May 2004, p. 13.

941 Operation Abelia, PIC Transcript, Private hearing, ANX, 13 May 2004, p. 15.

- When asked what could be done to sell the concept of amnesty, former Officer B2 suggested using an actual example of an officer who had found the amnesty helpful:

> It is hard. I guess probably one way would be for an officer who had come forward and had resurrected his own health and career to, maybe departmentally, have a video where he told that to other police, that he had come forward, that the assistance that he had received from the Commission and from medical people had helped him over his problem and he was now functioning – it hadn't impacted severely on his career, his promotional aspects, etc. I think then the police might have some faith in it'.[942]

- Officer G2 suggested that to encourage officers to come forward under the amnesty it would be important to publicise that officers would not get into trouble for coming forward. He also suggested that it would be important 'to keep bringing it up on a regular basis'.[943]
- Similarly, former Officer V3 said that he thought that total anonymity would be important and that there would be 'just no repercussions'.[944]

Some officers and former officers said that they could not suggest how the amnesty could be improved, for example, former Officer G6 said that he did not think that he could suggest anything to make the amnesty more appealing. He said that:

> Not that I can think of off the top of my head. An independent agency would even just – would be treated with the same sort of skepticism as the Police Service itself. I'm not sure how you would get round that. Yeah, and that's all in regards to confidentiality.[945]

Observation 9: Both commanders and officers suggested that the amnesty needed to be better publicised.

In mid-2003 senior PIC officers interviewed a sample of local area commanders and commanders of specialist units. These commanders were asked whether they considered that the amnesty provision was working and how they thought it could be improved. Two-thirds of the commanders interviewed commented that they had no experience with the amnesty provision, were not familiar with the amnesty provision, or they had not received any feedback about how the amnesty provision was working.

When asked how it could be improved, nearly one-third of the commanders interviewed suggested that the amnesty needed to be marketed or better advertised within NSW Police, and that this should be done on a regular basis to encourage participation, for example:

> It's a good thing but should be regularly revisited and reinforced.

942 Operation Abelia, PIC Transcript, Private hearing, APJ, 16 August 2004, p. 18.
943 Operation Abelia, Transcript of Record of Interview, 7 May 2004, pp. 14-15.
944 Operation Abelia, PIC Transcript, Private hearing, ANQ, 11 May 2004, pp. 12, 13.
945 Operation Abelia, PIC Transcript, Private hearing APH, 13 August 2004, p. 20.

> … doesn't know whether it's advertised appropriately ... doesn't know enough about it.
>
> It needs to be better advertised.
>
> More frequent marketing. Don't know enough. It's not a priority.

One commander suggested that it would assist if a success story could be held up and used as an example:

> I think it [the amnesty provision] is a good idea, but there is no-one to hold up and show as a success story so others might follow.

Some of the commanders interviewed also said that their lack of knowledge of the workings of the amnesty provision meant that they did not treat it as a priority. Several of the commanders interviewed said that they believed through education, discussion and feedback, they could become better informed about the amnesty issues and outcomes.[946]

In one of the focus groups conducted with officers as part of Operation Abelia, none of the officers appeared to know about the amnesty.[947] When asked what they knew of the amnesty, comments from participants in this focus group included:

> I haven't heard of it.
>
> The amnesty for guns?

In the other focus groups, comments from some participants indicated at least a basic awareness of the amnesty, for example:

> [Facilitator:] Do you know of the amnesty program available to drug users? [Several participants:] Yes.
>
> [Facilitator:] How does it operate? [Participant:] You come forward to seek assistance. [New speaker:] Counselling.
>
> It's the opportunity to come forward if you are having a problem. [New speaker:] And get treatment.
>
> [Facilitator:] And is there disciplinary action? [Participant:] Not while it's going on.
>
> Heard of it. If you admit to drug use and accept drug counselling you won't get into trouble, you'll get treatment.
>
> It's a window of opportunity to admit it and take the consequences without losing your job.

946 See Appendix 2 for more information about the interviews with local area commanders and commanders from specialist units.

947 For more information about how the focus groups were conducted and the responses of participants refer to Appendix 4.

> If you ask for it they will provide assistance. If not, and you're caught, then it's good-bye.

When asked for their suggestions as to how the amnesty provision could be improved some of the participants of the focus groups advocated providing more and better information regarding the amnesty, for example:

> Do we know the benefits of the amnesty? If it's widely published people will know that there's something that does help and that there's integrity in the system.

> Maybe the message needs to change: You have a problem not because of addiction but because of the terms of employment. Peer pressure is very strong in being able to influence people's actions and thoughts. [New speaker:] It's a question of targeting the attitudes; if people still really believe, 'I want to be a cop and I want to do the right thing.'

The need for education about amnesty and rehabilitation options was also frequently mentioned as one of the 'best and immediate practical strategies' to reduce the problem of police illegal drug use raised by delegates at the Police Association of NSW Biennial Conference in May 2004. For example, four of the 12 groups suggested:

> Education programs about amnesty and rehab programs.

> To promote the current amnesty amongst members.

> Keep members informed of any amnesty provisions.

> Promote programs such as the current amnesty. [948]

Observation 10: Commanders and officers who expressed opposition to the amnesty were in the minority.

Only one of the commanders interviewed by the PIC expressed a negative view of the amnesty. His view was that:

> Police users of drugs should be charged.

This commander went on to say that illegal drug use by police should not be tolerated, and he did not agree with rehabilitation.[949]

Officers and students who participated in focus groups were supportive of the amnesty provision. When asked whether they thought the amnesty is a good initiative, the majority of participants were positive, although their degree of endorsement varied, for example:

> Can't see anything wrong with it.

> I think it is.

948 See Appendix 8 for further information about the suggestions made by the 12 PANSW discussion groups.

949 For more information about the commanders' responses refer to Appendix 2.

> Yes definitely.
>
> Essential.

Some of the officer and student focus group participants provided the reasons why they thought the amnesty was a good idea. Their comments suggested that these participants supported the amnesty because they believed that the amnesty encourages officers to identify themselves as having a problem and is in the interests of the welfare of the officers who access the process (and possibly their colleagues). Some examples of comments by focus group participants include:

> You can't just be punitive. People won't come forward on their own.
>
> It's giving someone support to do the job.
>
> It shows that NSW Police is also trying to help and not just coming in with a big stick.
>
> People take drugs for different reasons; we probably need to have a 'grey area' so they don't get booted out for using.
>
> We're only human. It's the way the courts are treating us right now. If you put your hand up and say 'I've got a problem', it should be okay.

A smaller number of focus group participants' comments indicated ambivalence or dissatisfaction with the concept of the amnesty. These officers and students suggested that amnesty was incompatible with the belief that illegal drug use by officers is not acceptable under any circumstances, for example:

> I don't understand how illegal drugs can even be tolerated. I understand how prescription drugs [could be tolerated]. But something like purchasing heroin, that's illegal and that's that and we're police.
>
> Someone using drugs is engaging in illegal action. They need support but it is wrong for an officer to use.

Observation 11:	**Three of the officers who provided evidence to the PIC said that they had come forward under the amnesty. Their stories are quite different.**

Officer Q3 said that he accessed the amnesty because of his cannabis use and that he has not used drugs since.

In his evidence to the PIC Officer Q3 said that he had sought the assistance from NSW Police after more than 20 years service when he was unable to stop his cannabis use by himself. He said that fear of being caught was one of the factors that contributed to his coming forward, the other was that he realised how much of a problem his cannabis use was causing him.

Following discussion with a counsellor he took some holidays and then was placed in a residential rehabilitation program in a hospital for three weeks. The program essentially consisted of one-to-one counselling based on the 12 steps of Alcoholics Anonymous

(AA). He found the program helpful: 'I just didn't feel the need to partake from the day I left there'.[950] He said that he has not had anything to do with drugs or alcohol since that time.

Once he went back to work he was not put on restricted duties because his supervisor was not aware that he had been receiving treatment for a dependency problem.[951] As part of the amnesty he said he had three urine tests at various stages after his participation in the residential rehabilitation program.[952]

He has discussed being on amnesty with his colleagues.[953] He said that he considers the amnesty 'a good thing'.[954] He said:

> I'd tried to give up for probably three to four months prior to me handing myself in, and I'd go two or three days without any marijuana at all. I was just pretty unbearable to be around and extremely aggressive at times when things didn't go my way. And the mood swings were starting to bother me as far as my personal life was concerned, not my police work.[955]

When asked what he would do if he were police commissioner to improve the amnesty he said 'I think I'd take the scare factor out of it as far as loss of job. That would probably bring more people forward'. He added that 'there seems to be less of a problem as far as keeping your job is concerned with alcohol than there is with drugs, and I think if they could keep it like they do with alcohol as an addiction and treat it that way rather than as a criminal offence'.[956]

When asked whether he (a serving officer) is aware that there is an amnesty in place at the moment he said 'I'm not, no'. When asked whether there had been publicity about the amnesty he said that there 'may have been – I may have known this, but I haven't heard a great deal about it. I knew that the Integrity Commission was looking into drug use, but that's about it'.[957]

Former Officer S2, who sought assistance for his cannabis and alcohol use, said that he was 'clean' for eight or nine months.

Former Officer S2 joined NSW Police when he was 21 years of age and sought assistance after more than 15 years service following a family break-up. At that time he admitted that he had been a cannabis user for some years and that he also had problems with alcohol. He said that he sought assistance because he had 'been through a family break-up, and whatnot, and I was just having a nervous breakdown, I suppose you'd say, just a total collapse'. He said he did not seek help because of a specific concern about his drug use.[958] He also said that it was not called an amnesty at the time he sought assistance.

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950 Operation Abelia, PIC Transcript, Private hearing, ANJ, 10 May 2004, p. 12.
951 Operation Abelia, PIC Transcript, Private hearing, ANJ, 10 May 2004, p. 18.
952 Operation Abelia, PIC Transcript, Private hearing, ANJ, 10 May 2004, p. 11.
953 Operation Abelia, PIC Transcript, Private hearing, ANJ, 10 May 2004, p. 19.
954 Operation Abelia, PIC Transcript, Private hearing, ANJ, 10 May 2004, pp. 7-11, 13.
955 Operation Abelia, PIC Transcript, Private hearing, ANJ, 10 May 2004, p. 13.
956 Operation Abelia, PIC Transcript, Private hearing, ANJ, 10 May 2004, p. 17.
957 Operation Abelia, PIC Transcript, Private hearing, ANJ, 10 May 2004, pp. 17, 18 & 22.
958 Operation Abelia, PIC Transcript, Private hearing, ANK, 10 May 2004, p.78.

He was sent to a residential rehabilitation program for approximately three weeks for his alcohol and marijuana use. He said that he went back to work soon after finishing the residential program and that someone would come and see him to 'sit down and have a chat and see how I was going' about once a month and 'then it just faded out after, you know, not long at all'.

Following this he said he was 'clean' for about eight or nine months.[959] After about eight months or so he started smoking cannabis again to relax. He said that he started using again because he enjoyed it rather than there being any other personal reasons.[960] When he started using again he said he 'actually asked them if I could go back into rehab and they said "No, we're not going to pay for it again" '. He later explained that he had not asked to go back into rehab again until after he was drug tested following a critical incident and returned a positive drug test result.[961]

He said he was not aware of any publicity about the amnesty. After he came out of it he said he was 'spruiking the virtues to others'. He was not aware of any ongoing information sessions or information available via the NSW Police Intranet or Police Service Weekly that made people aware of the services available through NSW Police.[962]

Former Officer S2 resigned three months after he was nominated for s.181D action as a result of his positive drug test.[963]

Officer H4, who accessed the amnesty for alcohol abuse and previous amphetamine use, subsequently used heroin, cocaine and ecstasy.

Officer H4, a senior constable, joined NSW Police when he was 19 years old. He had been in NSW Police for approximately ten years at the time he gave evidence to the PIC. He said that he accessed the amnesty in late 2001. The PIC was subsequently told that Officer H4 sought amnesty primarily for alcohol-related problems. Officer H4 said that he had used heroin during 2003. Apart from heroin he said that he also used cocaine and ecstasy. He said that he continued using ecstasy and cocaine often during 2004. He had also used cocaine and ecstasy during 2002.[964]

He described the services provided by Healthy Lifestyles as 'excellent' and said that the counsellor whom he was seeing 'was very good and helped [him] for a long time'.[965]

After acknowledging his subsequent use of drugs this officer was asked: 'What could have been done to have further assisted you to, in effect, stop using prohibited drugs, as far as you see it?' He responded that continued counselling and support in the workplace may have helped:

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959 Operation Abelia, PIC Transcript, Private hearing, ANK, 10 May 2004, p. 8.

960 Operation Abelia, PIC Transcript, Private hearing, ANK, 10 May 2004, pp. 7-9, 14-15.

961 Operation Abelia, PIC Transcript, Private hearing, ANK, 10 May 2004, pp. 14, 21.

962 Operation Abelia, PIC Transcript, Private hearing, ANK, 10 May 2004, p. 15.

963 Section 181D of the Police Act states: 'The Commissioner may, by order in writing, remove a police officer from NSW Police if the Commissioner does not have confidence in the police officer's suitability to continue as a police officer, having regard to the police officer's competence, integrity, performance or conduct'.

964 Operation Abelia, PIC Transcript, Private hearing APC, 30 August 2004, pp. 42,44, 45, 46, 56

965 Operation Abelia, PIC Transcript, Private hearing APC, 30 August 2004, pp. 49-50.

> Continued counselling, probably – when I say this, I am not using it as an excuse, but probably work location, as where you're attached, what section you're attached to, that could be monitored more closely; welfare. Most definitely in the section I was working in, we had absolutely no support; none.
>
> [Section named] …
>
> Q: Is that because it's a bit of a one-off, if I can use that expression? It is detached from normal policing?
>
> A: It is definitely detached from normal policing, but, essentially, you're not dealing with anything good … This was pointed out on a number of occasions to supervisors, and it was never dealt with, not once, whilst I was attached – probably once toward the end of my time there was I – were we ever offered counselling, and I'm - as I said, I'm not using that as an excuse, but that's the answer to the question.[966]

Observation 12: The assistance provided under the amnesty has taken different forms for different officers.

NSW Police provided non-identifying information about the forms that the assistance has taken for different officers and the length of assistance provided.

The types of assistance provided varied and involved combinations of:

- counselling through the outsourced Employee Assistance Program
- referral to an outside psychologist (prior to the Employee Assistance Program)
- attendance at Alcoholics Anonymous, Narcotics Anonymous or Gamblers Anonymous meetings
- support and monitoring provided by a Drug and Alcohol Counsellor, and
- residential treatment provided within a hospital setting.

Those who sought assistance tended to stay on the amnesty for between one month and two years.

The NSW Police Director of Health Services emphasised that the needs of individuals who present for dependency problems are not straightforward and these individuals may have a range of dependency problems:

> the needs of individuals who are susceptible to dependency problems are never straightforward. As you may appreciate, it is commonly accepted that there is an inter-relationship between a range of addictive behaviours. Individuals may present with just one issue but, more often than not, upon assessment, will also reveal problems not only with drugs, but with alcohol, gambling and other substances.
>
> Accordingly, the strategies put in place for officers who have come forward under the Amnesty have not necessarily been confined to illegal substance

966 Operation Abelia, PIC Transcript, Private hearing APC, 30 August 2004, p. 58.

> issues only. Many officers have sought assistance for alcohol problems and many of the officers who have sought help for drug related matters have identified multiple dependency issues. For this reason, each case has been considered on an individual basis and the assistance provided to each officer has varied, depending on the D&A Counsellor's assessment of the officer's specific circumstances.[967]

Each officer who sought assistance under the amnesty for drug problems was drug tested. The number and frequency of drug tests differed among the different officers. Staff of the Healthy Lifestyles section of the NSW Police Health Services Directorate determined the number and frequency of the drug tests.

Observation 13: Some officers take leave during the rehabilitation process while others remain on duty.

The PIC sought clarification on whether officers who accessed the amnesty remained working on normal duties or not. NSW Police provided a summary of what had happened in the case of each of the 24 officers who had sought amnesty. From the information provided it seems that NSW Police Health Services assessed each case on its merits. In many cases the officers' duties were not changed while they were on amnesty either because:

- of the nature of the (administrative or 'non-operational') duties that they undertook
- they were on leave
- they had admitted past (rather than recent) drug use, and/or
- they returned a negative drug test result.

On the other hand, some officers who sought assistance following possible drink spiking had told their commanders of the possible spiking. In some cases these commanders arranged alternative duties until a negative result and clearance from the officer's doctor had been received, in other cases the commanders were said to be aware of the need to restrict duties if the officer was impaired.[968]

When officer and student focus group participants were asked for their suggestions for improving the amnesty provision some officers expressed concerns about the types of duties allocated to these officers and the way these officers are managed while on the amnesty. These issues appeared to be of concern both from a safety point of view as well as from concern that officers may relapse into drug use if returned to a situation that had caused their drug use. Many comments also illustrated these officers' lack of understanding of the amnesty provision. Examples of officer and student suggestions include:

967 Correspondence from the NSW Police Director of Health Services to the PIC, 10 August 2004.

968 No information was provided to the PIC as to how the commanders would determine whether the officer was impaired.

> Are there any work restrictions placed on these people at all? There's a bit of an issue with the types of duties. Maybe something that needs to be brought in is some kind of work program, take the pressure off the system. They might get off the gear and then go back to work and be copping exactly the same pressures.
>
> They [officers who have admitted drug use] should be taken off active duty while being rehabilitated.
>
> For an officer who has admitted to drug use, a decision should be taken as to whether or not they stay on duty. This decision should be based on the type of drugs and the circumstances of use. If it's heavy use, they should be taken off duty.

Observation 14: NSW Police does not collect much information from those who come forward under the amnesty.

When asked whether there are any patterns in usage or the way in which officers on amnesty began using drugs, in his evidence to the PIC, the NSW Police Director of Health Services said that NSW Police does not collect or analyse such information:

> So far as usage issues, past issues, usage, how they got into drugs in the first place, these are not issues that we raise with the individual. We are quite – we quite deliberately don't raise those types of issues with them because it places our counsellors in a very difficult ethical dilemma. That is why I said earlier on that our counsellors are not there treating people, because they are the sorts of issues that would come up in a treatment program. Our counsellors are there to facilitate someone going into a program. They would identify what sort of drug they are using and we would try to determine an appropriate program. But so far as treatment, how they got into it, these types of issues, they're matters that we don't canvass with them quite deliberately because we don't want to compromise our counsellors.[969]

When asked whether he thought that it would be helpful for someone (possibly not the counsellors who may have a conflict of interest) to gather such information, the NSW Police Director of Health Services replied:

> Oh, it would be extremely useful to have that information. The problem with that, however, is that if we did go into too much detail, we wouldn't have anyone come forward under the amnesty. They simply wouldn't trust us.[970]

When suggesting possible improvements for the amnesty provision a small number of the officer participants in the focus groups suggested that information should be gathered to help better understand the causes of drug use. Examples from the discussions in three of the focus groups include:

> Should look for the background of how they got to that point. I'm on HOD, and my doctor will give me whatever I want, it could be a pathway. You could identify that through the amnesty. [New speaker:] Through the

969 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, pp. 168-169.

970 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 169.

> rehabilitation process, surely there would be something in place to help the person to identify those reasons.
>
> You gotta look at the causes if you want to get them off the drugs. [New speaker:] How do we get to this point as an individual?
>
> The person helping them identify the problem should be able to find if it's work related, home related, if it's something systemic in the Eastern suburbs, those statistics should be available.

Observation 15: Although the PIC has been told that some commanders have referred officers to the amnesty, commanders or other officers who are told about another officer's drug use may find themselves in a position of conflict.

Clause 20 of the *Police Regulation 2000* imposes an obligation on any police officer, who believes that another officer has engaged in criminal conduct or other misconduct, to report the conduct or alleged conduct to a senior police officer. Clause 20 also requires the senior police officer to report the conduct promptly to the Commissioner of Police or another officer nominated by the Commissioner if the senior officer believes that the alleged conduct would constitute a criminal offence or provide sufficient grounds for s.73 dismissal, s.173 reviewable action or a s.181D order.[971]

Any commander, or other officer, in whom an officer has confided about their illegal drug use, may be confused about how they should respond given the apparent conflict between clause 20 and the philosophy that underpins the amnesty provision which seeks to encourage officers to self-report their drug use, receive assistance for this drug use and not be disciplined as a result of their admissions of past drug use.

The PIC has been told that some officers who access the amnesty for drug-related problems have been referred to the amnesty by their commander or another supervisor. Commanders and supervisors who make such a referral without also reporting the illegal drug use as misconduct are in contravention of clause 20 of the Police Regulation.

ASSESSMENT AND RECOMMENDATIONS

The PIC understands that NSW Police has been giving consideration to the future of the amnesty provision.[972] A review is timely given the small number of officers who have come forward under the amnesty for illegal drug use and the fact that some officers who have accessed the amnesty have subsequently relapsed into illegal drug use.

Value of amnesty

At the outset it should be noted that the amnesty exists to encourage officers to come forward for alcohol problems and problems with prescription drugs as well as problems with illegal drugs. The focus within Operation Abelia is on the way in which amnesty is

971 These sections of the *Police Act 1990* are described in Section 6.12 of this chapter that discusses 'Managing officers who have been found to use prohibited drugs'.

972 Operation Abelia, PIC Transcript, Commissioner K. Moroney, 12 November 2004, p. 1324.

used to encourage officers to come forward to declare their use of illegal drugs. The value of the amnesty to those with other problems is not considered in this report.

The PIC has not attempted to evaluate the amnesty in terms of the impact that it has had on the illegal drug use or the lives of the individual officers who have accessed it. The information that would be required for such an evaluation is not available.

Instead the PIC has considered the value that the amnesty offers both to the organisation and to individual officers as a strategy for minimising illegal drug use within NSW Police. The benefits that the amnesty offers the organisation are different from and complementary to the benefits that it offers individual officers.

To the organisation, the amnesty offers a means of bringing into the open officer drug use by encouraging officers to come forward to disclose their drug use before they are detected in any other way. Although the numbers who have come forward to admit their drug use are small (24 officers), these numbers are comparable with the number of officers whose drug use has been detected through targeted drug testing (27 officers). Without the amnesty provision the illegal drug use of these officers may not have come to notice and may have continued. Also the amnesty provides NSW Police with an information source about illegal drug use by some officers. Without the amnesty NSW Police may not have been as well informed about the diversity of the backgrounds of officers who have used illegal drugs.

Some of the officers who accessed the amnesty had lengthy periods of service in NSW Police. Another benefit to the organisation is that the amnesty provides a way of maintaining the training and experience of such officers that may have been lost to NSW Police and the community had the amnesty not been available.

To officers who come forward to admit past illegal drug use, the amnesty provides a means for retaining their job and obtaining different types of assistance such as counselling, relapse prevention or residential treatment paid for by NSW Police.

While only a few officers have sought assistance for their drug use under the amnesty, those officers have come from a cross-section of ages, duty types and ranks within NSW Police. Hence to the extent that the amnesty provides an avenue for assistance, this assistance has not been confined to officers of a particular age group, gender or rank. Without the amnesty, these officers may not have received any assistance concerning their drug use.

Support for amnesty

Despite the small number of officers accessing the amnesty, support for the existence of such an option within the organisation was evident from the interviews with the commanders and the focus groups involving officers and students. There is also support for the amnesty, or a similar provision, from outside the organisation. The NSW Police Association has given its support to the continuance of assistance such as that provided under the amnesty.[973] Furthermore, such assistance is consistent with what is seen as best practice in drug and alcohol policies that focus on health and welfare

973 Letter from President of Police Association of NSW to Assistant Commissioner Finlay, dated 12 November 2004.

rather than treating drug use exclusively as a disciplinary matter.[974] It is also consistent with the assistance available to officers with substance abuse problems in a number of other law enforcement agencies.[975]

Based on the considerations outlined above, the PIC believes that the amnesty provides a potentially useful tool to encourage officers to voluntarily report their drug use. In this way amnesty brings the illegal drug use by some officers to the notice of NSW Police. It is also a means of assisting officers who have used illegal drugs in the past. The PIC supports the continued practice by NSW Police to provide assistance to officers who come forward for help concerning their drug use.

However, the PIC questions the appropriateness of similar assistance being available to probationary constables. There are several reasons for this. Firstly, the purpose of the probationary period is to provide NSW Police with an opportunity to assess the fitness of an individual for permanent appointment as a constable. The use of an illegal drug by a probationary constable would suggest that the probationary constable is not suitable for appointment as a NSW Police officer. Secondly, in terms of experience, the loss to NSW Police and to the community of a probationary constable who uses drugs is minimal. Thirdly, it is envisaged that following changes arising from Operation Abelia, probationary constables should be in no doubt as to NSW Police policies and expectations in respect of illegal drug use. These probationary constables will have been informed of the NSW Police position on illegal drug use in recruitment information, in addition to attending lectures on the NSW Police Drug and Alcohol Policy they will have participated in discussions about integrity risks associated with drug use, and, in all likelihood, as a student, they will have been randomly drug tested.

In order to encourage appropriate officers to come forward to disclose their drug use it is important that there are incentives for such admissions. One such incentive is that no adverse action should be initiated as a result of personal admissions of past illegal drug use made to NSW Police drug and alcohol counsellors providing that the officer complies with the counselling, drug testing and/or any other conditions of the amnesty.

Recommendation SR 1:

The PIC recommends that NSW Police continues to arrange assistance in the form of rehabilitation, counselling and/or relapse prevention for officers who come forward for help concerning their illegal drug use.

As is currently the case, no adverse action should be initiated as a result of personal admissions of past illegal drug use made to NSW Police drug and alcohol counsellors, providing that the officer accessing amnesty complies with the counselling, drug testing and/or any other conditions of the amnesty.

974 Independent Inquiry into Drug Testing at Work (IIDTW) (2004) *Drug testing in the workplace: The report of the Independent Inquiry into Drug Testing at Work*. York, UK: Joseph Rowntree Foundation, June 2004, p. 70.

975 See Appendices 14, 15 and 16 for descriptions of the amnesty-like programs some agencies have in place to encourage officers to self-report their substance abuse problems as well as for descriptions of the range of support programs available to officers.

Areas for improvement

Reducing the barriers to officers applying for amnesty

In order for the amnesty to be a useful tool to assist NSW Police to learn about the illegal drug use of some officers, it is important to minimise any barriers that could discourage appropriate officers from coming forward under the amnesty.

Those who are unaware of the amnesty are not going to consider accessing it. Some current and former officers told the PIC that they had not known about the amnesty or that they did not know how to access it. The PIC acknowledges that some of those who said that that they had not been aware of the amnesty gave additional reasons why they would not have come forward under the amnesty, after the amnesty was explained to them. However, awareness of the amnesty would appear to be a threshold issue.

In addition to those who said that they were not aware of the amnesty provision, some of the officers who had thought that they were aware of it had misunderstood how it operates. Commanders, when interviewed by senior PIC officers, spoke of the need for greater publicity to be given to the assistance available under the amnesty. Perhaps surprisingly, one of the officers who had previously accessed the amnesty did not know whether the amnesty was still operating, as he had not heard any publicity about it. The officers who participated in the focus groups that were conducted as part of Operation Abelia and conference delegates at the Police Association of NSW Biennial Conference also identified the need for education about amnesty and rehabilitation options.

The PIC recommends that NSW Police promotes officer and commander awareness of the nature and availability of the amnesty provision in Recommendation SR 3, below.

Even with greater publicity it is clear that not all officers who use illegal drugs would be likely to admit their illegal drug use through the amnesty. Two further main barriers are clear from the evidence heard as part of Operation Abelia:

- firstly, officers who do not consider that they have a problem are not likely to seek any assistance
- secondly, officers have expressed their concern about the confidentiality of the process and their lack of trust in the organisation.

With regard to the first of these barriers, NSW Police needs to clearly communicate that behaviour, which some officers regard as ‘social’ or ‘recreational’ drug use, is a problem for the officer and for NSW Police. The PIC is not suggesting that these officers do not know that their drug use is illegal. However, it is clear that these officers do not see themselves as ‘drug users’ and do not consider their personal illegal drug use to be a problem that they should disclose or one for which they require assistance. While it may not increase the numbers who come forward under the amnesty, it is important that NSW Police ensures that officers understand why such social or recreational drug use *is* a problem for them and how it can compromise their position, even if they do not consider that they have a physical or a psychological addiction.

Recommendation SR 2:

The PIC recommends that NSW Police develops and implements strategies to ensure that all officers recognise why any illegal drug use by an officer is a problem for the officer and for NSW Police, even if that officer considers that he/she does not have a physical or psychological addiction, or that officer considers it to be 'social' or 'recreational' drug use. The strategies that NSW Police develops and implements in this area should also ensure that officers understand how such drug use can compromise their position.

A lack of officer trust in NSW Police was identified by some officers as a likely impediment to coming forward under the amnesty. While this would undoubtedly be a powerful disincentive to drug using officers accessing the amnesty program, the examination of the trust officers have in NSW Police was beyond the scope of Operation Abelia and the PIC is not able to offer any specific finding or assessment on this issue.

In relation to encouraging officers to come forward and report their illegal drug use, the use of one or two anonymous case studies of how the amnesty has actually assisted individual officers would be a useful communication strategy. It is possible that officers who successfully complete the amnesty may have since been promoted. Publicising 'success stories', in anonymous terms, may assist officers to better understand the amnesty process, the benefits of the amnesty to an officer and to NSW Police, and reduce officer concerns regarding coming forward to disclose their prior illegal drug use under the amnesty.

Recommendation SR 3:

The PIC recommends that NSW Police promotes officer and commander awareness of the nature and availability of the amnesty provision by publicising the assistance broadly, regularly and using a variety of strategies. The information provided should include:

- **the existence of this assistance**
- **how it works, including in what ways the assistance is kept confidential, the circumstances under which any information would be disseminated and to whom it could be disseminated**
- **the benefits of this assistance**
- **other rehabilitation options, and**
- **anonymous cases studies of how those who have come forward and admitted their prior drug use under the amnesty have been assisted in the past.**

Collecting and using information from those who seek amnesty

The PIC is of the view that NSW Police does not currently obtain sufficient information from the officers who come forward to report their drug use. In order to better understand the dynamics of what leads some officers to use illegal drugs, NSW Police should ask officers who access the amnesty about their views of what led to their own

illegal drug use and what these officers consider could be done to help other officers facing similar circumstances.

Recommendation SR 4:

The PIC recommends that NSW Police enlists the help of the officers who come forward under the amnesty for their illegal drug use, by collecting information from these officers about:

a. their accounts of the circumstances that led to their drug use, so the organisation can better understand the dynamics of what leads some officers to use illegal drugs, and

b. their suggestions of what, if anything, NSW Police could do to help other officers facing similar situations.

The name 'amnesty'

At the time the PIC was drafting this report, NSW Police was considering a number of changes to the operation of the amnesty provision. One of the proposed changes was to no longer use the name 'amnesty'. The PIC agrees there may be some value in changing the name because some officers associated the term 'amnesty' with a program that has a limited term.

Managing the risk

Another of the proposed changes was to inform the officer's commander or manager when an officer seeks assistance for their illegal drug use. Such a proposal reflects the tensions between the care and responsibilities to an individual officer seeking help versus the responsibilities to the unit in which the officer works, to his or her fellow officers, to the organisation as a whole and to the community. Any program such as the amnesty that seeks to provide non-judgmental and confidential assistance for those who use illegal drugs will experience such tensions. There should be no surprise that different areas and different individuals within NSW Police have different views of how to best balance the responsibilities to the individual officer and the responsibilities to the command.

The question of what, if any, information should be disseminated is particularly important given the strongly expressed concerns of officers regarding the confidentiality of the process. Any blanket decision to disseminate information in each and every case is likely to make officers even more wary of coming forward under the amnesty. This would be to the detriment of NSW Police as it would mean the drug use by these officers would remain undisclosed. Where an officer's drug use remains undisclosed to NSW Police, no one within NSW Police is in a position to assess possible safety and integrity risks associated with the officer carrying out his normal duties. Failure to come forward to disclose the drug use could also disadvantage the officer involved who may not receive any assistance.

In the past, some officers have confided to their commander about their illegal drug use and it has been the commander who has suggested that the officer access the amnesty. The PIC considers this a positive process.[976] However, in order that the officers continue to come forward to disclose their drug use, the PIC believes that confiding to the commander should not be a requirement of access to the assistance.

The PIC is of the view that a risk management approach should be taken when determining what, if any, information needs to be disseminated. The potential effect of the officer's drug use on the performance of his or her duties should be the crucial determinant in deciding whether any information should be given to the commander or manager as well as the nature of the information to be provided. The PIC considers that the primary circumstance where information would need to be provided to the commander or manager would be where the officer's drug use poses safety or integrity risks to the officer, to those with whom the officer works or to the community.

In relation to the safety risks, the PIC believes that there may be cases where it will not be necessary to inform the commander that one of the commander's officers has accessed the amnesty in relation to illegal drug use. The safety risks depend largely on the nature of the drug used, the frequency and recency of drug use, and the nature of the officer's duties. For example, the effects of amphetamines can last for six to eight hours, depending on factors such as a person's size and weight, the quality, purity and amount taken, the route of administration, and the person's mood or experience with the drug.[977] Also from the description of how the amnesty has operated to date, where in many cases it was not necessary to change the officer's duties while he or she was on amnesty[978], it appears that it has been possible to not compromise officer or community safety without telling the commander that one of his officers has sought assistance for his or her drug use.

The integrity risks of improper associations also need to be considered when determining the nature of any information to be given to the commander or manager. When assessing the possible integrity risks, both the nature of the officer's duties as well as available interventions that would minimise this integrity risk need to be taken into account.

In summary, given that officers will differ in the nature and history of their drug use as well as their duties, the PIC believes the assessment of what information, if any, should be provided to the commander, manager or any other person will need to be assessed on a case-by-case basis and that the following should be considered in each case:

- the type of drug(s) being used and the frequency, recency and circumstances of the drug use
- the integrity risks and potential for compromise of the officer

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976 The potential conflict between this practice and clause 20 of the Police Regulation is discussed in Observation 15 of this section. In Recommendation SR 7, later in this section, the PIC recommends that NSW Police formally amend current legislation and regulation as necessary so that commanders and supervisors are able to refer officers to the amnesty, without contravening clause 20, in the cases where that officer's illegal drug use has come to notice only through the officer's own admissions.

977 Australian Drug Foundation (2002) cited by the Australian Crime Commission, *Australian illicit drug report*. Canberra: Australian Crime Commission, March 2003, p. 46. Further information about the duration and nature of the effects of different drugs and the likelihood of their presenting safety risks would be available within NSW Police from the Director of Health Services. Readers of this report will find additional information on the duration of the effects of selected drug types in Appendix 9.

978 Refer to Observation 13 within this section for more information.

- the nature of the officer's current duties and scope for change in duties (for example change from administrative duties to more active duties), and
- the options available to minimise any potential safety or integrity risks.

The PIC considers that the decision as to who should make this assessment is one best left to the Commissioner of Police.

Recommendation SR 5:

The PIC recommends that, in order to establish the nature of what information, if any, is required to be given to the commander or manager of the officer who is seeking assistance, the NSW Police Commissioner establishes a mechanism to enable a risk assessment to be conducted on a case-by-case basis of the potential effects of the officer's drug use on the performance of his or her duties. For each case this risk assessment should involve a consideration of:

a. the type of drug(s) being used and the frequency, recency and circumstances of the drug use

b. the integrity risks and potential compromise of the officer

c. the nature of the officer's current duties and scope for change in duties, and

d. the options available to minimise any potential safety or integrity risks.

This risk assessment should be made by a person (or persons) of a high level and with appropriate skills in managing risk, as determined by the Commissioner of Police.

A record should be made of the decision reached as a result of the risk assessment, and of what information should be provided to whom.

There may be times when, for example, it is not possible to remove a safety risk by having an officer take leave because the officer has exhausted all forms of leave available to him or her. Where it is necessary to provide information to minimise safety or integrity risks, consideration should be given as to what aspects of the information need to be divulged to manage the potential risk. Finally, where information is provided to the commander or manager, it is necessary to ensure that the information is not disseminated any more widely than necessary.

Follow-up testing

The third of the changes being considered by NSW Police was to introduce a period of follow-up drug testing for officers who have completed the program of assistance provided under the amnesty. Currently officers who access the amnesty are not subject to any special drug testing provisions once they complete the assistance under the amnesty. There have been examples of officers, such as those who access the amnesty following possible accidental ingestion of illegal drugs, who have remained under the amnesty for periods as short as a month or so. The PIC believes that all officers who access the amnesty should be intermittently drug tested for a minimum of 12 months following completion of counselling or other assistance provided as part of the amnesty. In some cases it would be desirable for the officer to be drug tested for a period considerably longer than 12 months following completion of the assistance provided under the amnesty. The PIC is of the view that such a period of subsequent

drug testing would both discourage officers who were not motivated to stop using illegal drugs from accessing the amnesty as well as deter officers from relapsing into drug use.

Recommendation SR 6:

The PIC recommends that NSW Police extends the period of unannounced drug testing, so that all officers who come forward under the amnesty for their illegal drug use are intermittently drug tested for a minimum of 12 months following completion of counselling or any other assistance provided.

Removing the apparent conflict for commanders, supervisors or other officers who seek to refer to the amnesty any officers who have disclosed their drug use to them

The PIC supports the capacity for commanders and supervisors, who have had officers disclose their illegal drug use to them, to refer these officers to the amnesty. Such a referral is in line with the principles that underpin the amnesty provision that seeks to encourage officers to come forward to report their drug use and for these officers to receive assistance and not be disciplined as a result of their admissions of past drug use.

The PIC considers that NSW Police should review clause 20, with a view to seeking legislative amendment, and current practices relating to the amnesty so that commanders and supervisors can still refer to the amnesty those officers whose illegal drug use has come to notice only through the officer's own admissions. Without weakening the provisions of clause 20, NSW Police should seek to enable commanders and supervisors to make such a referral without needing to treat self-admission of prior illegal drug use in the same way as they would treat allegations of other forms of misconduct. The PIC considers that peers should also be able refer fellow officers to the amnesty without treating the disclosure as an allegation of misconduct, leading to disciplinary action.

Furthermore the PIC suggests that NSW Police seeks advice, if necessary, to determine the benefits of seeking a legislative basis for the amnesty.

Recommendation SR 7:

The PIC recommends that NSW Police seeks the necessary amendments to the current legislation and/or regulations (in particular, clause 20 of the Police Regulation) so that, in cases where an officer's illegal drug use has come to notice only through the officer's own admissions, commanders, supervisors and fellow officers are able to refer officers to the amnesty without otherwise having to report their past drug use.

Evaluation and monitoring

The PIC considers that NSW Police would benefit from seeking the feedback from those who have participated in the amnesty. NSW Police could use such feedback to attempt to reduce barriers to officers accessing amnesty and improve the assistance available.

Recommendation SR 8:

The PIC recommends that NSW Police improves the treatment and other assistance available to officers who come forward by asking these officers, three to six months after they have completed the program:

a. what could have been done to improve the program

b. what aspects they found most helpful

c. why they chose to come forward at that time

d. whether there was anything that could have encouraged them to come forward earlier than they did

e. whether they were satisfied with the level of confidentiality with which their matter was managed.

6.4 TARGETED DRUG TESTING

DESCRIPTION

Targeted drug testing is a tool for detecting employee drug use. Both targeted and random drug testing were introduced into NSW Police as a result of recommendations made by the Royal Commission into the NSW Police Service.[979] The legislative amendments enabling targeted and random drug testing commenced on 1 January 1997. The first targeted drug tests were conducted in November 1998, following an extensive education program.

Under s.211A of the *Police Act 1990*, NSW Police can require any police officer who is on duty in accordance with a roster to provide a sample of urine or hair for the purpose of testing for the presence of prohibited drugs in accordance with the directions of the authorised person and the regulations. The selection of a police officer for testing may be conducted on a random or targeted basis. The terms 'random' and 'targeted' are not defined in the legislation.

In his evidence to the PIC the NSW Police Director of Health Services said that there is no specific definition of what constitutes a targeted drug test:

> There's no, as I'm aware, no specific definition of a target test. It developed over a period of time as an understanding between myself and the then commander of the integrity testing unit that it would be based on intelligence and individuals would be selected for a test if there was a reasonable suspicion of them having consumed drugs, or using drugs.[980]

Under the current legislation officers who are not on duty in accordance with a roster, students and civilian staff cannot be drug tested. Also NSW Police can only test for drugs that are prohibited substances under Schedule 1 of the *Drug Misuse and*

979 J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Interim Report*. February 1996, p. 129; J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Interim Report. Immediate measures for the reform of the Police Service of New South Wales*, November 1996, p. 20; J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Final report. Volume II: Reform*, May 1997, pp. 506-507.

980 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 113.

Trafficking Act 1985. Steroids are not classified as prohibited substances under this Act. As a result the NSW Police drug testing program does not include testing for steroids.

Sample collection and testing procedures[981]

All forms of workplace drug testing involve analysing a sample, usually urine, from the employee's body for the presence of a drug or drug metabolite.[982] While urine testing or 'urinalysis' is the most common form of workplace drug testing, other types of specimen can also be examined to detect drug use. In addition to urine, hair, blood, oral fluid, or sweat can be analysed. (For a brief outline of how workplace drug testing operates and its limitations refer to Appendix 11.)

While s.211A of the Police Act enables the collection of either urine or hair samples, NSW Police has used only urine samples for its targeted, random, and mandatory drug testing.[983] To date, NSW Police has not made use of any hair samples to test for the presence of prohibited drugs.

The actual collection of the urine samples is conducted by the Institute of Clinical Pathology and Medical Research (ICPMR) Pathology Collections Department on behalf of NSW Police. The ICPMR collection and testing procedures comply with the Australian/New Zealand Standard for the collection, detection and quantification of drugs of abuse in urine (AS/NZS 4308:2001). The objective of the Australian/New Zealand Standard is to:

> specify an appropriate collection procedure for samples and competence of the laboratory conducting the test. A range of options for the preliminary test is presented but a chromatographic separation coupled to mass spectrometry is the only approved confirmatory test technology at present. The cut-off levels listed for both the preliminary test and confirmatory test are defined. The Standard addresses only the testing for medico-legal purposes. The testing of samples for clinical use is not covered.[984]

Amongst other things this Standard covers:

- qualifications and supervision of laboratory staff
- specimen collection protocol and storage including privacy, security, chain of custody and access
- transportation to and reception at the laboratory
- laboratory security and storage of samples
- initial test (screening) methodology and cut-off levels
- confirmatory testing methodology and cut-off levels

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981 The collection and testing procedures described in this section are the same for NSW Police targeted drug testing, random drug testing and mandatory drug testing.

982 An inert by-product of drug as it changes following ingestion.

983 Mandatory drug tests are conducted after a person dies or is seriously injured as a result of a police motor vehicle pursuit or the discharge of a firearm by a police officer, or a person is killed while in police custody. For further information about mandatory drug testing refer to Section 6.6 of this chapter.

984 Standards Australia/Standards New Zealand, Procedures for the collection, detection and quantification of drugs of abuse in urine. Australian/New Zealand Standard AS/NZS 4308:2001, 2001, p. 3.

- reporting of results and record keeping
- example of chain-of-custody form
- recommended precautions for handling biological specimens.

While NSW Police uses the cut-off levels specified in the Australian/New Zealand Standard for random drug tests, it uses a lower cut-off concentration level for targeted drug tests. The Director of the Drugs and Toxicology Laboratory at the ICPMR determined these concentration levels, known as 'Service Standards', in February 1999. These concentration levels were chosen to satisfy NSW Police needs for sensitivity (or the ability to detect the presence of low levels of a drug) while retaining a high degree of reliability, that is, ensuring that the analysis is able to stand up in court. As part of the investigative process, officers whose targeted drug test indicate the presence of one or more prohibited drugs at greater than the Service Standard are asked for an explanation of why there might be any evidence of the prohibited drug in their urine.

Procedures for authorising a targeted drug test within NSW Police

The procedures for authorising a targeted drug test within NSW Police changed in late 2003. Until September 2003 the authorisation of a targeted drug test was centralised within the Special Crime and Internal Affairs (SCIA) Command, now referred to as the Professional Standards Command. Since September 2003, the process for authorising a targeted drug test has been decentralised and targeted drug tests are now authorised at the command level by the Complaints Management Team (CMT).

The 1999 guidelines, *NSW Police Service Targeted Drug Testing Policy and Procedures*, specified that any member of NSW Police (referred to in these guidelines as the 'Contact Officer') could request a drug test to be conducted on an officer after the Contact Officer had received some information to believe that a test was warranted. The procedure involved the Contact Officer submitting a form to the Commander of the Integrity Testing Unit who was responsible for deciding whether a targeted drug test would proceed after an 'intelligence based analysis and profile' were conducted.[985] In August 2002 the responsibility for authorising a targeted drug test was transferred from the Commander of the Integrity Testing Unit to the Professional Standards Manager, another position within SCIA. Some representatives of NSW Police perceived that this transfer was associated with the commencement of what was seen as a more restrictive approach to authorising targeted drug tests.[986]

In July 2003 NSW Police drafted new *Targeted Drug Testing Protocols and Procedures.* These protocols and procedures were amended and issued in September 2003. They were again modified and reissued in December 2003. The impact of the modified protocols and procedures is to give more autonomy to the Local Area Commands in authorising a targeted drug test. The new protocols and procedures state that:

> When Superintendents or their equivalents receive information concerning the possible use of prohibited drugs by police within their commands, arrangements should be made for the Complaints Management Team

985 NSW Police Service, Targeted Drug Testing Policy and Procedures, January 1999.

986 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 115; Operation Abelia, PIC Transcript, P. Gallagher, 16 December 2003, pp. 214-215.

> (CMT) to conduct an assessment in conjunction with the Region Professional Standards Manager (PSM).
>
> If as a result of the CMT's assessment, it is deemed that a targeted drug test should be conducted, the Superintendent or equivalent must contact the Director Health Services, to make arrangements for the conduct of the test at the first available opportunity.[987]

These protocols and procedures require the decision whether or not to undertake a targeted drug test to be made by a group (the CMT) rather than by an individual (such as the commander).

The potential speed of response is seen as an advantage of the new targeted drug testing protocols:

> The previous system did not do so, but this has the capacity to give commanders a much more rapid decision-making process. If they receive intelligence at 2am that an officer was using drugs, or what ever information may come to hand, and they determine that – and the officer's reporting for duty at 6am, they have the facility now to be able to have an informal meeting with their CMT, make a decision, contact myself [the Director of Health Services] and we can have the drug testing team there at the commencement of the officer's shift. That capacity wasn't there previously.[988]

In terms of record keeping, these protocols state:

> All minutes of a CMT meeting that discusses a request for a targeted drug test should be scanned onto C@ts.i[989] regardless of whether a test is approved or conducted. All outcomes of targeted tests, whether negative or positive are also required to be entered onto C@ts.i for audit purposes. [990]

NSW Police has advised that the decisions to target drug test individuals are reviewed on a monthly basis by the Professional Standards Command to ensure consistency.[991] Furthermore one of the roles assigned to the Professional Standards Command Professional Standards Manager is to report monthly to the Assistant Commissioner to recommend best practice and record observations about CMT decision making processes.[992]

The Protocols and Procedures document offers the following list of possible types of information to consider when deciding whether or not to authorise a targeted drug test:

> When considering information received in relation to the inappropriate use of drugs, consideration should be given to, but not limited by, the:

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987 NSW Police, Targeted drug testing protocols and procedures, December 2003, pp. 2-3.

988 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 138.

989 C@tsi is the NSW Police computerised complaints management system.

990 NSW Police, Targeted drug testing protocols and procedures, December 2003, p. 3.

991 NSW Police response to Operation Abelia Round Table 1a; *Detecting drug use*, April 2004, p. 3. Abelia Round Table 1a: *Detecting drug use*, Minutes 7 April 2004, p. 6

992 NSW Police Professional Standards Command. Complaint Practice Note: Guidelines for dealing with drug use allegations made against police. *Police Weekly, Vol 16, 23 August 2004*, p. 10.

- reliability of the information provided
- motivation of informant in disclosing the information
- type of drug allegedly being used
- relationship of informant to officer
- observations of supervisors
- behaviour of the officer nominated for a targeted test
- places frequented by the officer
- recency of the information
- involvement of other officers
- protection of the identity of the informant
- impact on operational effectiveness
- previous complaints history
- absenteeism and sick leave record of the officer, and
- any other information considered relevant.[993]

An article promoting these protocols was published in the *Police Weekly* on 22 December 2003. This article summarised the main steps that need to be considered when authorising a targeted drug test and said that full details of the new protocols could be found on the NSW Police intranet. NSW Police has informed the PIC that a copy of these protocols was also forwarded to all local area commanders.

Complaint Practice Note 04/07: Guidelines for commanders and CMTs dealing with drug use allegations made against police

In June 2004, NSW Police supplemented these protocols and procedures by issuing what it refers to as a 'complaint practice note'. The purpose of this complaint practice note was stated to be:

> to help Commanders and Complaints Management Teams make informed decisions if police come under notice for alleged involvement in drug related activities, particularly if the use of targeted drug tests is considered.

Amongst other things, the complaint practice note clarifies the role of the CMT, the circumstances under which a targeted drug test should be considered appropriate and the circumstances when a drug test should not be conducted. The complaint practice note provides a list of factors or indicators to be considered when deciding whether or not to conduct a targeted drug test and states that CMTs are expected to apply these indicators to the allegations in a manner that ensures the decision making process is fair and impartial, is free from bias and will withstand independent review.[994] The complaint practice note also offers alternative investigative strategies to targeted drug testing and people whom commanders can consult if they require additional advice. NSW Police advised the PIC that this practice note was placed on the NSW Police

993 NSW Police, *Targeted drug testing protocols and procedures*, December 2003, p. 3.

994 NSW Police Professional Standards Command. Complaint Practice Note: Guidelines for dealing with drug use allegations made against police. *Police Weekly, Vol 16, 23 August 2004*, p. 9.

Intranet and was electronically communicated to all NSW Police officers. It was subsequently published in the *Police Weekly* on 23 August 2004.

OBSERVATIONS

Observation 1:	**There was a perception that not enough tests were being approved under the previous process, despite most commanders saying that the tests they requested were in fact conducted.**

Evidence was given in Operation Abelia hearings that prior to the change in targeted drug testing protocols and procedures in late 2003 there was a belief within NSW Police that the 'bar had been set too high' and not enough requests for targeted drug tests were being approved.[995]

This view was also apparent from the responses of a sample of NSW Police commanders who were interviewed by senior PIC staff in mid-2003, prior to the introduction of the changed procedures.[996] Commanders were asked for their opinions on how well the then targeted drug testing policy was working. At that time, only two of the commanders interviewed believed that targeted drug testing 'works well' and could not suggest any improvements. Approximately one-third of the commanders interviewed thought that targeted drug testing 'works poorly and needs to be revised', while a further third thought that targeted drug testing 'works fairly well, but there was room for improvement'. Almost a quarter of the commanders interviewed answered that they did not know if the targeted drug testing policy was working because they had little experience with it. (Commanders' understanding of the targeted drug testing procedures and protocols has not been assessed following the changes to the procedures and protocols made in late 2003.)

One of the two commanders who considered the targeted drug testing policy to be working well (with no improvements required) commented on his satisfactory experience with the process:

> Spoke to [name of officer] at SCIA. It just involved a phone call, and within days, Mr Jackel from Healthy Lifestyles Directorate had arrived … the test was conducted.

Some commanders thought that the process at that time made it too difficult to have a targeted drug test authorised. To improve access, some commanders suggested that the process be changed to enable commanders a closer involvement in the process of obtaining tests. (This has subsequently occurred.) Some commanders suggested that the authority for targeted drug testing should be transferred to commanders, for example:

> …should be at the LAC's [Local Area Commander's] discretion and that the testing should be done locally.
>
> The LAC should have the authority to authorise targeted tests.

995 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 115; Operation Abelia, PIC Transcript, P. Gallagher, 16 December 2003, pp. 214-215.

996 See Appendix 2 for more information about the interviews with a sample of commanders and the commanders' responses.

> [The Targeted Drug Testing policy] needs to be completely reviewed to make access for Commanders easy.

The perceived difficulty in obtaining an approval to have a targeted drug test conducted is perhaps surprising given that most of the commanders who said that they had requested a targeted drug test said that the test had in fact been conducted. Twelve of the commanders interviewed said that they had had cause to request a targeted drug test in relation to one or more of their staff. Of these, eight commanders said that the drug test had been conducted. Only four answered that the test had not been conducted. There were various reasons given by these four commanders as to why the targeted drug tests they had requested were not conducted. Two of these four commanders said that the targeted drug test had not been conducted because the officers who were to be the subject of the test had resigned prior to the test being conducted. One of these two commanders expressed satisfaction with the targeted drug testing procedure up to that point:

> … the process [targeted drug testing procedure] worked well up to the point of resignation.

The other two commanders commented that their requests for drug tests had been declined. One of these commanders requested a test for an officer he suspected was using steroids, but the test was declined because testing for steroids is not permitted under the legislation. The second of these commanders said that the test he requested was declined without explanation.

Approximately one-quarter of the commanders interviewed felt that targeted drug tests should be conducted more frequently. One commander, for example, commented that he had been led to believe that during the previous 12 to 18 months, NSW Police had not conducted one targeted drug test, despite numerous requests being made by commanders. This commander would have been referring to the period from early or mid-2002 to mid-2003.

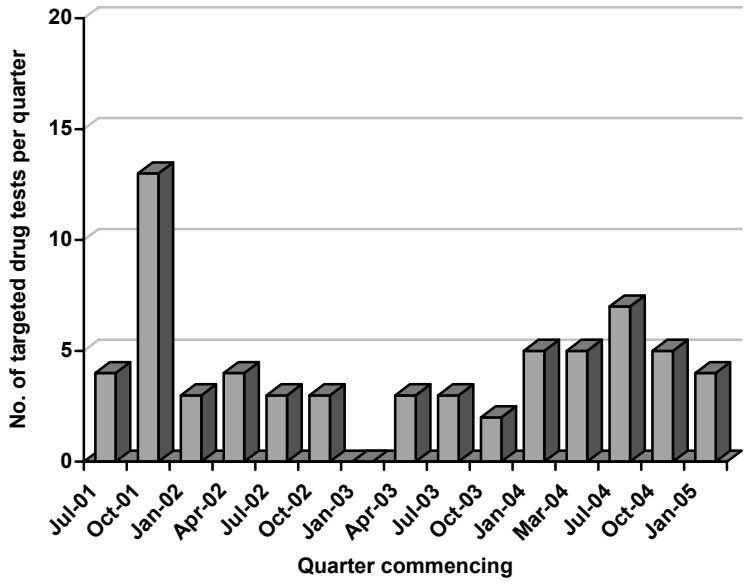
To examine trends in the number of targeted drug tests conducted, the PIC collated the information reported in the monthly drug testing statistical reports provided by NSW Police. The numbers of targeted drug tests conducted each quarter since July 2001 are illustrated in Figure 6.2. In summary, this graph shows that:

- a relatively high number of targeted drug tests were conducted in the October-December 2001 quarter[997]
- the drop in number of targeted drug tests conducted occurred before the responsibility for the authorisation of targeted drug tests was transferred between the different sections of SCIA
- for much of the rest of the 45 month period illustrated, targeted drug tests have been conducted at a rate of approximately one targeted drug test per month

997 The PIC is unaware of any reason for the higher number of targeted drug tests conducted in October to December 2001.

- given that the annual numbers of targeted drug tests fluctuate markedly (13 targeted drug tests were conducted in the 2002 calendar year, 8 tests were conducted in 2003 and 21 tests were conducted in 2004) it is too early to determine whether the apparent increase in 2004 is indicative of a continuing increase in the numbers conducted or merely a sampling fluctuation.

FIGURE 6.2: QUARTERLY NUMBER OF TARGETED DRUG TESTS CONDUCTED BY NSW POLICE, JULY 2001 - MARCH 2005



Observation 2: **While a number of officers who participated in the focus groups expressed support for drug testing, some officers were concerned about potential abuse of targeted drug testing.**

When asked 'what role should drug testing play in the management of illicit drug use by police officers?', a number of the officers who participated in the Operation Abelia focus groups expressed their support for the drug testing conducted by NSW Police. Some examples of their comments include:

> Why does there appear to be the softly, softly approach? We all sign on the bottom line, we know what we're supposed to do. If we're doing the right thing, test us, we won't care.
>
> There's definitely a place for targeted testing. If you've got information they should be pursued.
>
> It would be nice to know that if I'm out in a car that he's clean of drugs and alcohol. It's my own personal safety.

On the other hand, some participants raised their concern about the potential for abuse of targeted testing and the need for controls to manage this risk. The following examples of focus group discussions illustrate these concerns:

> I'd have concerns with the method of identifying targets. I'd hate to think that I was targeted on the say so of someone. I know someone who was not a user and was targeted, and they went through hell. [New speaker:] How did they know they were targeted? [New speaker:] Well, there's that confidentiality thing.

> When the document [regarding a recommendation for targeted testing] gets to a certain point, it's just rubber stamped. I honestly don't believe that this organisation can adequately review the decisions of senior managers.

> [Facilitator:] Who's going to make that call [to do a targeted drug test]? [Participant:] Region commander. [New speaker:] Region management team – not one sole person. Too much potential for abuse. [New speaker:] LAC team recommend it to the region commander.

Observation 3: Approximately one in every five officers who has been subjected to a targeted drug test has returned a 'positive' result.

NSW Police conducted 148 targeted drug tests between November 1998 and the end of May 2005. Twenty-seven (or 18%) of these targeted drug tests have given a 'positive' result, indicating that the officer tested had been exposed to one or more prohibited drugs.

Observation 4: A negative drug test result may not mean that the officer has not used illegal drugs.

A former senior constable was 32 years old when she gave evidence in a public PIC hearing, thirteen years after she joined NSW Police. She admitted that she had been using illegal drugs for about seven years while she had been working in NSW Police. She said that her drug use started approximately six years after she joined NSW Police. This former officer said that while she was a serving police officer she used ecstasy, speed, cocaine and ketamine; with cocaine and ecstasy being the drugs she used most often. She told the PIC that she shared drugs with other officers while she was off duty. This former senior constable said she had used ecstasy three or four days before she was targeted drug tested but the drug test result had been clear. She said that she deliberately timed her drug use on days off to avoid detection by drug testing when she returned to work.[998]

One of the limitations of drug tests is that they can only detect drug use for a relatively short period after ingestion. If drug tests are not conducted relatively soon after drug use, the drug use is unlikely to be detected. Different drugs (or drug metabolites) remain in the system for different periods of time. Hence exposure to some types of drugs can be detected for longer periods than exposure to other types of drugs. The approximate detection periods for urine samples are outlined in Table 6.1.

998 Operation Abelia, PIC Transcript, S. A. Hill, 6 November 2003, pp. 73-74.

TABLE 6.1: ESTIMATES OF TIME FOLLOWING INGESTION THAT DIFFERENT DRUG TYPES CAN BE DETECTED IN URINE[999]

Drug ingested	Length of time detected in urine (average)
alcohol	12-24 hours
amphetamine	2-4 days
cannabis	2-7 days but up to one month for regular users
cocaine/crack	12 hours – 3 days
ecstasy	2-4 days
heroin	1-2 days[1000]
LSD	2-3 days

The time periods listed in Table 6.1 are only averages and will not apply uniformly to every one who uses these drugs. A number of factors can affect the amount of drug present in the urine at the time the sample is taken. These factors have been documented to include the characteristics of the drug, the amount ingested, the form in which the drug is ingested, physical and pharmacological characteristics of the user, pathological factors such as genetic disorders, body water, and menstruation.[1001] The higher the dose of drug taken, and the greater the frequency of use, the more likely the drug use is to be detected.[1002]

Almost all of the officers and former officers, who had admitted previous illegal drug use and gave evidence to the PIC, were aware of the length of time different illegal drugs could be detected by drug tests. They also spoke of the strategies they used to avoid their illegal drug use being detected by a drug test. For example, former Officer G6 who joined NSW Police when he was 20 years old and resigned after eight years service, spoke about how the flexible rostering system gave officers time to use drugs on their days off without risk of being detected when they returned to work:

> but three to four days off allows you to go and do that and, as you're probably aware, you won't – a drug test after those four days for those recreational drugs won't pick up anything.[1003]

Similarly Officer X2, who joined NSW Police when she was 20 years old, said that in order to minimise the risk of detection she 'made sure I had a few days off after taking it'. She said she was aware that NSW Police conducted drug testing and she would have a few days off after taking ecstasy so that there would not be any traces of ecstasy in her system. She also 'just drank a lot of water' during the period she was off.[1004]

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999 Source: DrugScope, Drug testing. <http://www.drugscope.org.uk>.

1000 MAM (or 6-monoacetylmorphine) can be detected up to 6 hours, morphine metabolite 2-3 days. If MAM is present it indicates definite heroin use (T. Makkai, Drug use monitoring in Australia (DUMA): Drug detection testing. *Australian Institute of Criminology, Research and Public Policy Series, No. 25*, March 2000, p. 6).

1001 Bigger 1979 and Chiang & Hawks 1986 cited in T. Makkai, Drug use monitoring in Australia (DUMA): Drug detection testing. *Australian Institute of Criminology, Research and Public Policy Series, No. 25, March 2000*, p. 19.

1002 T. Makkai, Drug use monitoring in Australia (DUMA): Drug detection testing. *Australian Institute of Criminology, Research and Public Policy Series, No. 25, March 2000*, p. 12.

1003 Operation Abelia, PIC Transcript, Private hearing APH, 13 August 2004, p. 12.

1004 Operation Abelia, PIC Transcript, Private hearing ANH, 10 May 2004, pp. 9-10.

Observation 5: **Recalling officers to duty for targeted drug testing (or 'off-duty targeted drug testing') has been suggested as a tool for detecting and/or deterring officers who use illegal drugs while they are off duty.**

NSW Police told the PIC that it has been seeking a legislative amendment to enable officers to be recalled to duty for the purposes of a targeted drug test.[1005] This legislative amendment has been in the process of being sought for more than five years.[1006] When describing the history of the proposed amendment, the NSW Police Director of Health Services said that such an amendment was only intended to be used in exceptional circumstances:

> It goes back to 1998, when a number of proposals had been put forward to enable the recall of off-duty officers for targeted testing purposes. I'd stress it would only be in exceptional circumstances. You would not want to do that as a matter of course. That has been endorsed by the organisation for the past five years, but unfortunately has not been acted on at this stage.[1007]

> On several occasions it has been endorsed by the Commissioner and his Executive Team and, as I understand it, it is on a schedule – has been for some time – of suggested amendments to the Police Act which have been waiting consideration by government.[1008]

The Director of Health Services also gave examples of when off-duty targeted drug testing would be considered:

> I have received a number of, or had a number of discussions with investigators who have indicated to me that certain police were under observation, part of covert operations, and seen to be at nightclubs and seen to be taking some pills. They would have liked to have recalled those officers to duty, but were unable to do so.[1009]

The possible legislative change to enable an officer to be recalled to duty for drug testing while off duty was spoken about at the first Operation Abelia round table discussion on 7 April 2004. During that discussion the representative from the Ministry of Police raised the question of whether it would be better to seek a legislative change to enable 'off-duty' testing. He queried whether if someone were recalled to duty they would have to be fit enough to undertake all forms of duty. Furthermore, he questioned whether it is possible to recall someone to duty for only a very limited part of their duties or a limited purpose, that is, drug testing.

Participants at the round table discussion raised a range of practical issues that would need to be addressed in any such legislative amendment. Some of these practical issues included:

1005 NSW Police response to Operation Abelia Round Table 1a: *Detecting drug use*. April 2004, p. 1.

1006 B. Larkham, Discussion paper: Drug use by police: Workplace or integrity issue? *Paper presented at the NSW Police 8th Internal Investigations Conference – Corruption beyond 2000, Sydney 1-3 September 1999*, p. 17.

1007 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 126.

1008 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 130.

1009 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 129.

- transporting the officer to the selected testing site so that an officer suspected of using prohibited drugs is not put in the position of being expected to drive a motor vehicle
- managing those situations where an officer to be tested says that he or she is too ill to attend for any drug test
- minimising the invasiveness of going to an officer's home while he or she is off duty and requesting a urine sample while the officer is at home with his or her children or while entertaining friends
- not being able to locate the officer.

The representatives from the different agencies at the round table discussion agreed that any officer who was drug tested while off duty would need to be financially reimbursed for their time.

Observation 6: Although contentious, there is support for off-duty targeted drug testing.

NSW Police and the NSW Ombudsman expressed their support for a legislative amendment to allow off-duty officers to be recalled for the purpose of targeted drug testing in appropriate circumstances.[1010]

When asked 'Do you think that off-duty officers should be recalled to duty for targeted drug testing?', the majority of commanders interviewed for Operation Abelia (71%) expressed their support for recalling off-duty officers for targeted drug testing. Some examples of the comments made by these commanders include:

> [Off-duty officers being recalled] would get over the 12-hour shift arrangement. You're not likely to get a positive test on day 4, however, with recall to duty, you will be able to on day 1 or 2.
>
> [Off-duty officers should be recalled] so that there is no way in which police can avoid detection after using prohibited drugs by using 'off-duty' status to engage in such activities.
>
> NSW Police should be able to test these officers at the optimal time of their usage.
>
> … it should be 24 hours a day, 7 days a week. On or off duty you should be available for a targeted test.[1011]

Some Police Association delegates also expressed their support for enabling off-duty officers to be recalled to duty for targeted drug testing under certain circumstances. The Police Association of NSW (PANSW) held its Biennial Conference in the last week of May 2004. One part of the conference program was devoted to a discussion of Operation Abelia. Following a presentation about Operation Abelia by a PIC representative,

1010 NSW Police response to Operation Abelia Round Table 1a: *Detecting drug use*. April 2004, p. 1; Operation Abelia, PIC Transcript, Commissioner of Police, 12 November 2004, p. 1323; NSW Ombudsman response to Operation Abelia Round Table 1a: *Detecting drug use*. April 2004, p. 1.

1011 See Appendix 2 for more information about the interviews with a sample of commanders and the commanders' responses.

the approximately 130 delegates were divided into twelve groups. These groups were asked to address the following two questions:

1. What are the top two issues that must be addressed to reduce the problems of illicit drug use in NSW Police?, and
2. What does the group see as the best immediate and practical strategy that delegates could adopt in order to reduce the problem of illicit drug use by police?

Two of these twelve conference discussion groups nominated off-duty testing on the basis of a warrant or 'an instrument sworn before an authorised justice' as one of the top two issues to be addressed to reduce the problems of illicit drug use in NSW Police. The suggestions of these two groups were recorded as follows:

> Expand targeted drug testing on the basis of an issued warrant under the hand of a judge with any application supported by affidavit. This warrant may be executed at the person's home, public place or workplace, whether on or off duty.
>
> Increasing drug testing to include 'off duty' recalls. On the provision that it only relates to targeted drug testing on intelligence based information and must be by virtue of an instrument sworn before an Authorised Justice.

A spokesperson for a third discussion group said they took a vote about testing outside of work hours (not at home; with payment). The spokesperson reported the split result of this vote: five of the officers in this group were in favour, two were against and three abstained wanting additional information.

Some of these conference discussion groups also identified their concerns about drug testing. Their concerns were recorded in the following terms:

> No system should allow the process of targeted testing to be an alternative punitive method of harassing officers.
>
> Testing at home when off duty - what compensation if any?
>
> Will you be recalled to work?
>
> Cost factors of testing.
>
> Target testing should be told why, who may have been the complainant.[1012]

In addition to the opinions expressed in the conference discussion groups, the PIC obtained officer opinions on recall to duty for drug testing from the Operation Abelia focus groups. When asked 'Should we recall people to duty for targeted testing?' or 'Should you be able to recall people to duty for targeted tests?', officers were divided in their responses. This topic was discussed at some length in several focus groups. Many participants indicated their support for the principle of off-duty, or recall-to-duty,

[1012] See Appendix 8 for more information about the discussion groups that were held as part of the Police Association of NSW Biennial Conference.

testing. Several indicated that the extended days off with the current shift system in NSW Police provided an increased risk of undetected drug use, for example:

> Yeah, let's do it [recall to duty for drug testing]. If you've got nothing to hide.

> They should do it like they do it in sport, they can knock on your door unannounced. If they do that, they're going to have to pay. [New speaker:] Targeted or random? [New speaker:] Targeted. [New speaker:] I couldn't [care] because I don't take drugs. [New speaker:] if they wanted to be fair dinkum, to catch people, you'd go into the first lot of their days off, it brings a huge lot of other social issues to the fore.

> The impact would be that people don't know when they're going to be tested. I'm sure that would make the druggies think twice about going to a rave party and then coming to work afterwards.

> Well they do that with athletes, target them when they're not training. [New speaker:] They do that in the army, they recall them on holidays for drug tests.

Some officers were concerned about whether or not they would be paid if they were recalled to duty for drug testing. These officers expressed their support for recall to duty for drug testing if they were to be paid, for example:

> They can test me randomly every day and give me 3 hours recall to duty every day.

On the other hand, some focus group participants expressed disapproval of the idea of recalling officers to duty, or testing off-duty officers. Examples of the participants' comments illustrating the wide range of different reasons for not supporting off-duty targeted drug testing include:

> [Facilitator:] Should we recall people to duty for targeted testing? [Participant:] People would argue that, if they're using on the first night of days off, and they're not affected when back at work, so where's the problem? [New speaker:] What are we hunting them for?

> [Facilitator:] How do you get around the problem, if you've got evidence and you just can't get them? [Participant:] If it was that relevant and you wanted to spend the time and money doing a proper investigation, you could catch them whether it involved testing or not.

> Officers are just going to be scared. You'd say you're never going to be off duty, you can't sit at home and relax.

> Calling people in on days off, that's just lazy. Get the brief.

> If you call someone in [to duty for drug testing], you're virtually saying, we think you're a druggie. There'd be litigation issues, people would ask where the intelligence came from. [New speaker:] There'd also be a breakdown of the relationship afterwards. [New speaker:] And the outcome – you don't give them the sack, because we're about rehabilitation. So it does you no favours, apart from showing that you're fair dinkum and showing commitment as an organisation.

> I do see that calling them in off duty is a problem; you might call people in who are stoned – if they drive a car and crash the car, who's responsible?

Some focus group participants expressed their concerns about the standard of information required to initiate a targeted drug test and the potential for abuse of recall to duty for drug testing, for example:

> You've got to have some way of justifying to someone the reason for those tests. Boss can't decide to knock on your door at 2 o'clock in the morning. But if there's a good reason I can't see a problem with it. [New speaker:] What other levels of investigation is done along with the information for targeted testing?

> I don't like the idea of, if you're on holidays, some payback. [New speaker:] And it will be abused. It would have to be so well worded, it would have to come from the Commissioner or a deputy. Protocols have to be in place. I personally don't agree with it. [New speaker:] But they'd have to have a good reason.

Observation 7: Drug testing based on hair samples can detect drug use for a longer period after exposure to the drug.

The NSW Police Act already permits the use of hair samples for drug testing. Use of hair samples is seen as having a number of advantages as well as a number of disadvantages in comparison with the use of urine samples. The main advantage of the use of hair samples is that drug use can be detected for a longer period after exposure (that is, hair samples have a longer 'window of exposure') than with urine samples. Table 6.2 compares the windows of exposure of three of types of specimen.

TABLE 6.2: COMPARISON OF COMMONLY USED SPECIMENS FOR DRUG ANALYSIS[1013]

Specimen	Ease of collection	Stability of drugs	Average window of exposure	Sample preparation before analysis	Possible adulterations
Blood	Most invasive	Variable	Recent	Minimal	No
Urine *	Moderate	Stable	1-3 days	Minimal	Yes
Hair **	Less invasive	Stable	7-90 days	Significant	No

** The window of exposure is up to 30 days for cannabis and two weeks for benzodiazepines.*
*** The window of exposure can be up to a year; it depends on how often you get your hair cut.*

In her paper on drug detection testing, prior to concluding that urine testing remains the most cost-effective drug testing technology available in Australia at that time, Makkai provided the following comparison of the use of hair versus urine samples to detect drug use:

> Despite the pluses and minuses of each form of technology, Mieczkowski and Newel (1993, p. 65) concluded from their analyses of [hair and urine testing] that 'compulsive daily users are highly likely to be identified

1013 Taken from T. Makkai, Drug use monitoring in Australia (DUMA): Drug detection testing. *Australian Institute of Criminology, Research and Public Policy Series, No. 25, March 2000*, p. 3.

> regardless of the assay medium. Sporadic, or moderate, users are more likely to pass a urine screen and fail a hair screen'.[1014]

Most of the documented advantages of the use of hair samples concern its longer window of detection, for example:

- many drugs are incorporated into the hair and remain in the hair at all times. Hence hair has the widest window of detection – ranging from days to years[1015]
- hair samples can provide information on historic use spanning up to several months[1016]
- hair analysis has been said to be particularly suited to situations where drug use may be episodic and sporadic. Hair tests can reveal drug use that occurred anytime within the previous 90 days, whereas urinalysis is limited to detecting drug use within the previous 48 hours or so.[1017]

Hair samples have also been said to have other advantages, for example, unlike urine it is not possible to dilute or otherwise adulterate hair in order to evade a drug test. In general drugs can only be removed by cutting the hair, although it has been suggested that repeated washing or treating hair may diminish drug concentrations.[1018]

Some of the documented disadvantages of using hair samples include:

- there are potential problems of contamination and the degree to which environmental contamination can affect results is unclear[1019]
- ethnicity and hair colour appear to affect uptake of drugs in hair[1020]

1014 T. Makkai, Drug use monitoring in Australia (DUMA): Drug detection testing. *Australian Institute of Criminology, Research and Public Policy Series, No. 25, March 2000*, p. 30.

1015 T. Mieczkowski., & K. M. Lersch, *Drug-testing in criminal justice: Evolving uses, emerging technologies*. National Institute of Justice Journal, December 1997, p. 13; Makkai 2000, p. 3; J. H. Lewis, Drug detection and its role in law enforcement. *Australian Institute of Criminology, Trends & Issues No. 205, May 2001*; D. Rouen, K. Dolan, & J. Kimber, A review of drug detection testing and an examination of urine, hair, saliva and sweat. *National Drug and Alcohol Research Centre (NDARC) Technical Report 120, 2001*.

1016 T. Mieczkowski, Hair analysis as a drug detector. US Department of Justice, *National Institute of Justice Research in Brief, October 1995*, p. 2; C. Liddle, & R. Vining, *An independent research study of prohibited drug use within the New South Wales Police Service*. Institute of Clinical Pathology and Medical Research - a unit of the Western Sydney Area Health Service, October 1998; D. Rouen, K. Dolan, & J. Kimber, A review of drug detection testing and an examination of urine, hair, saliva and sweat. *National Drug and Alcohol Research Centre (NDARC) Technical Report 120, 2001*; T. Mieczkowski, & K. M. Lersch, Drug-testing police officers and police recruits: The outcome of urinalysis and hair compared. *Policing: An International Journal of Police Strategies and Management, Vol 25 (3), 2002, 581-601*.

1017 T. E. Feucht, & A. Keyser, Reducing drug use in prisons: Pennsylvania's approach. *National Institute of Justice Journal*, October 1999, p. 12.

1018 J. H. Lewis, Drug detection and its role in law enforcement. *Australian Institute of Criminology, Trends & Issues No. 205, May 2001*.

1019 C. Liddle, & R. Vining, *An independent research study of prohibited drug use within the New South Wales Police Service*. Institute of Clinical Pathology and Medical Research - a unit of the Western Sydney Area Health Service, October 1998; J. H. Lewis, Drug detection and its role in law enforcement. *Australian Institute of Criminology, Trends & Issues No. 205, May 2001*. DrugScope (Undated) Drug testing. <http://www.drugscope.org.uk>.

1020 C. Liddle, & R. Vining, *An independent research study of prohibited drug use within the New South Wales Police Service*. Institute of Clinical Pathology and Medical Research - a unit of the Western Sydney Area Health Service, October 1998; J. H. Lewis, Drug detection and its role in law enforcement. *Australian Institute of Criminology, Trends & Issues No. 205, May 2001*; T. Makkai, Drug use monitoring in Australia (DUMA): Drug detection testing. *Australian Institute of Criminology, Research and Public Policy Series, No. 25, March 2000*.

- it is difficult to calculate the date of exposure to a drug as there is significant variation in rate of growth of hair between individuals and between hair from different areas of the body[1021]
- there is a lack of correlation between drug dose and hair concentration[1022]
- difficulty in detecting cannabis[1023]
- hair analysis is more expensive than urinalysis per test.[1024]

The issue of environmental contamination can be examined as part of the analytical process whereby the hair samples undergo a number of 'washings' to remove external contaminants and the drug concentrations in these washings can be tested and compared to the drug concentrations in the hair sample.

Drug testing using hair samples is quite widely used amongst police departments in the US and is beginning to be used amongst police departments in the UK.

Observation 8: NSW Police currently cannot conduct targeted drug tests for anabolic steroids.

NSW Police cannot currently test for anabolic androgenic steroids (abbreviated to 'anabolic steroids' or 'steroids' in the text that follows) because anabolic steroids are not a 'prohibited drug' as listed on Schedule 1 of the *Drug Misuse and Trafficking Act*. Anabolic steroids are restricted substances in Australia. They can be legally obtained from medical practitioners for a limited number of purposes, such as to treat muscle wasting.[1025] (For further information about anabolic steroids refer to Appendix 9.)

Anabolic steroid abuse may be increasing internationally. The Director-General of the World Anti-Doping Agency was quoted in the media in October 2004 as saying that 'trafficking in steroids is now seen as a more lucrative task for those who work in the underworld than trafficking in some of the more familiar social drugs'.[1026]

In an organisation such as NSW Police where strength and physical fitness are of such importance, the research literature suggests there is a risk of abuse of steroids. For example, 'police' is one of the occupational groups identified as being more likely to use anabolic steroids. International research has identified five groups of anabolic steroid users:

1021 J. H. Lewis, Drug detection and its role in law enforcement. *Australian Institute of Criminology, Trends & Issues No. 205, May 2001*.

1022 C. Liddle, & R. Vining, *An independent research study of prohibited drug use within the New South Wales Police Service*. Institute of Clinical Pathology and Medical Research - a unit of the Western Sydney Area Health Service, October 1998.

1023 C. Liddle, & R. Vining, *An independent research study of prohibited drug use within the New South Wales Police Service*. Institute of Clinical Pathology and Medical Research - a unit of the Western Sydney Area Health Service, October 1998.

1024 T. Mieczkowski, & K. M. Lersch, Drug-testing police officers and police recruits: The outcome of urinalysis and hair compared. *Policing: An International Journal of Police Strategies and Management, Vol 25 (3), 2002, 581-601*.

1025 B. Maycock, & A. Beel, Anabolic steroid abuse and violence. *NSW Bureau of Crime Statistics and Research, Crime and Justice Bulletin Number 35, July 1997*, p. 1.

1026 AAP, Mobsters use steroids to bulk up empires. *Sydney Morning Herald, 25 October 2004*. http://www.smh.com.au; D. D. McNicoll, Warning on steroid trade as drug cheats fake bladder device revealed. *Australian, 26 October 2004*, p. 3.

- competitive athletes
- body image (recreational bodybuilders)
- competitive bodybuilders
- occupational users (where the use of anabolic steroids is perceived to help in the carrying out of employment duties and includes bodyguards, security personnel, construction workers, police and members of the armed services)
- adolescents.[1027]

A joint project between the Queensland Police Service (QPS) and the Queensland Crime and Misconduct Commission (CMC) examined the nature and extent of the possible use of illicit steroids by QPS officers. This project concluded that:

> The issue of illicit steroids use within the QPS is potentially serious but has thus far been isolated in nature.[1028]

In their examination of anabolic steroid abuse and violence, Maycock and Beel (1997) concluded that chronic high doses of anabolic steroids are likely to increase the risk of violent or aggressive behaviour:

> Taken as a whole, the evidence we have reviewed suggests that chronic high doses of anabolic steroids are more likely to increase the risk of aggressive and/or violent behaviour than to leave it unaffected. The majority of studies appear to have found at least some evidence of an association between anabolic steroid use and aggression or violence. Those studies which have found a negative relationship generally involved small doses of steroids. At the same time, the precise role played by anabolic steroid use in the commission of aggressive acts is far from clear. It is possible that anabolic steroid use only produces aggressive or violent behaviour in persons already predisposed to such behaviour … Regardless of how one interprets the available data on anabolic steroid use, there is no doubt that, at present, anabolic steroid use is a far less significant factor in the commission of violent crime than alcohol.[1029]

Information collected as part of Operation Abelia suggests that anabolic steroid abuse is also a concern for NSW Police. NSW Police has advised the PIC that 'feedback from the field suggests there would be a useful role for steroids testing within the organisation' but warned that 'some steroids can be prescribed by certain medical practitioners in strictly controlled circumstances'.[1030] Also, in their responses to interviews conducted by the PIC in mid-2003, two commanders suggested that drug testing should include testing for steroid use.

1027 National Drug and Alcohol Research Centre (n.d.) Steroid facts. NDARC brochure, p. 4.

1028 Crime and Misconduct Commission and Queensland Police Service, *The nature and extent of possible use of illicit steroids by QPS members*. Crime and Misconduct Commission and Queensland Police Service, December 2002, p. 19.

1029 B. Maycock, & A. Beel, Anabolic steroid abuse and violence. *NSW Bureau of Crime Statistics and Research, Crime and Justice Bulletin Number 35, July 1997*, p. 6.

1030 NSW Police response to Operation Abelia Round Table 1a: *Detecting drug use*. April 2004, p. 4.

During Operation Abelia, the PIC heard evidence from two officers who had used illegally obtained anabolic steroids. One of these was former Officer G3, who joined NSW Police when he was 22 years old and served for seven years before resigning. This former constable said that he started using veterinary steroids about twelve months after his hand was badly broken in a work accident. He said that he used the steroids after his hand had fully healed and he was able to get back into the gym. Former Officer G3 told the PIC that he obtained these steroids from friends and that he had never asked a doctor for a prescription for steroids. He said he was also using cannabis and later, ecstasy.[1031] Former Officer G3 said that the steroids had a considerable effect on him:

> Q. Do you attribute any of your actions on that day to the steroids or the other medication that you'd been taking?
>
> A. Oh, definitely steroids, I was out of control. I had no idea what I was doing.
>
> Q. Was that the first occasion you were in that state?
>
> A. Sorry?
>
> Q. Was that the first occasion?
>
> A. No, it wasn't, I tried – a few days before that I tried to kill myself. I tried to jump off my roof. I stabbed myself in the leg and required about six stitches, I just went – it sent me –everything sent me crazy. It just sent me crazy with all – my depression and the steroids just, yeah, they sent me crazy.[1032]

In the round table discussions that were held as part of Operation Abelia, the Police Association of NSW and the NSW Ombudsman also expressed their support for extending targeted drug testing to include anabolic steroids.[1033] For example, the Police Association observed:

> Steroids and their effect on the physical and emotional well-being of officers pose a significant higher risk to fellow officers and members of the public than many other illegal drugs. They are often illegally obtained and pose the same integrity and conflict issues that other 'recreational' drugs present.[1034]

1031 Operation Abelia, PIC Transcript, Private hearing, ANR, 11 May 2004, pp. 8-12.

1032 Operation Abelia, PIC Transcript, Private hearing ANR, 11 May 2004, pp. 19-20.

1033 Police Association of NSW response to Operation Abelia Round Table 1a: *Detecting drug use*. April 2004, p. 7; NSW Ombudsman response to Operation Abelia Round Table 1a: *Detecting drug use*. April 2004, p. 3.

1034 Police Association of NSW response to Operation Abelia Round Table 1a: *Detecting drug use*. April 2004, p. 7.

Observation 9: **A PIC review of the minutes of CMT meetings revealed considerable variation in the format, level of detail and the nature of the information recorded concerning the reasons for conducting targeted drug tests.**

In its examination of drug and alcohol policies from other jurisdictions, the PIC observed that many policies discuss the importance of documenting the reasons for conducting the equivalent of what are referred to in NSW as 'targeted drug tests'.[1035]

The PIC reviewed a sample of the C@tsi records of NSW Police CMT decisions about whether or not to conduct targeted drug tests.[1036] These decisions were all made following the decentralisation of the authorisation of targeted drug tests to the individual CMTs. The PIC reviewed the records of these decisions to establish:

- whether the decision to conduct a targeted drug test had been made by relatively few commands or whether these decisions had been spread across a large number of commands
- whether the minutes of the CMT meeting in which the decision to undertake the targeted drug test had been recorded on C@tsi as is required by the protocols and procedures
- the consistency in the type of information documented about the decision, and
- where available, the nature of the information considered prior to approving a targeted drug test.

The C@tsi records of all twenty-one officers who were subjected to a targeted drug test between January 2004 and November 2004 were examined. These twenty-one officers came from seventeen different commands, illustrating that the decision to conduct a targeted drug test was spread across a number of commands. Even in the case of two of the twenty-one officers, who came from the same command there were differences: while they were technically considered by the same CMT, the decisions were made at different meetings and the composition of the CMT varied.

The PIC was unable to find any record of relevant CMT meeting minutes in relation to five of the twenty-one officers who were the subject of a targeted drug test. While a short delay in recording the minutes on C@tsi may be an explanation in one case, it does not seem to be the reason for not being able to locate the records of these minutes for the other officers. Some of these officers had been subject to a targeted drug test more than six months prior to when the PIC sought to find these minutes.

1035 What is referred to as 'targeted drug testing' by NSW Police is referred to as 'reasonable suspicion', 'for cause' or 'just cause' testing in the USA. Documentation of the reasons for such tests is considered important. Generally in the USA such testing requires agreement by two supervisors, at least one of whom must have completed the appropriate training. The terminology 'articulable facts' or 'articulable observations' is common in USA policies, suggesting the importance of being able to document the justification for conducting the test. See for example: B. A. Manili, E. F. Connors, D. W. Stephens, & J. R. Stedman, Police drug testing. *US Department of Justice, National Institute of Justice, May 1987*, p. 21; US Department of Justice Federal Bureau of Investigation, Drug deterrence program: Drug-free workplace policy and procedure. US Department of Justice, Federal Bureau of Investigation, April 1997, p. 24; City and County of Denver, Executive Order No. 94: City and County of Denver employees' alcohol and drug policy. October 2002, pp. 5, 7; San Francisco Police Department San Francisco Police Department General Order 2.03: Drug use by members. July 1994, p. 5; Aurora Police Department Directives Manual: 14.5 Substance Abuse. Aurora Police Department, September 1998, pp. 8-9.

1036 C@tsi is the NSW Police computerised complaints management system.

The PIC was able to locate the records of the minutes concerning the decision to conduct the targeted drug test in relation to sixteen officers. The most remarkable feature of the records of these minutes was their diversity. The records of these minutes differed in terms of both presentation and content. The shortest of these minutes was seven lines, while the longest was two pages.

In three sets of minutes the allegation and the information considered by the CMT were thoroughly documented and the link between the considerations and the decision was clearly expressed. In four of the sets of minutes mention was made that the CMT considered alternatives to conducting a targeted drug test.

At the other extreme, in five cases the minutes recorded or implied that a decision was made to conduct a targeted drug test without giving any information about the reasons for that decision, extracts from these minutes are provided below:

> the meeting discussed the requirement to have a targeted drug test upon Constable [name] as a result of allegations made against her.
>
> The Commander has been appraised of the situation and gave approval for a Targeted Testing of [name and rank of officer].
>
> Seek assessment of targeted drug test for [name of officer]. Arrange for a Monday morning.
>
> It was the determination of the CMT that [rank and name] arrange for a targeted drug test to be conducted on the first rostered shift of [rank and name] upon her return from annual leave.
>
> A report was prepared for signature by [name of superintendent] to the Director, Health Services requesting the nominated officer be targeted for a drug test.

The information content for the remaining records of minutes fell between these extremes. For example, in some cases the minutes documented some of the information considered by the CMT but did not draw the link between the information considered (such as the reliability of the informant) and the decision taken to conduct a targeted drug test. It should be noted that all that can be assessed from an examination of the minutes of the meetings is how well the reasoning has been documented. The PIC is not questioning the decisions made to conduct these targeted drug tests. It is the record of the decision and the documentation of the reasons behind it that are at issue.

This diversity of the records of these minutes is not surprising since no guidance has been provided as to what information should be presented in these minutes or how they should be presented.

In this review of the C@tsi records of CMT decisions, the PIC noticed that the content of some minutes seemed to suggest that some CMTs may not understand the current targeted drug testing procedures. For example, one set of minutes referred to using a targeted drug test to determine whether an officer was being affected by 'illicit drugs or prescribed medication' where in fact the drug test is only used to detect the presence of illicit drugs (not prescribed medication). More than one set of minutes reported that the CMT had agreed that the most appropriate course of action would be to conduct a

'random drug test' of the officer, when in fact, it was recommending a targeted drug test.

Observation 10: Drug testing is not the only tool for investigating illegal drug use.

While workplace drug testing is common within law enforcement agencies in the USA, it is not as common in other countries. Within Australia, both NSW Police and the Australian Federal Police have had policies that incorporate drug testing in place since 1997. Other Australian jurisdictions are currently at different stages of planning or revising their drug and alcohol policies. Some law enforcement agencies within Canada and the UK are also currently considering the introduction of workplace drug testing. In the Netherlands there is no drug testing of police officers.

Some other law enforcement agencies say that they identify officers who use drugs by looking for clusters of officers/trends/types of police complaints that they are attracting (such as stealing drugs from people or on searches). For further information about the strategies used by other agencies refer to Chapter 3 and Appendices 14, 15 and 16.

Workplace drug testing is one tool for detecting and investigating illegal drug use. However, it is not the only tool. Some commentators actually suggest that those who rely on drug testing to identify drug users may undervalue better ways of detecting people who are having problems with drugs.[1037] Some other methods of detecting drug use include: self-referral, nomination by a colleague, identification by a supervisor, and use of employee risk management strategies or early warning systems.

Within the Operation Abelia round table discussions the Police Association of NSW emphasised that drug testing should only be seen as one of many tools in a proper investigative process:

> Testing should only be one tool in the investigation of such intelligence. Indeed, it should not be relied on to identify errant officers. The skilled investigator will have all the tools available to him or her that are available in the follow up to any other intelligence received in the course of their duties. If NSW Police is serious in identifying police who use illicit drugs, they should ensure that investigators have the skills and resources necessary to properly investigate allegations. [1038]

ASSESSMENT AND RECOMMENDATIONS

Effectiveness

The PIC's review of the literature and discussions with experts in the drug testing field has revealed that all forms of workplace drug testing have some limitations. The limitation that most hinders the effectiveness of targeted drug testing as a detection tool

1037 D. Bull, Management of substance abuse in the Australian Defence Force. Consultancy provided by ACT Community Care Alcohol and Drug Program to the Australian Defence Force, October 2001, p. 33; F. Gunja, A. Cox, M. Rosenbaum, & J. Appel, Making sense of student drug testing: Why educators are saying no. *The American Civil Liberties Union and Drug Policy Alliance, January 2004*, p. 16; Building Trades Group of Unions Drug and Alcohol Committee, 'Policy on Alcohol and Other Drug Testing in the Workplace', available at <www.btgda.org.au> Accessed on 16 December 2004.

1038 Police Association of NSW response to Operation Abelia Round Table 1a: *Detecting drug use*. April 2004, p. 5.

is that not everyone who uses prohibited drugs will be detected by a targeted drug test. Drug tests can only detect exposure to certain types of drug for relatively short periods. The length of time after ingestion that a drug can be detected depends on a number of factors including:

- the type of drug or drugs ingested
- the type of sample (such as urine, oral fluid, sweat, hair) analysed
- the frequency of use
- the individual metabolism of the person who is tested.

While a positive targeted drug test result provides information that the officer has ingested one or more prohibited drugs in the past, the interpretation of a negative drug test is less clear-cut. While a negative targeted drug test indicates that there is no evidence of recent drug use, it does not automatically remove all suspicion from an officer who has been subject to allegations of off-duty illegal drug use.

Despite these limitations, the PIC considers that NSW Police should continue to use targeted drug testing as one of its investigative tools in relation to suspected illegal drug use.

Areas for improvement

Decision making

The decision as to whether or not a targeted drug test is to be conducted is now made at the local level by the Complaints Management Team (CMT). There is a separate CMT for the majority of each of the 80 local area commands and for each of the 25 specialist units, though some small commands may share a CMT as may some specialist units. The composition of a CMT can vary from meeting to meeting.

Some CMTs are likely to have had more experience in considering targeted drug tests and may be more knowledgeable about the limitations of drug testing than other CMTs. The numbers of different people involved in making these decisions and the differences in their knowledge and experience may result in variability or inconsistency in the decision reached concerning whether or not a targeted drug test should be conducted. The PIC considers that this risk of inconsistency in decision making should be managed by providing training and guidelines to commanders and other officers who participate in CMTs, as well as by continuing the review of the decisions that NSW Police has already initiated.

It is important that CMT members considering using targeted drug testing as a detection tool understand the circumstances under which the tool is useful and when it is not. The PIC acknowledges the constructive efforts of NSW Police in developing the Complaint Practice Note (04/07) on ‘dealing with drug use allegations made against police’ to inform CMT members of their role and the appropriate factors to consider when deciding whether or not to undertake a targeted drug test. However, although the Complaint Practice Note provides a useful resource, its existence does not in itself ensure consistency and transparency in the decision making concerning whether a targeted drug test should be conducted.

CMT members currently have three sources of information available to them when they consider whether or not to conduct a targeted drug test:

- the *Targeted Drug Testing Protocols and Procedures* (last revised in December 2003)
- CPN 04/07 *Complaint Practice Note: Guidelines for dealing with drug use allegations made against police* (published in the Police Weekly in August 2004), and
- verbal advice from Complaints Management Unit complaint consultants.[1039]

Neither the *Targeted Drug Testing Protocols and Procedures* nor the Complaint Practice Note provide information on the limitations of drug testing as a detection tool.

From its review, the PIC noticed that the minutes of CMT meetings recorded in 2004 seemed to suggest that some CMTs may not understand the current targeted drug testing procedures. It is possible that not all of the CMTs are aware of all of the sources of information available to them. Even those that are aware may not consistently refer to these resources. To date the dissemination of information about targeted drug testing procedures has been by way of email or through the Police Weekly. The PIC suggests that training for CMTs on this topic be provided in a face-to-face environment to enable commanders and officers from different CMTs to discuss the issues involved.

Rather than requiring that CMTs refer to both the 'Targeted Drug Testing Protocols and Procedures' and the relevant Complaint Practice Note (CPN 04/07), access to relevant information could be facilitated by incorporating the information in the Complaint Practice Note into the 'Targeted Drug Testing Protocols and Procedures' document. The current protocols and procedures document lacks information about when a targeted drug test may be conducted and why a CMT might consider conducting a targeted drug test. It also lacks information on the alternatives a CMT might consider to a targeted drug test.

Recommendation TDT 1:

The PIC recommends that to improve the consistency and informed nature of CMTs' decisions in relation to targeted drug testing, NSW Police provides training to all officers who may participate as members of CMTs. This training should cover the uses and limitations of targeted drug tests, alternatives to targeted drug tests, the role of the CMT in relation to a targeted drug test, the resources a CMT should consult when considering a targeted drug test, and the monthly review of decisions by the Professional Standards Command.

1039 NSW Police, CPN 04/07 Complaint Practice Note: Guidelines for dealing with drug use allegations made against police, in *Police Weekly, Volume 16, 23 August 2004*, p. 10.

Recommendation TDT 2:

The PIC recommends that NSW Police considers facilitating access to relevant information by incorporating the information from the Complaint Practice Note on 'Guidelines for dealing with drug use allegations made against police' into the 'Targeted Drug Testing Protocols and Procedures' document.

Drug testing is not the only tool for detecting or investigating illegal drug use by police officers. Despite the fact that the PIC recommends increasing the range of drug testing tools available to be used by NSW Police (see Recommendations TDT 7, 8 and 9), the PIC believes NSW Police should not rely solely on drug testing when investigating illegal drug use by officers. The PIC supports the Police Association's observation that NSW Police should ensure that its internal investigators have the skills and resources necessary to properly investigate allegations of illegal drug use. The PIC considers that the CMT should take into account the alternatives that are available to targeted drug tests (such as integrity tests, surveillance or other investigative techniques) whenever a targeted drug test is proposed and that the CMT should document its consideration of the alternatives. (The issue of documenting the CMT's consideration of alternatives to targeted drug testing is discussed further in Recommendation TDT 6.)

Recommendation TDT 3:

The PIC recommends CMTs be required to consider the alternatives available when deciding whether or not a targeted drug test should be conducted.

NSW Police has incorporated a checking process in its targeted drug testing procedures. This process requires that CMTs must document the minutes of their considerations on the NSW Police computerised complaints management system[1040], and that they must provide a centralised officer (the Professional Standards Manager within the Professional Standards Command) with the reference number for those minutes so that the Professional Standards Manager can review decisions to undertake a targeted drug test across the state on a monthly basis. During the Operation Abelia round table discussions held in the first half of 2004, it appeared that these reviews had not, at that time, been conducted in a consistent manner. In the round table discussion it was noted that there had been some difficulties in staffing the Professional Standards Manager position at that time.

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Recommendation TDT 4:

The PIC recommends that NSW Police continues to conduct a centralised review of the records of CMT minutes of decision-making concerning targeted drug tests, in such a way that those conducting the review provide prompt feedback:

a. concerning the targeted drug testing protocols and the need to record the minutes to those commanders where meeting minutes have not been recorded on C@ts.i in accordance with NSW Police procedures

b. to individual commanders where either there is a need for improvement (such as there being insufficient detail in the recorded minutes to understand the decision making process or where the reason for the decision is unclear) or, on the other hand, where the quality of the minutes should be commended.

Recommendation TDT 5:

The PIC recommends that the broader lessons on recording decisions and/or decision-making processes, learned from the centralised reviews, be communicated to all CMTs.

Documentation

Although CMTs are required to document the minutes for their decisions, no guidelines are provided as to what information should be recorded. The Complaint Practice Note states that the CMT's decision making process should be 'fair and impartial … free from bias and [able to] withstand independent review'. [1041] This Complaint Practice Note also specifies that the Executive Officer's responsibilities include:

> Take full minutes and ensure CMT decisions are appropriately recorded

and the Professional Standards Command's Professional Standards Manager responsibilities include:

> Report monthly to the Assistant Commissioner Professional Standards including recommending best practice and recording observations about CMT decision making processes.[1042]

The PIC considers that NSW Police should produce guidelines on what aspects of the decision making process need to be recorded both to help structure the decision making process and so that the different CMTs can have a common understanding of what is meant in the Complaint Practice Note when it states that these decisions should be 'appropriately recorded'.

1041 NSW Police, CPN 04/07 Complaint Practice Note: Guidelines for dealing with drug use allegations made against police, in *Police Weekly, Volume 16, 23 August 2004*, p. 9.

1042 NSW Police, CPN 04/07 Complaint Practice Note: Guidelines for dealing with drug use allegations made against police, in *Police Weekly, Volume 16, 23 August 2004*, p. 10.

Recommendation TDT 6:

The PIC recommends that to improve the documentation and the transparency of the decision making process, NSW Police provides guidelines and associated training to the CMTs on the content and form of the information to be recorded when they consider whether or not to conduct a targeted drug test. Amongst other things, the following information should be documented as part of the CMT minutes:

a. the allegation(s) to which the targeted drug test is considered to be an appropriate response

b. the nature of the information considered, including the consideration of alternative investigative strategies and the reasons targeted drug testing was preferred over these strategies or the reasons these strategies were considered not feasible

c. a clear link between the information considered and the decision taken.

Range of drugs that can be targeted

The PIC considers that illegally obtained anabolic androgenic steroid (abbreviated to 'anabolic steroid' in the following discussion) use is a potential concern for NSW Police.

One of the catalysts for the PIC conducting Operation Abelia was a concern that some senior police had expressed to the PIC about illegal drug use, including non-prescribed anabolic steroid use, by some of their officers. During Operation Abelia, some evidence was heard about use of anabolic steroids obtained illegally by some NSW Police officers and the effects these anabolic steroids had on the officers' behaviour. Further support for the belief that anabolic steroid use is a potential concern for NSW Police came from the literature review and the comments made by commanders. The literature reviewed suggested that police are an 'at risk' group for illegal anabolic steroid use. A small number of the commanders interviewed as part of Operation Abelia indicated that they considered it would be desirable to be able to drug test for anabolic steroids.

To the extent that illegal steroid use might lead to an increase in aggressive or violent behaviour it poses a safety risk to the officer, those with whom the officer works and to the broader community. Illegally obtained steroids pose similar integrity issues to those posed by the other types of illegal drugs discussed in this report. For these reasons the PIC recommends that the legislation be amended to enable NSW Police to conduct drug tests for the non-prescribed use of anabolic steroids on a targeted basis.

The question of whether there are any other drugs that should be able to be the subject of a targeted drug test was considered within the Operation Abelia round table discussions. There was no suggestion or evidence that there was any need to extend the range of drugs to be tested on a targeted basis beyond the addition of testing for the non-prescribed use of anabolic steroids.

Recommendation TDT 7:

The PIC recommends that the *Police Act 1990* be amended to enable testing for non-prescribed use of anabolic androgenic steroids on a targeted basis, with the amendment reflected in the Police Regulation as necessary.

Detecting off-duty illegal drug use

The relatively short period some illegal drugs can be detected by urine tests poses a particular problem with regard to investigating possible illegal drug use by NSW Police officers who are rostered under what is called a 'flexible rostering' system. Under this flexible rostering system it is not uncommon for officers to work three or four 12-hour shifts and then have five or six consecutive days off. Given that the current legislation allows that officers can only be drug tested when they are on duty in accordance with a roster, this number of consecutive days off duty provides officers who use illegal drugs with opportunities to avoid their drug use being detected.

The majority of officers and former officers, who had admitted using illegal drugs and gave evidence to the PIC, were aware of the length of time that drugs could be detected following ingestion. Evidence was heard in Operation Abelia that some officers are timing their illegal drug use while off duty to minimise the chances of returning a positive drug test should they be tested on the day they return to duty. Some commanders and other officers to whom the PIC has spoken have suggested that there are several ways that officers who use drugs can avoid detection, for example, by using while off duty, using early in their off-duty period, using drugs that metabolise quickly, using masking agents, or taking sick leave or Family and Community Service (FACS) leave.

There is one benefit of officers using some of these strategies. Officers who time their off-duty drug use or take sick leave are unlikely to be under the influence of illegal drugs when they are at work. However, the problem of illegal drug use by officers is not merely a problem of impairment. There is also the issue of integrity. Illegal drug use by officers is not acceptable either on or off duty because it is not acceptable for officers to engage in criminal behaviour. Further, obtaining illegal drugs can place these officers in a position where they can be compromised by their supplier(s) or others who are aware that the officers have used illegal drugs.

In order to minimise the integrity and impairment risks it is important to be able to detect both off-duty and on-duty illegal drug use. One tool for detecting and potentially deterring both on-duty and off-duty illegal drug use is the use of hair samples as the basis for the drug test. The current legislation allows NSW Police to obtain hair samples as well as urine samples from its officers. Hair samples are used by a number of overseas law enforcement agencies to test for prohibited drugs. To date NSW Police has relied on urine samples and has not made use of hair samples for drug testing. While there are some disadvantages, hair samples have a longer 'window of exposure' or 'window of detection' for drug use than do urine samples. This means that hair samples taken while an officer is rostered on duty can be used to detect prior drug use, including off-duty illegal drug use. Knowing that off-duty drug use could be detected though hair samples may also act as a deterrent for some officers who might otherwise contemplate illegal drug use.

The PIC is of the opinion that NSW Police should trial using hair samples in addition to urine samples for all targeted drug tests for an initial period of twelve months. If there are cases where it is not possible to obtain a hair sample in addition to a urine sample, the reason why it is not possible to obtain a hair sample should be recorded. The number of targeted drug tests where it has not been possible to obtain a hair sample and the reason(s) for this should be analysed as part of the trial.

The PIC considers that hair samples would be most useful in those cases where the information that the officer has been using an illegal drug is not available sufficiently close to the time of drug use so as to make off-duty drug testing (discussed below) a feasible option. Furthermore the PIC considers that it is important that NSW Police widely publicises to its officers its intention to use hair samples as a way of deterring off-duty illegal drug use by some officers.

Recommendation TDT 8:

The PIC recommends that NSW Police trials the use of drug testing based on hair samples in addition to urine samples for all targeted drug tests where off-duty use is suspected. The Police Regulation should be amended as necessary to enable this trial. NSW Police should widely publicise its intention to use hair samples to deter off-duty illegal drug use by some officers.

However, even if the trial of hair samples, recommended above, indicates that hair testing is a viable option for NSW Police, there are likely to be some occasions in which hair testing will not assist in detecting off-duty illegal drug use. For example, hair samples may not be useful in detecting very recent illegal drug use. There may be other cases where it is difficult to obtain a hair sample from an officer. For these reasons the PIC suggests that NSW Police considers additional methods for detecting illegal drug use by officers while they are off duty.

From the information that has been collected for Operation Abelia the PIC observed that there is mixed support for a legislative amendment introducing ‘recall to duty’ or ‘off-duty’ drug testing as a means of both detecting and deterring off-duty drug use.

Recall to duty or off-duty drug testing was supported by NSW Police, the NSW Ombudsman, the majority of the commanders interviewed by the PIC and a number of the officers who participated in focus groups. However, some officers expressed their concern that, if it were available, some commanders might abuse off-duty testing. Some of the delegates at the Police Association of NSW Biennial Conference suggested that the best approach would be to have an authorised justice issue a warrant to enable the off-duty targeted drug testing of any officer.

Within the discussion in this section of the report two different names have been used to refer to the drug testing of an officer on occasions when he or she is not on duty in accordance with a roster: ‘recall to duty’ testing and ‘off-duty’ testing. While the PIC believes that the choice of name given to this form of testing is not a major issue, the PIC has chosen to refer to ‘off-duty’ targeted drug testing so that there is no suggestion of the officer being recalled to undertake a range of duties in addition to being drug tested.

The PIC is of the opinion that a legislative amendment should be sought to enable NSW Police to conduct off-duty targeted drug testing. Furthermore the PIC considers that off-duty targeted drug testing should only occur when there is sufficient evidence about the officer's drug use to support such a test. Such information would need to indicate that the nature and timing of the drug use dictates that off-duty drug testing is the most appropriate way to detect such drug use, such as the officer had recently used illegal drugs or was to use illegal drugs at a specified time in the future while off duty, and that the time frame and drug type were such that the drug use could be detected through an off-duty drug test.

The PIC considered the issue of a warrant by an authorised justice, as suggested by some of the Police Association Conference delegates, but decided that an authorised justice would not be well placed to determine whether off-duty drug testing would be appropriate. However, the PIC acknowledges the concerns expressed by officers in relation to the potential for abuse of off-duty targeted drug testing. For this reason, the PIC considers that there may be some circumstances when a CMT's recommendation to conduct an off-duty targeted drug test should be referred to a more senior officer before such a test is authorised. The PIC believes that NSW Police is best placed to determine the circumstances when the decision to undertake an off-duty targeted drug test should be made by the CMT and when a decision to undertake an off-duty targeted drug test would need to be ratified by a more senior officer.

Independent of whether the decision to conduct an off-duty targeted drug test is determined by a CMT or ratified by a more senior officer, the PIC considers a complaint always needs to be created and registered on the NSW Police computerised complaint management system.[1043] While it would be desirable, from the point of view of transparency, that the complaint be created and registered before an off-duty targeted drug test takes place, the decision and basis for the decision to target test an officer while he or she is off duty should be recorded on the NSW Police computerised complaint management system within 72 hours of the test taking place. Creating a complaint and registering it in this way ensures that the matter is oversighted by the NSW Ombudsman or, in some cases, the PIC. The CMT recommendations/decisions and the reasons for those recommendations/decisions need to be recorded in full, making the process transparent.

The question of payment for any testing while off-duty was raised in the focus groups with officers, at the Police Association of NSW Biennial Conference and at the round table discussions. The PIC supports payment of officers who are target drug tested while off duty. As a guide the PIC suggests that officers who are target tested while off duty should be financially compensated in accordance with clause 43, Recall to Duty, of the Crown Employees (Police Officers – 2003) Award, or the relevant clause of any subsequent award that may apply at the time an officer is drug tested while off duty.

The PIC considers that a legislative amendment to the *Police Act 1990* is necessary to allow for the targeted drug testing of off-duty officers. Such legislation would need to take into consideration a range of practical features of off-duty targeted drug testing. These include:

- where the test should take place and the method of transporting the officer to the test site

1043 Currently C@tsi.

- provisions for what should happen if the officer is sick or claims to be sick
- appropriate management action if the officer refuses to undergo the targeted drug test
- arranging for support to be available to the officer
- strategies to be used for minimising the impact on the officer's family
- ensuring due regard for the officer's privacy and dignity.

Recommendation TDT 9:

The PIC recommends that the *Police Act 1990* be amended to authorise off-duty targeted drug testing by NSW Police. The PIC recommends that:

a. the basis on which off-duty drug testing may be authorised and conducted by NSW Police is that it is reasonable to do so in all the circumstances

b. failure by an officer to provide samples as requested in relation to at least two separate off-duty targeted drug tests should be specified as capable of being grounds for dismissal or other disciplinary action

c. refusal to provide a sample for an off-duty targeted drug test on any occasion should be specified as capable of being grounds for dismissal or other disciplinary action, and

d. the collection of samples may be conducted at a location directed by or agreed to by NSW Police including any private residence.

In respect of decisions to authorise off-duty targeted drug testing, it is recommended that:

e. NSW Police should determine the circumstances when the decision to undertake an off-duty targeted drug test should be made by the CMT and when a decision to undertake an off-duty targeted drug test would need to be ratified by a more senior officer

f. matters that give rise to a CMT recommendation/decision to conduct an off-duty targeted drug test be registered on the computerised complaint management system and notified to the NSW Ombudsman within three working days of making that decision

g. information to be recorded on the computerised complaint management system, and notified within three working days, is to include the information required for all targeted drug tests (outlined in Recommendation TDT 6), and detailed reasons for conducting the test off duty (rather than testing the officer when he or she is on duty in accordance with a roster).

The PIC also recommends that:

h. officers who are required to be drug tested while off duty are paid for their time

i. guidelines and procedures are developed which incorporate relevant industrial, health and welfare considerations in relation to off-duty testing.

Evaluation and monitoring

The PIC believes that the reviewing role designed to be undertaken by the Professional Standards Manager is an important one that can assist in developing the quality and consistency of decision making in relation to a targeted drug test, including off-duty targeted drug tests. To enable tracking of this review process, the PIC believes that a copy of the monthly reviews conducted, together with the minutes of the CMT meetings that formed the basis of each of the monthly reviews, should be provided to the PIC on a quarterly basis.

Recommendation TDT 10:

The PIC recommends that NSW Police provides to the PIC, on a quarterly basis, a copy of:

a. its monthly reviews of targeted drug testing decisions

b. the minutes of the individual CMT meetings that were reviewed, and

c. a statement of how the information from these reviews has been used or is intended to be used.

As noted earlier, the PIC is of the opinion that NSW Police should trial using hair samples in addition to urine samples for all targeted drug tests for an initial period of twelve months.

Recommendation TDT 11:

The PIC recommends that NSW Police reports the results of the trial of drug testing based on hair samples to the PIC after the initial 12 months of incorporating hair samples as part of targeted drug testing.

Costs

The PIC acknowledges that the recommendations made in this report concerning targeted drug testing will require some additional resources to be allocated to the NSW Police drug testing program including:

- funds for hair testing
- funds for testing for anabolic steroids
- payment of any officers tested while off duty.

On average less than 20 targeted drug tests have been conducted by NSW Police each year, over the last five financial years from July 1999 to June 2004. Even presuming that the provision for off-duty testing might lead to a greater number of targeted drug tests, the PIC does not consider that the additional resources required will be excessive.

6.5 RANDOM DRUG TESTING

DESCRIPTION

Random drug testing, like targeted drug testing which was described in the previous section, was introduced as a result of recommendations from the Royal Commission into the NSW Police Service[1044] and is conducted under s.211A of the *Police Act 1990*. The term 'random' is not defined in the legislation.

The NSW Police Drug and Alcohol Policy states:

> Random drug testing may be conducted at any work site on a 24 hour, seven day week basis. When an authorised testing officer from Healthy Lifestyles Branch arrives at a site, officers to be tested will be randomly chosen from the roster. Officers selected for a drug test will be required to provide a urine sample – but will be able to do so in the privacy of a toilet cubicle. Collection procedures will comply with the Australian Drug Testing Standards.

Under the current legislation, police who are not on duty in accordance with a roster, students and civilian staff cannot be randomly drug tested. Also, NSW Police can only test for drugs that are prohibited substances under Schedule 1 of the *Drug Misuse and Trafficking Act 1985*.

NSW Police commenced random drug testing in September 2001. As stated in an article in the *Police Service Weekly* on 27 August 2001 to promote the introduction of random drug testing, this form of drug testing was designed to be a visible deterrent to the use of illegal drugs by police:

> The introduction of random drug testing is designed to serve as a visible deterrent to the use of prohibited drugs by police and is seen as a logical extension of the Service's existing testing programs (p. 4).

Officers to be 'randomly' drug tested are selected using a two-stage process. First, a command or other work unit is chosen where testing is to occur. Second, the officers within that unit to be tested are selected in such a way that a mixture of officers (in terms of gender and type of duties) is chosen. Approximately 10 to 20 officers are randomly selected from an individual command or unit.

Sometimes the command is not selected randomly but is selected to fit in with a request for targeted testing. The 'NSW Police Targeted Drug Testing Protocols and Procedures' issued in December 2003 (and the previous version issued in September 2003) allow for an officer selected for a targeted drug test to be:

> discreetly targeted during a broader drug testing program.[1045]

1044 J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Interim Report*. February 1996, p. 129; J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Interim Report. Immediate measures for the reform of the Police Service of New South Wales*, November 1996, p. 20; J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Final report. Volume II: Reform*, May 1997, pp. 506-507.

1045 NSW Police, Targeted drug testing protocols and procedures, December 2003, p. 4.

OBSERVATIONS

Observation 1: **Random drug testing in NSW Police seeks to deter (rather than detect) drug use. That is to say, it seeks to prevent it from happening (referred to as a 'front-end' solution) rather than attempting to detect it after the drug use has occurred (a 'back-end' solution).**

While the processing of random drug tests in NSW Police is identical, in terms of the collection and the analysis of the urine samples, to that of targeted drug tests, the underlying premise and purpose of these two forms of drug testing are quite different. Like random breath testing (RBT) in the community, random drug testing in NSW Police seeks to deter rather than detect drug use.

RBT has been found to be an effective deterrent to drink driving, which has reduced fatal car accidents in the community. Research has shown that RBT reduced fatal accidents in NSW initially by 48%, and by 15% in the longer term.[1046] RBT has been shown to have a considerable deterrent effect despite the fact that relatively few cases are detected:

> The disadvantages of random or quasi-random enforcement methods seem obvious – drivers are subjected to a police check when they have committed no offense, and as a consequence about 99% of random tests are negative, making them largely useless as a detection technique.[1047]

The NSW Police Director of Health Services has described deterrence to be the focus of the NSW Police random drug testing program. He has also said that such programs are not effective in detecting drug use:

> I think the emphasis on our program is – and I think it's pretty well the consensus of most testing programs – is one of deterrence rather than detection. I don't think that any sort of random testing program is particularly productive in terms of detecting people, and I think that you would need a vigorous targeted testing program if you were looking to yield results in that area.[1048]

The differences between targeted and random drug testing are similar to the differences between investigating a corrupt act after it has occurred (sometimes called a 'back-end' solution) and implementing a strategy to minimise the risk of a corrupt act occurring in the first place (sometimes called a 'front-end' solution). In their paper examining workplace drug testing in Europe, Shahandeh and Caborn (2003) have observed that there has been a move towards using drug testing programs as a means of deterring drug use rather than detecting it:

1046 R. Homel, *Policing and punishing the drink driver: A study of general and specific deterrence*. New York: Springer-Verlag, 1988, p. 246; J. Henstridge, R. Homel, & P. Mackay, *The long-term effects of random breath testing in four Australian states: A time series analysis*. Department of Transport and Regional Development. The Federal Office of Road Safety, April 1997; T. Babor, R. Caetano, S.Casswell, G.Edwards, N. Giesbrecht, K. Graham, J. Grube,,P. Gruenewald, L. Hill, H. Holder, R. Homel, E. Osterberg, J. Rehm, R. Room., & I. Rossow, *Alcohol: No ordinary commodity – Research and public policy*. Oxford: Oxford University Press, 2003, p. 161.

1047 R. Homel, *Policing and punishing the drink driver: A study of general and specific deterrence*. New York: Springer-Verlag, 1988, p. 262.

1048 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 155.

> Increasingly the aim of introducing a testing programme is deterrence from drug use of any kind. This contrasts with the attitude in the late 1980's when drug testing was perceived as a tool to detect and dismiss drug-abusing workers.[1049]

One important consequence of random drug testing being a deterrent rather than a detection tool is that its effectiveness cannot be assessed in terms of the number of drug users detected.

Observation 2: While there is no direct way to evaluate the impact of random drug testing on police drug use, some insight into its effectiveness can be obtained from looking at officers' perceptions of the likelihood of their being drug tested.

The impact of RBT in the community is more easily evaluated than the impact of random drug testing in the workplace. RBT can be evaluated because the behaviour it is seeking to influence (traffic accidents) is readily observable and easily quantified. The annual number of traffic accidents has been counted and recorded for many years prior to the implementation of RBT as well as following its implementation. The effects of RBT on the number of serious road accidents can be examined by comparing the number of traffic accidents prior to the introduction of RBT with the number of traffic accidents following its implementation, after allowing for a number of other factors, such as the number of cars on the road and weather conditions.

The effectiveness of random drug testing on illegal drug use by police cannot be evaluated in this way. No measures of the extent of police drug use before (or after) the implementation of random drug testing are available.

Commentators warn that it is not appropriate to evaluate random testing programs by examining the number of individuals detected. When discussing random breath testing, Homel has explained that the impact of RBT can only be validly assessed by determining its deterrent effects on accidents. Furthermore, Homel has described extensive research that has demonstrated that the impact of RBT is considerable, 'despite the very low hit rate'.[1050]

Previous literature reviews have concluded that no controlled studies have been conducted to examine the effectiveness of random drug testing on reducing drug use or on reducing workplace accidents or productivity.[1051] Ross Coomber, Principal Lecturer in Sociology at the University of Plymouth, conducted a literature review for the Independent Inquiry into Drug Testing in the Workplace in the UK. Based on his

1049 B. Shahandeh, & J. Caborn, Ethical issues in workplace drug testing in Europe. *Paper presented at Seminar on Ethics, Professional Standards and Drug Addiction organised by the Pompidou Group Council of Europe, Strasbourg, 6-7 February 2003*, p. 5.

1050 R. Homel, Integrity testing. In T. Prenzler & J. Ransley *Police reform: Building integrity*. Hawkins Press, 2002, p. 168.

1051 See, for example, S. Allsop, & M. Phillips, Drug testing in the workplace: An unfortunate marriage. *Paper presented at forum, 'Under the influence: The issues and practicalities of alcohol and other drug testing in the workplace', Perth, 8 October 1996*, p. 1.

review of the available evidence, Coomber concluded that it is not clear how effective drug testing is in reducing drug and alcohol use.[1052]

Some organisations that use random drug testing simply assert that workplace drug testing has been effective without providing further evidence:

> Clearly industry experience reflects that, as with our driving laws, random testing is an effective deterrent.[1053]

When the PIC asked representatives from other law enforcement agencies how they assess the effectiveness of their drug testing programs, those that responded referred to the small proportion of employees who return a positive drug test result. While this might reflect the effectiveness of drug testing and/or other agency policies, there are many possible alternative explanations for the small proportion of employees detected as having used drugs. It is possible, for example, that a much larger proportion of employees use drugs but their drug use is not identified because of the short time frame during which most drugs can be detected using a urine sample or because employees may use methods to avoid tests or mask the presence of drugs.

The research on deterrence generally and on RBT in particular suggest that the key to effective deterrence is that individuals need to believe that they might be caught, or in the case of drug testing that they might be tested, at any time.[1054] The effectiveness of random drug testing as a deterrent depends on the extent to which officers who might consider using illegal drugs perceive that their chance of detection is too great for them to take the risk of using illegal drugs. In order to obtain an insight into the effectiveness of the NSW Police random drug testing program, the PIC asked some officers and former officers whether they were concerned about being drug tested; whether they had ever been drug tested and whether they knew of any other officers who had been drug tested by NSW Police. (The answers which some officers and former officers gave are discussed in Observations 8 and 9.)

Observation 3:	**The research on RBT programs suggests that successful random testing programs share certain characteristics that contribute to an individual's belief that the individual is likely to be tested.**

The PIC reviewed the research literature on RBT in an attempt to develop useful criteria against which to measure the effectiveness of the NSW Police random drug testing program. This review revealed that successful random testing programs have the following characteristics, which contribute to an individual's belief that she/he is likely to be tested:

- the testing program is publicised and that publicity reinforces random testing activities ('publicity')
- testing is highly visible ('visibility')

1052 Independent Inquiry into Drug Testing at Work (IIDTW) *Drug testing in the workplace: The report of the Independent Inquiry into Drug Testing at Work*. York, UK: Joseph Rowntree Foundation, June 2004, p. 54.

1053 Australian Mines and Metals Association (AMMA) Shorten out of touch with current approach to drug and alcohol issues in the workplace. Australian Mines and Metals Association Media Release, 15 May 2003, p. 2.

1054 R. Homel, Integrity testing. In T. Prenzler & J. Ransley, *Police reform: Building integrity*. Hawkins Press, 2002, p. 164.

- the timing and location of testing is unpredictable ('unpredictability')
- individuals cannot influence the chances of being tested or avoid being tested once selected ('inability to influence').

The key lessons for a successful random testing program, identified from the PIC's review of the RBT research, are summarised below.

Publicity

Random testing programs like RBT have been found to work only when they are conducted in a highly visible manner and are well publicised. The publicity is said to reinforce the impression that testing is widespread and will be difficult to avoid. Researchers have observed that publicity can be used to achieve 'a deterrent effect' even when the actual number of random testing operations is fairly low. One researcher has argued the need for continued publicity based on the argument that people 'forget very quickly'.[1055]

The RBT research suggests that the major aim of the publicity about random testing programs should be to reinforce the actual testing that is being undertaken. That is, the focus of the message should be on the perceived probability of arrest for drink-driving. Any advertisements should depict the testing being conducted in order to remind the public that the testing is still operating.[1056]

However, publicity alone is not enough. It has been found that publicity must be reinforced by regular, highly visible, unpredictable random enforcement – that is, testing. For this reason, 'visibility' of the testing that is conducted is discussed below as a characteristic of a successful random testing program that is separate and additional to 'publicity'.

Visibility

The RBT research has found that unless potential offenders actually see random testing in operation at least occasionally, or hear about it from friends or others, they are not likely to be deterred by the publicity for very long.[1057] This research has found that drivers who had repeatedly or recently driven past an RBT operation were much more likely to nominate fear of arrest rather than fear of an accident as a reason for not drinking and driving.[1058]

1055 R. Homel, *Policing and punishing the drink driver: A study of general and specific deterrence*. New York: Springer-Verlag, 1988, p. 264.

1056 R. Homel, *Policing and punishing the drink driver: A study of general and specific deterrence*. New York: Springer-Verlag, 1988, p. 264.

1057 R. Homel, Integrity testing. In T. Prenzler & J. Ransley *Police reform: Building integrity*. Hawkins Press, 2002, p. 165; T. Babor, R. Caetano, S.Casswell, G.Edwards, N. Giesbrecht, K. Graham, J. Grube,, P. Gruenewald, L. Hill, H. Holder, R. Homel, E. Osterberg, J. Rehm, R. Room., & I. Rossow, *Alcohol: No ordinary commodity – Research and public policy*. Oxford: Oxford University Press, 2003, p. 161; Homel 1988 cited by J. Henstridge, R. Homel, & P. Mackay, *The long-term effects of random breath testing in four Australian states: A time series analysis*. Department of Transport and Regional Development. The Federal Office of Road Safety, April 1997, p. 112.

1058 R. Homel, *Policing and punishing the drink driver: A study of general and specific deterrence*. New York: Springer-Verlag, 1988, p. 235.

It has been argued that random testing needs to be repeatedly brought to attention because its effectiveness as a deterrent can decrease over time.[1059] In fact, it has been suggested that random testing needs not only to be kept up, it also needs to be 'intensified over time until genuine attitude change takes place in the target population'.[1060] For example, people may perceive their chances of being detected by a random testing program to be greater when the program is first introduced than after the program has been in operation for several months. The introduction of a random testing program and its supporting legislation is usually associated with a surge of publicity for the new program. Such publicity for a new RBT program can be expected to have an effect that is different in nature and size from any continuing effect. In addition, the operation of the testing program may take some time to settle down to a routine. Ross has suggested that the impact of legal innovations, like RBT, are temporary because people realise after a while that their chances of getting caught are not as high as they thought at first.[1061]

Even after the introductory period, the deterrent effects of a random testing program are not static but rather are continuously open to change. Taking RBT as an example, the deterrent effects for an individual motorist are decreased each time the motorist drinks to the extent that would place him or her above the legal limit without being caught, and the deterrent effects are increased when the motorist is pulled over for a test, passes a location where they can see testing in progress or when they have a friend who mentions having recently passed a location where testing is in place.[1062] Homel advises:

> Deterrence should be seen as a dynamic process, maintained not necessarily in a single individual but in the whole target population through constant enforcement of the law. Without such constant reinforcement, it seems likely that behaviors adopted as a response to the threat of punishment will eventually disappear, unless they are transformed into habits.[1063]

Unpredictability

Another key feature of RBT is said to be its unpredictability: people do not know whether the chances of detection are actually high or low on any given occasion, so they over-compensate by assuming, for safety, that the chances are higher than they really are. This phenomenon, referred to as 'ambiguity aversion', is said to underlie the success of all randomised enforcement regimes.[1064]

1059 J. Henstridge, R. Homel, & P. Mackay, *The long-term effects of random breath testing in four Australian states: A time series analysis*. Department of Transport and Regional Development. The Federal Office of Road Safety, April 1997, pp. 23, 110; R. Homel, *Policing and punishing the drink driver: A study of general and specific deterrence*. New York: Springer-Verlag, 1988, pp. 244, 245, 256; R. Homel, Integrity testing. In T. Prenzler & J. Ransley *Police reform: Building integrity*. Hawkins Press, 2002, p. 165.

1060 R. Homel, Integrity testing. In T. Prenzler & J. Ransley *Police reform: Building integrity*. Hawkins Press, 2002, p. 165.

1061 Ross 1982 cited by R. Homel, *Policing and punishing the drink driver: A study of general and specific deterrence*. New York: Springer-Verlag, 1988, p 244.

1062 R. Homel, *Policing and punishing the drink driver: A study of general and specific deterrence*. New York: Springer-Verlag, 1988, p. 245.

1063 R. Homel, *Policing and punishing the drink driver: A study of general and specific deterrence*. New York: Springer-Verlag, 1988, p. 246.

1064 Nagin 1988 and Sherman 1990 cited by R. Homel, Integrity testing. In T. Prenzler & J. Ransley *Police reform: Building integrity*. Hawkins Press, 2002, p. 165.

Inability to influence

Commentators note that a defining feature of RBT is that any motorist at any time may be required to take a test and there is nothing he or she can do to influence the chance of being tested.[1065] Homel has suggested that the inability of the individual to influence their chances of being tested means that they are less likely to continue to offend in the belief that they are too clever ever to be caught:

> One particularly important property of random testing is that it takes away one of the key defences of the offender who considers that he is too smart to get caught … It follows that undetected offenders can only be deterred by testing that is known to be random, since they do not believe that they will ever be targeted. Even if they are targeted and caught, it is only after a long period of offending that should have been prevented before it became entrenched. [1066]

Observation 4:	**NSW Police conducts approximately 500 random drug tests per year.**

While NSW Police has said that it conducts approximately 500 random drug tests per year, the actual number varies from year to year. In 2002-2003 a total of 499 random drug tests were conducted, while in 2003-2004 a total of 582 tests were conducted.

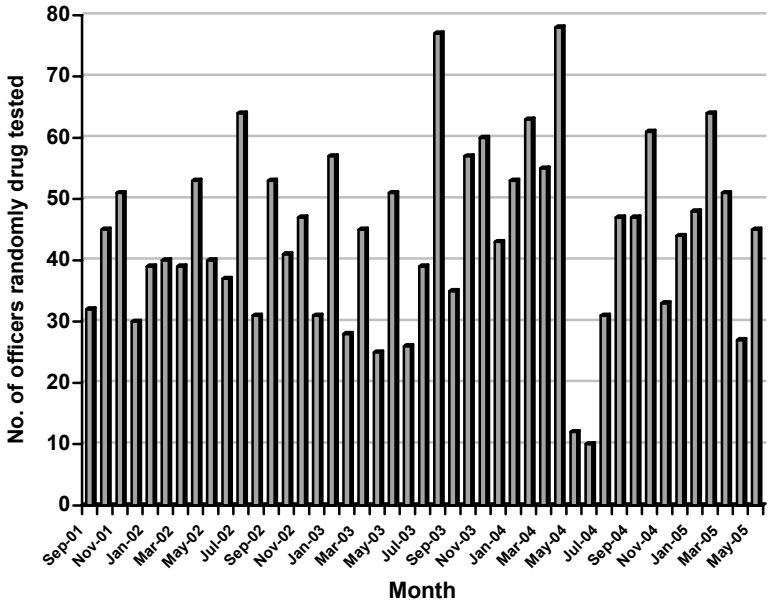
Between September 2001 and the end of May 2005, a total of 1995 random drug tests were conducted. Only one of these results has been 'positive'. That is to say, only one of the random drug tests conducted so far has provided evidence of drug use by the officers tested.

As can be seen from Figure 6.3, the numbers of random drug tests conducted each month vary. Also, testing is undertaken on a 24 hour a day, seven day a week basis. This is consistent with one of the characteristics of successful random testing programs: that the timing of tests should be unpredictable.

1065 T. Babor, R. Caetano, S.Casswell, G.Edwards, N. Giesbrecht, K. Graham, J. Grube,, P. Gruenewald, L. Hill, H. Holder, R. Homel, E. Osterberg, J. Rehm, R. Room., & I. Rossow, *Alcohol: No ordinary commodity – Research and public policy*. Oxford: Oxford University Press, 2003, p. 161; J. Henstridge, R. Homel, & P. Mackay, *The long-term effects of random breath testing in four Australian states: A time series analysis*. Department of Transport and Regional Development. The Federal Office of Road Safety, April 1997, pp. 3-5.

1066 R. Homel, Integrity testing. In T. Prenzler & J. Ransley *Police reform: Building integrity*. Hawkins Press, 2002, p. 165.

FIGURE 6.3: MONTHLY NUMBER OF OFFICERS RANDOMLY DRUG TESTED BY NSW POLICE, SEPTEMBER 2001- MAY 2005

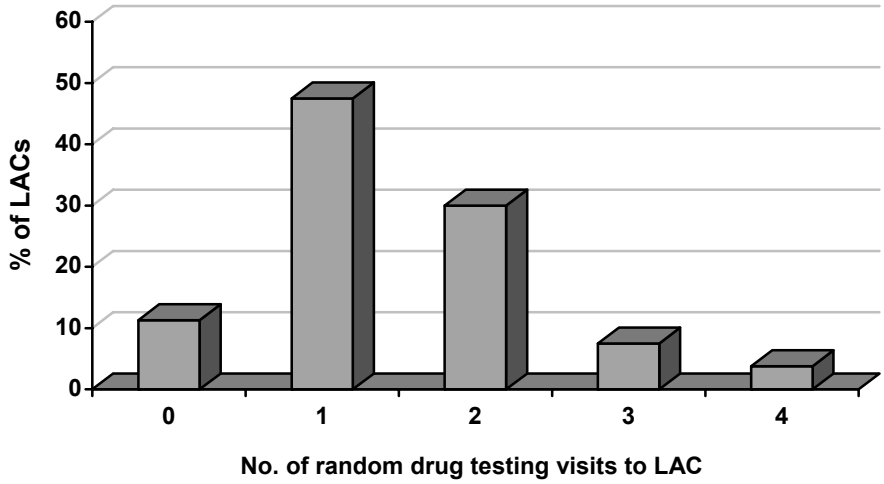


Observation 5: **On average, the drug testing team visited each local area command once or twice during the first three years after random drug testing commenced in NSW Police.**

The monthly statistical report provided by NSW Police lists the names of the local area commands and specialist units where random drug testing took place during the month. The PIC collated the information from the monthly statistical reports from September 2001 up to August 2004 to examine how often the drug testing team visited each of the 80 local area commands to conduct random drug tests during the first three years of random drug testing. Each of the 'visits' by the drug testing team described below refers to the drug testing team arriving at a local area command during a single shift where it organised random drug tests with a sample of approximately 10 to 20 officers.

During the first three years of random drug testing, some local area commands were not visited (and therefore not randomly drug tested) at all. The most frequently that any individual local area command was visited by the random drug testing team was four times over the three year period. As can be seen from Figure 6.4, after the random drug testing had been in place for three years, 11 per cent of local area commands had not been subject to any random drug testing. Where random drug testing had taken place the frequency of testing has been very low. Almost half of the local area commands (48%) had been visited only once by the drug testing team to conduct random drug tests on a sample of officers during the three year period.

FIGURE 6.4: FREQUENCY OF RANDOM DRUG TESTING VISITS AT EACH LAC DURING FIRST 36 MONTHS



On average, each of the 80 local area commands had been visited 1.5 times during the first three years of random drug testing. The rate of visits by the drug testing team was slightly higher in the Inner Metropolitan region, where, on average, each of the 23 local area commands in that region was visited twice during the first three years of random drug testing. The rate of visits by the drug testing team was lower in the Western and Northern regions (see Table 6.3).

TABLE 6.3: COMPARISON OF AVERAGE NUMBER OF RANDOM DRUG TESTING VISITS TO LOCAL AREA COMMANDS IN DIFFERENT REGIONS DURING FIRST 36 MONTHS OF TESTING

Region	Number of LACs in region	Average number of visits per LAC in region
Inner Metro	23	2.0
Greater Metro	23	1.6
Southern	11	1.5
Western	11	0.9
Northern	12	0.7
Total	80	1.5

Observation 6: Some officers were not aware that NSW Police conducts random drug testing.

Comments made by some focus group participants demonstrated that some officers were not aware that NSW Police conducts random drug testing. In one of the seven focus groups that were conducted as part of Operation Abelia, no participants appeared to be aware of random drug testing. Examples of the comments about drug testing made by some focus group participants include:

> For drugs there's just targeted.
>
> [Facilitator:] What about random testing? [Long silence. Participant:] You can be requested to give it, but you can deny that request. Is that right?
>
> I have never seen drug testing taking place. Do we have a random drug testing policy?
>
> We don't have random testing that I'm aware of.
>
> [Facilitator:] Do you know of anyone who has been randomly tested? [Participant:] No. Didn't think you could do the random testing.

One of the focus group participants said that he had only recently learnt that NSW Police conducts drug testing:

> I never knew that they had drug testing until a couple of weeks ago when I did a BAS [breathalyser] course.[1067]

The lack of awareness of random drug testing apparent from the focus group discussions stands in contrast to NSW Police's view that all NSW Police officers have been made aware that they are liable to be tested at any time while on rostered duty:

> In view of the extensive education measures that have been in place for some time, it can be said that all police have been informed of the expectations of the organisation in relation to drug and alcohol issues. Although not all police may be aware of all of the specific provisions of the testing programs, they have all at least been made aware of the fact that the use of illicit drugs is completely unacceptable and that they are liable to be tested at any time while on rostered duty.[1068]

1067 For more information about the conduct of the focus groups and the comments given by participants refer to Appendix 4.

1068 NSW Police response to Operation Abelia Round Table 1b: *Deterring drug use: Using workplace drug testing,* April 2004, p. 2.

Observation 7: Commanders did not appear to be well informed about random drug testing.

More than three-quarters of the commanders interviewed by the PIC in mid-2003 commented that at that time either they had no experience with random drug testing (43%) or that they had very minimal experience with random drug testing (38%). Some commanders' comments suggest that they may not be well informed about random drug testing in NSW Police. Although random drug testing had commenced only about two years before they were interviewed, several commanders suggested that it had been in operation for longer.[1069]

Observation 8: Some officers and former officers who admitted prior illegal drug use said that they did not think they would be likely to be chosen for a random drug test.

NSW Police has stated that the aim of its strategy of selecting a limited number of officers to be randomly drug tested from each roster is to maximise the visibility of the current drug testing system, to remind officers that they are liable to be drug tested at any time:

> The current practice of selecting a limited number of officers from each roster to be randomly drug tested has been adopted to maximise the visibility of the current testing program. It enables a wide cross section of locations throughout the State to be visited for drug testing purposes, thus ensuring that police throughout the organisation have a regular and visible reminder that they are liable to be tested at any time.
>
> It is the view of NSW Police that unless it is decided to substantially increase the size of the random testing program, the current practice offers the most effective means of providing a visible deterrent to prohibited drug use.[1070]

However, a number of the current and former officers who provided evidence to the PIC did not consider that the random drug testing program provided a visible deterrent. The PIC heard evidence from some current and former officers about their experiences with random drug testing and their perceptions of it. These officers and former officers were asked:

- When you were using drugs, were you concerned about being randomly drug tested?
- Were you ever randomly drug tested?
- Did you know any other officers who were randomly drug tested by NSW Police?

1069 For more information about the interviews with commanders and these commanders' responses refer to Appendix 2.

1070 NSW Police response to Operation Abelia Round Table 1b: *Deterring drug use: Using workplace drug testing*, April 2004, p. 4.

- Do you know how long after use prohibited drugs can still be detected by drug tests?[1071]

As illustrated in the following examples, a number of officers and former officers did not consider that they were likely to be selected for a random drug test:

- Former Officer M2, who was aged 19 when he joined NSW Police and served for less than two years prior to resigning, was a probationary constable when his illegal drug use came to attention. He told the PIC that he had never worried about being drug tested as he had only heard of drug testing being:

  > done at a place, like, far away from where I was posted, and I heard that they weren't doing it very much because of the costs involved, so I wasn't too concerned about being tested.[1072]

- When asked whether he had any fears of being randomly drug tested, former Officer C2, who joined NSW Police when he was 23 years old and resigned just under 18 months later, said:

  > I didn't – not particularly. I didn't think about it, to tell you the truth.[1073]

- Officer G2 joined NSW Police in his late 20s and had served for approximately six years at the time he was interviewed by the PIC. This senior constable said that he did not think about being randomly drug tested at the time he used drugs because he did not know much about random drug testing. He said that he had never been randomly drug tested while he was in NSW Police.[1074]

It was not uncommon for current and former officers to tell the PIC that they had never been the subject of a random drug test while working in NSW Police. Many also said that they did not know of any other officers who had been randomly drug tested. For example, former Officer G3 joined NSW Police when he was 22 years old and resigned seven years later. He said that he had not been randomly drug tested, nor did he know of any other officers who were randomly drug tested while he was a police officer.[1075] A number of other officers and former officers gave similar evidence.[1076]

Some former officers told the PIC that they became less concerned about the possibility of being randomly drug tested as time elapsed, for example:

- Former Officer A2, who joined NSW Police when he was 24 years old and resigned after less than three years service, said that he had never been randomly drug tested. He said that while he had initially been

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1071 For further information about the purpose of these private hearings and the nature of the questions asked refer to Appendix 3.

1072 Operation Abelia, PIC Transcript, Private hearing, ANV, 12 May 2004, pp. 8, 17.

1073 Operation Abelia, PIC Transcript, Private hearing, ANL, 10 May 2004, p. 13.

1074 Operation Abelia, Record of Interview, 7 May 2004, pp. 11-12.

1075 Operation Abelia, PIC Transcript, Private hearing, ANR, 11 May 2004, pp. 20--21.

1076 For example: Operation Abelia, PIC Transcript, Private hearing, ANJ, 10 May 2004, p. 17; Operation Abelia, Record of Interview, 13 May 2004, p. 9; Operation Abelia, PIC Transcript, Private hearing, APJ, 16 August 2004, p. 15.

concerned about being drug tested, as time went on he thought that it was unlikely that he would be drug tested:

> Q: Did the possibility of being drug tested deter you from using drugs?
>
> A: Yes, at first.
>
> Q: At first?
>
> A: Hmm.
>
> Q: But what happened?
>
> A: I just thought it's a pretty slim possibility of getting randomly tested, as I never saw it in my couple of years of service, someone just come in and randomly drug test someone.
>
> Q: Do you know anyone who was randomly drug tested?
>
> A: No.[1077]

- Former Officer C4 joined NSW Police when she was 20 years old and resigned after more than five years service. When asked whether any random testing ever took place at a station where she worked, this former officer replied that there had only been random alcohol testing but no random drug testing. She also said:

> you know in five years not once did I see them at our station for that, so I guess the risk is then lowered.[1078]

One officer said that one of the reasons he used illegal drugs was that he had previously tested positive to alcohol and was worried about testing positive to alcohol again. Officer J4, a 24 year old male constable, resigned following seven years' service after he tested positive to cannabis. One of the reasons this officer was said to have given his supervisor for his drug use was that he had previously tested positive to a targeted breath test and he was 'paranoid about testing positive to alcohol again'. This officer may have weighed the chances of being randomly alcohol tested against the chances of being randomly drug tested. Many more random alcohol tests than random drug tests have been conducted. In contrast to the relatively small number of officers selected to be randomly drug tested, all officers who are rostered on duty at a location, irrespective of rank, undergo random alcohol tests when the testing team arrives at their work site. NSW Police commenced random alcohol tests in September 1997. In the period from September 2001 to May 2005 a total of 30 936 random alcohol tests were conducted, compared with 1995 random drug tests over the same period.

1077 Operation Abelia, PIC Transcript, Private hearing, APF, 16 August 2004, p. 13.

1078 Operation Abelia, PIC Transcript, Private hearing, APG, 16 August 2004, p. 26.

Observation 9: Some officers and former officers told the PIC that they use strategies to avoid their drug use being detected, even if they were randomly drug tested.

Officers and former officers who had admitted prior illegal drug use were asked what they did to avoid their drug use being detected by NSW Police.[1079] As mentioned in the previous section about Targeted Drug Testing, some officers and former officers told the PIC that they timed their illegal drug use in such a way that their drug use would not be detected even if they were drug tested on their first day back at work after a period of leave, for example:

- As mentioned previously, former Officer C4 joined NSW Police when she was 20 years old and resigned after approximately five years service. She said that she was aware that NSW Police conducted random drug tests. She knew that she could have been drug tested. When asked whether she thought that there was a chance that she would be randomly tested, she replied:

  > Oh, definitely. I mean, yeah, you probably would have been. If you happened to be at work on the day, it's really just unlucky, unless you're targeted, I mean, you happen to be there on the day they come in. It's like a breath test for alcohol. Yeah, definitely …[1080]

  Despite this, she said that she was not concerned about being randomly drug tested because she always used drugs 'within certain time frames'.[1081] That is to say, she timed her drug use by only using drugs at the beginning of a period of leave so that the drugs would not be detectable by the time she returned to work. She had previously explained she only used drugs when she had plenty of time off:

  > if I was going to do anything, like take any drugs, I would always do it when I had plenty of days off. It was never the night before I went to work, or anything like that.[1082]

  It is interesting to note that this former constable's illegal drug use was not detected through drug testing. Her illegal use came to light as the result of a NSW Crime Commission investigation.

- Former Officer G6, who joined NSW Police when he was 20 years old and resigned after eight years service, had left NSW Police prior to the introduction of random drug testing. When asked whether he thought that random drug testing was likely to deter police from using drugs or coming to work drug affected, he said that he thought that it would have limited use:

  > Yes, but only in a minor way. I'm not sure of the numbers you're – that you do or the stations that you do, but I think – I mean, from

1079 The strategies that officers and former officers described using to avoid detection are discussed in more detail in Section 5.8 of Chapter 5.

1080 Operation Abelia, PIC Transcript, Private hearing, APG, 16 August 2004, p. 26.

1081 Operation Abelia, PIC Transcript, Private hearing, APG, 16 August 2004, p. 17.

1082 Operation Abelia, PIC Transcript, Private hearing, APG, 16 August 2004, p. 12.

> what I hear, that's – that's not the issue. The fact that the substances that I was talking about are out of your system quite quickly and the chance of being detected, the chance of being tested, I – yeah, I really don't think that's an actual fear.[1083]

- When asked about random testing, Officer H4 said that there are ways around random testing. When asked what ways he had in mind this officer replied:

> Well – they already know – I'm sure they already know that if you are going to get tested, you don't – if you are going to have drugs, you don't go to work for a few days.[1084]

Other strategies officers and former officers described using to avoid their illegal drug use being detected through random drug testing included taking sick leave or swapping shifts. For example, a former senior constable gave evidence in a public hearing that several times a year she might telephone in to swap a shift or take sick leave after using drugs. She agreed that this would also avoid the risk of her being picked up through random drug testing if she were at work.[1085]

One of the officer participants in the focus groups said that he did not think that random drug testing would be an effective deterrent, because most people know how long the drug can be detected and time their drug use accordingly:

> Most people know there's a 3-5 day window on how long it stays in your system. Most people will use at the beginning of their days off. Random is not effective as a deterrent, I don't think.

Observation 10: Some officers and commanders suggested that more random drug tests should be conducted. Others suggested that more publicity was necessary.

When asked what NSW Police could do to minimise illegal drug use by its officers, some of the officers and former officers who had admitted prior drug use suggested in their evidence to the PIC that NSW Police should conduct more drug testing and/or publicise drug testing more, for example:

- Former Officer R3, who had served more than ten years in NSW Police before being dismissed, agreed with the proposition that regular testing would be likely to deter police from engaging in drug use. When asked what NSW Police could have done to stop him from using drugs, he suggested:

> Maybe if they'd tested at my station before on a few prior occasions, then there's no way I would have done it.[1086]

1083 Operation Abelia, PIC, Transcript, Private hearing APH, 13 August 2004, p. 29.
1084 Operation Abelia, PIC, Transcript, Private Hearing, APC, 30 August 2004, p. 50.
1085 Operation Abelia, PIC, Transcript, M. K. Wilson, 6 November 2003, p. 49.
1086 Operation Abelia, PIC Transcript, Private hearing ANV, 12 May 2004, p. 17.

- Former Officer G4, who joined NSW Police when he was 19 years old and was dismissed after more than ten years service, said that if there had been drug testing when he joined the police, he would not have gone near cannabis, knowing that he could be tested at any time. He also agreed that if there were very frequent random drug testing blitzes, it would have made him much less likely to 'have the occasional smoke'.[1087]
- Former Officer A2, who joined NSW Police aged 24 years and resigned after less than three years service, suggested that he thought that more drug tests would help to minimise illegal drug use. He conceded that if there had been more publicity about the risk of drug testing he might have had second thoughts about using illegal drugs.[1088]
- Former Officer V1 said that he thought that there should be increased drug testing 'for all police, not just targets'. He added:

> 'Cause you might not know someone who would go home and have a few cones or something like that. They might not be a target. But they do affect [you]. I know what they do to [you]. Maybe regular testing would be more effective.[1089]
>
> Regular constant testing. Like not just 'Oh, we'll test this station one day' and then – there should be people employed at the station to test officers. Like I know of jobs where you get tested every week and they can't take anything because they get tested … And if they don't want to abide by them, find a new job, 'cause you can't do both, do you know what I mean.[1090]

Even though former Officer C4 had been aware of random drug testing she said that she thought that random drug testing needed to be better publicised. She said that:

> You're aware but it wasn't really publicised. It wasn't really drummed into you or anything …[1091]

Over three-quarters of the commanders interviewed in mid-2003 (76%) suggested that random drug testing needed to be more frequent. Some commanders suggested that random drug testing should be conducted as frequently as random alcohol testing in NSW Police.**[1092]**

When asked whether he thought that it would be desirable to increase the proportion or numbers of random drug tests, the NSW Police Director of Health Services stated:

> Yes I do. It is governed by resources …
>
> To increase our testing regime to the New York model of 20 per cent, I estimate conservatively, that would cost in the vicinity of $600 000 per

1087 Operation Abelia, PIC Transcript, Private hearing, ANW, 12 May 2004, pp. 15, 18.

1088 Operation Abelia, PIC Transcript, Private hearing, APF, 16 August 2004, pp. 18-19.

1089 Operation Abelia, Transcript of Record of Interview, 13 September 2004, pp. 21-22.

1090 Operation Abelia, Transcript of Record of Interview, 13 September 2004, p. 24.

1091 Operation Abelia, PIC Transcript, Private hearing, APG, 16 August 2004, p. 26.

1092 See Appendix 2 for more information about the interviews with a sample of commanders and the commanders' responses.

> annum. I know the FBI test every section every month. Now it's a matter of coming up with the best model. I'm not sure what that is.[1093]

Some of the officers who participated in the focus groups that were conducted for Operation Abelia also suggested that a larger number of random drug tests was desirable:

> I would like to see a situation, as with alcohol testing, where everyone on a shift gets tested.
>
> [Facilitator:] Is it a deterrent at the moment? [Participant:] I think so, if you don't know when and where. But if it's just a handful at each station it's not enough, it should be the whole thing.
>
> If you're gonna support random testing but [only] conduct 500 tests per year, there's no point even bothering. The question was asked whether people in this room know about random testing, not many people put up their hands. If you're gonna run it, run it fair dinkum so people know its out there – 'cause no-one knows.[1094]

Observation 11: There is no agreed threshold number of tests (or proportion of employees to be tested) that will ensure deterrence.

In 1992 Blaze-Temple wrote that 'presumably employers … try to keep the proportion tested high enough to represent a perceived threat to alcohol and other illicit drug users' and she added that 'the ideal testing level will have to be established empirically'.[1095] To date, no one has established the ideal testing level for workplace drug testing. A criminologist whom the PIC interviewed for Operation Abelia said that, because deterrence relies on an individual's perceptions, to find the appropriate testing levels it would be necessary to trial different testing levels and survey officers to determine what they perceived were their chances of being drug tested under these different testing levels.

While no one has established the ideal number, several researchers and other commentators have written about the optimal number of tests. For example, one researcher in this area has said that 'it is generally agreed that at least 10% of a workforce needs to be tested annually for random testing to provide a deterrent effect, although some law enforcement agencies aim for 25%'.[1096] (However, no arguments were provided to support this statement.) Those researching the effects of random breath testing on drink driving have suggested that the number of random breath tests should be increased up to the equivalent rate of one random test per licence holder per year.[1097] By the mid-1990s, Australian motorists were subjected to breath tests at a rate

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1093 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 125.

1094 For further information about the focus groups that were conducted as part of Operation Abelia, refer to Appendix 4.

1095 D. Blaze-Temple, Drug testing in the Australian workplace: an overview of the issues. *Drug and Alcohol Review, 11, 59-73, 1992*, p. 63.

1096 K. Mann, Substance use in a police workplace: emerging issues and contemporary responses. Queensland Police Service, 2003, p. 29.

1097 J. Henstridge, R. Homel, & P. Mackay, *The long-term effects of random breath testing in four Australian states: A time series analysis*. Department of Transport and Regional Development. The Federal Office of Road Safety, April 1997, pp. x, 112.

of about 0.6 tests per (driving) licence holder per year.[1098] If NSW Police conducted random drug tests at this rate they would need to conduct approximately 9000 drug tests per year: about eighteen times as many as they currently conduct.

In its 2004 report, the Independent Inquiry into Drug Testing at Work in the UK observed that deterrence is linked to the perceived likelihood of discovery, and then suggested:

> Drug testing might have to be conducted on a regular basis (maybe weekly or daily) if it is to have any kind of deterrent effect. [1099]

When the PIC examined the rate at which other agencies conduct random drug testing, it found that there was no consistency in the practices of those other agencies. Not all law enforcement agencies conduct workplace drug testing. Of those that do conduct some form of workplace drug testing, not all conduct random drug testing. The agencies identified through the Operation Abelia research that do conduct random drug testing vary markedly in the number of officers they test. These agencies annually test the equivalent of between 5 out of every 100 officers and 144 of every 100 officers (see Table 6.4).[1100]

By comparison, the 500 officers NSW Police randomly tests each year equates to a little more than 3 out of every 100 officers. NSW Police has advised that the number of officers they test has been 'largely influenced by budgetary considerations'.[1101] In addition to those subjected to random drug testing, NSW Police also tests officers who have been involved in certain types of 'critical incident', such as an incident where someone is killed or seriously injured as the result of a police motor vehicle pursuit or discharge of a firearm. This form of drug testing is called 'mandatory' drug testing and is described in more detail in Section 6.6. The NSW Police Director of Health Services has said that he sees mandatory drug testing as a form of random drug testing:

> … I think it is important to include in the random testing the mandatory testing, which is a form of random testing, if you like.[1102]

Between September 2001 and May 2005, 591 officers were tested following 127 critical incidents. This represents an average of an additional 161 officers being tested each year. The combined number of random and mandatory drug tests represents a testing rate of a little less than five out of every 100 officers tested each year.

1098 Henstridge et al 1997 in T. Babor, R. Caetano, S.Casswell, G.Edwards, N. Giesbrecht, K. Graham, J. Grube, P. Gruenewald, L. Hill, H. Holder, R. Homel, E. Osterberg, J. Rehm, R. Room., & I. Rossow, *Alcohol: No ordinary commodity – Research and public policy*. Oxford: Oxford University Press, 2003, p. 161.

1099 Independent Inquiry into Drug Testing at Work (IIDTW) *Drug testing in the workplace: The report of the Independent Inquiry into Drug Testing at Work*. York, UK: Joseph Rowntree Foundation, June 2004, p. 80.

1100 Details about the approaches other policing agencies take to the issue of drug use by officers can be found in Appendix 14 for Australian policing agencies and Appendix 15 for overseas policing agencies.

1101 NSW Police response to Operation Abelia Round Table 1b: *Deterring drug use: Using workplace drug testing*, April 2004, p. 1.

1102 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 153.

TABLE 6.4: COMPARISON OF RATES OF RANDOM DRUG TESTING WITHIN DIFFERENT AGENCIES

Rates of testing: No. of tests each year per 100 officers	Agency	Additional information
≥ 5	Aurora Police Department, Colorado, (USA)	Each year, at least five per cent of the sworn membership of Aurora Police Department that are not subject to testing as a condition of assignment to specialised positions will be randomly selected for drug testing.
20	New York Police Department (USA)	Drug testing in the New York Police Department was amended to include a random selection process in 1990, with the initial projected goal of annually testing, on a random basis, ten per cent (10%) of all uniformed members of the service. This percentage was increased to twenty per cent (20%) in 1993.
25	Metropolitan Police Department Washington DC (USA)	Metropolitan Police Department Washington DC randomly tests 25% of its sworn force each fiscal year. Random drug tests are conducted each business day, Monday to Friday. All sworn officers are subject to the tests and can only be excused if they are on an approved leave or day off.
33	Chicago Police Department (USA)	Chicago Police Department test approximately 1/3 of the Department's sworn and select civilian personnel each year. They currently use urine as their primary test matrix but hope to launch the use of hair testing on incumbent employees in the near future.
50+	Australian Federal Police (Australia)	The AFP has stated that its aim would be to test a minimum of 50 per 100 employees per year for the random process, as well as employees being tested in other 'significant' times under other programs such as: pre- & post-deployment overseas, pre- & post-deployment to undercover operations and those operating in highly sensitive positions.
≥ 100	Kansas City Missouri Police Department (USA)	All members are required to submit to drug testing at least once annually. The scheduling of the tests will be made on a random basis throughout each year.
120	US soldiers based in South Korea	At a minimum, the 8th Army requires ten per cent of a unit's soldiers to be tested each month. A computer program randomly picks Social Security numbers of soldiers to submit to a urine test.
<130	Los Angeles Police Department (USA)	No police officer will be tested more than three times in one year. This total number of tests per year will not exceed the total number of officers of the rank of lieutenant and below excluding probationers plus thirty per cent.
133	San Diego Police Department (USA)	All sworn officers of the San Diego Police Department are tested randomly twice within an 18 month period.
144	Houston County Sheriff's Office (USA)	About 12 per cent of all employees (there are 297 employees) are randomly drug tested monthly in Houston County Sheriff's Office.

Observation 12: Some law enforcement agencies test officers working in 'high risk' areas more frequently than other officers.

Some law enforcement agencies identify work areas that they consider to be 'high risk' areas because of the nature of the work undertaken in these areas. Some of these agencies drug test officers prior to their commencing work in these areas, and some agencies test those working in these high risk areas more often than they test officers working in other areas.

Some examples of agencies that use such a strategy are the Australian Federal Police (AFP) and Aurora Police Department (in Colorado in the USA). The AFP, for example, has a form of random drug testing known as 'Mandatory Targeted Testing'. This drug testing program differs from random testing in NSW Police, in that it tests officers in high risk areas more frequently than it tests officers in other areas. Based on the results of its risk assessment, the AFP has categorised each of its 'business areas' as 'Priority One', 'Priority Two' or 'Priority Three' areas. The AFP uses a computer-generated process to randomly select employees for drug testing. A higher ratio of employees from Priority One areas is selected for testing than from Priority Two areas. Similarly, a higher ratio of employees from Priority Two areas is selected than from Priority Three areas.[1103]

In his report reviewing Toronto Police Service practices and procedures to determine how they could be improved 'to prevent misconduct and corruption of any kind', Ferguson (2003) has recommended that those who are promoted to, or transfer to, sensitive or high-risk areas should be required to submit to a drug testing program:

> I am, however, equally satisfied that a drug testing program, as a prerequisite for promotion or transfer to sensitive or high-risk areas (e.g. drug squads, major crime units, Emergency Task Force, Intelligence Services, Mobile Support Unit, Professional Standards, Internal Affairs, etc.) is not only appropriate, but essential in the interests of public and officer safety.[1104]

During the Operation Abelia round table discussions, the NSW Ombudsman's Office suggested that it would be desirable that NSW Police 'advertise quite loudly' to high risk commands that those commands might be subject to more regular random testing than others. The NSW Ombudsman's Office suggested that this might reinforce that those officers within commands where the risk of drug taking is greater and/or the implications of drug taking is greater may indeed be under greater scrutiny.[1105]

1103 Australian Federal Police, National Guideline on the Use of Prohibited Drugs, Attachment A; Mandatory Targeted Testing Procedure.

1104 G. Ferguson, *Review and recommendations concerning various aspects of police misconduct. Volume 1*. Commissioned by Julian Fantino, Chief of Police Toronto Police Service. January 2003. (Released 27 February 2004), p. 31.

1105 Operation Abelia Round Table 1b: *Deterring drug use: Using workplace drug testing*, Minutes 21 April 2004, p. 2.

Observation 13: Many agencies emphasise that their methods of selecting employees to participate in random drug testing are fully computerised so that there is no ability for individuals to influence who is or is not to participate. Within NSW Police the selection of officers to participate in random drug testing is open to individual discretion.

Two of the requirements for a successful random testing program are that the individual must not be able to influence the chances of being tested and the individual must not be able to avoid being tested once selected.

The selection of who is to be chosen for random testing and the dissemination of this information can be cause for concern. For example, when discussing the proposal to randomly test Queensland Police for alcohol and other drug use, the union was reported as advocating the need for corruption-proof software.[1106] A media article reported that:

> Once the legislation is passed, the Government will regulate how and when the testing should take place, based on the findings of a working party set up to investigate strict accountability measures, including corruption-proof computer software.[1107]

A study by the Independent Commission Against Corruption explored functions of public sector organisations that might put employees at a greater risk of exposure to corruption. One of the fifteen such 'high-risk functions' that were identified in this study was 'testing blood, urine or other bodily samples from people or animals'. This was considered a high-risk function because of the combination of the discretion exercised by the public official who organises the testing and the potential importance of the outcome to those being tested. It was suggested that, in some cases, inappropriate incentives might be offered to those in a position to influence such test results. This is not to say that the performance of drug testing is more likely to be corrupt than the performance of other functions. What it does suggest is that there are risks that need to be managed.[1108]

As part of the research for Operation Abelia, the PIC examined the drug testing policies of a variety of law enforcement and other agencies.[1109] The PIC's review of these policies revealed that many agencies provide a detailed account of how they select employees to participate in random drug testing. Many of these agencies emphasise that their methods of selecting employees to participate in random testing are fully computerised, with no ability for individuals to influence who is or who is not to participate. For example, Los Angeles Police Department's procedures state:

> The selection of test subjects will be conducted by computer without human intervention, so that at least 100 tests are conducted every week, in addition to the tests required by the Department of Transportation and

1106 The Queensland legislation ultimately did not provide for random drug testing.

1107 S. Parnell, Rift over grog testing of police. *The Courier-Mail, 11th September 2003*.

1108 Independent Commission Against Corruption, Profiling the NSW Public sector: Functions, risks and corruption resistance strategies. *Sydney: Independent Commission Against Corruption, January 2003*, pp. 24, 101.

1109 Details of these policies are provided in Appendix 14 (for Australian policing agencies); Appendix 15 (for overseas policing agencies) and Appendix 16 (for other Australian agencies).

> those tests administered to probationary officers. The computer selection program will ensure that at least one person is randomly selected to be tested each week at every Community Police Station, Traffic Division, and Transit and Narcotics Groups. The program will randomly select at least one person to be tested every two weeks from the Metropolitan Division and Organised Crime and Vice Division. The remainder of the Department's sworn personnel will be grouped by their bureau of assignment and the program will randomly select at least one person from each bureau grouping to be tested every month.[1110]
>
> The selection of police officers for testing will occur on a random basis by utilizing a computer-generated random numbers program written by members of the Information Technology Division (ITD). The sampling plan is designed to assure random selection of test subjects for drug testing as well as confidentiality of the testing procedure.[1111]

In the Kansas City Missouri Police Department, the responsibilities of the Computer Unit include:

- Provide and maintain a computer program which will select members on a random basis to be scheduled for drug testing.
- Maintain security of the program and information to prevent tampering and unauthorized access.[1112]

The FBI's 'Drug deterrence program: Drug-free workplace policy and procedure', simply states that:

> employees to be tested are selected from a statistically random sampling of individuals (i.e. social security numbers).[1113]

The procedures of the US Nuclear Regulatory Commission are of interest, because these procedures stress a further element of unpredictability, namely that a person who has just completed a drug test is immediately eligible for another:

> Unannounced drug and alcohol tests imposed in a statistically random and unpredictable manner so that all persons in the population subject to testing have an equal probability of being selected and tested. The tests must be administered so that a person completing a test is immediately eligible for another unannounced test. As a minimum, tests must be administered on a nominal weekly frequency and at various times during the day. Random testing must be conducted at an annual rate equal to at least 50 percent of the workforce.[1114]

1110 City of Los Angeles and The Police Officers, Lieutenant and Below Representation Unit Memorandum of understanding: July 1 2000 – June 30 2003, 2000, p. 10.

1111 City of Los Angeles and The Police Officers, Lieutenant and Below Representation Unit Memorandum of understanding: July 1 2000 – June 30 2003, 2000, p. 11.

1112 Kansas City Missouri Police Department Personnel Policy: Employee Guidelines 203- Substance Abuse Testing. Kansas City Missouri Police Department, April 1990, p. 8.

1113 US Department of Justice Federal Bureau of Investigation Drug deterrence program: Drug-free workplace policy and procedure. US Department of Justice, Federal Bureau of Investigation, April 1997, p. 2.

1114 US Nuclear Regulatory Commission Fitness for duty programs. In Code of Federal Regulations (USA) Title 10, Chapter 1, Part 26, Section 26.24.

In contrast, the NSW Police selection of officers to participate in random drug testing is open to individual discretion. Selection is currently made in a two-stage process. First the work area (such as a local area command) is selected and then the individuals within the work area are selected. The selection of the work area is currently carried out by the Director of Health Services together with his Testing Team leader. The selection of individuals within the work area is made by the Testing Team leader from the roster, when she arrives at the command or other work area. When asked whether there were any protocols for the selection of sites for random testing, the NSW Police Director of Health Services replied that there were no such protocols. He said:

> I suppose ultimately it's my decision. It's a matter that I discuss with the team leader of the Testing Team and it's usually a joint decision.[1115]

NSW Police has said that it had found problems with using computer generated lists and that it finds the current system for selecting officers as the most practical option for the organisation:

> The main problem with computer generated lists is that once a computer program selects an officer for testing, the only viable means of ascertaining when he/she will be on duty is to check at the local level. This opens the possibility of officers being forewarned of the testing process.
>
> Although the current system for selecting officers (which involves a manual selection of rostered staff by the leader of the Testing Team) may not be perfect, it has been demonstrated to be the most practical option for the organisation and is the preferred method of selecting police for testing purposes. Disputation arising out of the current selection process is minimal and no accusations of unfair treatment or victimisation have ever been lodged against the Testing Team.[1116]

In the Operation Abelia round table discussions, NSW Police elaborated on the difficulties that it had encountered in using a computerised method to select participants. NSW Police reported that it had previously used a computer program to select locations for testing. However, NSW Police said this program was discarded when it created logistical problems by selecting geographically distant locations such as Lismore and Broken Hill in succession.[1117]

NSW Police also reported the confidentiality of the process as an advantage of its current method of selecting officers to be randomly tested. NSW Police advised the PIC that no one on the Testing Team knows where they are going other than the Testing Team Leader and the Director of Health Services. The remainder of the team are not told where they will be conducting tests until they are in transit or even on location. Once the team arrives at the testing location, the roster is requested and the team leader selects individuals from that roster. The roster is then kept and if there are issues that people 'ducked out' or went on sick leave there is a record of this.[1118]

1115 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 138.

1116 NSW Police response to Operation Abelia Round Table 1b: *Deterring drug use: Using workplace drug testing*, April 2004, p. 3.

1117 Operation Abelia Round Table 1b: *Deterring drug use: Using workplace drug testing*, Minutes 21 April 2004, p. 7.

1118 Operation Abelia Round Table 1b: *Deterring drug use: Using workplace drug testing*, Minutes 21 April 2004, p. 6.

Observation 14: The PIC received information that suggests two officers selected for random testing successfully evaded the testing process.

NSW Police has advised that it has adopted a wide range of strategies aimed at minimising the opportunity officers have to avoid or sabotage a drug test, including ensuring:

- workplaces have no prior knowledge of their selection for random testing
- individual officers have no prior knowledge of their selection for a random test
- duty officers and shift supervisors are informed of the need for police to report to the Testing Team if they wish to report off sick or leave the station for a special job while the testing team is in attendance
- actual testing protocols strictly comply with the Australian Standard for Workplace Drug Testing, and
- commanders have an opportunity to review the overall performance of their staff if patterns of sick leave absences emerge.[1119]

Subverting drug testing procedures is not unheard of in other organisations. The Independent Inquiry into Drug Testing in the Workplace in the UK reported that it had heard of cases where testing procedures that appeared to be 'more or less foolproof' had been subverted. In particular, that Inquiry reported that it heard evidence of managers and staff colluding to subvert testing systems out of friendship or a sense of loyalty to colleagues, to avoid losing a trained employee or because a positive test could reflect badly on their team or part of their business.[1120]

The PIC has not received evidence to indicate that there is widespread evasion of random testing. One former NSW Police officer, who admitted using drugs 'off and on for probably a period of four or five years while she was a police officer', told the PIC that there was no way of avoiding a random drug test. When she was asked whether she had done anything to avoid random drug testing, in her evidence to the PIC in a public hearing, this former senior constable said that she did not think that it was possible to find out when random drug testing would take place.[1121]

However, the PIC is aware of two incidents where officers appear to have evaded tests conducted by the Healthy Lifestyles Testing Team. One incident concerned a random alcohol test (Incident A), while the other concerned a targeted drug test conducted as part of a broader random drug testing exercise (Incident B). These two cases are discussed below. While the focus of Operation Abelia is on illegal drug use by police, the processes involved in random alcohol testing are sufficiently similar to those used for random drug testing to make Incident A relevant for consideration within Operation Abelia. A key difference between the procedures for random alcohol testing and

1119 NSW Police response to Operation Abelia Round Table 1b: *Deterring drug use: Using workplace drug testing,* April 2004, p. 5.

1120 Independent Inquiry into Drug Testing at Work (IIDTW) *Drug testing in the workplace: The report of the Independent Inquiry into Drug Testing at Work*. York, UK: Joseph Rowntree Foundation, June 2004, p. 69.

1121 Operation Abelia, PIC Transcript, M. K. Wilson, 6 November 2003, p. 39.

random drug testing is that with random alcohol testing all officers who are rostered on duty, irrespective of rank, undergo a breath test. In contrast, random drug testing involves the testing of only a sample of officers who are rostered on duty at that time.

Incident A: Random alcohol test

A conversation was recorded, pursuant to a listening device warrant, in which a now former officer, who at the time was the target of a NSW Police investigation, claimed he had evaded a random alcohol test. During the course of the conversation, this officer stated that staff from the Healthy Lifestyles Branch had arrived at his local area command at 10:00 am to conduct random alcohol testing the morning after the command's Christmas party.

It appears from the context that the Christmas party and the subsequent alcohol test had occurred only a matter of weeks before the conversation in question took place. The officer indicated in the conversation that he had been under the influence of alcohol the morning after the Christmas party, or was concerned that he may have been alcohol-affected, saying that he had to 'bolt' when Healthy Lifestyles staff arrived to conduct the tests. This officer, who said he was the rostered duty officer at the time the tests were conducted, claimed that he told Healthy Lifestyles that he could not submit to an alcohol test because he needed to drive another police officer to an appointment with a psychologist.

According to the NSW Police Drug and Alcohol Policy, the officer should have been subjected to an alcohol test insofar as he was rostered for duty on the date of the alcohol test. According to his claim, however, he was able to evade the test by informing Healthy Lifestyles staff he had to leave the police station to perform another task.

Incident B: Targeted drug test conducted as part of a broader random drug testing exercise

Less than three years ago, the then Special Crime and Internal Affairs Command (SCIA) requested that Healthy Lifestyles Branch conduct a targeted drug test on a senior constable, on the basis of intelligence that the senior constable was using illegal drugs.

The Testing Team arrived at the police station before 9:00 am, which was when the officer was scheduled to commence his shift. According to Healthy Lifestyles, they were advised that the senior constable had telephoned to say that he was taking family and community service (FACS) leave for that day.

It is clear from SCIA's internal investigation, however, that on the morning he was due to be drug tested the senior constable attended the police station on two occasions: once at or around 9:00 am, the other shortly afterwards. As part of its investigation, SCIA interviewed the Custody Manager who had been responsible for assisting Healthy Lifestyles staff to make arrangements for the drug tests, including locating officers within the station whom Healthy Lifestyles had indicated they wanted to test.

According to information provided by the Custody Manager, the senior constable entered the police station, probably the foyer area, at or around 9:00 am, informed the Custody Manager that his child was unwell and in hospital and that he would need to

take FACS leave. The senior constable then left the station. At 9:06 am the senior constable phoned the Custody Manager, presumably from a location nearby. The two then arranged to meet at the rear entrance of the police station, although the senior constable expressed some concern that 'they might see me'. The Custody Manager said the purpose of the second meeting was to discuss the type of leave the senior constable was going to take.

Following an examination of electronically recorded surveillance material obtained by NSW Police, the PIC believes that the now former senior constable was using amphetamines, and possibly other illegal drugs as well, at the time he was under investigation. Whether he was under the influence of, or would have tested positive to, any illicit drug if he had been tested is not possible to say.

This incident demonstrates that an officer who was selected for a targeted drug test was able to twice enter the police station where the test was to occur and make arrangements to place himself off duty, notwithstanding the fact that the Testing Team was present in the station ready to conduct the drug test.

Given the coincidence of the drug test, the absence of the officer from the station during the drug testing team's visit, the officer's reluctance to be seen at the station by some unspecified person(s) and the intelligence indicating drug use by him at that time, it is open to consider that the officer may have learned that Healthy Lifestyles staff were waiting inside the station to test him and he took steps to avoid the test. Whether or not this was the case is, however, of less importance than the fact that the system for drug testing targeted officers appears to have broken down: the officer was in the police station on two occasions but nonetheless managed to avoid testing.

ASSESSMENT AND RECOMMENDATIONS

Given the difficulty in detecting illegal drug use by officers, a front-end approach such as random drug testing that seeks to deter drug use has a lot to commend it if, in fact, it can effectively deter such behaviour.

An individual officer who may be considering using illegal drugs is deterred from such drug use when the risks outweigh its attractions. Officers may be deterred from using illegal drugs because of risks to their health, to their reputation or to their livelihood. There are, in turn, many factors that may affect an officer's perception of the likelihood of having his/her drug use detected, with consequent possible loss to reputation and/or livelihood. For example, some officers who live and work in small communities may consider that their off-duty behaviour is under greater scrutiny than those who live and work in larger, more anonymous communities. Officers who are considering using illegal drugs may also weigh up the risks of such drug use coming to notice through a positive result to a drug test, a NSW Police internal investigation or an investigation by the PIC.

While the PIC acknowledges that deterrence results from a combination of factors, the focus in this section is on random drug testing. Random drug testing is considered a potentially important deterrence strategy, both because it is within the control of NSW Police and because it can be used to deter illegal drug use by officers across the board, independent of whether the officer works in a small community or a larger community, where the officer is more anonymous.

Effectiveness of NSW Police random drug testing program

For random drug testing to be an effective deterrent, any officers contemplating using illegal drugs must believe that the likelihood of their drug use being detected through random drug testing is too great for them to risk using illegal drugs. That is to say, for random drug testing to be an effective deterrent:

- firstly, officers must believe that they may be drug tested during any shift
- secondly, they must believe that such a drug test would detect their drug use, and
- thirdly, these beliefs (that they may be drug tested and that this would result in their drug use being detected) need to affect their behaviour in such a way that they decide not to use illegal drugs.

It is possible that random drug testing may deter some officers from using illegal drugs both while they are on duty and while they are off duty. However, the overall impression obtained from the information collected for Operation Abelia was that, in its current form, the random drug testing program is not an effective deterrent for many officers. The most fundamental limitation of the testing program is that some officers do not know that NSW Police conducts random drug testing. Officers disposed to use illegal drugs are not going to be deterred by a program of which they are unaware.

A second limitation of the current operation of the NSW Police random drug testing program is that the effectiveness of random drug testing has diminished over time for some officers. Some officers and former officers have told the PIC that although they knew about random drug testing and initially thought that random drug testing was a deterrent, they became less concerned as time elapsed because they did not see random drug testing happening.

On the other hand, the PIC heard evidence that random drug testing does result in some officers using illegal drugs only at the start of periods of rostered days off. In this way, it acts as a deterrent to illegal drug use at work or at a time close to when the officer is rostered on duty. Some officers told the PIC that that they knew about random drug testing, thought that it was likely that they might be drug tested but took precautions to ensure that their drug use would not be detected if they were drug tested. These officers and former officers said that they timed their illegal drug use so that they only used drugs while they were off duty, several days before they recommenced duty. Officers who limit their drug use in this way are unlikely to be impaired by their illegal drug use when they are at work.

As has been discussed throughout this report, illegal drug use by officers presents both integrity and impairment concerns. However, even if random drug testing only minimises the risk of officers being impaired while on duty, the potential safety benefits that follow are sufficient to suggest that random drug testing should be retained by NSW Police as a strategy to deter illegal drug use.

Areas for improvement

In its review of the research literature on RBT, the PIC identified the following as characteristics that are associated with successful random testing programs because they have been found to contribute to an individual's belief that he or she is likely to be tested:

- testing is highly visible ('visibility')
- there is publicity for the testing program and that publicity reinforces random testing activities ('publicity')
- timing and location of testing is unpredictable ('unpredictability')
- the individual cannot influence the chances of being tested or avoid being tested once selected ('inability to influence').

These characteristics of a successful random testing program represent opportunities to improve the effectiveness of NSW Police random drug testing. The better the NSW Police random drug testing program demonstrates these characteristics, the more likely officers are to believe that they will be tested, their drug use will be detected, and consequently the more likely it is that the program will effectively deter illegal drug use.

Visibility and publicity

Although NSW Police has said that its random drug testing was designed to be a visible deterrent, the information collected by the PIC for Operation Abelia suggests that the NSW Police random drug testing program is neither sufficiently visible nor sufficiently well publicised. That is, it is does not rate well on what have been identified as the first two characteristics of successful random testing programs. This is demonstrated by the facts that:

- some current and former officers who gave evidence about their prior illegal drug use, as well as many sworn officers who participated in the Operation Abelia focus groups, were not aware that NSW Police conducts random drug testing
- commanders did not appear to be well informed about random drug testing
- nine of the 80 local area commands were not visited at all during the first three years of random drug testing
- on average, each local area command was only visited 1.5 times during a three year period.

The PIC acknowledges the efforts that NSW Police has made to educate officers and students about the NSW Police Drug and Alcohol Policy. These efforts include, amongst others, that all students receive a lecture about the Drug and Alcohol Policy that includes reference to random drug testing. It is perhaps unsurprising to find that not all students retain this knowledge. The information that students receive currently is detached from practice. While the students hear of random drug testing as one of many concepts to which they are introduced, they do not witness such testing occurring. NSW Police also publicises its drug testing programs through workshops conducted by

the Healthy Lifestyles section. Despite the attempts made by NSW Police to communicate the message, it is clear that not all officers have retained the message that NSW Police conducts random drug testing. It also appears to the PIC that NSW Police has not attempted to evaluate the effectiveness of its communication strategies in this area.

Based on the information that it has received, the PIC considers that it is important that NSW Police raises the profile of random drug testing in particular, and drug testing in general, amongst NSW Police officers. The PIC is of the view that the solution in the longer term is to inculcate an understanding that drug testing is an integral part of working as a NSW Police officer. This can be achieved by communicating relevant messages from the time a potential applicant initially approaches NSW Police and reinforcing these messages to the students at the NSW Police College and to officers throughout their career. This is discussed further, and a number of recommendations are made, in Section 6.9 on 'Recruitment', later in this chapter.

To raise the profile of random drug testing amongst current officers, the PIC considers that, in addition to its current communication strategies, NSW Police also needs to further publicise the drug testing that it is currently conducting. One way to do this would be by publicising which commands and specialist units have been subject to random drug testing and mandatory drug testing in recent weeks. This would be consistent with research on random testing, which has found that the aim of any publicity should be to reinforce actual drug testing that is being undertaken. This information could be disseminated on a regular basis in publications such as the Police Weekly. An additional way of raising its profile would be by including random drug testing for discussion in meetings and workshops in commands and other work sites. A further potential strategy for raising the profile of random drug testing would be exploring ways to use the random alcohol testing process to increase awareness of the existence of random drug testing, since officers seem to be well aware of the random alcohol testing program. For example, when the Testing Team is conducting random alcohol tests at a work site, all officers at the site could be informed that some will also be drug tested and a small number of random drug tests could be conducted at the same time.

Recommendation RDT 1:

The PIC recommends that NSW Police raises the profile of random drug testing amongst all ranks of officers by publicising the existence of this form of drug testing broadly, regularly and using a variety of strategies. Recommended strategies include:

- **a. regularly publishing in the Police Weekly and/or other appropriate publications a list of those commands and specialist units that have been subject to random drug testing or mandatory drug testing in a given period of time**
- **b. incorporating a discussion of random drug testing in workplace meetings and workshops**
- **c. trialling the use of random alcohol testing sessions to publicise to officers the fact that NSW Police also conducts random drug testing.**

Another strategy to raise the profile of random drug testing would be to increase the number of random drug tests conducted. One of the issues considered by the PIC was whether or not NSW Police should increase, decrease or continue its random drug testing at its current rate (approximately 500 to 600 tests annually: equivalent to testing three or four officers out of every 100). In considering this issue, the PIC took the following factors into account:

- among the law enforcement agencies that do conduct random drug testing, there is no agreed proportion of the workforce that should be tested annually
- there is no simple relationship between the rate of testing and the level of deterrence; this is to say, it is not possible to conclude that if NSW Police doubled the number of drug tests that it would deter twice the number of officers from using illegal drugs
- random drug testing is far more costly than random alcohol testing in terms of the cost of sample analysis and work time taken to collect samples
- even if every NSW Police officer were drug tested on every shift for which they were rostered (a very costly and inappropriate use of the strategy), given the combination of the flexible rostering system and the relatively short time some drugs are detectable, it is likely that there would be some officers whose illegal off-duty use of stimulants would not be detected.

Given that the PIC heard evidence that random drug testing does result in some officers limiting their drug use to the beginning of periods of leave, and consequently minimises the risk of officers being impaired while on duty, the PIC considers that NSW Police should continue to undertake random drug testing. The evidence that some officers and former officers gave, that they became less concerned about random drug testing as time elapsed because they did not see any testing occurring, as well as the evidence that many officers were unaware that NSW Police conducts any random drug testing, suggests that the number of random drug tests should be increased, at least in the short term. As stated earlier, the PIC sees the longer-term solution in instilling an understanding that drug testing is an integral part of working as a NSW Police officer, by communicating relevant messages from the time a potential applicant initially approaches NSW Police.

In order to increase the visibility of random drug testing, the PIC believes that NSW Police should markedly increase the number of officers who are tested as part of the NSW Police random drug testing program. The PIC acknowledges that the number of random drug tests conducted to date has been determined by available funding. The PIC believes that it is time to increase the funds allocated to random drug testing.

Given that there is no established optimal rate of testing, the PIC believes that for the next five years NSW Police should trial increasing the number of officers who are tested as part of random drug testing, from the current rate of three or four officers per 100 officers employed to an equivalent of at least 15 per 100 officers employed per annum. This equates to collecting approximately 2250 urine specimens annually for the approximately 15 000 officers employed by NSW Police.

Recommendation RDT 2:

The PIC recommends that NSW Police trials, for the next five years, increasing the number of officers who are required to provide a urine sample as part of the random drug testing program to the equivalent rate of at least 15 out of every 100 officers (or approximately 2250 random drug tests conducted annually).

NSW Police should support this extra random drug testing capacity with increased and varied publicity and use this additional capacity to trial different strategies to increase the visibility and unpredictability of the testing. For example, some work areas could be drug tested and then retested in quick succession. Another strategy would be to test more officers within individual work areas on some occasions. The use of these different strategies should also be publicised, in order to increase both the perceived risk of being tested and the unpredictability of when such testing will occur.

Recommendation RDT 3:

The PIC recommends that NSW Police uses the additional testing capacity to enable a trial of different strategies to increase the visibility and unpredictability of random drug testing. Examples of such strategies might include testing larger numbers of officers within some individual work areas, and testing and then retesting officers from a work area in quick succession.

Even by markedly increasing the rate of random drug testing, the number of officers tested will be limited. The PIC advocates that NSW Police should make the best use of its resources by identifying high risk work types and testing officers who work in these areas more frequently than officers working in other areas. From the profiles of officers who have used illegal drugs discussed in Chapter 5 of this report, it is clear that officers using illegal drugs come from a wide range of backgrounds and are not readily predictable based on their demographic characteristics (such as gender or age). Rather than determining risk in terms of demographics, the PIC believes that work types that are subject to greater risk of illegal drug use or where the consequences of illegal drug use would be more serious should be subject to more frequent drug testing. The literature reviewed in Chapter 2 suggests that covert policing is one such area of work. Some participants in the focus groups conducted as part of Operation Abelia considered 'highway patrol' work to be high risk for illegal drug use by officers. If this is the case, highway patrol work would be an example of a work type where the consequences of illegal drug use could be more serious than for some other types of police work.

The PIC is aware that NSW Police already implements such a practice with some specific work areas. The PIC considers that NSW Police should continue this practice and also regularly review which work areas should be considered to be high risk for illegal drug use. Furthermore, the PIC believes that officers who undertake work that is identified as high risk should be told that they may be subject to a higher rate of random drug testing.

Recommendation RDT 4:

Not withstanding that illegal drug use by officers working in any area of policing is a serious matter, the PIC recommends that NSW Police:

a. continues to identify and review high risk areas on the basis of work type rather than demographic characteristics of officers. 'High risk' work types would be those that are subject to greater risk of illegal drug use (such as covert work) or work types where the consequences of illegal drug use would be more serious than for other officers

b. continues to drug test officers in high risk work types more frequently than other officers

c. notifies officers who undertake such high risk work that they may be subject to a higher rate of random drug testing.

Unpredictability

The third of the characteristics associated with successful random testing is unpredictability of the timing and location of testing. Currently, testing is predictable to the extent that, in accordance with the legislation, officers can only be tested when they are on duty in accordance with a roster.

In relation to the question of off-duty drug use, the PIC does not anticipate that an increased rate of random drug testing of officers on duty will deter illegal drug use by all officers when they are off duty. Earlier in this report, the PIC recommended a trial of hair samples for targeted drug tests and off-duty targeted drug testing. These measures could deter some off-duty drug use. However, the use of hair samples and off-duty targeted drug testing will only deter off-duty drug use if these strategies are publicised sufficiently so that any officers contemplating using illegal drugs while off-duty believe that they may be subjected to a targeted drug test and that these targeted drug tests would detect their off-duty drug use.

The PIC does not consider it appropriate to extend random drug testing to officers while they are off-duty. However, if the trial of using hair samples for targeted drug tests proves that hair testing is a viable drug testing strategy for NSW Police, the PIC believes that NSW Police should use and publicise the use of hair samples for some random drug tests to strengthen its effectiveness in deterring off-duty drug use.

Recommendation RDT 5:

The PIC recommends that NSW Police extends the use of hair samples to some random drug tests, if the trial of the use of hair samples for targeted drug tests (see Recommendation TDT 8 in previous section on Targeted Drug Testing) proves that hair testing is a viable drug testing strategy for NSW Police.

NSW Police has taken steps to minimise officers' ability to predict when, during the time they are on duty, they are likely to be tested. NSW Police has told the PIC that its testing procedures are designed so that neither workplaces nor officers have prior knowledge of their selection for random drug testing purposes. The unpredictability of the timing and location of the testing is important not only to prevent evasion of testing

(discussed in more detail below), but also so that officers do not believe that there are times when they are less likely to be tested, and consequently times when it would be safer to use illegal drugs. From the information collected as part of Operation Abelia, a general lack of awareness that any random drug testing is conducted appears to be a larger problem than officers believing that they could predict the shifts on which they might be tested and planning their drug use accordingly. Recommendations RDT 1, 2 and 3 (as well as Recommendations R 1, R 3 and R 4 discussed in the Recruitment section) seek to improve the awareness of random drug testing. In addition to increasing the visibility or random drug testing, Recommendation RDT 3 is specifically aimed at increasing the unpredictability of random drug testing.

Inability to influence

The fourth of the characteristics associated with successful random testing programs is that the individual is not able to influence the chances of being selected for testing or avoid being tested once selected.

The current NSW Police process for selecting which officers are to be tested is a two-stage process. It involves first selecting the work area where testing is to occur and then selecting the particular officers to be tested from that work area. The PIC considers that the multistage process is a practical one, given the wide geographical area covered by NSW Police. If a multistage process was not used, it is likely that officers selected would be from geographically diverse areas creating logistical problems for testing.

As it currently stands, both stages of the process - selecting the work area where testing is to occur and then selecting the officers to be tested within a work area - are largely determined by individual discretion. While the PIC accepts that there needs to be the capacity for some flexibility in the selection process, it considers that there is potential for the system to be improved to present less corruption risk, by reducing the amount of individual discretion involved in the selection.

The reason that there needs to be capacity for some flexibility in the process is that, in accordance with the NSW Police 'Targeted Drug Testing Protocols and Procedures' issued in December 2003, some individual officers who are the subject of a targeted drug test are 'discreetly targeted during a broader drug testing program'. That is to say, that in some cases a small number of targeted drug tests may be conducted during a random drug testing session.

The numbers of officers selected and tested in this way are small. NSW Police has told the PIC that approximately 10 of the 500 to 600 officers selected for testing during random drug testing sessions over the previous 12 months were selected as the result of a request for a targeted drug test. The PIC is of the opinion that the remaining officers should be selected in a statistically random manner.

The current process of selecting the officers to be tested is left to the discretion of one officer. Currently, the Testing Team Leader has complete discretion over which individuals within a work area are chosen for testing. The integrity of the current Testing Team leader who makes this selection is not in question. What is in question is the process, which is potentially open to manipulation. It would be possible under the current process for an individual to be excluded or included without any accountability or transparency.

The PIC believes that it is important that the procedures for selecting officers are transparent and accountable. For this reason, the PIC believes that a statistically random sample should be taken of the officers in the selected workplace, apart from the small number who are target tested in conjunction with a random testing exercise.

Recommendation RDT 6:

The PIC recommends that NSW Police selects which officers at a work site will be drug tested in a statistically random manner.

While similar concerns arise regarding the role of individual discretion in the selection of the work area (such as local area command) where the testing is to take place, additional issues need to be considered in relation to this stage of the selection. In addition to the flexibility to include some officers where requests have been made for targeted drug tests to be conducted, another reason for allowing some flexibility in this part of the process is to avoid logistical problems that would follow the random selection of geographically diverse locations to be tested soon after each other.

Even with these considerations in mind, the PIC is of the opinion that there is potential for the selection process to be modified to increase transparency and accountability. While the integrity of those who currently select the locations for testing is not in question, under the current process it would be possible for a work area to be excluded or included without any accountability or transparency. For this reason, the PIC suggests that NSW Police reviews its current process for selecting where random drug testing is to occur, to identify ways of increasing the statistical randomness, as well as the transparency and accountability in the selection process while maintaining confidentiality and appropriate flexibility for targeting purposes. In its review, NSW Police should consider the possibility of involving an independent officer or an appropriate internal body (such as the NSW Police Drug and Alcohol Liaison Committee) in the selection process.

Recommendation RDT 7:

The PIC recommends that NSW Police reviews its current process for selecting where random drug testing is to occur, to identify ways of increasing the transparency and accountability of the process while maintaining confidentiality and appropriate flexibility for targeting purposes.

In relation to evading drug tests, some commanders suggested that they had heard stories of officers walking out of the station when Healthy Lifestyles arrived to conduct drug tests. Two incidents that did come to the attention of the PIC are described in Observation 14. While the PIC did not receive evidence to suggest that evasion of random drug testing is widespread, these two cases highlight the need to recognise the real possibility that some officers will attempt to evade random drug testing.

In one incident, an officer claimed he was able to evade a random alcohol test by informing Healthy Lifestyles staff that he had to leave the police station to perform another task. NSW Police officers are required to respond to emergencies or other high priority tasks and, in such circumstances, need to immediately suspend or defer tasks of a lower priority that they may have been performing. Healthy Lifestyles staff need to be sensitive to this aspect of policing and ensure that drug and alcohol testing does not impede officers from discharging more urgent tasks. However, officers who are inclined

to evade drug or alcohol tests may take this as an opportunity to fabricate apparently compelling reasons as to why they need to be excused. It would seem unreasonable to place Healthy Lifestyles staff in circumstances where they have to adjudicate as to whether or not an officer's request to be excused from a drug or alcohol test on the grounds of work demands is well founded.

It must be acknowledged that officers who use illegal drugs may go to considerable lengths to evade a drug test. It must also be assumed that there are some officers, or non-sworn staff, who may be prepared to forewarn other police that testing staff are on the premises. This being the case, it would also seem unreasonable to expect the Healthy Lifestyles Testing Team to have the knowledge of, or control over, police premises to reduce the opportunities for officers to evade tests. The PIC considers that the responsibility for officers not leaving the site prior to being randomly tested (for alcohol or drugs) should fall to the commander.

One way of ensuring that the officers selected for testing do not leave the site on spurious grounds would be to provide the commander or officer-in-charge at the site with a list of the officers to be tested and, in the event that any of those officers left the workplace or made themselves unavailable, the commander would be required to record on this list the reason that the officer was unavailable. Accordingly, if there was an operational requirement for an officer to leave the station urgently then this would be briefly recorded (without disclosing sensitive operational information) in the notation made by the commander. If there was any cause for suspicion on the part of the Testing Team as to the reason given for the officer avoiding the test, then the appropriate Professional Standards officers could be notified and provided with the written notation made by the commander as a starting point for any inquiries.

Recommendation RDT 8:

The PIC recommends that the commander of the unit undergoing testing has the responsibility for ensuring that officers do not leave the site prior to being randomly alcohol or drug tested. If an officer does need to leave the site for operational or personal reasons, then the commander or officer-in-charge at the site should make a note of the reason for this on the list of officers to be tested and initial this note. This list will then be retained by the Testing Team and, if necessary, referred to appropriate Professional Standards officers in the event that further inquiries are indicated.

Evaluation and monitoring

As discussed earlier, the PIC proposes that NSW Police substantially increases the number of random drug tests conducted. Given that there is no established optimal rate of testing, the PIC has recommended that random testing should be undertaken at this higher rate for a period of five years. This five-year period should be considered as a trial and the testing and communication strategies should be evaluated and refined during this period. During this period, officers should be surveyed at regular intervals to determine the extent to which they are aware that NSW Police conducts random drug testing, as well as to discover whether these officers believe that they are likely to be drug tested and whether they believe that officers who use illegal drugs would be detected through random drug testing. Given that communication strategies for future recruits will differ from those for current officers, the effect of length of service on knowledge and perceptions of random drug testing should also be examined in these

surveys. At the end of the five-year period, NSW Police should be in an informed position to determine the optimal rate for random drug testing after that time.

Recommendation RDT 9:

The PIC recommends that NSW Police regularly surveys a sample of officers to determine the extent to which officers are aware that NSW Police conducts random drug testing, whether they believe that they are likely to be drug tested and whether they believe that any officers using illegal drugs would be detected through this testing. NSW Police should use the information from these surveys to gauge the need to further publicise drug testing or for other strategies to increase the visibility and unpredictability of the testing.

Recommendation RDT 10:

The PIC recommends that NSW Police reports the results of these surveys to the PIC as part of the process of monitoring the implementation of the recommendations made in this report.

Recommendation RDT 11:

The PIC recommends that NSW Police, at the end of the five-year trial outlined in Recommendation RDT 2 (above), reassesses the level of random drug testing required, based on the results of surveys conducted and other relevant information obtained.

Costs

The PIC acknowledges that the recommendations made concerning increased random drug testing will require additional resources to be allocated to the NSW Police drug testing program, including funds for the collection and analysis of additional urine samples, and the additional administrative costs associated with testing a larger number of officers. The PIC understands that NSW Police may need to request supplementary funding for this purpose. The PIC would support any such request.

6.6 MANDATORY (CRITICAL INCIDENT) DRUG TESTING

DESCRIPTION

'Mandatory drug testing' is the term that NSW Police uses to describe drug testing of officers who are directly involved in some incidents where someone has been killed or seriously injured.

Background to the legislation

On 11 March 1998, the State Coroner made a number of recommendations following from the inquest into the death of Roni Levi.[1122] One of the recommendations that was directed to the Minister for Police concerned the drug testing of officers:

> In order that police officers may answer any allegations that they may have been affected by alcohol or drugs at the time of an incident, I am of the opinion that it is imperative that legislation be amended to provide for such officers to be mandatorily alcohol/drug tested as soon as possible following such an incident. I see this provision as being an important form of protection for police officers particularly when unfounded allegations are made. I MAKE THAT RECOMMENDATION.[1123]

In his media release concerning mandatory drug and alcohol testing for deaths in custody the Hon. Paul Whelan, then Minister for Police, stated that this testing:

> will remove one cause of doubt, namely that a police officer was impaired by drugs or alcohol.[1124]

The State Coroner did not specify the types of incidents that should lead to an officer being drug or alcohol tested. However, in the second reading speech for the Police Service Amendment (Alcohol and Drug Testing) Bill, the then Minister for Police said that the State Coroner's recommendation specifically referred to police shootings and that the drug and alcohol testing provisions should also apply to high speed pursuits in which a member of the public is seriously injured or killed and other incidents where a member of the public dies in police custody:

> After the recent inquest into the shooting of Roni Levi, State Coroner Derrick Hand recommended that police directly involved in shootings be immediately tested for the presence of alcohol or prohibited drugs. This recommendation is intended to remove one cause of doubt as to the exercise of a police officer's judgment, if such incidents arise in the future.
>
> The Government believes this is a positive recommendation which supports police officers, members of the public and their families … in response to the Coroner's recommendation, the Government considers it appropriate to extend existing testing provisions to include mandatory tests of officers directly involved in specific incidents. These are: police shootings; high speed pursuits in which a member of the public is seriously injured or killed; and other incidents where a member of the public dies in police custody as a direct result of police action. High-speed pursuits potentially place police officers, suspects and members of the public at risk …
>
> The investigation of deaths in custody requires strict accountability, which mandatory testing will provide. To provide this accountability and consistency of approach, mandatory tests will be incorporated into standard operating procedures for all shootings, high-speed pursuits and deaths in custody … The addition of mandatory testing is a commitment to

1122 Further information about the death of Roni Levi can be found in the discussion of Operation Saigon in Section 2.4 of this report. Roni Levi died as the result of a police shooting.

1123 D. W. Hand, Inquest into the death of Roni Levi: Recommendations, 11 March 1998.

1124 Media release from the Office of the Hon. Paul Whelan, Minister for Police, 20 May 1998.

protecting public safety as well as the safety and wellbeing of police officers.[1125]

Section 211A (2A) of the *Police Act 1990*

As a result of the Coroner's recommendation, s.211A (2A) was inserted into the *Police Act 1990* and commenced on 1 July 1998. Section 211A (2A) specifies that if an incident occurs in which:

- a person is killed or seriously injured as a result of a police motor vehicle pursuit or the discharge of a firearm by a police officer, or
- a person is killed while in police custody,

an authorised person may require any police officer directly involved in the incident while on duty:

a. to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence of alcohol, or

b. to provide a sample of the police officer's urine or hair for the purpose of testing for the presence of prohibited drugs.

Under this provision NSW Police can test only for drugs that are prohibited substances under Schedule 1 of the *Drug Misuse and Trafficking Act 1985*. Usually these drug tests have been based on urine samples. In a small number of cases where the officer has been injured and hospitalised and where it would have been difficult to obtain a urine sample, NSW Police has organised for a blood sample to be taken with the officer's consent.[1126]

NSW Police has advised that while its internal protocols place an expectation on the Drug Testing Team to conduct the drug testing within 24 hours of a critical incident, invariably the tests are conducted within two to three hours. NSW Police has advised that the Testing Team aims to arrive at a critical incident, wherever possible, before the completion of the shift of the officers concerned. It has advised that the only time drug tests may be delayed beyond this timeframe is in remote areas of the State. However, NSW Police has advised the PIC that even then, the tests are conducted within current guidelines.[1127]

As has been discussed in the previous sections on Targeted Drug Testing and Random Drug Testing, under the current legislation officers who are not on duty, students and civilian staff are not drug tested under s.211A (2A) of the *Police Act*.

1125 NSW Legislative Assembly Hansard, Police Service Amendment (Alcohol and Drug Testing) Bill, Second Reading Speech, 27 May 1998, pp. 5328-5329.

1126 Operation Abelia, PIC, Transcript, G. N. Jackel, 15 December 2003, p. 116. Also the NSW Police Guidelines for the management and investigation of critical incidents, July 2002, specifies that 'If an involved officer is treated at a hospital as a result of the incident, an authorised person may require a sample of the officer's blood, urine or hair to be taken for testing'.

1127 NSW Police response to Operation Abelia Round Table 1c: *Drug testing following critical incidents*. April 2004, p. 2.

NSW Police Guidelines for the management and investigation of critical incidents, 2002

In July 2002, NSW Police produced a set of *Guidelines for the management and investigation of critical incidents*. These Guidelines provide a much broader definition of critical incident than the circumstances that result in directly involved officers being required to be drug tested. These Guidelines were under review at the time of drafting this report.

The purpose of these Guidelines and the list of circumstances that are defined as critical incidents within these Guidelines are described as follows:

> To provide guidance for police officers and other people dealing with the timely and professional investigation and review of critical incidents. A critical incident is defined as:
>
> Homicide of a police officer, whether or not the officer is on duty at the time
>
> Any death or injury resulting from the discharge of a police firearm (including attempted or actual suicide by police and civilians)
>
> Death or serious injury resulting from the use of police issue appointments[1128]
>
> Death or serious injury to any person in custody
>
> Death or serious injury arising from a police operation[1129]
>
> Death or serious injury arising from a police vehicle pursuit
>
> As a guide, a serious injury is one that would normally require emergency admission to a hospital and significant medical treatment.[1130]

These Guidelines make the point that the types of incidents covered are invariably of great interest to the community and can involve much public controversy and scrutiny:

> The community is entitled to know that NSW Police has investigated all critical incidents professionally, with integrity and that the decisions made and processes used are appropriate and reasonable.
>
> For this reason, these incidents will always be investigated as soon as they occur by specialised teams … Further, the investigation itself is subject to review by a senior officer independent of the investigation team …

1128 The following examples are provided in the Guidelines: an incident involving the use of police appointments during training, if a person dies 'in custody' (i.e. was not free to leave) as the result of the use of police appointments.

1129 The Guidelines note that a death as a result of or in the course of a police operation is not defined in the Coroners Act. However, the Guidelines refer to a NSW State Coroner's Circular No. 24 which contained the following potential scenarios 'that are likely deaths, as a result or in the course of a police operation as referred to in Section 13A of the [Coroners] Act'. These scenarios include: any police operation calculated to apprehend a person(s); any police siege; an operation to contain or restrain persons; an evacuation; a traffic control/enforcement; a road block; execution of a writ/service of process; any other circumstance considered applicable by the State Coroner or a Deputy State Coroner.

1130 NSW Police, Guidelines for the management and investigation of critical incidents, July 2002, p. 1.

> It follows that as a police officer involved in a critical incident you should expect your role and conduct during the incident to attract a high level of scrutiny, not only by NSW Police, but also by external stakeholders, such as the, Police Integrity Commission, NSW Ombudsman, the NSW Coroner, or the media.[1131]

While the legislation does not define which officers should be considered to be 'directly involved', the Guidelines state that it is the responsibility of the Senior Investigation Officer of the Critical Incident Investigation Team to determine which officers are directly involved in the incident. The NSW Police Drug and Alcohol Policy adds that:

> If the senior investigating officer is delayed significantly from attending the incident then, in their absence, the Duty Officer can deem who is directly involved and thus who will be tested for alcohol and prohibited drugs.

In terms of selecting who is tested, in his evidence to the PIC the NSW Police Director of Health Services said that the investigating officer usually tends to take a fairly inclusive approach to who is tested:

> It's been my experience in the conduct of those tests that the investigating officers are very much aware of the possibilities that may happen down the track and so, therefore they tend to take a broader picture and if there's any doubt as to whether an officer is directly involved, the preference is to test those officers to make sure.[1132]

Role of mandatory drug testing

From the wording of the Coroner's recommendation, the stated rationale for mandatory drug and alcohol testing is as a 'form of protection for police officers particularly when unfounded allegations are made'.

The second reading speech to support the introduction of the amendment made reference to the following roles of mandatory drug testing:

- to remove one cause of doubt as to the exercise of a police officer's judgment
- to provide accountability and consistency of approach in the investigation of deaths in custody
- to protect public safety as well as the safety and wellbeing of police officers.[1133]

The NSW *Police Act 1990* and the NSW Police Drug and Alcohol Policy both specify the circumstances when mandatory drug testing should be conducted. Neither the Act nor the policy specifies the purpose of mandatory drug testing. Hence neither of these documents provide any guidance as to whether the primary purpose of mandatory drug testing is to assess officer impairment or to assess officer integrity.

1131 NSW Police, Guidelines for the management and investigation of critical incidents, July 2002, p. 1.

1132 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 104.

1133 NSW Legislative Assembly Hansard, Police Service Amendment (Alcohol and Drug Testing) Bill, Second Reading Speech, 27 May 1998, pp. 5328-5329.

During Operation Abelia hearings, the NSW Police Director of Health Services stated that the focus of mandatory drug testing to date has been on probity or integrity issues rather than impairment:

> … my personal view is that it would be a mistake to use drug testing to determine impairment. I don't believe that there is sufficient research available to justify testing for drugs in relation to impairment in the market place.
>
> Our emphasis is on probity/integrity issues …[1134]

The NSW Police Commissioner reiterated the message that the focus of all NSW Police drug testing programs, including mandatory drug testing, is on integrity rather than impairment in a letter to the Commissioner of the PIC in mid-2004.[1135]

Proposed legislative amendment requiring blood testing

In its report to Parliament concerning Operation Saigon[1136], the PIC recommended:

> that the law should allow for, and require the obtaining of the best evidence for the purpose of drug and alcohol testing of a police officer after a critical incident, namely blood testing.[1137]

This recommendation, which has had the support of NSW Police, had not been enacted at the time Operation Abelia commenced. A decision was made by the Ministry of Police, in consultation with the PIC, that the implementation of this recommendation be put on hold to allow it to be further considered as part of Operation Abelia.

OBSERVATIONS

Observation 1:	**Although there are different requirements of the different types of drug and alcohol testing, the wording of the *Police Act 1990* enabling mandatory drug and alcohol testing (s.211A (2A)) directly mirrors that which enables random and targeted drug and alcohol testing (s.211A (1)).**

While the legislation for random and targeted drug testing in s.211A (1) of the *Police Act 1990* refers to 'any officer who is on duty in accordance with a roster' and the legislation for mandatory drug testing in s.211A (2A) refers to 'If an incident occurs in which a person is killed or seriously injured …', both sections refer to 'an authorised person may require any police officer' in such circumstances:

a. to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence of alcohol, or

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1134 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 108.

1135 Correspondence from NSW Police Commissioner to Commissioner of PIC, 11 July 2004.

1136 For further information about Operation Saigon, refer to Section 2.4 of Chapter 2 of this report.

1137 Police Integrity Commission *Report to Parliament: Operation Saigon*. Sydney: Police Integrity Commission, June 2001, p. 127.

b. to provide a sample of the police officer's urine or hair for the purpose of testing for the presence of prohibited drugs.

While this wording is clear in relation to the requirements for random and targeted drug testing, it is less clear in terms of the requirements for mandatory drug testing where both alcohol *and* drug testing are required rather than a choice of one or the other.

Similarly the wording that an authorised person 'may' require officers to produce such samples could raise some doubt that this testing is not in fact mandatory.

Also the current wording suggests that a urine sample or a hair sample may be required. There may be some occasions when it might be desirable to collect both a urine and a hair sample, rather than one or the other.

Observation 2: Seven of 1249 officers have tested positive to a drug test following a critical incident during the period July 1998 to May 2005.

NSW Police commenced mandatory drug testing following critical incidents in July 1998. Between July 1998 and the end of May 2005 a total of 1249 officers had been tested following 293 critical incidents. The number of officers drug tested following a critical incident varies, depending on the nature of the critical incident. While on average more than four officers are drug tested following each critical incident, following one critical incident approximately 40 officers were considered to be directly involved and each of these officers was drug tested.

Seven of these 1249 drug tests have returned a 'positive' result, indicating that the officers tested had been exposed to one or more prohibited drugs. Five of these officers tested positive to cannabis, one tested positive to amphetamines and the other tested positive to morphine. As at the end of May 2005, the last officer to test positive to a mandatory drug test was tested four years earlier, at the end of May 2001.

Observation 3: Most commanders appeared to be satisfied with the way drug testing is conducted following critical incidents. Officers were aware of mandatory drug testing following critical incidents and felt it served a useful purpose.

In mid-2003, the PIC interviewed a sample of NSW commanders about their perceptions of drug use within NSW Police, their experience with different aspects of the NSW Police Drug and Alcohol Policy and their suggestions for improvement. Amongst other things, these commanders were asked: what they had seen of drug testing following critical incidents, how well they thought this form of drug testing was working, and how they thought that drug testing following critical incidents could be improved.

Two-thirds of the commanders interviewed said that they had experience with drug testing after critical incidents. The vast majority of these commanders said that they were satisfied with the way critical incident drug testing was working.[1138]

With reference to critical incident testing, participants in focus groups conducted as part of Operation Abelia[1139] indicated an awareness of the types of event that can constitute a critical incident. Examples of some comments from officers and students include:

> Death or injury, shooting.
>
> If you're involved in a critical incident you get tested, shootings, deaths. [New speaker:] If you're identified as an involved officer. Any custody related matter. [New speaker:] Discharge of firearm.
>
> … death in custody, shooting, any death where police officers are involved.
>
> Deaths in custody, high speed pursuits, firearms, death or injury.

Some officers who participated in the focus groups considered that drug testing following a critical incident contributes to community confidence in NSW Police, for example:

> The testing … indicates to the community that the police are clean at that site, there's no adverse indication that could be taken, police were not affected by alcohol or drugs.
>
> [Critical incident testing] makes it open for the community. It makes it so they can't point the finger and say 'drugs were affected [a factor]'.

Observation 4: The main area of concern with mandatory drug testing amongst country commanders and officers was the delay in testing that they said sometimes occurred following a critical incident in the country.

Despite commenting that they were generally satisfied with critical incident testing, five of the nine commanders interviewed from country areas said that one aspect of the process they were concerned with was the length of time they had to wait for a drug test following a critical incident in rural areas[1140], for example:

> Breath testing was conducted immediately and Healthy Lifestyles tested for drugs within 8 to 9 hours. The 8 to 9 hours is probably too long.
>
> There is a welfare issue there for police who were undergoing enormous stress after a critical incident. It is critical that these tests take place as soon as possible afterwards.

1138 See Appendix 2 for more information about the interviews with local area commanders and commanders from specialist units.

1139 For further information about how the focus groups were conducted and the responses of participants refer to Appendix 4.

1140 See Appendix 2 for more information about the interviews with local area commanders and commanders from specialist units.

One of the officers who participated in the focus groups for Operation Abelia[1141] spoke about his experience of the delay in being drug tested following a critical incident:

> Being a victim of drug testing – and I made a written complaint about the process – I have a complaint about the mechanics of the drug testing. I was in a cubicle, there were people waiting outside, you were a prisoner and not explained your rights, what you could and couldn't do. If they explained it, 'listen we're going to take you to hospital, take a sample', I would've said 'great.' But the waiting time of 12 hours, all that makes me anti.

With regard to the time between the critical incident and drug testing, NSW Police has told the PIC that only 4% of critical incidents have involved more than six hours travel from the Sydney Metropolitan area and also that '96% of critical incidents have been responded to within a relatively short time frame'.[1142] The NSW Police Director of Health Services has said that in the vast majority of cases, drug testing is conducted within two or three hours of the incident.[1143]

NSW Police also advised the PIC that while it recognised that it can take some time for the Testing Team to travel to remote areas, its experience had shown that even in those circumstances, the Testing Team invariably arrived before other specialist groups such as Forensic Services and the Critical Incident Review Team.[1144]

Observation 5: **One reason NSW Police gave for deciding not to use local hospitals to conduct drug tests in remote locations is that it could not guarantee that the Australian Standard would always be met.**

The second reading speech introducing the legislative amendment to enable mandatory drug testing foreshadowed that drug testing would be conducted by the testing team from the Sydney-based Human Services Command while the breath analysis for alcohol testing would be conducted locally:

> To be effective, mandatory testing must be carried out as quickly as possible after the incident. The bill will permit alcohol testing by way of breath analysis to be carried out straight away by authorised personnel at the local level.
>
> Drug testing will be administered by non-sworn personnel and co-ordinated by the drug and alcohol testing unit of the Human Resources Command. In addition medical practitioners will be permitted to take a blood sample from an incapacitated officer at the direction of an authorised person. This

1141 For further information about how the focus groups were conducted and the responses of participants refer to Appendix 4.

1142 NSW Police response to Operation Abelia Round Table 1c: *Drug testing following critical incidents*. April 2004, p. 2.

1143 Operation Abelia, PIC Transcript, G N Jackel, 15 December 2003, pp. 105-106.

1144 NSW Police response to Operation Abelia Round Table 1c: *Drug testing following critical incidents*. April 2004, p. 2.

> means that officers who are hospitalised, or taken from the scene, can be tested within a reasonable time.[1145]

To reduce possible delays in testing officers following critical incidents in country areas, some country commanders suggested that drug testing should be done locally, for example:

> Expand provisions to allow others to carry out testing, especially in rural areas.
>
> A local capability would improve timeliness.
>
> Need local facilities to be used.

Similarly one of the officers who participated in a focus group commented:

> Why not take [critical incident testing] to the hospital?

NSW Police advised that while it had considered using local hospitals to conduct drug testing in remote locations, it had decided against this on two grounds:

- an 'overwhelming response' by officers that they would prefer not to use local doctors or nurses because they regularly work with these people and would not like to be drug tested by them, and
- given the very low rate of critical incidents in remote areas, a local doctor or nurse would have very little practice in complying with the Australian drug testing standard[1146], with the result that NSW Police considered it highly unlikely that a guarantee could be given that the standard would be strictly adhered to on every occasion.[1147]

The Police Association of NSW (PANSW) said that it also did not support the use of local medical facilities for drug testing because it considered that there is little opportunity to maintain the integrity of the process and comply with the Australian standard because very few local facilities would have expertise in the area.[1148] The PANSW expressed the view that it is imperative that all the required procedures are followed so as to protect both the officer and the community.[1149]

1145 NSW Legislative Assembly Hansard, Police Service Amendment (Alcohol and Drug Testing) Bill, Second Reading Speech, 27 May 1998, p. 5329.

1146 The standard referred to here is Standards Australia/Standards New Zealand (2001) Procedures for the collection, detection and quantification of drugs of abuse in urine. Australian/New Zealand Standard AS/NZS 4308:2001. This standard is described further at the beginning of Section 6.4 of this chapter that discussed Targeted Drug Testing.

1147 NSW Police response to Operation Abelia Round Table 1c: *Drug testing following critical incidents*. April 2004, p. 2; Minutes of Operation Abelia Round Table 1c: *Drug testing following critical incidents*. 22 April 2004, p. 5.

1148 Police Association of NSW response to Operation Abelia Round Table 1c: *Drug testing following critical incidents*. April 2004, p. 2.

1149 Minutes of Operation Abelia Round Table 1c: *Drug testing following critical incidents*. 22 April 2004, p. 5.

Observation 6: **Some consider mandatory drug testing to be a deterrent because officers cannot predict when they are likely to be involved in a critical incident.**

The NSW Police Director of Health Services has told the PIC that he sees mandatory drug testing as a form of random drug testing:

> … I think it is important to include in the random testing the mandatory testing, which is a form of random testing, if you like.[1150]

Some officers who participated in the focus groups conducted as part of Operation Abelia[1151] suggested that mandatory drug testing can act as a deterrent to officers who might otherwise consider using illegal drugs, for example:

> I think it also acts as a deterrent. They think, 'I could walk around a corner and get involved in a shooting and they're going to test me'.

Observation 7: **During Operation Abelia NSW Police suggested to the PIC that the range of circumstances that result in an officer being drug tested should be broadened.**

While s.211A (2A) of the *Police Act 1990* currently enables drug testing of officers involved in an incident where a person has died or been seriously injured following a police motor vehicle pursuit or the discharge of a firearm, or an incident where a person has died in police custody, it does not provide for drug testing following an incident where a person has been seriously injured while in police custody.

During the course of Operation Abelia, NSW Police suggested to the PIC that the definition of 'critical incident' should be broadened by requiring drug testing where:

- a person sustains a serious injury while in police custody
- a firearm is used or discharged, even where a person is not killed or seriously injured, in instances other than for the purposes of training.

In his evidence in a PIC public hearing on 15 December 2003, the NSW Police Director of Health Services said that he believed that the current definition of critical incident, which only allows for those killed whilst in custody and not for those seriously injured, should be broadened to include 'seriously injured in custody':

> I believe that the definition of a critical incident should be broadened. We have actually had a request, a verbal request, from the coroner's officer to bring the definition of critical incident in line with the coroner's ability to

1150 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 153.

1151 For further information about how the focus groups were conducted and the responses of participants refer to Appendix 4.

> conduct inquiries into any police operation where someone's killed or seriously injured.[1152]

When subsequently asked to identify any areas of the policy or procedures for mandatory drug testing that could be improved, the NSW Police Director of Health Services returned to the definition of critical incident:

> I personally would like to see the definition of a critical incident changed to talk about serious injuries in custody as well. We have had numerous incidences where an individual has been very seriously injured, the medical advice was that they were not expected to live beyond 24 or 48 hours, but because they hadn't actually died at the time of the incident we had no legal authority to conduct tests.
>
> In those situations, we usually rely on the good grace of the officers involved and we indicate to them that it's in their own personal interest for these tests to be done. We have had on occasion officers decline in those situations because we did not have the legislative authority to do so.[1153]

NSW Police advised that the current legislation has presented difficulties for Critical Incident Investigation Teams, particularly in those incidents where a person has been fatally injured in custody but has not died immediately.[1154]

The NSW Commissioner of Police supported broadening the definition of critical incidents. In his closing remarks, made on the final day of the Operation Abelia public hearings, the Commissioner of Police suggested that the PIC should 'consider extending the definition of "critical incident" to include serious injury and to extend the definition to include the use or discharge of a firearm in instances other than for the purposes of training'.[1155]

In the Operation Abelia round table discussions the Police Association of NSW (PANSW) said that it accepted that the current definition of critical incident is inadequate and that consideration needs to be given to those situations where a serious injury is sustained in custody.[1156] The PANSW said that it considered a serious injury in custody would be one that is life threatening or likely to result in permanent impairment or long-term rehabilitation.

Both the PANSW and the NSW Ombudsman expressed concern about possible subjective definitions of what is meant by 'serious injury'. The NSW Ombudsman referred to the guidance on what is meant by 'serious injury' that is given in the NSW Police Critical Incident Guidelines, which suggests that 'a serious injury is one that would normally require emergency admission to hospital and significant medical treatment'. The NSW Ombudsman said that the term 'significant medical treatment' is highly subjective and open to interpretation and that it would prefer to see further

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1152 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, pp. 102-103.

1153 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, pp. 110-111.

1154 NSW Police response to Operation Abelia Round Table 1c: *Drug testing following critical incidents*. April 2004, p. 1.

1155 Operation Abelia, PIC Transcript, Commissioner K. Moroney, 12 November 2004, p. 1323.

1156 For more information about the round table discussions conducted as part of Operation Abelia, refer to Appendix 7. Police Association of NSW response to Operation Abelia Round Table 1c: *Drug testing following critical incidents*. April 2004, p. 1.

guidance given on this.[1157] The NSW Ombudsman further suggested that it would be desirable to give guidance in the form of brief scenarios as to what is and what is not to be considered as 'serious injury'.[1158]

Observation 8:	**Some other law enforcement agencies drug test officers following a wider range of incidents than those specified in the NSW Police legislation.**

The Australian Federal Police (AFP)[1159], the Queensland Police Service (QPS)[1160] and the Tasmanian Police Service[1161] legislation each enable drug testing following an incident where a person has been seriously injured while in police custody.

The AFP legislation also enables drug testing where a person is killed or seriously injured in an incident involving a vessel (as opposed to a motor vehicle).[1162]

Observation 9:	**NSW Police has also suggested that mandatory drug testing should be broadened to enable any civilian staff members who are directly involved to be drug tested after a critical incident.**

A number of positions within NSW Police have been 'civilianised' with both sworn officers and civilian staff undertaking the same tasks.

In evidence given to the PIC on 15 December 2003, the NSW Police Director of Health Services suggested that there may be occasions where civilian staff should be drug tested:

> In the past there have been a couple of instances where communication officers have been tested as a part of a critical incident, just to determine whether or not – to raise any issues or to address any issues that might have come up in the past about radio instructions that might be received via police radio or police communications.
>
> There are both sworn and non-sworn communication officers, radio operators, in the organisation. I think, to be entirely appropriate and fair, anyone who is involved in a critical incident, whether they be sworn or non-sworn, would be appropriate to be tested in those situations.[1163]

1157 NSW Ombudsman response to Operation Abelia Round Table 1c: Drug testing following critical incidents. April 2004, p. 1.

1158 Minutes of Operation Abelia Round Table 1c: *Drug testing following critical incidents*. 22 April 2004, p. 4.

1159 Section 40N(1) of the *Australian Federal Police Act 1979* refers to 'a person is killed or seriously injured in an incident … while in police custody' while Section 40N(2) of the Australian Federal Police Act 1979 refers to 'a person is killed or seriously injured by … physical force'.

1160 In Section 5A.2 of the *Queensland Police Service Administration (Alcohol and Drug Testing) Amendment Act 2003* a critical incident is defined as including, amongst other incidents, 'a workplace incident at a police station or police establishment' in which 'a person dies or because of which a person is admitted to hospital for treatment of injuries'.

1161 Section 50(2) of the *Tasmanian Police Service Act 2003* states that drug testing may be carried out in the event of an incident involving a police officer, while discharging the duties of a police officer, where a person is killed or seriously injured.

1162 Section 40N(1) of the *Australian Federal Police Act 1979*.

1163 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 134.

In the round table discussions conducted as part of Operation Abelia, NSW Police expressed the view that any employee who is directly involved in a critical incident should be required to comply with the mandatory testing legislation, irrespective of their sworn status.[1164] The NSW Ombudsman said that it has no objection, in principle, to the drug testing of a civilian staff member who is directly involved in a critical incident.[1165]

In his closing remarks on the final day of the Operation Abelia public hearings, the Commissioner of Police suggested that consideration should be given to drug testing civilian staff in operational areas following involvement in a critical incident:

> With a number of non-police or civilian staff employed by the NSW Police in key operational areas, such as communications and forensic services, their likelihood of being involved in critical incidents is increasing. I would therefore welcome the Commission's recommendations on the extension of our testing regime to all civilian areas declared as operational. Procedural issues applying to civilians may necessitate some further examination and discussion with the Public Service Association.[1166]

It is relevant to note that the AFP and the QPS legislation permit the testing of civilian staff.[1167]

Observation 10: The recommendation made in Operation Saigon concerning blood testing was based on the evidence heard that blood was the most reliable indicator of the presence of drugs.

In its report to Parliament concerning Operation Saigon, the PIC (2001) recommended:

> that the law should allow for, and require the obtaining of the best evidence for the purpose of drug and alcohol testing of a police officer after a critical incident, namely blood testing.[1168]

During Operation Saigon the PIC heard evidence from Associate Professor Starmer from the Department of Pharmacology at the University of Sydney. In his evidence Associate Professor Starmer said that he would rank blood as the most reliable indicator of the presence of drugs, followed by saliva, then urine and then hair.[1169] Associate Professor Starmer said that the principal advantage of the use of blood samples is:

1164 NSW Police response to Operation Abelia Round Table 1c: *Drug testing following critical incidents*. April 2004, p. 4.

1165 NSW Ombudsman response to Operation Abelia Round Table 1c: *Drug testing following critical incidents*. April 2004, p. 2.

1166 Operation Abelia, PIC Transcript, Commissioner K. Moroney, 12 November 2004, p. 1323.

1167 The *Australian Federal Police Act 1979* permits drug testing of any AFP employee (see ss.40M(1) and 40N). In addition to officers, s.5a.3(1) of the *Queensland Police Service Administration (Alcohol and Drug Testing) Amendment Act 2003* permits the drug testing of: a staff member whose duties include performing functions in a critical area; an assistant watch-house officer or a person whose duties include duties as an assistant watch-house manager; or a police radio and electronic technician.

1168 Police Integrity Commission, *Report to Parliament: Operation Saigon*. Sydney: Police Integrity Commission, June 2001, p. 127.

1169 Operation Saigon Phase III, PIC Transcript, G. A. Starmer 2 March 2000, p. 624.

> …with the proviso that what you are actually trying to do ultimately is to relate a drug level to some form of human behaviour, whatever that might be, then human behaviour is governed by events which go on in the brain. The nearest you can get practically to what is going on in the brain is to take a blood sample.[1170]

Associate Professor Starmer added that a blood test should be taken as soon as possible after the critical incident to give the best chance of making any linkage between the nature of the drug and its concentration and any effect it might have on the incident itself.[1171] He added:

> It doesn't guarantee that it would allow that interpretation, but it maximises the chances, equally, it maximises the chances of saying you could not make any inference from the level of drug found in the blood. It is a question of interpretation.[1172]

Observation 11: Officer opinion is divided about blood testing.

When officers were asked their opinions about the desirability of taking blood versus urine samples during the focus groups conducted for Operation Abelia, some officers expressed favourable opinions about using blood samples, for example:

> [Facilitator:] What do you think of blood testing? [Participant:] I haven't got a problem with it. [New speaker:] I'd prefer it to having to piss in a bottle. [Several participants:] Yes.

> [Facilitator:] The Police Association has been anti blood testing. This is the first time I've heard people supporting blood. [Participant:] How many people you've spoken to before have been involved in critical incident testing, and had the experience of being treated second hand?

Some focus group participants indicated an aversion to blood testing, although they did not necessarily give their reasons for this, for example:

> I would prefer oral swab to needle tests.

> [Urine is] better than blood, I don't want them taking blood out of me.

1170 Operation Saigon Phase III, PIC Transcript, G. A. Starmer 2 March 2000, p. 624.

1171 Operation Saigon Phase III, PIC Transcript, G. A. Starmer 2 March 2000, pp. 626-627.

1172 Operation Saigon Phase III, PIC Transcript, G. A. Starmer 2 March 2000, p. 627.

Observation 12: Other Australian police agencies tend to rely on drug tests based on urine specimens following a critical incident, though the legislation for some agencies also makes provision for taking blood samples.

The recent Queensland Police Service legislation permits the use of urine samples only for what it calls 'targeted substance testing' that includes critical incident tests.[1173]

The drug testing regime used by the Australian Federal Police (AFP) follows the Australian Standard AS4308 and hence also uses urine samples.[1174] The AFP Act does provide for other forms of body sample (such as blood or hair) to be sought for drug testing purposes though, under the policy, requesting a different form of sample must be carefully considered having regard to whether it is 'justified by the circumstances'.[1175]

The Tasmanian legislation permits an officer involved in a critical incident to 'provide a sample of urine or saliva for testing for the presence of any alcohol or drug' or 'with the consent of the police officer, permit a sample of blood to be taken by a qualified person for testing for the presence of any alcohol or drug'.[1176] At the time of drafting this report such drug testing had not commenced as the Tasmanian Department of Police and Public Safety was developing its comprehensive drug and alcohol policy and procedures, which will, in part, enable the implementation of the drug testing aspects of the legislation.

Observation 13: The current debate on different approaches to assessing drug driving demonstrates that there is no consensus as to the best way to detect those driving under the influence of drugs.

When considering appropriate drug testing methodologies, it is of interest to note that in recent years there has been some discussion of a range of proposals to attempt to test for drug-affected drivers. While not specifically talking about 'impairment', these jurisdictions have referred to 'drug influenced behaviour', 'driving under the influence of drugs' and 'drug-affected drivers'. These proposals are of interest both because of the relative recency of the debate and because the variety of techniques nominated demonstrates the lack of consensus about the appropriate way to assess drug-affected behaviour. While representatives of some jurisdictions have been reported as saying that it is not possible to determine drug-influenced behaviour, others have proposed various methods for roadside testing including:

- saliva or oral fluid samples
- behavioural tests, or

1173 Section 5A.2 of the *Queensland Police Service Administration (Alcohol and Drug Testing) Amendment Act 2003* defines a 'targeted substance test' as a 'test for deciding whether a relevant member has evidence of a targeted substance in the member's urine'.

1174 Further information on the Australian/New Zealand Standard for the collection, detection and quantification of drugs of abuse in urine can be found in Section 6.4 on Targeted Drug Testing under the heading 'Sampling collection and testing procedures'.

1175 Australian Federal Police, National Guideline on the Use of Prohibited Drugs, Canberra, p. 3.

1176 Section 50(2) of the *Tasmanian Police Service Act 2003*.

- a hand-held computerised device.

The approaches reported as proposed or in use by some of these jurisdictions are described below. The accuracy of these approaches in assessing drug-affected behaviour has still to be established.

Victoria commenced a 12 month trial of roadside saliva testing for cannabis and methamphetamines, in accordance with the Victorian *Road Safety (Drug Driving) Act 2003*, on 13 December 2004.[1177] The accuracy of this form of drug testing was questioned when two of the first three drivers who were reported to have tested positive were subsequently reported as having been cleared by an independent laboratory.[1178] Some other Australian states are also reported to be considering trials similar to the Victorian trial. The specific nature of these trials has yet be specified.[1179]

On 23 December 2004, British police were given new powers to conduct roadside drug tests such as asking drivers to stand on one leg and count out loud, to see whether a driver's balance, judgment and ability to do two things at once have been affected by drugs.[1180]

Queensland has also reportedly proposed the use of a range of behavioural tests, such as 'looking at a driver and finding out whether his eyes are bloodshot, asking whether he can stick his right index finger on his nose or walk a straight line'.[1181] Similarly, New Zealand Police is reported to be proposing to use trained police staff to determine whether drivers are 'on drugs' by examining their pupil dilation and 'those suspected of having used drugs would have to do coordination tests like walking in a straight line'.

Drivers suspected of drug use will reportedly be taken to hospital to confirm police suspicions, though it was not clear how this would be done.[1182] As of May 2004, up to 36 New Zealand Police officers from Traffic Alcohol Groups (TAGs) were being trained in international best practice regarding field impairment testing and drug-driving enforcement in order to prepare them for conducting on-the-job field impairment testing.[1183] It is of interest to note that some research on these behavioural measures

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1177 D. Silkstone, Roadside drug test swiftly snares offender No. 1. *The Age Online, 14 December 2004*, <www.theage.com.au>,

1178 Herald-Sun, Drug-test questions. *The Herald-Sun, 16 December 2004*; ballarat.yourguide, Doubts over saliva checks, *ballarat.yourguide 15 December 2004*, <www.yourguide.com.au>; N. Ross, Roadside drug tests in turmoil. *Herald Sun, 22 December 2004*.

1179 G. Kelton, Plan to test drivers for illegal drugs, *The Advertiser, 26 November 2004*; E. Whinnett, State to stick with driver drug testing. *The Mercury, 23 December 2004*, <www.news.com.au>; R. Pash, Drivers face roadside drug tests. *NEWS.com.au, 11 November 2004*; R. Johns, *Briefing Paper No. 15/04 – Drink Driving and Drug Driving. NSW Parliamentary Library Research Service*, December 2004, pp. 48-58, <http://www.parliament.nsw.gov.au>.

1180 The Department for Transport, Code of Practice for Preliminary Impairment Tests, December 2004, issued by the Secretary of State for Transport under the power contained in Section 6B(2) *Road Traffic Act 1988* (as amended by the *Railways and Transport Safety Act 2003*), and for the use of police officers trained and authorised to carry out Preliminary Impairment Tests; BBC News, Police get driver drug test power. *BBC News, 22 December 2004*; news.telegraph, Drivers given one-legged drugs test. *Telegraph, 23 December 2004*, www.telegraph.co.uk.

1181 S. Parnell, Driving licences put on the line. *The Courier-Mail, 17 September 2003*.

1182 J. Smith, Bay drivers target for random drug tests. *Bay of Plenty Times, 22 January 2004*; L. Bleakley, Police eye Australian drug test trial, *stuff.co.nz, 11 January 2005*, www.stuff.co.nz.

1183 New Zealand Police, 'Training to recognise drug-driving begins', Ten One: *The New Zealand Police Online Magazine (Community Edition), May 2004*, <http://www.police.govt.nz/tenone/20040430-260/feature_train1.htm>.

(or sobriety tests) has found that sobriety tests such as 'the One Leg Stand' have been found to detect the presence of cannabis even when driving is not impaired.[1184]

At present, there is no objective test available in line with the breathalyser that can be used at the roadside to determine impairment due to drugs. However, in November 2003 it was reported that police in the UK were trialing a new hand-held device known as an 'impairment detector'. It was acknowledged that the device was still in the early stages of development and the Police Scientific Development Branch (PSDB) was reported to be in the process of studying results from a prototype to determine whether further trials were warranted.[1185] Information obtained by the PIC from the Home Office PSDB indicates that a range of simple impairment tests have been programmed onto different types of hand-held computer devices and these have undergone validation testing to determine whether they may have a practical use as a roadside screening tool. At the time of writing this report, researchers were planning to combine the most sensitive of the impairment measures already tested into a single hand-held device before further field research is carried out.[1186]

In Ottawa Canada, a Bill introduced to the House of Commons in November 2004 proposed to amend the Criminal Code to authorise specially trained police officers to conduct behavioural tests to determine whether a person is impaired by a drug and also to take samples of bodily fluids to test for the presence of a drug in a person's body. Under the amendments outlined in Bill C-16, drivers suspected of being under the influence of drugs could be required to perform physical coordination tests and to provide police with a sample of oral fluid, urine or blood. However, at the time of drafting this report, the Bill remains with the House of Commons of Canada and its provisions are yet to be enacted.[1187]

It has been reported that both the Northern Territory and Western Australia have announced that they will not follow Victoria's lead in drug testing motorists. In the Northern Territory, the Police Minister Paul Henderson is reported to have said that roadside drug testing is too slow and too expensive to be used in the Northern Territory yet.[1188] In Western Australia, the WA Road Safety Council was reported as saying that saliva-testing technology is not sufficiently proven or reliable.[1189]

Other work is currently underway in this area. The European Union established a project to examine 'Roadside Testing Assessment'. This project is known as 'Rosita'. A series of 'deliverables' were released through this project in June 1999[1190], August

1184 K. Tzambazis, & C. Stough (2003) The SFST and driving ability: Are they related? Drugs and Driving Research Unit, Centre for Neuropsychopharmacology, Swinburne University of Technology, Hawthorn, Victoria, Australia.

1185 G. Lawton, End of the breathalyser? *New Scientist, 22 November 2003*, p. 25.

1186 Correspondence from Project Manager, Road Policing Technology, Home Office Scientific Development Branch, UK, 30 March 2005; P.R. Dixon, S. Davies & P. Mumby-Croft, Development of a Roadside Screening Device for Driver Impairment, Home Office Police Scientific Development Branch, Sandridge, St Albans, Hertfordshire, UK (n.d.), p. 1; A. Degia et al, Evaluation of a Driver Impairment Device: An Illicit Drugs Field Investigation With Volunteers, HPRU Medical Research Centre, School of Biomedical and Molecular Sciences, University of Surrey, Guildford, UK, (n.d.), p. 5. *Presented to the International Conference on Alcohol Drugs & Traffic Safety (ICADTS), Glasgow, August 2004*.

1187 Bill C-16, First Session, Thirty-eighth Parliament, House of Commons of Canada, An Act to amend the Criminal Code (impaired driving) and to make consequential amendments to other Acts, First Reading, 1 November 2004. Refer to amendments to subsections 254(2) & 254(3), <http://www.parl.gc.ca/legisinfo>.

1188 E. Bevin, Driver drug tests delayed. *news.com.au, 19 November 2003*.

1189 N. Miller, WA snub to driver drug test. *The West Australian, 15 September 2003*.

1190 Deliverable 1: Drugs and medicines that are suspected to have a detrimental impact on road user performance; Deliverable 2: Inventory of state-of-the-art roadside drug testing equipment.

1999[1191], and December 2000.[1192] The second phase of the Rosita project ('Rosita-2') is intended to be a three-year project to evaluate roadside oral fluid tests in six countries in Europe and several centres in the USA. Rosita-2 commenced in late 2003.[1193]

It should be noted that in NSW, while at the time of drafting this report there is no provision for random drug testing of drivers, a NSW Police officer is permitted to drug test drivers who have passed a roadside breath test and where the officer has a reasonable belief that the driver may be under the influence of a drug. In such a situation an officer may require a person to submit to an assessment of his or her sobriety.[1194] Information provided to officers states that this sobriety assessment is not defined anywhere and the nature of the sobriety assessment will be a matter for the officer to determine.[1195] Blood and urine samples can also be obtained from a driver by a medical practitioner at a hospital or another place prescribed by the regulations if the driver refuses to undertake the sobriety assessment or if the officer has a reasonable belief that the person is under the influence of a drug after the sobriety assessment.[1196] Educative material provided to NSW Police officers states that:

> The legislation has provided in certain circumstances for a blood and/or urine sample to be taken to test for the presence of a drug. A concentration of the drug can be ascertained. A certificate to that effect is admissible as evidence. However, the concentration of the drug as described in the certificate is meaningless to the law without expert interpretation. It is essential therefore to call as a witness in all DUI drug prosecutions where a blood analysis has been conducted, an expert to give evidence about the effect the scientifically determined concentration of the drug would have on the person.[1197]

In NSW a blood sample can also be taken from accident patients who are admitted into hospital for examination or treatment as a consequence of an accident on a road or road-related area.[1198] This blood sample may be analysed for the concentration of a drug other than alcohol only where:

- the officer has reasonable grounds to believe at the time of the accident concerned, the person from whom the sample was taken was under the influence of a drug other than alcohol, and
- because no officer attended the scene of the accident there was no reasonable opportunity to require the person from whom the sample was taken to submit to an assessment of his or her sobriety.[1199]

1191 Deliverable 3: Operational, user and legal requirements across EU member states for roadside testing equipment.

1192 Deliverable 4: Evaluation of different roadside drug tests; Deliverable 5: General conclusions and recommendations.

1193 For further information about Rosita and Rosita-2 refer to <www.rosita.org>.

1194 Section 25 of the *Road Transport (Safety and Traffic Management) Act 1999*.

1195 D. Godfrey, & M. Phillips, Driving under the influence of drugs. *NSW Police, Policing Issues & Practice Journal, January 2003*, p. 22.

1196 Sections 26 and 27 of the *Road Transport (Safety and Traffic Management) Act 1999*.

1197 D. Godfrey, & M. Phillips, Driving under the influence of drugs. *NSW Police, Policing Issues & Practice Journal, January 2003*, p. 21.

1198 Section 20 of the *Road Transport (Safety and Traffic Management) Act 1999*.

1199 Sections 23 (5) and 23(6) of the *Road Transport (Safety and Traffic Management) Act 1999*.

Observation 14: Drug tests do not measure impairment.

It is widely recognised that while drug tests detect exposure to drugs they do *not* measure impairment. A positive drug test result does not indicate impairment nor does it measure an employee's ability to carry out his or her work.[1200] This is particularly true of drug tests based on urine samples. On the one hand, drug tests based on urine samples can detect previous drug use that is not indicative of current impairment. As many writers on the topic have noted, drug metabolites can be detected in urine samples long after any drug-related impairment would have ceased. On the other hand, drug tests based on urine samples may not detect very recent drug use as it takes some time for the drug metabolites to appear in the urine, though the experts whom the PIC consulted were not concerned with failing to detect any possible drug use by relying on urine samples.

There are also difficulties assessing drug-related impairment through the analysis of drug concentrations in blood samples. An analysis of a blood sample can determine the blood concentration level of different drugs at the time the sample was taken. Writers in this area have observed that it has not been possible to set a cut-off limit for drug use that might indicate impairment in relation to driving because there is no known correlation, with the exception of ethanol (alcohol), between blood drug concentration levels and impairment.[1201] There are many reasons for the difficulty in relating the

1200 See, for example, All-Party Parliamentary Drug Misuse Group, *Drug testing on trial. A report of the All-Party Parliamentary Drug Misuse Group*, London: House of Lords, July 2003, p. 16-17; S. Allsop, & M. Phillips, Drug testing in the workplace: An unfortunate marriage. *Paper presented at forum, 'Under the influence: The issues and practicalities of alcohol and other drug testing in the workplace', Perth, 8 October 1996*, p. 1; American Civil Liberties Union (ACLU) *Drug testing: A bad investment*. New York: ACLU September 1999, p. 9; D. Blaze-Temple, Drug testing in the Australian workplace: an overview of the issues. *Drug and Alcohol Review, 11, 1992*, pp. 61-62; T. Browne, Managing drugs & alcohol in the workplace. *Paper presented at the Australian Workers' Union Testing the limits: An exploration of drug and alcohol testing in the workplace, Melbourne, 2 May 2003*; K. Heiler, Drugs and alcohol management and testing standards in Australian workplaces: avoiding that 'morning-after' feeling. Sydney: *ACIRRT University of Sydney, Working Paper 81. Presented at breakfast briefing on 5 December 2002 at Masonic Centre Sydney. Reprinted in AWU Seminar Papers: Testing the limits: An exploration of drug and alcohol testing in the Workplace, Friday May 2 2003*, p. 7; P. Holland, & M. Wickham, The contentious issue of drug testing in the workplace: The case of South Blackwater Mine. School of Management, University of Tasmania, November 2001, p. 5; J. H. Lewis, Drug detection and its role in law enforcement. *Australian Institute of Criminology, Trends & Issues No. 205, May 2001*, p. 5; B. A. Manili, E. F. Connors, D. W. Stephens, & J. R. Stedman, Police drug testing. *US Department of Justice, National Institute of Justice, May 1987*, p. 9; National Council on Alcoholism and Drug Dependence, Policy statement: Alcohol and other drug testing. National Council on Alcoholism and Drug Dependence, Inc. October 1993, <http://www.ncadd.org>; National Workrights Institute, Workplace drug testing. (n.d.), <http://www.workrights.org>; Privacy Committee of New South Wales *Drug testing in the workplace*. The Privacy Committee of New South Wales, No. 64, October 1992, p. 21; M. A. Rothstein, Workplace drug testing: A case study in the misapplication of technology. *Harvard Journal of Law and Technology, 5, Fall Issue, 1991*, p. 5, <www.jolt.law.harvard.edu/articles>; B. Shahandeh, & J. Caborn, Ethical issues in workplace drug testing in Europe. *Paper presented at Seminar on Ethics, Professional Standards and Drug Addiction organised by the Pompidou Group Council of Europe, Strasbourg, 6-7 February 2003*, p. 8; B. Shorten, When workers become canaries. *Paper presented at the Australian Workers' Union Conference, Testing the limits: An exploration of drug and alcohol testing in the workplace, Melbourne, 2 May 2003*; G. Tweedly, Testing the limits. *Paper presented at the Australian Workers' Union Conference, Testing the limits: An exploration of drug and alcohol testing in the workplace, Melbourne, 2 May 2003*; WorkCover New South Wales, *Drugs, alcohol and the workplace: A guide to developing a workplace drug and alcohol policy*. WorkCover NSW, 1995, p. 12; Worksafe Western Australia Commission, *Guidance notes: Alcohol and other drugs at the workplace*. Worksafe Western Australia Commission Perth; 2000, p. 23.

1201 M. A. Rothstein, Workplace drug testing: A case study in the misapplication of technology. *Harvard Journal of Law and Technology, 5, Fall Issue, 1991*, p. 5, <www.jolt.law.harvard.edu/articles>; Privacy Committee of New South Wales, *Drug testing in the workplace*. The Privacy Committee of New South Wales, No. 64, October 1992, p. 21; the 1989 report of the Parliament of New South Wales Joint Standing Committee of Road Safety (the Staysafe Committee) cited by Privacy Committee of New South Wales, *Drug testing in the workplace*. The Privacy Committee of New South Wales, No. 64, October 1992, p. 22; B. Shahandeh, & J. Caborn, Ethical issues in workplace drug testing in Europe. *Paper presented at Seminar on Ethics, Professional Standards and Drug Addiction organised by the Pompidou Group Council of Europe, Strasbourg, 6-7 February 2003*, p. 8; S. Allsop, & M. Phillips, Drug testing in the workplace: An unfortunate marriage. *Paper presented at forum, 'Under the influence: The issues*

concentration of a drug in a person's blood to what effects the drug might have on the person's behaviour, for example:

> Interpretation of the effects produced at various concentrations of drugs in blood specimens depends on many factors not generally available to an expert witness for use as a basis for formulating acceptable scientific opinions. Some of the factors are: the impossibility of reliably back calculating concentration to a prior time, individual differences in metabolism, single or chronic dosing, tolerance, withdrawal, inter and intralaboratory methods and variances, multiple drug use, method of use, and the ranges of drug concentrations produced in different individuals ingesting the same size dose.[1202]

Observation 15: While different 'fitness-for duty' tests have been developed to detect impairment, the accuracy and reliability of such tests has yet to be proven.

The PIC has also reviewed the current literature on alternative drug testing methodologies to inform its work in Operation Abelia. Several 'fitness-for-duty' or performance tests have begun to be developed as alternatives to alcohol and other drug tests. These tests usually seek to assess whether performance is impaired rather than investigate the cause of any impairment. Such tests do not necessarily distinguish fatigue-induced impairment from drug-induced impairment.[1203]

Corry (2001) has described fitness-for-duty testing as usually involving a set of brief tasks that assess cognitive and psychomotor functioning. She has said that these tests may include critical-tracking tasks or divided attention tasks. For example, in a 'critical-tracking task', the employee attempts to control random movements of an arrow and to keep it within the target area on a computer screen. In a divided attention task, the individual is typically required to complete two tasks that simultaneously appear on a computer screen. Usually these tests are very brief – only of a few minutes' duration – and they are easy to administer, thereby avoiding the placement of undue economic and time burdens on the workplace.[1204] A variety of such tests have been developed, for example:

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and practicalities of alcohol and other drug testing in the workplace', Perth, 8 October 1996, p. 3; J. H. Lewis, Drug detection and its role in law enforcement. *Australian Institute of Criminology, Trends & Issues No. 205, May 2001*, p. 5.

1202 A. J. McBay, *Drugs and driving impairment*. Shaffer Library of Drug Policy, p. 7, <http://www.druglibrary.org/schaffer/Misc/driving/ddimp.htm>.

1203 A. Corry, Controls on drug use. In S. Allsop, M. Phillips, & C. Calogero (Eds) (2001) *Drugs and work: Responding to alcohol and other drug problems in Australian workplaces*. East Hawthorn, Victoria: IP Communications Pty Ltd, p. 114; J. R. DesJardins, & R. Duska, Drug testing in employment. In W. H. Shaw (2003) *Ethics at work: Basic readings in business ethics*. New York: Oxford University Press, p. 109; DesJardins & McCall 1990 cited by P. Holland, & M. Wickham, The contentious issue of drug testing in the workplace: The case of South Blackwater Mine. School of Management, University of Tasmania, November 2001, p. 4; J. Nolan, Employee drug testing: Some recent legal developments. In S. Allsop, M. Phillips, & C. Calogero (Eds) (2001) *Drugs and work: Responding to alcohol and other drug problems in Australian workplaces*. East Hawthorn, Victoria: IP Communications Pty Ltd, p. 72.

1204 A. Corry, Controls on drug use. In S. Allsop, M. Phillips, & C. Calogero (Eds) (2001) *Drugs and work: Responding to alcohol and other drug problems in Australian workplaces*. East Hawthorn, Victoria: IP Communications Pty Ltd, p. 114.

- *OSPAT* is a psychomotor test that requires the subject to keep a randomly moving object within a defined target area on a computer screen. An individual's baseline score is established and future scores are measured against this baseline score.[1205]
- *FIT Workplace Safety Screener* measures a person's reactions against a baseline by measuring the flicker of the person's eye. It is based on the premise that a person's state of alertness and fitness for work can be readily determined by measuring their oculo-motor responses to light stimuli. An individual is designated only as 'low risk' or 'high risk' according to his/her performance on each particular session.[1206]
- The *EyeCheck Pupilometer* is a handheld instrument that is held to the eye and scans using green light flashing at the pupils. The test is administered three consecutive times to the recipient and at the conclusion of the final test, it calculates the average of the three tests. The machine, which costs £10 000, gives an instant reading of the pupil's reaction speed. Since the machine does not distinguish between use of alcohol, other drugs or fatigue, those who display slow reaction times in the four-minute test could then face further checks such as a urine test to confirm the presence of alcohol or other drugs. The manufacturers claim that it is 'the first to measure "impairment" rather than analyse urine or swabs for drugs that can remain in the system for days after ingestion'.[1207]
- A *hand-held computer device* which utilises simple impairment tests is being developed in the UK. It is described further in Observation 13.[1208]
- *FACTOR 1000* – A critical tracking task involving eye-hand co-ordination.[1209]
- *ART90* – computer-based test battery of 8 to 10 tests including: visual perception, reaction time, concentration, cognitive processing and personality.[1210]

1205 Boylan, Simpson, & Simpson, Fitness for work: Module 1 Managing fitness for work. Boylan, Simpson & Simpson, Corporate Psychology Services, West Perth, (n.d.), pp.1-2; L. Hartley, T. Horberry, N. Mabbott, & G. P. Krueger, *Review of fatigue detection and prediction technologies*. Melbourne: National Road Transport Commission, September 2000, p. 5; J. Nolan, Employee drug testing: Some recent legal developments. In S. Allsop, M. Phillips, & C. Calogero (Eds) (2001) *Drugs and work: Responding to alcohol and other drug problems in Australian workplaces*. East Hawthorn, Victoria: IP Communications Pty Ltd, pp. 72-73.

1206 Boylan, Simpson, & Simpson, Fitness for work: Module 1 Managing fitness for work. Boylan, Simpson & Simpson, Corporate Psychology Services, West Perth, (n.d.), pp.3-6; L. Hartley, T. Horberry, N. Mabbott, & G. P. Krueger, *Review of fatigue detection and prediction technologies*. Melbourne: National Road Transport Commission, September 2000, p. 5; J. Nolan, Employee drug testing: Some recent legal developments. In S. Allsop, M. Phillips, & C. Calogero (Eds) (2001) *Drugs and work: Responding to alcohol and other drug problems in Australian workplaces*. East Hawthorn, Victoria: IP Communications Pty Ltd, pp. 72-73.

1207 P. Peachey, Eye scanner introduced to test for drugs in the workplace. *Independent News, 25 September 2003*. <http://news.independent.co.uk/low_res/story.jsp?story=446756&host=3&dir=65>.

1208 G. Lawton, End of the breathalyser? *New Scientist, 22 November 2003*, p. 25; Correspondence from Project Manager, Road Policing Technology, Home Office Scientific Development Branch, UK, 30 March 2005; P.R. Dixon, S. Davies & P Mumby-Croft, Development of a Roadside Screening Device for Driver Impairment, Home Office Police Scientific Development Branch, Sandridge, St Albans, Hertfordshire, UK (n.d.), p. 1; A. Degia et al, Evaluation of a Driver Impairment Device: An Illicit Drugs Field Investigation With Volunteers, HPRU Medical Research Centre, School of Biomedical and Molecular Sciences, University of Surrey, Guildford, UK, (n.d.), p. 5. *Presented to the International Conference on Alcohol Drugs & Traffic Safety (ICADTS), Glasgow, August 2004*.

1209 L. Hartley, T. Horberry, N. Mabbott, & G. P. Krueger, *Review of fatigue detection and prediction technologies*. Melbourne: National Road Transport Commission, September 2000, p. 4.

1210 L. Hartley, T. Horberry, N. Mabbott, & G. P. Krueger, *Review of fatigue detection and prediction technologies*. Melbourne: National Road Transport Commission, September 2000, p. 5.

- *Psychomotor Vigilance Test (PVT)* – a ten minute administration of visual reaction time testing via a hand held device. [1211]
- *PassPoint Machine* is said to test for eight different categories of drug including marijuana, depressants, opiates, stimulants and inhalants. During a series of tests, the computerised device 'reads an offender's eye movements'. It automatically compares the outcome with results taken during a test conducted days or weeks earlier, after their urine tested negative for drugs. While the machine provides an instant reading, anyone who tests positive is required to submit to a follow-up urine test.[1212]

Some writers have identified a number of advantages of performance testing over drug testing, for example:

- individuals may experience drug-related impairment (hangover, withdrawal, etc), not detected through drug testing
- performance test results are available 'on-the-spot' where concern exists about an employee's capacity to work
- performance testing is non-intrusive and non-invasive, and
- performance testing specifically tests fitness for work and potential safety risks.[1213]

However, most reviewers are less certain of the capacity of these devices to assess impairment. For example, in her review of fitness-for-duty testing undertaken approximately ten years ago, Corner (1995) recommended the need for a systematic investigation of fitness-for-duty testing in organisations. Based on the information that she was able to gather from archival data from two commercial test manufacturers, interviews with managers of current and former clients of fitness-for-duty tests, and questionnaires completed by employees who undertake fitness-for-duty tests, Corner concluded that:

> fitness-for-duty testing loses something in the translation from theory to practice. These tests emerge valid and reliable in laboratory investigations; yet current test-takers and managers of former test-takers assert that the fit individuals fail while the obviously impaired individuals pass, and employees claim they can pass or fail their performance tests at will.[1214]

Boylan, Simpson and Simpson suggest that, while such tests could be viable in the next decade, such tests currently have the following limitations:

1211 L. Hartley, T. Horberry, N. Mabbott, & G. P. Krueger, *Review of fatigue detection and prediction technologies*. Melbourne: National Road Transport Commission, September 2000, p. 5.

1212 F. Geary, Test keeps an eye on drug use. *Las Vegas Review-Journal 28 January 2004*.

1213 D. Bull, Management of substance abuse in the Australian Defence Force. Consultancy provided by ACT Community Care Alcohol and Drug Program to the Australian Defence Force, October 2001, p. 34

1214 D. Corner, An evaluation of fitness-for-duty testing. *Presented at 103rd Annual Convention of the American Psychological Association, New York, 15 August 1995*.

- They determine the employee's state only at the moment of testing. Alertness levels vary rapidly and an employee who passes the test at the start of work may be seriously fatigued soon after.
- The employee can muster special effort to pass the test but be unable to maintain this.
- These tests may promote a passive attitude to fitness for work ('If the computer says I'm OK, then I must be fit for duty').
- There is always a danger that the tests do not measure the type of performance that is relevant to the job.
- These tests do not necessarily detect what may be 'mood impairment' for example certain drugs (e.g., stimulants, steroids) may improve an individual's alertness and/or performance but can also cause aggression, impatience and risk taking.
- They are believed to have less deterrent effect than regular [alcohol and other drug] testing as they are purposely designed not to provide information as to why the employee might be impaired.[1215]

Boylan and associates have also said that further research is required to demonstrate the reliability and validity of computer-based assessment:

> Further research is required to demonstrate the reliability and validity of computer based assessment. Until this is available, organisations should regard such technology as unproven and continue to utilise a broadly based programme to monitor and promote fitness for work. [1216]

More recently, evidence to the House of Representatives Standing Committee on Family and Community Affairs (2003) also suggested that the efficacy of the computer screen-based tests of impairment is currently unproven by large scale published studies.[1217] Nolan (2001) has also warned about the need for caution when evaluating the claims of different test manufacturers, given that many of the strongest promoters of these tests are likely to be those who have the most to gain financially:

> These impairment measurement systems are competitors to drug testing in the market place, and as such, claims about their effectiveness must be viewed with due circumspection. Nothing in this chapter should be regarded as an endorsement of either system. It may be expected, however, that if the claims of the superiority of these non-intrusive systems are proven, employees and their unions will press strongly for the replacement of random drug testing with impairment testing. Because of the relative technologies, the industrial community still awaits the kind of

1215 Boylan, Simpson, & Simpson, Fitness for work: Module 1 Managing fitness for work. Boylan, Simpson & Simpson, Corporate Psychology Services, West Perth, (n.d.), p. 4.

1216 Boylan, Simpson, & Simpson, Fitness for work: Module 1 Managing fitness for work. Boylan, Simpson & Simpson, Corporate Psychology Services, West Perth, (n.d.), p. 10.

1217 House of Representatives Standing Committee on Family and Community Affairs, *Road to recovery: Report on the inquiry into substance abuse in Australian communities*. Canberra: The Parliament of the Commonwealth of Australia, August 2003, p. 288.

independent, thorough scientific studies that will allow it to judge the merits of these competing systems.[1218]

Observation 16: The PIC held a round table discussion involving experts in pharmacology and forensic toxicology to inform itself of recent developments in drug testing and the advantages and disadvantages of the use of different types of specimen. There was general agreement by the experts that urine samples are adequate to detect the use of most illicit and impairing prescription drugs but that the use of blood samples had advantages in a limited range of circumstances.

Understanding that technology changes quickly, as part of Operation Abelia the PIC convened a round table discussion specifically to examine the most appropriate drug testing technology to be used following a critical incident. Four NSW experts in pharmacology and forensic toxicology - Professor MacDonald Christie, Associate Professor Graham Starmer, Associate Professor Chris Liddle and Dr John Lewis - were the key participants in this round table discussion. Also attending the round table discussion were representatives of NSW Police, the Police Association of NSW, the Ministry of Police, NSW Ombudsman and the PIC.[1219]

Amongst other things, at this round table discussion the following was agreed by the experts:

- Urine testing is adequate to detect the use of most illicit and impairing prescription drugs. Urine testing is well established and validated for detection of different classes of drug and initial screening tests are quite reliable. However, the relationship between time of use, presence of drugs and drug concentration in urine is poor for many drugs. Therefore this testing method does not provide proof that behaviour was affected or not by a drug at the time of taking the sample, nor at any earlier time such as at the time of the critical incident.
- For most drugs blood shows a closer relationship between behaviour or intoxication and drug concentrations or metabolites than urine. If the intention of testing is to establish the likelihood of intoxication at the time of testing, or some time before that, then blood tests are the most appropriate. Blood tests are superior both for establishing a high likelihood of intoxication and for ruling out intoxication.
- Regardless of the type of specimen used, impairment by a prohibited drug cannot be measured using current technology and expertise. The relationship between what is measured in the blood and behavioural effects 'is extremely complex'.

1218 J. Nolan, Employee drug testing: Some recent legal developments. In S. Allsop, M. Phillips, & C. Calogero (Eds) (2001) *Drugs and work: Responding to alcohol and other drug problems in Australian workplaces*. East Hawthorn, Victoria: IP Communications Pty Ltd, pp. 72-73.

1219 Refer to Appendix 7 for further information on the round table discussions conducted by the PIC for Operation Abelia and about the positions held by the experts who attended this round table discussion.

In addition the following points emerged:

- The best that can be done is to estimate the time frame during which the ingestion of some drugs took place. Where it is possible to estimate a time of ingestion this can be used to estimate the likelihood that a person's behaviour was adversely affected by this drug use. For example Professor Christie told other round table participants that if there is an estimate that cannabis may have been used in the last eight hours then the likelihood that the individual is impaired is about fifty per cent but equally it is possible that they may not be impaired.[1220]
- Blood appears to be the only suitable matrix for estimating the ingestion timeframe.
- In making these estimates one is actually interested in the blood drug concentration at the time of the incident and using this information to estimate the likelihood of behaviour being impaired at the time of the incident. For practical reasons the blood sample will be taken at some time after the incident and there is no agreed way to back-calculate what the blood drug concentration would have been at the time of the incident.
- Professor Christie also suggested that beyond two hours after use the information from a blood sample may not be much better than a urine sample (although he still thought that it would be worth collecting a blood sample after this time).[1221]
- There are no cut off limits for blood drug concentration levels for different drug types that are accepted as being able to indicate greater likelihood of impairment (cf .02, .05 or .08 blood alcohol concentrations).

ASSESSMENT AND RECOMMENDATIONS

Mandatory drug testing in NSW Police resulted from a recommendation made by the State Coroner. The State Coroner made this recommendation prior to the implementation of targeted or random drug testing in NSW Police. In making his recommendation he said that he saw this provision as an important form of protection for officers, particularly when unfounded allegations are made.

Effectiveness

The effectiveness of mandatory drug testing depends on the criteria against which it is judged.

Protecting officers from unfounded allegations

If the effectiveness of mandatory drug testing is judged solely on the grounds of protecting officers from unfounded allegations that a death or serious injury was the result of illegal drug use by an officer, the negative urine test results have successfully protected 1242 of the 1249 officers tested between July 1998 and May 2005 from such

1220 Operation Abelia, PIC Transcript, Round Table: *Critical Incident Testing (Expert Participation)*, 6 May 2004, pp. 21-22.

1221 Operation Abelia, PIC Transcript, Round Table: *Critical Incident Testing (Expert Participation)*, 6 May 2004, pp. 38-39.

allegations. As at the end of May 2005, this includes all 665 officers who have been drug tested after a critical incident since May 2001.

In the case of the seven officers who tested positive, however, all that is known is that these officers had used prohibited drugs at some time prior to being drug tested. The drug tests based on urine samples cannot provide any information about how close to the time of the critical incident they ingested the drug, the quantity of the drug ingested or, more generally, whether the ingestion of the drug affected the officer's performance in any way.

Determining the cause of death

Although it was not explicitly stated in the recommendation of the State Coroner, given the role of the Coroner, another objective of mandatory drug testing could be argued to be to assist in determining the aspects of an incident that led to a person's death. To the extent that this can be reasonably regarded as an objective of mandatory drug testing, it is obvious that drug testing can only play a very limited role in determining the aspects of an incident that led to a person's death.

While a negative drug test result can rule out prohibited drug use as a contributing factor to the cause of a person's death, a positive drug test result indicates that prohibited drug use cannot be ruled out as a contributing factor to the death. For the seven officers who tested positive to the use of one or more prohibited drugs following a critical incident, the results of the urine tests do not provide information as to whether that drug use had contributed in any way to the person's death (or serious injury).

There are many potential factors that could contribute to a person's death during a critical incident which are not related to the performance of an individual officer. Even on an occasion where an officer's impaired performance may have contributed to a death there are many possible causes of impairment such as fatigue or illness that are not going to be identified through a drug test.

A complete investigation is important to determine the causes of the critical incident whether the result of the drug test is negative or positive.

Leaving aside the issue of the measurement of impairment, and whether or not an objective determination can be made that a person was impaired at the time of an incident, and if so the extent of their impairment, it is ultimately a matter for the Coroner to determine those factors that are relevant to a coronial finding. The PIC accepts that in some circumstances the results of a drug test may be relevant to the finding of a Coronial inquiry.

Integrity

NSW Police has said that all of its drug testing, including mandatory drug testing, is integrity or probity-related only. The mandatory urine tests conducted up to the end of May 2005 have indicated that there was no evidence of illicit drug use by 1242 of the 1249 officers drug tested to date. As such it provides a measure of officer integrity in relation to illegal drug use at that time. For the remaining seven officers the positive result of the drug test served to initiate an investigation into the circumstances that led to the ingestion of a prohibited drug.

Deterring illegal drug use

While not a stated objective of mandatory drug testing, a possible additional benefit of this form of drug testing is that some officers may be deterred from using illegal drugs by the fact that they cannot predict whether they will be involved in a critical incident on any shift and as a result they cannot predict whether they will be required to be drug tested on any shift. This concern about possibly being drug tested after a critical incident could deter illegal drug use by some officers who otherwise might consider it.

Given that deterrence is not a stated objective, the PIC did not specifically collect the information that would be required to assess the extent to which mandatory drug testing is a successful deterrent. Based on the literature on random testing and deterrence summarised in the previous section of this chapter (6.5), the following four characteristics are associated with successful random testing (and hence deterrence) programs because they have been found to contribute to an individual's belief that he or she is likely to be tested:

- testing is highly visible ('visibility')
- there is publicity for the testing program and that publicity reinforces the testing ('publicity')
- timing and location of testing is unpredictable ('unpredictability')
- the individual cannot influence the chances of being tested or avoid being tested once selected ('inability to influence').

As at the end May 2005, a total of 1249 officers have been tested since 1 July 1998. This is equivalent to approximately 181 officers per year, indicating that mandatory drug testing is conducted approximately one-third as often as random drug testing of NSW Police. Given that random drug testing was considered to have low visibility it could be argued the visibility of mandatory drug testing is even less than that of random drug testing. This would suggest that mandatory drug testing is unlikely to be an effective deterrent. On the other hand, mandatory drug tests would be highly unpredictable and from the information collected all those who are selected for mandatory drug testing are in fact drug tested, hence mandatory drug tests could also be seen as high on 'inability to influence'.

Areas for review

Specimen for drug testing

When the State Coroner recommended that drug testing takes place as soon as possible after a critical incident he did not specify what type of specimen (that is, blood, urine, saliva, hair or sweat) should be used as the basis of this drug testing. NSW Police has used urine samples as the basis for almost all of their drug tests.

The PIC heard evidence in its Operation Saigon that the analysis of a blood sample was the best available technology, at that time, to indicate whether or not an officer was impaired at the time of a critical incident. Based on this evidence, the PIC recommended in its Operation Saigon report in 2001 that blood samples be taken and analysed for the presence of drugs following a critical incident.

As was discussed in Chapter 3, the most suitable type of specimen for drug testing will depend on the nature of the question that the drug testing is seeking to answer. When considering officer drug use, there are two possible questions of interest:

- Is the officer fit to work, that is, is the officer unimpaired by any alcohol or other drug use? (the 'impairment question'), and
- Has the officer used prohibited substances? (the 'integrity question').

It is worth noting that, in relation to illegal drugs, the integrity question is a broader question than the impairment question. That is to say, it is clear that if an officer has not used illegal drugs then the officer will not be impaired by illegal drugs.

There is no explicit statement regarding which of these two questions mandatory drug testing is seeking to answer. As discussed earlier in this section, the stated roles of mandatory drug testing have included:

- a form of protection for police officers particularly when unfounded allegations are made[1222]
- to remove one cause of doubt as to the exercise of a police officer's judgment[1223]
- to provide accountability and consistency of approach in the investigation of deaths in custody[1224]
- to protect public safety as well as the safety and wellbeing of police officers.[1225]

In the past NSW Police has stated that it sees that the main focus of its drug testing, including mandatory drug testing, is to answer the integrity question.

In relation to illegal drugs, testing to answer the integrity question of whether or not an officer has used any illegal drugs in recent times can fulfil each of the stated roles of mandatory drug testing. The use of a urine sample is sufficient and appropriate to answer this question because the testing of urine samples is well accepted as a method of detecting prohibited drug use.

However, if the question of interest is the impairment question then alcohol and other legally obtainable drugs as well as illegal drugs are of concern, as the use of any of these drug types could affect an officer's behaviour. The question of impairment by alcohol is addressed in the mandatory alcohol testing that is conducted under the current testing provisions. However, the question of impairment by either legally

1222 As stated by the then Coroner in making the recommendation that led to mandatory drug testing. D. W. Hand, Inquest into the death of Roni Levi: Recommendations, 11 March 1998.

1223 As stated in the then Minister of Police's media release and in the second reading speech of the legislative amendment. Media release from the Office of the Hon. Paul Whelan, Minister for Police, 20 May 1998. NSW Legislative Assembly Hansard, Police Service Amendment (Alcohol and Drug Testing) Bill, Second Reading Speech, 27 May 1998, pp. 5328-5329.

1224 As stated in the second reading speech of the legislative amendment. NSW Legislative Assembly Hansard, Police Service Amendment (Alcohol and Drug Testing) Bill, Second Reading Speech, 27 May 1998, pp. 5328-5329.

1225 As stated in the second reading speech of the legislative amendment. NSW Legislative Assembly Hansard, Police Service Amendment (Alcohol and Drug Testing) Bill, Second Reading Speech, 27 May 1998, pp. 5328-5329.

obtained or illegal drugs is not addressed by the current mandatory drug testing processes. This is because:

- mandatory drug testing currently only tests for certain prohibited substances, it does not test for legally obtainable drugs[1226], and
- a urine test is not a good indicator of culpability for an incident because a positive test result only signals that the individual has been exposed to one or more drugs in the past. It does not provide any indication of the recency of use, quantity of drug taken or extent to which the drug affected the individual's behaviour. That is, it may reflect prior drug use that would not have had any impairing effect at the time of the incident (such as cannabis use two weeks earlier or amphetamine use two days earlier).

A review of the literature as well as information provided in the Expert Participants round table discussion held on this topic reveals that, with the exception of alcohol testing using breath and blood samples, there is no drug testing technology currently available that can provide an answer to what is described as the 'impairment question' above. Similarly while a number of 'fitness-for-duty' tests have been developed none of these is sufficiently proven to enable an accurate or reliable assessment of any drug-related impairment of officers who are considered to be directly involved in an incident.

The PIC has been told that rather than assessing impairment, the best that can currently be done with available technology is that an estimate may be able to be made as to the time frame during which ingestion of some types of drug took place. From that estimate of when a drug was ingested, a further estimate may be able to be made of the likelihood that the drug adversely affected an individual's performance. Using the illustration provided by Professor Christie referred to earlier in this section, for example, it may be possible to estimate that the likelihood that an individual was impaired at the time of the incident is about fifty per cent. (However, such a statement may not assist in clarifying the role of the prohibited drug in a critical incident.)

The estimate of time of ingestion can only be made on the basis of a blood sample. Without the estimate of time of ingestion it is not possible to make a scientifically-based estimate of the likelihood that the individual's performance was adversely affected by the drug. For this reason the PIC concludes that blood samples continue to have an advantage over other types of specimen for detecting where performance might be adversely affected by illegal drug use.

However, such an estimate can only be made when the blood sample is taken sufficiently close to when the drug was ingested. That is to say, the primary advantage of blood testing occurs in limited circumstances. These limited circumstances occur when an officer: has used prohibited drugs, is involved in a critical incident, the testing following the critical incident is done very soon after use[1227] and a high blood drug concentration is found. In such circumstances it is possible to draw a conclusion about the likely effect of the drug on the officer's behaviour.

1226 The question of broadening the range of substances that are tested for as part of a mandatory drug test is considered later in this section.

1227 In terms of critical incident testing this would require both the critical incident occurring soon after the drug use and the drug testing occurring soon after the critical incident.

Further information was obtained about the limitations of the circumstances under which the use of a blood sample is superior to that of a urine sample. For example, Professor Christie suggested that beyond two hours after ingestion the information from a blood sample may not be much better than a urine sample (although he still considered that it would be worth collecting a blood sample after this time).

Experts agreed that a negative urine test provided evidence that the incident was not the result of prohibited drug use by the officer. From the information provided in the Expert Participants round table discussion, there would be no need to analyse a blood sample where there is a negative result to a urine test. In such cases the results based on the blood sample would also have been negative and would not have added any additional information. Accordingly, if blood samples had been taken in conjunction with urine samples following a critical incident, then none of these blood samples taken since May 2001, the date of the most recent positive urine test, would have been analysed. However, this could change at any time given that it is not possible to know when the next urine specimen will test positive.

Following its further research, the PIC considers that the recommendation made in Operation Saigon to use blood samples should be set aside and that NSW Police should continue to base its mandatory drug tests on urine samples. In the vast majority of cases (that is, where the result based on the analysis of a urine sample is subsequently negative) there is no loss of information in the use of urine samples. Even where there is a positive result based on a urine sample, it is unlikely that a blood sample taken following an incident would provide additional information concerning the extent to which the officer's behaviour was adversely affected at the time of the incident as a result of prior drug use.

Recommendation MDT 1:

The PIC recommends that NSW Police continues to use urine samples as the basis of mandatory drug testing following an incident as specified in s.211A (2A) of the *Police Act 1990*, on the understanding that this does not provide a measure of impairment and that for those who test positive the drug test will not, of itself, assist to determine to what extent this drug use may have contributed to the critical incident.

Range of incidents that result in directly involved officers being drug tested

The current legislation requires mandatory drug testing after five types of incident:

- a person is killed as a result of a police motor vehicle pursuit
- a person is seriously injured as a result of a police motor vehicle pursuit
- a person is killed as a result of the discharge of a firearm by a police officer
- a person is seriously injured as a result of the discharge of a firearm by a police officer
- a person is killed while in police custody.

These were the circumstances that were specified in the second reading speech for the 1998 Police Service Amendment (Alcohol and Drug Testing) Bill. There is currently no provision for officers to be mandatorily drug tested following an incident where a person is seriously injured while in police custody.

From the PIC's research it is not obvious why the circumstances requiring mandatory drug testing have been limited to these specific examples. The then Coroner who made the recommendation did not specify the types of circumstances that would result in mandatory drug testing of directly involved officers. At the time he made his recommendation, as well as currently, the circumstances of interest to the Coroner are specified in the *Coroners Act 1980.* Section 13(1) of this Act states that:

> A coroner has jurisdiction to hold an inquest concerning the death or suspected death of a person if it appears to the coroner that the person has died, or that there is reasonable cause to suspect that the person has died, in any of the following circumstances:
>
> a. the person died a violent or unnatural death
>
> b. the person died of a sudden death the cause of which is unknown
>
> c. the person died under suspicious or unusual circumstances …

Section 13A (1) itemises the types of deaths that are examinable only by the State Coroner or Deputy State Coroner. These deaths include, amongst others, the following that pertain to NSW Police:

> a. while in the custody of a police officer or in other lawful custody, or while escaping or attempting to escape from the custody of a police officer or other lawful custody, or
>
> b. as a result of or in the course of police operations.

Neither the *Coroners Act* nor the associated *Coroners Regulation 2000* defines the specific circumstances included in the term 'police operation'. It is also of interest to note that when making his recommendation, the Coroner did not suggest that mandatory drug testing should be required following any death arising from a police operation.

In order to allow for the potential breadth of the Coroner's jurisdiction, NSW Police has produced a set of guidelines which defines a much broader set of critical incidents than that specified in s.211A (2A) of the *Police Act*:

> Homicide of a police officer, whether or not the officer is on duty at the time
>
> Any death or injury resulting from the discharge of a police firearm (including attempted or actual suicide by police and civilians)

Death or serious injury resulting from the use of police issue appointments[1228]

Death or serious injury to any person in custody

Death or serious injury arising from a police operation[1229]

Death or serious injury arising from a police vehicle pursuit.[1230]

The incidents specified in these NSW Police guidelines are not mutually exclusive. For example, a death or injury resulting from the discharge of a police firearm may also be a death or serious injury arising from a police operation. Also while there are parallels between this list and the circumstances specified in s.211A (2A) there are also differences. For example s.211A (2A) refers to a serious injury as a result of the discharge of a firearm by an officer whereas the list in the NSW Police guidelines refers to any form of injury, not necessarily a serious injury.

During the course of Operation Abelia NSW Police made suggestions for broadening the range of incidents that require directly involved officers to be drug tested. The PIC also identified additional circumstances that would result in officers being drug tested in other Australian jurisdictions that are not currently included in s.211A (2A) of the *Police Act*.

One suggestion by NSW Police was that the set of circumstances that require testing be broadened to incorporate an incident when someone is seriously injured while in police custody. This suggestion is consistent with the practices of some of the other Australian police agencies that conduct drug testing. The PIC would support the inclusion of serious injury in custody as one that should result in directly involved officers being drug tested.

Furthermore, the PIC would support NSW Police efforts to more broadly review the set of circumstances that result in mandatory drug testing, with a view to seeking amendment to s.211 (2A) of the *Police Act*. Although the PIC is not aware of any deaths or serious injuries that have involved a police vessel, such as a marine vessel operated by the Water Police, the PIC suggests that NSW Police consider including such an incident as one which would require involved officers to be drug tested. This would appear to be consistent with the other circumstances that require mandatory drug testing. From its review of the legislation and policies of policing agencies in other jurisdictions, the PIC suggests that the circumstances that require directly involved officers to be drug tested should be further broadened to incorporate the following where a person is killed or seriously injured:

1228 The following examples are provided in the Guidelines: an incident involving the use of police appointments during training, if a person dies 'in custody' (i.e. was not free to leave) as the result of the use of police appointments.

1229 The Guidelines note that a death as a result of or in the course of a police operation is not defined in the *Coroners Act*. However, the Guidelines refer to the NSW State Coroner's Circular No. 24 which contained the following potential scenarios 'that are likely deaths, as a result or in the course of a police operation as referred to in Section 13A of the [Coroners] Act'. These scenarios include: any police operation calculated to apprehend a person(s); any police siege; an operation to contain or restrain persons; an evacuation; a traffic control/enforcement; a road block; execution of a writ/service of process; any other circumstance considered applicable by the State Coroner or a Deputy State Coroner.

1230 NSW Police, Guidelines for the management and investigation of critical incidents, July 2002, p. 1.

- as a result of the application of physical force by a police officer
- in an incident involving a police vessel, or in the related circumstances
- in an incident involving a police aircraft.

A second suggestion by NSW Police was that the set of circumstances that require testing be further broadened to include an incident where 'a firearm is used or discharged, even where a person is not killed or seriously injured, in instances other than for the purposes of training'. Section 211 (2A) of the *Police Act* currently requires mandatory drug testing following an incident where an officer has discharged a firearm and that discharge has led to a death or a serious injury. Hence this second suggestion by NSW Police involves broadening the circumstances that result in officers directly involved being drug tested to circumstances in which an officer discharges a firearm (other than for the purposes of training) and no one is killed or serious injured.

While the Queensland legislation enables drug testing following 'an incident in which it was necessary for an officer on duty to discharge a firearm in circumstances that caused or could have caused injury to a person', both the Tasmanian legislation and the Australian Federal Police testing procedures require drug testing only where the discharge of the firearm has resulted in death or serious injury. The PIC is not aware of other jurisdictions that require drug testing following the discharge of a firearm where that discharge of a firearm does not result in death or serious injury. Nor is the PIC aware of the circumstances that prompted NSW Police's suggestion to require officers to be drug tested following an incident where no one is killed or seriously injured or of any examples of incidents where this has been an issue in the past.

In addition to excluding incidents where the firearm is discharged for the purposes of training, there may be various other incidents where the discharge of a firearm should not result in officers who are directly involved being drug tested. One example of such an incident that should not necessarily result in the officer being drug tested may be where an officer discharges his or her firearm to put down an injured animal.

The PIC considers that NSW Police is best placed to understand which circumstances involving the discharge of a firearm should result in mandatory drug testing and which should not. For this reason the PIC holds the view that NSW Police should examine the circumstances where a firearm is discharged that should result in officers who are directly involved being drug tested as part of its broader review of the set of circumstances that result in mandatory drug testing.

The PIC has noted that one of the roles of mandatory drug testing, as stated in the second reading speech of the Amendment Bill, was to provide accountability and consistency of approach in the investigation of deaths in custody. The PIC would support NSW Police, in its review, seeking to achieve consistency between the definition of critical incidents in its guidelines and those that are specified as requiring mandatory drug testing in the *Police Act*.

The PIC understands that, at the time of drafting this report, the NSW Police guidelines were currently under review. Given that as a result of this review the list of circumstances defined as a critical incident by NSW Police may change, it is not an appropriate time for the PIC to prescribe a specific list of incidents that should result in directly involved officers being drug tested.

Furthermore, in reviewing the set of circumstances that should result in mandatory drug testing, the PIC suggests that NSW Police consider simplifying the wording rather than providing what might give the appearance of an ad hoc list. The Tasmanian legislation might present a possible model. Section 50(2) of the Tasmanian *Police Service Act 2003* enables an authorised person to require a police officer to be alcohol or drug tested where a person is killed or seriously injured in an incident involving a police officer while discharging the duties of a police officer.

Recommendation MDT 2:

The PIC recommends that NSW Police reviews the circumstances that require a directly involved officer to be drug tested with a view to broadening this set of circumstances in such a way that:

a. the circumstances include situations where a person is seriously injured while in police custody

b. NSW Police considers incorporating circumstances where a person is killed or seriously injured as a result of the application of physical force by a police officer, or in an incident involving a police vessel or a police aircraft

c. NSW Police seeks to achieve consistency with circumstances defined as critical incidents in the NSW Police guidelines

d. NSW Police considers simplifying the wording used to describe these circumstances.

Furthermore the PIC recommends that, following this review, NSW Police seeks a legislative amendment, reflected in the Police Regulation as necessary, to modify s.211A (2A) of the *Police Act* to include this broader definition of circumstances that should result in drug testing any officers directly involved.

As stated above, the PIC supports broadening of the range of circumstances that result in those officers who are directly involved being drug tested to incorporate serious injury in custody. This will, however, require specification of what types of physical injuries should be classified as 'serious'. It is unlikely that anyone would dispute that the types of injury described by the PANSW, that is injuries that are life-threatening, likely to result in permanent impairment or long-term rehabilitation should be classified as 'serious'.

Recommendation MDT 3:

The PIC recommends that NSW Police develops criteria, in consultation with the Police Association of NSW, that clarify the types of injuries to be classified as 'serious' for the purpose of defining the circumstances that require directly involved officers to be drug tested.

As it noted in its initial Observation in this section, the PIC has observed that the current wording of s.211A (2A) of the *Police Act* may cause some confusion in relation to:

- the requirement for both alcohol *and* drug testing rather than a choice of one or the other

- the fact that this testing is in fact mandatory rather than optional
- whether one or more types of specimen can be collected.

Recommendation MDT 4:

The PIC recommends that the wording of s.211A (2A) of the *Police Act 1990* be redrafted to clarify that both alcohol and drug testing are required and this testing is mandatory in the specified circumstances.

Testing of civilian staff directly involved in critical incident

NSW Police suggested that mandatory drug testing should be broadened to include civilian staff directly involved in a critical incident. Such a suggestion was also made in a submission from a member of the public received soon after the PIC commenced Operation Abelia. The PIC considers that this issue is outside the scope of Operation Abelia which focused on illegal drug use by (sworn) officers.

However, the PIC notes that some NSW Police positions (such as some positions in communications and forensic services) are filled by both sworn officers and civilian staff and that there are equity arguments that employees who carry out exactly the same tasks should be treated in the same way. The PIC also notes that some other Australian police agencies do drug test civilian staff. Hence, while outside the scope of Operation Abelia, the PIC does not have any objections in principle with the testing of civilian staff who are directly involved in a critical incident. The PIC understands that such testing would be carried out, for the same purpose as the testing of officers, that is as a means of protecting the civilian staff member by removing any doubt that a death or serious injury was incurred as the result of the staff member's alcohol or drug use. There may be occasions where civilian staff are prepared to volunteer for such testing.

Time between critical incident and drug test

When the State Coroner made his recommendation that led to the introduction of mandatory drug testing, he specified that such drug testing should be conducted as soon as possible following a critical incident. Minimising the time between when an incident occurs and when a sample is taken for a drug test is important for two reasons. Firstly, the nearer the drug test is conducted to the time of the incident the better an indication the drug test provides of the drugs present in the officer's system at the time of the critical incident. Secondly, with the officer's welfare in mind, it is important to avoid unnecessarily prolonging the incident and its associated processes.

NSW Police operates all of its drug testing from a centralised unit, known as the Testing Team, located in Sydney. This Testing Team uses pathology collectors from the Institute of Clinical Pathology and Medical Research, located at Westmead. Given the large geographical area of NSW[1231] there are delays between when the Testing Team is notified of the critical incident and when the team arrives at the location of the incident to conduct the drug tests. The length of this delay is directly related to the distance the team needs to travel from Sydney. It is understandable that the delay

[1231] The State of NSW has an area of 801 428 square kilometres.

between the occurrence of an incident and when the sample is taken for drug testing has been a concern for some commanders and some officers located in country areas.

When introducing the legislation it was noted that the mandatory alcohol testing should be conducted locally while the Sydney-based team should conduct the mandatory drug testing:

> To be effective, mandatory testing must be carried out as quickly as possible after the incident. The bill will permit alcohol testing by way of breath analysis to be carried out straightaway by authorised personnel at the local level.
>
> Drug testing will be administered by non-sworn personnel and co-ordinated by the drug and alcohol testing unit of the Human Resources Command.[1232]

The PIC has heard that, perhaps fortuitously, most of the critical incidents to date have occurred within a relatively short travel time of Sydney. The PIC has also heard that while NSW Police has considered using local hospitals to conduct drug tests in remote areas, it decided against this approach because it cannot guarantee that the Australian Standard would always be met. The PIC is not persuaded that other avenues could not be explored to reduce the delays in drug testing officers located in remote areas. Two possible avenues for further exploration could include:

- identifying one or more medical practitioners in the area, faxing or emailing the required procedures to them and talking them through the procedures to ensure that the Australian Standard was met
- training a small number of NSW Police staff located in regional areas to familiarise them with the required procedures, thus enabling them to collect the samples to the required standards, perhaps with telephone support from someone in Sydney.

There may also be other avenues that NSW Police could explore to minimise delays in the time taken to collect the sample while still complying with the Australian Standard.

Recommendation MDT 5:

The PIC recommends that NSW Police considers options to reduce the delays in conducting mandatory drug testing of officers following critical incidents in remote areas.

Range of drugs that are tested for as part of a mandatory drug test following a critical incident

At the round table with the expert participants, the PIC sought opinions as to whether the range of drugs that are subject to being detected as a result of mandatory drug testing should be extended. Associate Professor Starmer expressed the view that it becomes difficult analytically if one tries to screen for too many drug types. There was

1232 NSW Legislative Assembly Hansard, Police Service Amendment (Alcohol and Drug Testing) Bill, Second Reading Speech, 27 May 1998, pp. 5328-5329.

some discussion of the value of testing for tricyclic antidepressants, benzodiazepines and steroids. The point was made that prescription drugs are generally used for good reason and that an untreated individual is going to have more problems performing his or her duties than an officer who is taking medication that has been prescribed by a medical practitioner. Antidepressants are very widely prescribed drugs and were seen to fall into that category of assisting performance rather than impairing it.

The PIC has formed the view that as the non-prescribed use of anabolic androgenic steroids (referred to as 'steroids' below) might lead to an increase in aggressive or violent behaviour, such use poses a safety risk to the officer, those with whom the officer works and to the broader community. As stated earlier, one of the catalysts for the PIC conducting Operation Abelia was a concern that some senior police had expressed to the PIC about illegal drug use, including non-prescribed steroid use, by some of their officers. During Operation Abelia, some evidence was heard about the use of steroids obtained illegally by some NSW Police officers and the effects these steroids had on the officers' behaviour. Further support for the belief that steroid use is a potential concern for NSW Police came from the literature review, the comments made by commanders and from the Expert Participants round table discussion. The literature reviewed suggested that police are an 'at risk' group for illegal steroid use. A small number of the commanders interviewed as part of Operation Abelia indicated that they considered it would be desirable to be able to drug test for steroids. For these reasons the PIC has suggested elsewhere in this report that NSW Police seeks a legislative amendment to enable testing for steroids on a targeted basis (see Recommendation TDT 7 in Section 6.4 on Targeted Drug Testing).

While the PIC considers that there may be merit in testing directly involved officers for non-prescribed steroid use in the circumstances specified in s.211A (2A) of the *Police Act*, the PIC has decided not to make this a recommendation largely on the grounds of the costs that it would involve. The PIC understands that, on average, the cost of analysing a urine sample for steroids is more than four times the cost of analysing a urine sample for other prohibited drugs. Furthermore the PIC considers that steroids represent a drug type where there are some physical and behavioural signs of its use. That is to say, the body size and shape of some officers (including many of the female officers) directly involved in incidents that result in mandatory drug testing may suggest it is unlikely that these officers are using steroids and that the testing of all officers involved in such incidents would be an unnecessary expense. For these reasons the PIC considers that non-prescribed steroid use is one that would be better targeted and detected in advance of a critical incident. By enabling the testing for steroids on a targeted basis, if an investigator suspected that steroids may have been a contributing factor in the behaviour of an officer at a critical incident, then this could provide reason for the consideration of a targeted drug test to seek to detect any non-prescribed use of steroids.

If a less costly technique for reliably detecting non-prescribed steroid use became available, as stated above, the PIC would consider that there would be merit in analysing samples taken from all directly involved officers for non-prescribed steroid use in the circumstances specified in s.211A (2A) of the *Police Act*.

Monitoring and evaluation

The PIC considers that NSW Police should review, on an ongoing basis, technological developments that may assist it to conduct its drug testing. Further research in the area of drug testing technology and the alternative assessment methodologies, such as the

measurement of fitness-for-duty, is underway. Currently significant efforts are being put towards developing methods of assessing drug-affected drivers. At the time of drafting this report the outcome of the European Union Rosita-2 project in early 2007 would seem to be of interest as would progress in the development of the impairment detector by the Police Scientific Development Branch in St Albans in the UK. These are only two examples. This area of research is likely to produce a range of further possible strategies in the future.

At the Expert Participants round table discussion the PIC was informed that it is currently not possible to test whether an individual has abused prescription drugs. If at some point in the future it becomes possible to determine, via testing, that an individual has abused prescription drugs, NSW Police should consider such testing.

Recommendation MDT 6:

The PIC recommends that NSW Police reviews technological developments in drug testing and alternative assessment methodologies on an ongoing basis, and reports to the PIC no less than every two years on what, if any, developments there have been that might be usefully incorporated in NSW Police practices.

6.7 CODE OF CONDUCT AND ETHICS

One reason that the NSW Police 'Code of Conduct and Ethics' was selected for specific examination was that an extract from this Code is used within the Drug and Alcohol Policy to describe unacceptable behaviour in respect of drug use. The Code of Conduct and Ethics is also of interest because it is a tool that NSW Police uses to provide general guidance concerning acceptable behaviour by its officers.

DESCRIPTION

NSW Police introduced its Code of Conduct and Ethics in January 1997 and amended it in February 2002. The purpose of the code, as described in its Introduction, is:

> to make explicit certain behaviours which are unacceptable for all sworn and un-sworn officers regardless of rank or grade, and to provide an ethical framework for your decisions and actions.

Each officer was given a personal copy of the Code of Conduct and Ethics and asked to sign an acknowledgement that they had received and read the Code.[1233]

The code provides specific advice as well as more general advice and values relevant to a broad range of conduct by NSW Police officers. Two sections of the code are specifically relevant to conduct examined as part of Operation Abelia. These sections are entitled 'Drugs and Alcohol' and 'Private Conduct'. Under the heading 'Drugs and Alcohol', the code advises:

> You must not perform your job, remain at work or undertake any NSW Police related activity if you are impaired by alcohol or other drugs

1233 NSW Police Service, Mandatory Continuing Police Education Scheme, NSW Police Service – Code of Conduct and Ethics, M004, October 1999, p. 2.

> including those prescribed by your doctor. This includes training functions and seminars. If you are off duty and impaired, you are not allowed to visit the workplace. If you are taking a prescribed drug or other medication and have any doubt about your ability to perform any or all of your duties, you should consult with your doctor or pharmacist and discuss alternative work options with your supervisor.
>
> If a medication carries a warning that it has the potential to impair functioning, you must inform your supervisor about the warning if your duties require you to drive, operate heavy machinery, or carry a gun.

The training material that was developed to support the introduction of the Code of Conduct and Ethics emphasises the message that officers who are affected by alcohol or other drugs, potentially including illegal drugs, should not attend work:

> If officers are affected by drugs or alcohol, it is likely they will not be able to do their best. For this reason the Code requires officers, who are affected by drugs and/or alcohol, to stay away from the workplace

and also:

> If you are impaired by alcohol or other drugs (including prescription drugs) you must not:
>
> - perform your job; or
> - attend the workplace.[1234]

Under the heading 'Private Conduct', the Code of Conduct and Ethics specifies:

> Lawful behaviour while off duty is not of concern unless it brings, or has the potential to bring, discredit to the NSW Police.
>
> All officers have an obligation to act and to be seen to act by the public in accordance with the spirit and the letter of the law including the terms of this Code of Conduct whether on or off duty.
>
> Any private activity which adversely affects your job-performance will be regarded as a work-related issue.

These specific sections of the Code of Conduct and Ethics are supplemented by more general advice including a statement of values. Two of the eight values listed as part of the Code of Conduct and Ethics require that each member of the NSW Police act in a manner that 'places integrity above all' and 'upholds the rule of law'. Such values concern a wide range of police conduct including that examined in Operation Abelia.

1234 NSW Police Service, Mandatory Continuing Police Education Scheme, NSW Police Service – Code of Conduct and Ethics, M004, October 1999, p. 39.

OBSERVATIONS

Observation 1:	**The importance of providing clear messages and rule setting is acknowledged in the crime prevention and corruption prevention literature.**

Criminologists have discussed the importance of organisations providing clear messages about what is acceptable and what is unacceptable, in relation to a range of different workplace misconduct within different types of organisations (for example: Horning (1970) in relation to theft amongst blue-collar workers[1235]; Hollinger and Clark (1983) in relation to 'employee deviance' amongst those working in US retail, manufacturing and service industries[1236]; Cressey (1986) in relation to management fraud[1237]; Mirrlees-Black & Ross (1995) in relation to bribery and extortion amongst UK retailers and manufacturers[1238]). In his paper examining different theoretical perspectives on management fraud, Cressey (1986) concluded that confusion over what is acceptable allows individuals to justify their misconduct:

> … when multiple moralities abound, people disobey the law because they have learned that, from many points of view, one can be moral and criminal at the same time.[1239]

The need to resolve discrepancies between 'multiple moralities', as referred to by Cressey, is particularly relevant to the issue of illegal drug use by police. In relation to illegal drug use by police, Carter and Stephens advised that police departments should 'promulgate clearly defined organizational rules related to drug use and possession. Moreover, it should be stipulated that these rules apply both on duty and off duty'.[1240]

Codes of conduct provide a mechanism for rule setting and providing clear messages in the workplace. The Independent Commission Against Corruption (ICAC) has stated that a code of conduct helps staff identify the boundaries between desirable and undesirable behaviour.[1241] In its review of the different corruption prevention strategies employed by NSW public sector organisations, the ICAC (2003) observed that a code of conduct is usually considered one of the most fundamental resources in building an organisation's capacity to resist corruption. Furthermore, it remarked that staff are unlikely to retain information on the code of conduct if this is presented only once, as part of the induction process. The ICAC recommended that NSW public sector organisations review the adequacy of their code of conduct every two years and review

1235 D. N. M. Horning, Blue-collar theft: conceptions of property, attitudes towards pilfering, and work group norms in a modern industrial plant. In E. O. Smigel & H. L. Ross (Eds) *Crimes against bureaucracy*. New York: Van Nostrand Reinhold Company, 1970.

1236 R. C. Hollinger, & J. P. Clark, *Theft by employees*. Lexington, Massachusetts: Lexington Books, D.C. Heath and Company.

1237 D. R. Cressey, Why managers commit fraud. *Australian and New Zealand Journal of Criminology, 1986, 19*, 195-209.

1238 C. Mirrlees-Black, & A. Ross, A. Crime against retail and manufacturing premises: Findings from the 1994 commercialisation victimisation survey. *Home Office Research Study 146, 1995*.

1239 D. R. Cressey, Why managers commit fraud. *Australian and New Zealand Journal of Criminology, 1986, 19*, 208.

1240 D. L. Carter, & D. W. Stephens, *Drug abuse by police officers: An analysis of critical policy issues*. Springfield Illinois: Charles C. Thomas Publisher, 1988, p. 25.

1241 Independent Commission Against Corruption (2002) Codes of conduct: The next stage. *Sydney: Independent Commission Against Corruption, Guideline, March 2002*, p. 4.

the adequacy of their code of conduct training arrangements at regular intervals of no more than two years.[1242]

Observation 2:	**Some codes of conduct are more effective than others. There are identified strategies for increasing the effectiveness of codes of conduct.**

Royal Commissioner Wood observed that an earlier NSW Police Code of Conduct did not have 'much practical impact in reducing corruption'. He described the impact of the earlier Code of Conduct and the Statement of Values in the following terms:

> - they gave little by way of practical guidance to officers in the work place
> - they were not tested for their relevance and impact upon police
> - their generality meant that they were, in real terms, incapable of enforcement, and
> - they had little meaning to the recalcitrant or corrupt officer, or to the subversive supervisor
>
> yet their existence was somewhat blithely seen by the Service as the solution to the problem.[1243]

Further, the Police Association of NSW has suggested that:

> A hurdle to the internalization of the codes of conduct is the fact that they were never developed through dialogue with the practitioners – they were handed down from the Commissioner's office. As such the organisation as a whole has not had the opportunity to develop an understanding of what it means to have a code of professional conduct … Police appear to view the code as another set of rules, rather than a set of guiding principles in which context one exercises the discretionary powers of the office of constable. An urgent re-stating of a code of conduct may be appropriate, with emphasis on an engagement of the practitioners in its composition.[1244]

In 2002, with the knowledge that almost every NSW public sector organisation had a code of conduct at that time, the ICAC produced a guideline, *Codes of conduct – the next stage*, to assist organisations to make their code of conduct more effective and more relevant. This guideline contrasts ineffective approaches to a code of conduct with effective approaches. Two examples of ineffective approaches identified by the ICAC are:

- the 'develop and file' approach, where codes are developed but then filed away in an induction manual. When this happens, organisations de-value their codes and staff can become cynical about the codes' usefulness.

1242 Independent Commission Against Corruption, Profiling the NSW Public sector: Functions, risks and corruption resistance strategies. *Sydney: Independent Commission Against Corruption, January 2003*, pp. 34-35.

1243 J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Final report. Volume II: Reform*, May 1997, p. 496.

1244 Police Association of NSW response to Operation Abelia Round Table 5: *Supporting and equipping sworn officers*, May 2004, p. 1.

- a code developed without staff involvement risks being regarded as irrelevant because staff may feel it was imposed on them.[1245]

In contrast, the ICAC guideline identifies a number of features of successful codes of conduct, for example:

- senior management support the code and lead by example
- staff are involved in all stages of code development and implementation
- support mechanisms are in place to encourage the use of the code
- code of conduct (and general corruption awareness) training is ongoing
- the organisation continually promotes its ethical culture (a code of conduct is an important tool in this)
- the code is enforced when necessary
- the code is regularly reviewed.[1246]

This guideline suggested that there are three basic steps organisations can take to create a more effective code:

- review their existing code for currency, relevance and accessibility
- develop a revised code with a style and structure that meets the particular needs of their organisation
- implement their code in a way that will make it an accepted and well-used tool for influencing decisions, actions and attitudes in their workplace.[1247]

Observation 3:	**Some officers do not have a good understanding of the NSW Police Code of Conduct and Ethics, and/or do not see a need for it.**

Officers who participated in the Operation Abelia focus groups were asked whether they recalled what the NSW Police Code of Conduct and Ethics says about drugs and alcohol. Their responses generally indicated a low level of familiarity with the details of the Code of Conduct and Ethics. In most focus groups the responses were brief and few.[1248] In one of the focus groups the comments were:

1245 Independent Commission Against Corruption (2002) Codes of conduct: The next stage. *Sydney: Independent Commission Against Corruption, Guideline, March 2002*, p. 6.

1246 Independent Commission Against Corruption (2002) Codes of conduct: The next stage. *Sydney: Independent Commission Against Corruption, Guideline, March 2002*, p. 10.

1247 Independent Commission Against Corruption (2002) Codes of conduct: The next stage. *Sydney: Independent Commission Against Corruption, Guideline, March 2002*, p. 5.

1248 For further information about how the focus groups were conducted and the responses of participants refer to Appendix 4.

> Don't know.
>
> No-one knows.

Comments made by focus group participants suggested that these officers considered that the NSW Police Code of Conduct and Ethics is primarily concerned with broad issues of appropriate behaviour, and that, rather than receiving attention as a topic in its own right, drug use is covered as one example of illegal behaviour. For example:

> It's about behaviour, how you're supposed to behave.
>
> Does not say exactly about drugs.

Some of the officers who participated in these focus groups appear to have offered their guesses on what they thought the Code of Conduct and Ethics said with respect to drugs and alcohol, for example:

> Have to uphold the law even if you're drunk.

Participants in some focus groups were asked supplementary questions about their opinion of the Code of Conduct and Ethics and the role it played in their working lives. Some participants spontaneously offered comments on these topics. Several comments suggested that some students and officers saw that learning about the Code of Conduct and Ethics is an individual responsibility of officers, with little formal reinforcement from the organisation:

> It's been touched on. Nothing in depth.
>
> We're told to have a look on the intranet and then sign it.
>
> Told to look at it. Live up to it.
>
> It's not gone into. It was left up to us to look it up.
>
> It was circulated by memo and signed when you read it.
>
> Once you've signed it once you don't have to revisit it. It's assumed that you are aware of the policy, police Code of Conduct. It's one off. When the document gets revised, you might have to re-sign it.

Some comments suggested that the officers and students who participated in the focus groups felt that there is little need for officers to have a detailed knowledge of the contents of the Code of Conduct and Ethics, for example:

> It is all relevant, [but] most of the stuff is what a decent police officer would be doing naturally, so it's not what most people would need to think about. It is a guideline for ethical decision making in the workplace. The average decent copper won't need to refer to it.
>
> There's a lot of cynicism. They're all just words on a page, whether it's the Code of Conduct or something else.
>
> By you joining the job, you've got a certain moral standard anyway.

ASSESSMENT AND RECOMMENDATIONS

Effectiveness

For any code of conduct to be effective, at a minimum, it must deliver clear messages about organisational expectations and acceptable behaviour, and these messages must be received, understood and retained by staff. The information collected for Operation Abelia has indicated that the messages in the Code of Conduct and Ethics in relation to illegal drug use are not retained by all officers.

Areas for improvements

Clarity of messages

The NSW Police Code of Conduct and Ethics currently attempts to inform officers of NSW Police's expectations in relation to the use of alcohol and all other forms of drugs, (including over-the-counter medication, drugs available through prescription and illegal drugs), with one set of words. This does not acknowledge that the issues associated with the use of illegal substances by police are different from the issues associated with the use and abuse of legally acquired substances.

The main focus of the message provided in the 'Drug and Alcohol' section of the Code of Conduct and Ethics is that officers should not be at work or perform their duties while they are impaired by alcohol or other drugs. This is an important message, particularly in relation to alcohol consumption and the use of prescription drugs. However, it is not an adequate message in relation to the use of illegal drugs. Use of illegal drugs by police is inappropriate, whether or not it causes impairment.

The current wording of the 'Drug and Alcohol' section of the Code of Conduct and Ethics may be read to suggest that illegal drug use is acceptable, provided that one is not on duty or does not visit the workplace:

> You must not perform your job, remain at work or undertake any NSW Police related activity if you are impaired by alcohol or other drugs … If you are off duty and impaired, you are not allowed to visit the workplace.

The PIC is of the opinion that the impairment issues concerning the use of alcohol and other legal drugs, such as prescription and over-the-counter medication, are quite different from the integrity issues concerning the use of illegal drugs. For this reason, the PIC has recommended that NSW Police amends its current practice of conveying its expectations concerning the use of legal and illegal drugs. That is, rather than providing a single message within its Code of Conduct and Ethics and other documentation that specifically refers to the Code of Conduct and Ethics (such as the Drug and Alcohol Policy), the PIC considers that NSW Police should separate messages about the use of illegal drugs from messages about the use and abuse of legally acquired substances.

Recommendation CCE 1:

The PIC recommends that NSW Police amends its Code of Conduct and Ethics and other documentation that specifically refers to it:

a. to separate messages about the use of illegal drugs from messages about the use and abuse of legally acquired substances

b. to clarify that use of prohibited drugs is not appropriate at any time – whether the officer is rostered on duty or not.

Communication of messages

The views expressed by focus group participants suggest that officers may not have a good knowledge of the content of the Code of Conduct and Ethics in relation to drugs and alcohol. In addition, the focus group participants' responses raise the concern that many officers do not see this Code of Conduct and Ethics as particularly important or relevant to their work.

The responses from focus group participants suggest that NSW Police has not effectively communicated the messages in its Code of Conduct and Ethics. Furthermore, these comments may indicate that NSW Police is seen by its officers as having what the ICAC refers to as a 'develop and file' approach to its Code, and lacks relevant training and support mechanisms to ensure that officers adopt the behaviours referred to in the Code. Related training and communication issues are considered later in Section 6.10 of this chapter.

Recommendation CCE 2:

The PIC recommends that NSW Police reviews the adequacy of the mechanisms - including staff involvement, senior management backing, and training - which are currently in place to support officers' awareness, understanding and use of the Code of Conduct and Ethics. This review of support mechanisms should be consistent with the ICAC 'Code of Conduct' guideline, particularly as it relates to implementing a code of conduct.

On the basis of the findings of this review, NSW Police should take appropriate action as necessary, to implement new and/or revised measures to ensure that all officers:

a. are aware of the existence of the Code of Conduct and Ethics

b. know its contents, and importantly,

c. are aware of how the Code of Conduct and Ethics applies to their behaviour when they are on duty and when they are off duty.

Evaluation and monitoring

As discussed in the Recommendations CCE 1 and CCE 2 above, the PIC proposes that NSW Police:

- clarifies the messages concerning the use of illegal drugs provided in this Code of Conduct and Ethics, and
- reviews the adequacy of the mechanisms currently in place to support officers' awareness, understanding and use of the Code of Conduct and Ethics.

The PIC considers that after NSW Police has revised the content of the Code of Conduct and Ethics, NSW Police should assess officer understanding of messages provided in the revised Code of Conduct and Ethics to determine whether:

- the revised text clearly expresses the message that illegal drugs are not appropriate at any time, whether the officer is on duty or is off duty, and
- officers understand the difference between NSW Police expectations in relation to legally acquired drugs and NSW Police expectations in relation to illegally acquired drugs.

The PIC considers that NSW Police should also evaluate the effectiveness of any new or revised measures that it implements to support the awareness and understanding of the Code of Conduct and Ethics. The PIC suggests that this evaluation should consider officer awareness of the contents of the Code and their knowledge of how the Code of Conduct and Ethics applies to their on-duty and off-duty behaviour.

Recommendation CCE 3:

The PIC recommends that, after NSW Police has revised the content of its Code of Conduct and Ethics, NSW Police should assess officer understanding of the revised wording to determine whether:

a. the revised text clearly expresses the message that illegal drugs are not appropriate at any time, whether the officer is on duty or is off duty

b. officers understand the difference between NSW Police expectations in relation to the use of legal drugs and the use of illegal drugs.

Recommendation CCE 4:

The PIC recommends that NSW Police evaluates the effectiveness of new or revised measures to support officers' awareness and understanding of the contents of the Code of Conduct and Ethics and their knowledge of how it applies to their on-duty and off-duty behaviour.

Recommendation CCE 5:

The PIC recommends that NSW Police reports the results of the assessment conducted in accordance with Recommendation CCE 3 and the evaluation conducted in accordance with Recommendation CCE 4 to the PIC, as part of the process of monitoring the implementation of the recommendations made in this report.

6.8 CODE OF BEHAVIOUR

The 'Code of behaviour', which was established as part of the *Police Regulation 2000* specifically in regard to the consumption of alcohol and the use of prohibited drugs, is quite separate from the NSW Police Code of Conduct and Ethics that was discussed in the previous section.

DESCRIPTION

The *Police Act 1990* was amended to include Section 211B by the *Police Legislation Further Amendment Act 1996.* The purpose of the Amendment Act was to give legislative force to the recommendations of the Royal Commission into the NSW Police Service.[1249] Section 211B(1) of the *Police Act 1990* allows for Regulations to establish a 'code of behaviour' regarding the consumption of alcohol and the use of prohibited drugs. The Code of behaviour which is provided in Clause 49 of the *Police Regulation 2000* ('the Regulation') states:

> **49. Code of behaviour**
>
> (1) A member of NSW Police must not use any prohibited drug.
>
> (2) A member of NSW Police must not have the prescribed concentration of alcohol in his or her blood while the member is rostered on duty.
>
> (3) A member of NSW Police must not consume alcohol while the member is on police premises. This applies whether or not the member is rostered on duty.
>
> (4) A police officer must not consume alcohol while the police officer is wearing a police uniform. This applies whether or not the police officer is rostered on duty.
>
> (5) A police officer must not, when required under the Act or this Part to do so, refuse or fail:
>
> a. to undergo a breath test, or
>
> b. to submit to a breath analysis, or
>
> c. to provide a sample of urine or hair

1249 NSW Legislative Council, Hansard Parliamentary debates, second reading speech for the Police Legislation Further Amendment Bill, 26 November 1996.

in accordance with a direction given by an authorised person.

(6) A member of NSW Police must treat all information relating to the results of any test conducted under section 211A of the Act or this Part that comes to the member's knowledge in his or her official capacity as strictly confidential and must not divulge the information to anyone, except for the purposes of Part 9 of the Act or in connection with the assessment, counselling or rehabilitation of the police officer under this Part.

(7) A member of NSW Police must not conspire with, or aid and abet, any police officer to breach this code of behaviour.

(8) A breach of this code of behaviour does not constitute an offence.

Subclauses 49(1), 49(5)(c) and 49(6), outlined above, deal with issues relating to illegal drug use by officers and drug testing.

In July 1997 an article was published in the *Policing Issues and Practice Journal* to set out NSW Police's expectations in relation to the use of alcohol and other drugs by all employees. Amongst other things, this article stated that NSW Police officers are expected to comply with both the Code of behaviour and the Drug and Alcohol Policy:

> All employees, both sworn and unsworn officers, as well as Police Service Executive Service members, are expected to comply with the spirit of the policy, as well as the code of behaviour regarding the consumption of alcohol and prohibited drugs as set out in the legislation.[1250]

The Code of behaviour was reproduced in this July 1997 article. The PIC has not identified any subsequent promotion of the Code of behaviour to NSW Police officers.

OBSERVATIONS

Observation 1:	**The 'Code of behaviour' is not specifically referred to in either the Drug and Alcohol Policy or the Code of Conduct and Ethics.**

While the introduction to the Code of Conduct and Ethics (discussed in more detail in the preceding section of this chapter) advises officers that they need to comply with relevant legislation, no specific reference is made to the Police Regulation or to this Code of behaviour. The introduction to the Code of Conduct and Ethics states:

> The purpose of this organisational code is to make explicit certain behaviours which are unacceptable for all sworn and un-sworn officers regardless of rank or grade, and to provide an ethical framework for your decisions and actions. Such a framework recognises it is not possible to address all ethical questions you might encounter. For that reason, you need to be aware of and comply with relevant legislation, this Code, Police policy, guidelines and instructions as they relate to your work, and you

1250 G. Jackel, & M. Shiels, Police, drugs and alcohol. *Policing Issues and Practice Journal, July 1997*, 67-68.

> should seek additional advice from a person in authority whenever you are in doubt about any matter.

Similarly, the Code of behaviour is not specifically referred to in the Drug and Alcohol Policy. From the July 1997 *Policing Issues and Practice Journal* article cited above, the requirements of the Code of behaviour would appear to be additional to those of the Drug and Alcohol Policy.

Observation 2: Officers and students who participated in focus groups demonstrated little awareness of the Code of behaviour.

There appeared to be very little awareness among focus group participants of the existence of the Code of behaviour provided in Clause 49 of the Regulation. When asked *Are you aware of the NSW Police Code of behaviour?* participant responses included silence and replies such as:

> No.
>
> I'm not aware of it.
>
> Never heard of it.
>
> We've got codes of conduct specific to our roles.
>
> Don't know.
>
> Is it still in vogue? Hasn't it been superseded by the Crown Employees Act?

Only one participant expressed a clear understanding of the Code of behaviour:

> The Code of behaviour is very strict: no drugs, no alcohol on NSW Police premises, not affected by alcohol in uniform.

In most focus groups, as participants expressed little or no knowledge of the Code of behaviour, the facilitator did not ask what participants recalled of the contents of the Code of behaviour.

Participants in some focus groups were asked what the differences were between the 'Code of behaviour' and the 'Code of Conduct and Ethics'. The responses included silence and comments such as:

> Much of a muchness; the way that you conduct yourself as a police officer.
>
> So we've got a code of conduct and a code of behaviour? Oh yeah, that makes sense, let's simplify it.
>
> There's an association between them.
>
> There has to be a difference.

> The Code of Conduct is broader. You're not supposed to bring the service into disrepute, chasing other people's wives, et cetera.[1251]

Assessment and recommendation

Despite the similarity in the names, the Code of behaviour differs from the Code of Conduct and Ethics in two principal ways. Firstly, the Code of behaviour has a legislative basis and legislative force. It provides a set of rules with which officers must comply or be dealt with under Part 5 Division 3, 'Consequences of breach of code of behaviour'. In contrast, the Code of Conduct and Ethics is an organisational statement of expectations of NSW Police in relation to the behaviour of all sworn and unsworn officers. Secondly, the Code of behaviour specifically concerns the consumption of alcohol and the use of prohibited drugs, while the Code of Conduct and Ethics provides guidance on a much broader range of behaviours.

However, given the similarity in the names, it is not surprising that some officers expressed confusion between the 'Code of Conduct and Ethics' and the 'Code of behaviour'.

The responses by focus group participants suggest that there is poor awareness of the existence of the Code of behaviour. Regulations such as the Code of behaviour cannot affect officer behaviour when the officers are unaware of them. For this reason, the PIC considers that NSW Police should specifically refer to the Code of behaviour within the NSW Police Drug and Alcohol Policy and promote the Code of behaviour in information sessions held to promote the Drug and Alcohol Policy. The PIC considers that NSW Police could facilitate officer access to relevant information concerning drug and alcohol issues by using its Drug and Alcohol Policy as a 'one stop shop' for information about drug and alcohol issues for officers.

Recommendation CoB 1:

The PIC recommends that NSW Police incorporates in its Drug and Alcohol Policy a reference to the policy's statutory basis, including the Code of behaviour.

Recommendation CoB 2:

The PIC recommends that NSW Police promotes the Code of behaviour in the information sessions it conducts to promote the Drug and Alcohol Policy.

1251 For more information about how the focus groups were conducted and the responses of participants refer to Appendix 4.

6.9 RECRUITMENT

DESCRIPTION

Recruitment to NSW Police is a staged process that extends over a period of months. The first stage involves determining which applicants are the most suitable to undertake the Diploma of Policing Practice (DPP). Those selected to undertake this Diploma are referred to as 'students'.[1252] They are not employees.

Terminology

While some law enforcement agencies speak about 'recruits', this term is confusing in the NSW Police context. In this report the following terms are used:

- *Potential applicants* – members of the community who request an information package from NSW Police, obtain information from the recruitment section on the NSW Police website or who attend a NSW Police Career Day
- *Applicants* – members of the community who complete and submit one or more of the three application forms required to join NSW Police
- *Students* – those applicants selected to enrol in the DPP at the NSW Police College
- *Probationary constables* – those students who satisfactorily complete the first two of five sessions of study for the DPP and meet the fitness and professional suitability criteria.

Steps in the recruitment process

NSW Police conducts its recruitment in partnership with Charles Sturt University (CSU). The recruitment process to become a NSW Police officer incorporates the following steps[1253]:

- *Assessment of academic eligibility* - all applicants complete the Application for Admission form (also known as the 'Academic Application') [1254] and return it to CSU. CSU assesses the level of current educational achievement and advises the applicant of their academic eligibility status.
- *Initial assessment of professional suitability* - applicants who meet the academic criteria to undertake the DPP are sent a Professional Suitability Assessment Kit to return to the NSW Police Recruitment Branch for assessment. The professional suitability assessment consists

1252 For further information about the Diploma of Policing Practice, which was renamed the Associate Degree in Policing Practice in 2005, see Section 6.10 of this report.

1253 Much of the following information is adapted from NSW Police and Charles Sturt University, Admission eligibility guide. Published by the Division of Marketing and Communications, Charles Sturt University, March 2004, p. 5.

1254 This form seeks information under the following headings: citizenship and residency, physical and sensory disability, application for credit, education (including previous studies), employment, supporting statements, declaration and signature.

of two components - a general professional suitability assessment and a medical history assessment[1255]:

- *General assessment*: NSW Police assesses the information on the general application form[1256], conducts a criminal record check, a driving record check and other background checks by contacting previous employers, personal referees and any current NSW Police officers nominated by the applicant as knowing the applicant.
- *Medical history assessment*: In addition to assessing the applicant's responses to a medical history assessment form[1257], applicants undergo a medical examination conducted by their own doctor supplemented by a certificate from a registered audiologist and a certificate from a registered optometrist.

As part of the professional suitability assessment applicants may be invited to attend the NSW Police College (or other NSW Police facility) to submit to further tests (such as a fitness test) or interviews. NSW Police notifies the applicant of the success or otherwise of the professional suitability assessment.

- *Placement on an eligibility list* - Applicants who meet the professional suitability criteria are placed in a pool of eligible applicants and are ranked in order of merit.
- *Selection as a student of DPP* - Based on their ranking and NSW Police recruitment needs, CSU may offer applicants a place as a student to undertake the DPP. There are three intakes to the DPP each year – January, May and September. There are no standard class sizes. The number accepted into the course depends on NSW Police requirements at that time. For example, 363 students commenced the May 2003 intake while 804 commenced in the May 2002 intake.
- *Student undertaking DPP and continued professional suitability assessment* - Students undertake the first two sessions of the DPP at the NSW Police College over a period of approximately six months.[1258]

1255 Accordingly applicants are required to complete two forms: a general professional suitability application form and a medical application form.

1256 The general professional suitability application form seeks information under the following headings: personal details; address details; contact details; driving history; citizenship and residency details; equal employment opportunity (EEO) information; prior interaction with NSW Police, other police services or armed services in Australia; employment history details; references; full birth certificate; background information (including prior police investigation, history of charges, convictions, court orders including apprehended violence order and interim orders, imprisonment, club or gang associations); working with children check – prohibited employment declaration; declaration as to financial insolvency; fingerprint request form. Further information on criteria for recruitment into NSW Police can be found in Appendix 12.

1257 The medical history assessment form seeks information under the following headings: applicant details; employment history; sporting/recreational history; respiratory problems; orthopaedic injuries or problems; psychiatric or psychological problems; neurological; cardiovascular; infectious diseases; diabetes or thyroid problems; other conditions; applicant declaration; applicant consent; medical examination (to be conducted by applicant's GP); GP declaration; hearing (to be completed by audiologist); vision (to be completed by registered optometrist); appendix (further specialist reports).

1258 Not all students attend both sessions at the NSW Police College. Some students complete the first session of the DPP by Distance Education. This means that they study the first session subjects part-time over a period of eight months from their homes. This is supplemented by compulsory residential sessions that are held at the NSW Police College on some weekends. Small numbers of students who have either completed the Bachelor of Policing offered by the University of Western Sydney or the Bachelor of Justice Studies (Policing) offered by CSU Bathurst campus are given advanced standing and are exempted from attending the first session. These graduate students undertake Session 2 of the DPP at the NSW Police College.

While undertaking the DPP the students' physical and professional suitability continue to be assessed. NSW Police uses a psychometric personality test to screen students to determine which students may need to be more actively monitored while at the College.

- *Employment as probationary constable* - Students who successfully complete the first two of five sessions of study for the DPP are eligible to apply for employment with NSW Police as a 'probationary constable'. Those chosen to become probationary constables complete the final three sessions of the DPP via distance education while they are working. Following completion of all five sessions of the DPP, the probationary constables who meet the required medical, fitness and integrity standards graduate and become constables.

When describing its recruitment process, NSW Police has emphasised that recruitment is a process that is conducted over an extended period of time:

> Recruitment commences from the time an applicant completes the application form right up until they are attested as a Constable of Police[1259]

and that the assessment of professional suitability continues while the students undertake their studies at the NSW Police College:

> Students of Policing are constantly assessed as to their professional suitability during their studies at the Police College for a period of 13 - 26 weeks, depending on their entry pathway into NSW Police. NSW Police submit that this is a more rigorous examination than a 15-45 minute interview. At any time during the recruitment/student phase, the professional suitability of the student can be withdrawn.[1260]

Changes to professional suitability form in late 2004

Following the Operation Abelia round table discussions, NSW Police revised its Professional Suitability Application (general) form to include a clear message that no NSW Police officer is permitted to use any prohibited drug either on or off duty and that any officer who is found to be using prohibited drugs is liable to dismissal. The revised form differs from earlier versions in that it:

- foreshadows the introduction of drug testing during the student phase
- includes information on the NSW Police Drug and Alcohol Policy
- seeks information on the applicant's past and present drug and alcohol use, and
- seeks the applicant's written consent for NSW Police to collect one or more urine samples for the purpose of screening for prohibited drugs while they are students at the NSW Police College.

This revised Professional Suitability Application form was ready for distribution in late December 2004 but was expected to be first completed by applicants in 2005.

1259 NSW Police response to Operation Abelia Round Table 4: *Recruitment*, April 2004, p. 1.

1260 NSW Police response to Operation Abelia Round Table 4: *Recruitment*, April 2004, p. 2.

Assessment of prior drug use

Prior to 2005, applicants were not specifically requested to declare current or prior illegal drug use unless it had been the subject of investigation by police or was considered by the applicant to be a psychiatric or psychological problem.

The covering letter accompanying the application forms stated that applicants should declare any information that may affect their professional suitability:

> It is imperative that you declare ANY information that may affect your professional suitability application. Information relating to previous criminal acts, medical conditions, physical injuries and psychological conditions must be declared in your application so that a fair assessment can be made. More often than not, declared issues do not impede applications from progressing through to professional suitability.

NSW Police has told the PIC that in the past a small number of applicants have voluntarily disclosed their prior drug use. Past drug use by applicants may also be revealed through criminal records checks or referee checks.

NSW Police, to date, has not drug tested its applicants. While all applicants have a urine test that is arranged by the applicant's general practitioner to identify medical problems, it is not analysed for the presence of prohibited drugs.

OBSERVATIONS

Observation 1:	**NSW Police officers are drawn from the general community where illegal drug use is not uncommon.**

NSW Police officers are drawn from a community where it has been estimated that almost six in every ten Australians aged 20 to 29 years have used marijuana/cannabis at least once in their life and one in every five Australians aged 20 to 29 years have used ecstasy at least once. These officers are recruited from a community in which some sections consider using illegal drugs as commonplace and unremarkable.[1261]

It is likely that some of those who apply to become a NSW Police officer, particularly if they fall within the above age group, will have used illegal drugs in the past.

Observation 2:	**NSW Police commanders and officers, as well as researchers from other jurisdictions, have identified recruitment as a point of intervention to minimise police drug use.**

Although they were not specifically asked about recruitment, when asked 'what do you see as the best ways of fixing the problem?', nearly half of the NSW Police commanders interviewed (43%) by senior PIC officers in mid-2003 said that they thought that a review of current recruitment practices was an important step in

1261 For further information about illicit drug use in the Australian community refer to Section 2.7 in Chapter 2.

minimising the problem of illegal drug use in NSW Police.[1262] Nearly one-third of commanders interviewed (29%) commented on the need to have some form of screening procedure in place to identify those inclined to use drugs before they join NSW Police.

Similarly, a number of officers who attended the Police Association of NSW (PANSW) Biennial Conference in May 2004 expressed their view that improvements to the NSW Police recruitment process can assist in minimising illegal drug use by officers. The approximately 130 PANSW delegates were divided into twelve groups to discuss their suggestions for strategies that would assist in minimising drug use within NSW Police. In answer to the question 'What are the *top two issues* that must be addressed to reduce the problems of illicit drug use in NSW Police?', five of the twelve discussion groups made reference to the need to improve the recruitment process, while another three discussion groups advocated that applicants should be drug tested.[1263]

From their research on police officers in the USA, Carter and Stephens have suggested that screening police applicants is a critical step in minimising illegal drug use:

> At the outset, screening police applicants is a critical first step in dealing with the substance abuse problem among employees. Whether the screening is done by urinalysis, background investigation, polygraph, or a combination of these, the point to note is that the best way to deal with the problem is by minimising its potential to occur. It is unrealistic in today's society to expect police applicants have not experimented with drugs.[1264]

As part of the research for Operation Abelia the PIC spoke with Dr David Carter from the School of Criminal Justice at Michigan State University, who co-authored the research discussed above as well as a book entitled *Drug abuse by police officers.*[1265] During his visit to Sydney in early 2004 Dr Carter advised that one of his main research findings was that 'fast-tracking' police recruits was problematic and led to problems downstream in terms of police misconduct. He said that officers who were fast-tracked in the United States were showing a higher number of instances of use of excessive force and drug use. When asked about the strategies he would use to minimise illegal drug use by police, he said that he would ensure that no corners were being cut with regard to the recruitment and training of officers.

Commentators in Canada and in the UK have also discussed approaches to minimise corruption through recruitment practices. In his report reviewing Toronto Police Service practices and procedures to determine how these could be improved 'to prevent misconduct and corruption of any kind', Ferguson (2003) argued that there needs to be more thorough background checks conducted for those who apply to join the police.[1266] In the UK the HM Inspectorate of Constabulary is said to have investigated a number of

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1262 See Appendix 2 for more information about the interviews with local area commanders and commanders from specialist units.

1263 See Appendix 8 for more information about the discussion groups conducted as part of the Police Association of NSW Biennial Conference in May 2004.

1264 D. L. Carter, & D. W. Stephens, An overview of issues concerning police officer drug use. In T. Barker & D. L. Carter (Eds) *Police deviance*. Cincinnati Ohio: Anderson Publishing Co., 1994, pp. 108-9.

1265 D. L. Carter, & D. W. Stephens, *Drug abuse by police officers: An analysis of critical policy issues*. Springfield Illinois: Charles C. Thomas Publisher, 1988.

1266 G. Ferguson, *Review and recommendations concerning various aspects of police misconduct. Volume 1*. Commissioned by Julian Fantino, Chief of Police Toronto Police Service. January 2003, (Released 27 February 2004), p. 20.

approaches to minimise corruption through recruitment practices including effective vetting of staff at the recruitment stage and more advanced vetting for high-risk posts.[1267]

Observation 3:	**The recruitment process provides an opportunity to communicate organisational expectations and the nature of the work so that some unsuitable applicants can decide for themselves that policing is not the career for them.**

When discussing recruitment, the Independent Commission Against Corruption has observed that the recruitment process is often an employee's first contact with an organisation. As such the recruitment process provides an opportunity for an organisation to communicate to potential applicants its ethical standards and expectations of staff.[1268]

Some police agencies currently use their recruitment process to communicate the message that prohibited drug use is unacceptable. For example, the Charlotte-Mecklenburg Police Department (CMPD) in North Carolina uses a strategy that has many different components to communicate this message. Examples of some parts of this strategy include:

- When applicants request information about employment they are sent a letter that describes the application process in detail. Amongst other things this letter specifies the types of drug use that can eliminate an applicant from the process. It also states the importance of providing truthful responses during the recruitment process:

  > many applicants are eliminated from consideration because they have not been completely truthful and given full disclosure of all information that we require in our investigation. The integrity of our employees is one of this department's most important Core Values.

- This letter also advises applicants that they will be required to submit to a polygraph examination and to a drug test. The Police Chief of the CMPD has said that providing this information to applicants at the beginning of the application process leads to some who may be involved in drug usage removing themselves from the application process.
- Applicants can then schedule themselves for a police applicant written and physical ability testing session. An orientation talk is given at the beginning of each drug testing session. This includes a discussion of the two issues that disqualify many applicants including truthfulness and drug use. Applicants are also informed that the CMPD will conduct an extensive background investigation that requires full disclosure on their part about drug-related issues. The CMPD has found that potential applicants also self-select out of the process at this point: at several testing sessions applicants have admitted to drug use and withdrawn from the process, some applicants have also left the testing session

1267 J. Miller, Police corruption in England and Wales: An assessment of current evidence. *Home Office Online Report 11/03*, 2003, p. 36.

1268 Independent Commission Against Corruption, Profiling the NSW Public sector: Functions, risks and corruption resistance strategies. *Sydney: Independent Commission Against Corruption, January 2003*, p. 41.

> during the break between the orientation and the beginning of the drug testing.[1269]

The Police Association of NSW has suggested that the recruitment process should be used to place an emphasis on lifestyle expectations. It has advocated the desirability of 'a reassessment of recruitment procedures that places an emphasis on lifestyle expectations prior to entrance into the Police College'.[1270]

Some law enforcement agencies use an orientation session to inform trainees that policing will affect their lives when they are off duty as well as when they are on duty. For example, the Amsterdam Police deliberately emphasise to trainees in the first days of their training the impact that joining the police force will have on their lives, both on and off duty:

> We started a program for new members of our police force. The first day after the selection procedure in our organisation is a day to make them aware that joining the police force will change their life in a certain way. It will affect your personal life and behaviour in society 24 hours a day. We share a lot of temptations and risks out of our experiences through investigations and start discussions with them. And of course we tell them they make a wonderful choice to join our police force where there's no doubt about the integrity of most of their new and professional colleagues.[1271]

Some NSW Police officers have attributed their illegal drug use, at least in part, to stress encountered in their work.[1272]The Australasian Centre for Policing Research (ACPR) has suggested that providing relevant information to applicants can maximise the chances of recruiting those best able to handle the types of stressful situations officers are likely to encounter in their work. As part of a project designed to assist police agencies to fulfil their duty of care in relation to their officers' psychological wellbeing, the ACPR coordinated a workshop in July 2001 involving participants from nine Australasian police agencies. One of the issues raised by participants at that workshop was that the marketing of police work in recruitment campaigns does not commonly reflect all aspects of day-to-day police work and that, as a result, these campaigns may attract applicants who are physically or psychologically unsuitable.[1273] As one of its proposed strategies to prevent and respond to psychological harm incurred during operational duties, the ACPR recommended:

> Providing information to potential applicants to ensure adequate awareness of all aspects of police work, including the potential for exposure to traumatic situations.[1274]

1269 Correspondence from Chief of Charlotte-Mecklenburg Police Department, 2 February 2004.

1270 Letter from President of Police Association of NSW to Assistant Commissioner Finlay, dated 12 November 2004.

1271 Correspondence from Chief of Internal Affairs, Amsterdam-Amstelland Police, November 2003.

1272 See Chapter 5 for more information about the reasons officers gave for their illegal drug use.

1273 K. Adams, & J. Stanwick, Managing the risk of psychological harm for operational police. *Australasian Centre for Policing Research. Report Series No. 142.1, 2002*, p. 7.

1274 K. Adams, & J. Stanwick, Managing the risk of psychological harm for operational police. *Australasian Centre for Policing Research. Report Series No. 142.1, 2002*, p. iv.

The ACPR elaborated on this recommendation by stating that:

> The recruitment process, whilst promoting many aspects of the job, must be sure to portray stressful or risky aspects of police work in order to maximise the compatibility of recruits to the work they will be required to undertake. It is acknowledged that a large proportion of police work is routine with only a small percentage of an officer's time involving stressful or critical situations. Nevertheless, applicants should be given realistic expectations of the type of potentially traumatic situations they may be called to as a police officer, and in addition, a realistic insight into the types of stressors that would be encountered should they at some stage move into specialist units. This is not only important in minimising potential psychological harm but also in reducing future attrition rates.[1275]

Observation 4:	**Recruitment practices are seen as only one part of the answer to addressing the issue of illegal drug use by police officers.**

Barker and Carter (1994) have warned that one of the lessons from their research on police misconduct is that 'no matter how careful the selection and training processes, there will always be people who survive the selection assessment, and eventually become involved in misconduct'.[1276]

When asked whether they had any views about the relationship between recruitment and illegal drug use, some of the officers and students who participated in the Operation Abelia focus groups[1277] indicated that they did not think that changing the recruitment processes would have much effect on illegal drug use by NSW Police officers. Extracts from the discussions in three of these focus groups are provided as examples:

> You're always going to have people who use drugs. It's a cross-section of the community. Ten per cent who are going to come into the police force will be thieves, et cetera.
>
> [Facilitator:] What about recruitment? [Participant:] You can't, it's open across the board. How can you possibly target that?
>
> [Facilitator:] Do you think there is a relationship between recruitment and drug use? [Participant:] I don't think there is a relationship. The same type still joins the cops, only the training is different. [General agreement from the group.]

When asked whether there was anything that he could suggest that could have helped him avoid getting back into drugs Officer H4, who gave evidence in a private hearing conducted as part of Operation Abelia, suggested that improved recruitment might help but he added that it would not have assisted him:

1275 K. Adams, & J. Stanwick, Managing the risk of psychological harm for operational police. *Australasian Centre for Policing Research. Report Series No. 142.1, 2002*, p. 8.

1276 T. Barker, & D. L. Carter, *Police deviance*. Cincinnati, Ohio: Anderson Publishing, 3rd Edition, 1994, p. v.

1277 For further information about the focus groups that were conducted as part of Operation Abelia, refer to Appendix 4.

> My problems, I'm afraid, don't arise from the police, within the police; it is outside of that. In today's society, the way police are recruited, or during the recruitment process, perhaps tougher screening. But, in saying that, at the time that I joined, I wasn't involved in this, so I can't help you.[1278]

Observation 5: There is no clear relationship between the nature and extent of illegal drug use before joining NSW Police with the nature and extent of illegal drug use after joining NSW Police.

Some of the officers and former officers who admitted drug use after joining NSW Police said that they had not used any illegal drugs prior to joining NSW Police.[1279] Hence screening for prior drug use at recruitment would not have identified these officers as potential illegal drug users.

No information was available on whether or not the officer had used illegal drugs prior to recruitment in more than half of the eighty-one case studies analysed for Operation Abelia.[1280] For those officers who admitted using illegal drugs prior to their recruitment, the extent of their prior drug use varied widely. For example:

- Former Officer P1 stated that the extent of his illegal drug use prior to joining NSW Police was smoking 'a little bit of pot' as a teenager.[1281] Former Officer P1 said that he did not really enjoy smoking cannabis and his drug use was limited.
- Officer G2 admitted that he used cannabis frequently prior to his recruitment, smoking the drug on a 'daily basis'.[1282] Officer G2 also admitted that he occasionally used speed, cocaine and ecstasy prior to joining NSW Police, as well as using steroids over a number of years.

Interestingly, it was former Officer P1 who later came to attention for extensive use of a number of drugs throughout his policing career (including speed, cocaine and ecstasy), while Officer G2 was identified for just one incident of ecstasy use. This illustrates that the nature and extent of illegal drug use by some officers prior to their joining NSW Police may be a misleading indicator of their drug use after they join NSW Police.

On the other hand, some officers said that they continued using illegal drugs throughout their time at the NSW Police College or resumed their illegal drug use shortly after attestation and commencing their duties as a probationary constable. For example:

1278 Operation Abelia, PIC Transcript, Private hearing, APC, 30 August 2004, pp. 49-50.

1279 For example, Operation Abelia, PIC Transcript, M. K. Wilson, 6 November 2003, p. 27; Operation Abelia, PIC Transcript, S. A. Hill, 6 November 2003, p. 53; Operation Abelia, PIC Transcript, T. L. Tyler, 6 November 2003, pp. 79-80; Operation Abelia, PIC Transcript, S. J. Foster, 6 April 2004, p. 792; Operation Abelia, PIC Transcript, Private hearing, ANJ, 10 May 2004, p. 10; Operation Abelia, PIC Transcript, Private hearing, ANR, 11 May 2004, p. 8; Operation Abelia, PIC Transcript, Private hearing, APG, 16 August 2004, p. 9; Operation Abelia, PIC Transcript, Private hearing, APC, 30 August 2004, pp. 49-50.

1280 For further information about the Case Study Analysis see Appendix 5.

1281 Operation Abelia, PIC Transcript, Private hearing, ANP, 11 May 2004, p. 9.

1282 PIC, Transcript of Record of Interview, 7 May 2004, p. 5.

- Former Officer S2 admitted that he began smoking cannabis as a teenager and continued smoking the drug throughout his training at the Academy and his policing career. Former Officer S2 said that at the time he sought assistance for his drug use more than 15 years into his career he had been a cannabis user for several years. He also admitted that he relapsed into cannabis use eight months later.[1283]
- Former Officer C2 admitted that he had been a recreational drug user prior to joining NSW Police. Although he denied using illegal drugs whilst at the NSW Police College, he admitted that he resumed his recreational drug use within a few weeks of attestation and beginning duties as a probationary constable.[1284]

Observation 6: Some law enforcement agencies explicitly define what they consider to be an acceptable level of prior illegal drug use.

In 1988 Carter observed that many US law enforcement agencies did not openly discuss their position on prior drug use by applicants. At that time he advocated that open discussion of the agency's position regarding prior drug use is preferable as it both acknowledges that people make mistakes in life and allows the agency to draw a line between what applicants may have done in the past and the expectations that they will be drug-free once employed as a police officer:

> The problem is that like many other customs which serve as policies in agencies, drug experimentation policies for applicants are neither openly discussed or acknowledged (although notable change has taken place in recent years). Open discussion of this policy portrays an organization that acknowledges people make mistakes in life but clearly communicates to the applicant and the community that the department expects its police officers to be drug-free as a condition of employment. Once established, this policy can be reinforced throughout the applicant screening period which should be inclusive of the probationary period.[1285]

US law enforcement agencies now appear to be more open in discussing their position on prior illegal drug use. The Federal Bureau of Investigation (FBI), for example, has developed criteria to determine whether an applicant who has used drugs in the past is unsuitable for employment. The FBI's 'Application for Employment' specifically states that:

> As a further condition of employment, you will be administered a polygraph examination. This examination will focus on your truthfulness on the FBI application form, which includes questions on prior drug use. Please note that you can be disqualified for FBI employment if you have done any of the following:
>
> - used marijuana during the last 3 years
> - used marijuana more than 15 times

1283 Operation Abelia, PIC Transcript, Private hearing, ANK, 10 May 2004, pp. 7-8.

1284 Operation Abelia, PIC Transcript, Private hearing, ANL, 10 May 2004, pp. 7-8.

1285 D. L. Carter, Identifying officers who are substance abusers. In D. L. Carter & D. W. Stephens (Eds) *Drug abuse by police officers: An analysis of critical policy issues*. Springfield Illinois: Charles C. Thomas Publisher, 1988, p. 61.

- used an illegal drug or combination of illegal drugs, other than marijuana, more than 5 times
- used an illegal drug or combination of illegal drugs, other than marijuana, during the last 10 years
- sold an illegal drug for profit
- used an illegal drug while employed in a law enforcement or prosecutorial position or while in a position of high-level responsibility or public trust
- failed an FBI polygraph examination regarding prior drug use, even if the extent of use would not be disqualifying
- failed an FBI polygraph examination regarding truthfulness/ candor on an FBI employment application, or
- failed an FBI polygraph examination regarding contact with non-US Intelligence Services.[1286]

Another example is the Idaho State Police drug use policy that disqualifies an applicant:

> if they have illegally manufactured or delivered a controlled substance, if they have, on any occasion, used LSD, or if they have illegally used marijuana on more than 12 occasions or within a three year period before application.[1287]

The Police Education Advisory Council in Queensland has found that policies relating to an applicant's drug history vary across the many jurisdictions in the United States:

> The Louisville Police Department, for example, disqualifies any one who admits having used or sold marijuana within three years of application or any other controlled substance within six years of application. The District of Columbia rejects applicants who admit to having used marijuana more than 15 times, although recency of drug use is also considered. In Chicago, prior experimental drug use is permitted if the applicant passes the Inwald Personality Inventory. In Miami, experimental marijuana use (but not harder drugs) is permitted.[1288]

Observation 7: Some officers and former officers who told the PIC that they had used drugs prior to joining NSW Police said that, had they been asked during the recruitment process, they would not have declared their prior drug use.

Current and former NSW Police officers who had admitted using illegal drugs were asked whether they had used any illegal drugs prior to joining NSW Police. The PIC asked those who said that they had used illegal drugs before joining NSW Police

1286 US Department of Justice Federal Bureau of Investigation, Application for Employment. Federal Bureau of Investigation, reviewed 17 April 2000, p. 1.

1287 G. Mills, Idaho State police job openings. *NBC Newschannel 6, 30 July 2003*.

1288 Police Education Advisory Council, *Police for the future: Review of recruitment and selection for the Queensland Police Service*. Criminal Justice Commission and Queensland Police Service, August 1998, p. 77.

whether they thought that their former drug use would have affected their chances of being recruited to be a police officer.[1289]

Some officers and former officers said that they did not think that their prior drug use would have affected their application because it had been 'a couple of years' since they had last used illegal drugs or because their prior drug use had been minor, for example:

- Former Officer R3, who had joined NSW Police when he was 19 years old, told the PIC that it was probably a couple of years between when he last used drugs and when he applied to become a police officer. He said that he had no intention of using drugs again at the time he applied to join NSW Police and so he did not think that his prior drug use would affect his application. He said that he could not remember whether he had been asked to disclose his drug use at the time of recruitment, but added that if he had been asked he would have lied so he could get the job.[1290]
- Officer D3, who joined NSW Police when he was 18 years old, told the PIC that he did not think his former drug use would have affected his chances of being recruited as a NSW Police officer because he only used drugs three or four times in three or four years. He said that he 'never really got into that type of thing'. He also told the PIC that he did not remember being asked anything about his drug use when he was being recruited into NSW Police.[1291]

One former officer said that he did not think that he was under any obligation to disclose his prior drug use:

- Former Officer C2 said that he did not make any disclosures about his previous drug use at the time he applied to join NSW Police. He said he did not remember being asked any specific questions about it and that he did not think that there was any obligation on him to make such a disclosure.[1292]

Although one officer (Officer G2) said that he thought that he told NSW Police about his prior drug use and the person with whom he spoke had said that he appreciated Officer G2's honesty[1293], most of the officers and former officers questioned by the PIC said that they did not remember being asked about their prior drug use when they applied to join NSW Police. The majority also said that if they had been asked about their past drug use they would have lied, for example:

1289 For further information about the purpose of these private hearings and the nature of the questions asked refer to Appendix 3.

1290 Operation Abelia, PIC Transcript, Private hearing, ANX, 13 May 2004, pp. 6-7.

1291 Operation Abelia, Transcript of Record of Interview, 13 May 2004, pp. 4-5.

1292 Operation Abelia, PIC Transcript, Private hearing, ANL, 10 May 2004, p. 19.

1293 Operation Abelia, Transcript of Record of Interview, 7 May 2004, p. 5.

- Former Officer A2 said that he did not think that he was asked any questions about his drug use when he applied to join NSW Police. When asked how he would have responded had he been asked, former Officer A2 said that he would have said that he had not used any drugs.[1294]
- Former Officer M2 said that he thought that his prior use of drugs would affect his chances of becoming a police officer so on his application he wrote that he had not used drugs.[1295]
- Officer F4 told the PIC that he assumed that if you said 'yes, I've taken illegal drugs' your application would have been thrown in the bin.[1296]
- Former Officer G4 said that he did not disclose his cannabis use when he applied to join NSW Police. He said that he did not remember whether there was a question on the form about it, but he remembers being asked an interview question about what he would do if he were at a party and there were people smoking cannabis there.[1297]

Observation 8: While applicants may not answer questions about their prior illegal drug use accurately, asking the questions provides a means for NSW Police to reinforce the message that illegal drug use is not acceptable within NSW Police.

In its examination of police recruitment practices, the Police Education Advisory Council in Queensland identified three strategies that can be used to determine whether an applicant has a history of drug use: direct questioning, paper and pencil tests (including psychological testing), and drug testing.[1298] (Psychological testing and drug testing of applicants are discussed in more detail later in this section of the report.)

The Council identified the most significant disadvantage of directly questioning applicants is that applicants may not respond truthfully. The Council also suggested that direct questioning may not be an effective strategy for screening out applicants who have previously used drugs:

> [A]pplicants are not likely to admit to drug use if they believe it may exclude them from selection. Furthermore, it is extremely difficult to develop decision-making rules, particularly for applicants who admit drug use in the distant past. For these reasons, direct questioning does not appear to be an effective strategy for preventing and deterring applicants with a record of illicit drug use from entering the [police service].[1299]

1294 Operation Abelia, PIC Transcript, Private hearing, APF, 16 August 2004, p. 6.

1295 Operation Abelia, PIC Transcript, Private hearing, ANV, 12 May 2004, p. 6.

1296 Operation Abelia, PIC Transcript, Private hearing, ANS, 12 May 2004, p. 10.

1297 Operation Abelia, PIC Transcript, Private hearing, ANW, 12 May 2004, p. 9.

1298 Police Education Advisory Council, *Police for the future: Review of recruitment and selection for the Queensland Police Service*. Criminal Justice Commission and Queensland Police Service, August 1998, p. 77.

1299 Police Education Advisory Council, *Police for the future: Review of recruitment and selection for the Queensland Police Service*. Criminal Justice Commission and Queensland Police Service, August 1998, p. 78.

Carter (1988) also suggested that an applicant's self-reported drug use needs to be checked using other methodologies such as urinalysis, polygraphy and background investigation.[1300]

Asking applicants about their prior drug use may have benefits beyond the actual answers that the applicants provide. During the round table discussions conducted as part of Operation Abelia, the NSW Ombudsman suggested that asking questions about prior or current drug use serves to notify applicants that NSW Police 'are alive to this issue and may provide NSW Police with a further opportunity to state the organisation's attitude to illicit drug use by officers'.[1301]

Observation 9: Although recent research has suggested that psychological tests do have potential to screen for risk of corruption, such tests do not specifically screen applicants for drug use.

As Hogg and Wilson (1995) have observed, psychological tests can be used within the police recruitment process to either 'screen out' (that is, exclude) applicants who are considered undesirable for a position or to 'screen in' (that is, select) applicants who are considered desirable.[1302] In the literature analysed to inform Operation Abelia, the PIC considered four other research papers that reviewed the practices of different police agencies and/or related literature on the use of psychological testing as a tool in police recruitment. Aspects of these papers are summarised below.

In 1997 Kaczmarek and Packer of the National Police Research Unit sought to identify a battery of tests that could be used to maximise the chances of selecting suitable entry-level police officers into Australian police services. They reviewed the available psychological tests that could be used to screen police applicants. They also undertook a job analysis of the general duties constable position to determine the critical tasks performed by entry-level police officers across the nation and the psychological characteristics needed to perform these tasks. Based on this job analysis and their review of available tests they identified five tests (two general abilities tests, two personality tests and a writing test) to form the core components of a national test battery.[1303] None of these tests specifically screen for applicants most likely to use drugs.

The Police Education Advisory Council in Queensland has also examined psychological testing as a tool in police recruitment. Amongst other things, it identified examples of tests that it said directly address drug-taking behaviour that it referred to as 'overt tests' as well as 'indirect measures':

> Examples of tests which directly address drug taking behaviours include overt tests such as the Reid Report (substance abuse) and the Personnel Selection Inventory (version 7) (drug avoidance). Other indirect measures (or veiled purpose tests) such as the Personnel Reaction Bank and the Hogan Reliability Scale address domains such as hostility to rules, thrill

1300 D. L. Carter, Identifying officers who are substance abusers. In D. L. Carter & D. W. Stephens (Eds) *Drug abuse by police officers: An analysis of critical policy issues*. Springfield Illinois: Charles C. Thomas Publisher, 1988, p. 61.

1301 NSW Ombudsman response to Operation Abelia Round Table 4: *Recruitment*, May 2004, p. 1.

1302 A. Hogg, & C. Wilson, Is the psychological screening of police applicants a realistic goal? The successes and failings of psychological screening. *National Police Research Unit, Report Series No: 124, 1995*.

1303 A. Kaczmarek, & J. Packer, Determination of a job-related test battery for the psychological screening of police applicants. *National Police Research Unit, Report Series 124.2. 1997*.

> seeking, impulsiveness and conscientiousness, which in turn may be used to identify a potential for 'unacceptable behaviour' which might, but not necessarily, include drug taking.[1304]

However, the Police Education Advisory Council concluded that, as with direct questioning, applicants may not answer truthfully:

> as with direct questioning, there is a significant disadvantage in overt tests because applicants are not likely to admit to drug use if they think to do so may exclude them from selection. Secondly, these types of tests are argued by some researchers to have low predictive validity.[1305]

The Police Association of NSW (PANSW) has conducted some research on psychological screening of police recruits. When considering whether psychological testing can detect drug use among applicants the PANSW has observed:

> Research and discussion with psychologists have failed to reveal any one specific test that has been designed for the detection of an individual's predisposition for drug or other substance abuse. However, there are tests that are already in existence that will test for this trait along with others. Amongst these are the Inwald Personality Inventory.[1306]

As part of its research the PANSW contacted the Director of the Australian Institute of Forensic Psychology (AIFP) who has stated that it is exceedingly difficult to use psychological testing to measure the likelihood of an applicant abusing drugs now or in the future.[1307] The Director of the AIFP said that one of the reasons for this is that:

> Psychological tests are designed to measure personality traits. Drug use is a **behaviour**, not a personality trait. However, most behaviours have a group of personality traits which are usually associated with that behaviour.[1308]

Rather than attempting to measure drug abuse, the Director of the AIFP has suggested that a better approach would be to measure personality characteristics associated with drug abuse.[1309] He concluded that the most appropriate methodology would involve a group of tests supplemented by 'a highly structured interview which questions the applicant about their drug use'.[1310]

1304 Police Education Advisory Council, Police for the future: *Review of recruitment and selection for the Queensland Police Service*. Criminal Justice Commission and Queensland Police Service, August 1998, p. 78.

1305 Police Education Advisory Council, *Police for the future: Review of recruitment and selection for the Queensland Police Service*. Criminal Justice Commission and Queensland Police Service, August 1998, p. 78.

1306 Police Association of NSW, Recruitment practices. Unpublished research paper provided by the Police Association of NSW, (n.d.), p. 5. Provided to the PIC by the Police Association of NSW in February 2004.

1307 K. Byrne, Using psychological profiling to detect drug use in police applicants. Australian Institute of Forensic Psychology, Clifton Hill Victoria, (n.d.), p. 4. Provided to the PIC by the Police Association of NSW in February 2004.

1308 K. Byrne, Using psychological profiling to detect drug use in police applicants. Australian Institute of Forensic Psychology, Clifton Hill Victoria, (n.d.), p. 5. Provided to the PIC by the Police Association of NSW in February 2004.

1309 K. Byrne, Using psychological profiling to detect drug use in police applicants. Australian Institute of Forensic Psychology, Clifton Hill Victoria, (n.d.), pp. 5-7. Provided to the PIC by the Police Association of NSW in February 2004.

1310 K. Byrne, Using psychological profiling to detect drug use in police applicants. Australian Institute of Forensic Psychology, Clifton Hill Victoria, (n.d.), pp. 8-9. Provided to the PIC by the Police Association of NSW in February 2004.

A recent paper from the Australasian Centre for Policing Research (ACPR) reviewed the existing research evidence to determine whether standard psychological tests of personality have the potential to screen police applicants for corruption risk.[1311] The ACPR's literature search revealed 16 studies that have examined the relationship between psychological test scores and some measure of corruption (such as termination, suspension, reprimands). Comparison across these studies was difficult since:

- one of the studies reviewed was conducted in Australia, the others were conducted in the USA
- sample sizes ranged from 27 to 878 police officers
- different studies looked at the utility of different psychological tests.

This ACPR report concluded that some standard psychological tests do have the 'potential' to screen for corruption risk and encouraged police agencies to further investigate the use of psychological tests as a method to screen applicants for corruption risk:

> standard psychological tests of personality have the potential to accurately screen for risk of corruption. Australasian police organisations are therefore encouraged to further investigate the use of standard psychological tests for this purpose. This paper provides a template for each jurisdiction to examine the value of using existing personality test data to screen for corruption risk.[1312]

However, the report warns that standard psychological tests vary in the accuracy with which they can screen applicants for corruption and 'many predictive functions performed little better than chance'.[1313] The report also warns that the use of psychological tests to screen for corruption risk 'should not replace established corruption screening methods. Instead these tests should complement existing methods'.[1314]

1311 M. Sced, Screening for corruption using standard psychological tests of personality: A review of the research evidence. *Australasian Centre for Policing Research, A critical issues in Policing paper, November 2004*.

1312 M. Sced, Screening for corruption using standard psychological tests of personality: A review of the research evidence. *Australasian Centre for Policing Research, A critical issues in Policing paper, November 2004*, p. iv.

1313 M. Sced, Screening for corruption using standard psychological tests of personality: A review of the research evidence. *Australasian Centre for Policing Research, A critical issues in Policing paper, November 2004*, p. 27.

1314 M. Sced, Screening for corruption using standard psychological tests of personality: A review of the research evidence. *Australasian Centre for Policing Research, A critical issues in Policing paper, November 2004*, p. 28.

Observation 10: Despite little support for the effectiveness of pre-employment drug tests by some commentators, the PIC has heard from law enforcement agencies that consider their pre-employment drug testing to be useful.

One method of screening applicants for drug use is by drug testing them. This form of drug testing is referred to as 'pre-employment testing'. Shahandeh and Caborn (2003) have stated that pre-employment testing is the most common form of workplace drug testing. Approximately 80 per cent of the workplace drug testing in the world is carried out as part of the recruitment process.[1315] Pre-employment drug testing is fairly common in the US, where some agencies supplement pre-employment drug testing with polygraphed interviews.

Some commentators have expressed doubts about the utility of pre-employment drug testing. For example, some have suggested that pre-employment drug testing may only deter drug use during the actual application process rather than deterring drug use once the person has been appointed.[1316] The Australasian College of Occupational Medicine has referred to anecdotal reports from the USA that show that pre-employment drug testing only detects 'the hard core addicts who cannot abstain for more than the few weeks necessary to ensure "clean" urine specimens'.[1317]

In its discussion of drug testing more than a decade ago, the Privacy Committee of NSW suggested that if drug users were aware of the retention times for various substances they could 'more easily adopt strategies to avoid detection'.[1318] The Privacy Committee also cited research that suggested that pre-employment drug testing may not be cost effective.[1319] The Police Education Advisory Council in Queensland has suggested that the utility of drug testing will vary with such factors as the prevalence of drug use among a given population, the cost of testing, and the stringency of the analytical methods employed.[1320]

Those who have reviewed the available literature to examine the effectiveness of pre-employment drug testing have tended to say that there are insufficient well-designed studies to be confident of the value of this form of drug testing. One team of researchers has suggested that those studies that have been well designed have found that 'many of the claims used to justify this type of screen have been exaggerated'.[1321]

1315 B. Shahandeh, & J. Caborn, Ethical issues in workplace drug testing in Europe. *Paper presented at Seminar on Ethics, Professional Standards and Drug Addiction organised by the Pompidou Group Council of Europe, Strasbourg, 6-7 February 2003*, p. 7.

1316 For example: American Civil Liberties Union (ACLU), *Drug testing: A bad investment*. New York: ACLU September 1999, pp. 15-16; S. Allsop, & M. Phillips, Drug testing in the workplace: An unfortunate marriage. *Paper presented at forum, 'Under the influence: The issues and practicalities of alcohol and other drug testing in the workplace', Perth, 8 October 1996*, p. 5.

1317 Australasian College of Occupational Medicine, *Management of alcohol and other drugs in Australian workplaces*. Report prepared by The Australasian College of Occupational Medicine, Victoria, February 1992, p. 10.

1318 Privacy Committee of New South Wales, *Drug testing in the workplace*. The Privacy Committee of New South Wales, No. 64, October 1992, p. 21.

1319 Privacy Committee of New South Wales, *Drug testing in the workplace*. The Privacy Committee of New South Wales, No. 64, October 1992, pp. 22-23.

1320 Police Education Advisory Council, *Police for the future: Review of recruitment and selection for the Queensland Police Service*. Criminal Justice Commission and Queensland Police Service, August 1998, p. 78.

1321 Zwerling, Ryan, & Orav 1990 cited by A. Corry, Controls on drug use. In S. Allsop, M. Phillips, & C. Calogero (Eds) *Drugs and work: Responding to alcohol and other drug problems in Australian workplaces*. East Hawthorn, Victoria: IP Communications Pty Ltd, 2001, p. 113.

Another team of researchers has concluded that 'in terms of predicting "unsuitability discharge" from the military, whether or not the subject completed high school was a better indicator of later performance' than pre-employment drug testing.[1322]

The NSW Police Director of Health Services expressed his opinion on the limited value of pre-employment drug testing in the evidence he gave at a public hearing on 15 December 2003:

> I understand that pre-employment drug tests are really intelligence tests rather than drug tests because if you know that you're going to be drug tested as part of a medical examination and if you do use drugs, there are steps you can take.[1323]

Some commentators, however, have suggested that the value of pre-employment testing lies in the message that it sends to applicants about the agency's expectations of appropriate conduct, for example:

> Job applicants should be made aware of company policy regarding alcohol and other drugs prior to presenting to a medical department for drug testing. This may lower the efficacy of the policing aspects of a drug program, but heightens the strength of the message concerning the corporate attitude to drugs and alcohol. It allows those uncomfortable with the situation to withdraw with dignity[1324]

> Drug screening of applicants serves as a deterrent, discouraging unlikely applicants from applying and thereafter consuming the time and efforts for Jacksonville Sheriff's Office personnel.[1325]

Despite the apparent ease of 'passing' a pre-employment drug test, a number of law enforcement agencies have commented on the fact that they do disqualify applicants on the basis of their drug test results. For example, the Los Angeles Police Department has said that 'at the very beginning of the hiring process, numerous applicants are disqualified due to positive drug test results'.[1326] The FBI has found:

> Within the first 5 years of the program, the FBI had tested urine specimens for approximately 14 021 applicants and 18 verified positive GC/MS test results were recorded.[1327]

The Chicago Police Department also conducts drug testing as part of its recruitment process. It has used hair samples along with urine samples since 1997. It reports that it has found pre-employment screening to be very useful. It has said that hair testing enables the detection of drug use over a longer period of time than urine testing and the Chicago Police Department considers that the use of hair samples eliminates the

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1322 S. Allsop, & M. Phillips, Drug testing in the workplace: An unfortunate marriage. *Paper presented at forum, 'Under the influence: The issues and practicalities of alcohol and other drug testing in the workplace', Perth, 8 October1996*, p. 5.

1323 Operation Abelia, PIC Transcript, G. N. Jackel, 15 December 2003, p. 121.

1324 Australasian College of Occupational Medicine, *Management of alcohol and other drugs in Australian workplaces*. Report prepared by The Australasian College of Occupational Medicine, Victoria, February 1992, p. 14.

1325 Office of the Sheriff Consolidated City of Jacksonville, General Order XV.3 (15) Drug screening program, September 1997, p. 2.

1326 Correspondence from Chief of Police Los Angeles Police Department, 24 July 2003.

1327 US Department of Justice Federal Bureau of Investigation, *Drug deterrence program: Drug-free workplace policy and procedure*. US Department of Justice, Federal Bureau of Investigation, April 1997, p. 10.

casual user from the 'hard core user' or addict. The Chicago Police Department recognises that it may miss the recreational or occasional user in pre-employment testing but it is willing to accept this in order to eliminate the heavy user.[1328]

Another agency that considers it important to conduct pre-employment drug tests is the West Midlands Police in the UK. The West Midlands Police uses urine testing for all new recruits and hair testing for internal applicants for specified posts.[1329]

Within Australia, the Australian Federal Police, Victoria Police and Western Australia Police Service drug test applicants. Victoria Police uses its website to warn potential applicants that they will be drug tested:

> You will be required to undergo urine drug screening at the medical examination. If you decline to sign the consent form or provide a specimen of urine for testing you will have your application immediately cancelled.[1330]

Several US agencies supplement their drug testing with the use of a polygraph interview. Mann (2003) has noted that:

> The polygraph can overcome the problems of drug testing as a stand-alone selection strategy. It overcomes the obvious problem of self-disclosure, and the problem of an applicant abstaining from detectable drug use in the period immediately before the test. Use of the polygraph examination complements the drug testing process by ensuring a more accurate picture of an applicant's drug-using history and behaviour.[1331]

She also suggests that where the polygraph is used early in the selection process it is a cost-effective strategy:

> Because the polygraph is the first step in the selection process, with successful applicants moving onto drug testing and finger printing, the timely use of the polygraph is also promoted as a cost-effective strategy.[1332]

1328 Correspondence from Commanding Officer, Personnel Division, Chicago Police Department, 16 January 2004.

1329 Correspondence from Deputy Chief Constable West Midlands Police, 18 March 2004.

1330 Victoria Police, The recruiting process. www.police.vic.gov.au, accessed 17 March 2004.

1331 K. Mann, Substance use in a police workplace: emerging issues and contemporary responses. Queensland Police Service, 2003, p. 35.

1332 K. Mann, Substance use in a police workplace: emerging issues and contemporary responses. Queensland Police Service, 2003, p. 35.

Observation 11: Support for the drug testing of students came from stakeholders at the round table discussions, commanders, officers and students.

NSW Police, the Police Association of NSW and the NSW Ombudsman have each supported the introduction of drug testing of students.[1333]

Although they were not specifically asked about drug testing of applicants or students, nearly one-third of the commanders interviewed (29%) suggested that they thought students should be screened for drug use or drug tested prior to recruitment as students, and students should be drug tested prior to being posted in commands.[1334]

Participants in each of the Operation Abelia focus groups, including students, indicated support for the drug testing of applicants and students. Some participants appeared to see drug testing as a way of screening potential recruits, while others spoke of drug testing as a deterrent and/or educational measure for students. Examples from the discussions in five of the focus groups are provided as examples:

> [Facilitator:] What about recruitment? Should we [drug] test them? [Participant:] Of course we should.
>
> It's a problem in itself that we can't drug test students. [New speaker:] If you want a clean police force, drug test on entry. [New speaker:] They fingerprint when you join to see if you're a crim, so why can't they drug test?
>
> It has to be an ongoing process, at the academy, they have to be drug tested. The probability of catching someone with random or targeted testing at the academy is highly unlikely, but it changes their perception.
>
> My position is that you are coming into an environment where you must be drug free. If you want to join the police, you must undergo drug testing.
>
> It should be criteria for employment: 'you can expect to be tested for drug and alcohol throughout'. [New speaker:] Someone signs up for AIS [Australian Institute for Sport] you know you're going to be tested.[1335]

1333 NSW Police response to Operation Abelia Round Table 3: *Students*, May 2004, p. 1; Police Association of NSW response to Operation Abelia Round Table 3: *Students*, May 2004, p. 1; NSW Ombudsman response to Operation Abelia Round Table 3: *Students*, May 2004, p. 1; Operation Abelia, PIC, Transcript, Commissioner Moroney, 12 November 2004, pp. 1322-23.

1334 For more information about the interviews with commanders and these commanders' responses refer to Appendix 2.

1335 For more information about the conduct of the focus groups and the comments given by participants refer to Appendix 4.

Observation 12: Contrasting views were offered to the PIC concerning the adequacy of current NSW Police background checks for applicants.

The importance of rigorous background checks as part of the recruitment process is well acknowledged.[1336] Commanders and a number of sworn officers told the PIC that they believed that insufficient background checks were being conducted on applicants for NSW Police. In contrast, those responsible for recruitment within NSW Police as well as some students who had recently been selected to undertake the DPP said that background checks on potential applicants remained rigorous.

One of the commanders, for example, commented on the inadequacy of background checks:

> ….checks are inadequate and there was no psychological testing done.

Similarly many of the officers who participated in the Operation Abelia focus groups were critical of the current recruitment system.[1337] Many of their comments indicated that these officers considered that the process for conducting background checks on applicants needs to be improved. Some example discussions from the focus groups include:

> In the old days you were grilled and so were your neighbours. Not so these days.
>
> There should be full background checks as soon as a person is accepted into Police College.
>
> … they're not serious about recruitment anyway, if they're serious they gotta do testing when they go in. We don't do background tests like we used to. [New speaker:] They're looking at re-introducing that. Why did we ever get rid of it? [New speaker:] A lot of people think those sorts of measures should be reintroduced.
>
> What happened to interviewing both of your neighbours? [New speaker:] To be a cleaner in this organisation you have to have a face-to-face interview, but to be a copper you don't. [Facilitator:] Would this make a difference to the issue? [Several participants:] Oh yes. [New speaker:] Definitely. [New speaker:] People are going to slip through the gaps anyway. But it might close some of the gaps and also to hit home to them the importance. [New speaker:] Yeah, let them know we're fair dinkum.

In contrast, when the question of background checks was raised with current students, these students indicated that the checks that had been conducted as part of their recruitment had been rigorous:

1336 For example: M. Mollen, *Commission to investigate allegations of police corruption and the anti-corruption procedures of the Police Department*, Commission Report. City of New York, July 1994, p. 117; G. Ferguson, *Review and recommendations concerning various aspects of police misconduct. Volume 1*. Commissioned by Julian Fantino, Chief of Police Toronto Police Service. January 2003. (Released 27 February 2004), p. 20.

1337 For further information about the focus groups that were conducted as part of Operation Abelia, refer to Appendix 4.

> [Facilitator:] Some focus groups have mentioned the former screening process of interviewing recruits' neighbours. [Participant:] A friend was spoken to and grilled [New speaker:] The major bosses [I worked for in the past] were tracked down and spoken to.

When the commanders' comments and concerns were discussed in one of the Operation Abelia round table discussions, NSW Police representatives involved in the recruitment process and also a commander at the round table discussion said that local area commanders were unaware of the recruitment process. A NSW Police representative at the round table discussion stated that the responses given by commanders do not seem to reflect current NSW Police vetting and recruitment procedures. He added that:

> In terms of the stringency of the professional suitability applications they have never been stronger in the history of the organisation than they are now.[1338]

Some commanders and some officers had incorrectly believed that no psychological testing is conducted. In fact, NSW Police uses psychological testing to screen students to determine which students may need to be more actively monitored while at the College. Although some commanders and some officers considered that the current background checks of applicants are inadequate, NSW Police does conduct a range of background checks such as a criminal record check, a driving record check, and other background checks by contacting previous employers, personal referees and any current NSW Police officers nominated by the applicant as knowing the applicant. However, NSW Police has discontinued its earlier practice of contacting the applicants' neighbours.

When considering the views about NSW Police recruitment procedures expressed by commanders and officers, it is important to be aware that commanders and officers, in general, are not required to have a good knowledge of the recruitment process.

ASSESSMENT AND RECOMMENDATIONS

The focus of this assessment is to examine ways that the NSW Police recruitment process could be used to minimise illegal drug use within NSW Police. The focus is not to evaluate the overall effectiveness of the recruitment process in selecting the most suitable applicants.

Given the estimated rate of illegal drug use in the community, it stands to reason that some of those who apply to become a NSW Police officer will have used illegal drugs in the past. The PIC considers that while it would be unrealistic to attempt to restrict recruitment to only those who have never used prohibited drugs in the past, a clear message must be given that current and future illegal drug use by an applicant for NSW Police, or any illegal drug use while a student or during their career in NSW Police, is unacceptable at anytime, whether on duty or off duty.

While applicants had in the past been invited to declare any information that might affect their professional suitability application, prior to 2005 NSW Police did not specifically request applicants to declare current or prior illegal drug use unless either it had been subject to investigation by police or the applicant considered it to be a

1338 Minutes of Operation Abelia Round Table 4: *Recruitment*, 12 May 2004, p. 7.

psychiatric or psychological problem. Similarly, prior to 2005 NSW Police did not provide potential applicants with any information on its Drug and Alcohol Policy. Hence prior to the changes proposed at the end of 2004, NSW Police had not actively sought to use its recruitment process as a tool to minimise illegal drug use.

Areas for improvement

Any recruitment and selection process involves an information exchange between the employing organisation and the applicant. The recruitment process can be used both to let the applicant know more about the organisation and the work involved, as well as to let the organisation know more about the applicant. To date the NSW Police recruitment process has largely focused on seeking information from applicants rather than providing information to them.

Providing additional information to deter unsuitable applicants

The PIC considers that NSW Police should modify the information package that is sent to potential applicants to more actively deter unsuitable applicants. That is to say, the PIC considers that NSW Police should provide additional information to potential applicants to better enable some to decide for themselves that policing is not the appropriate career for them. The PIC supports the inclusion of information about the NSW Police Drug and Alcohol Policy and drug testing as part of the Professional Suitability Application (general) form designed to be distributed to potential applicants from the end of 2004. This material seeks to send a clear message to potential applicants that no NSW Police officer is permitted to use any prohibited drug either on or off duty. In addition to distributing this information as part of the suitability application form, this information should also be available to potential applicants via the NSW Police website and in the material presented and provided at Career Days conducted by NSW Police.

To enable some of the potentially unsuitable applicants to decide for themselves that policing is not the appropriate career for them, the PIC suggests that NSW Police should also provide more detail about the nature of work officers carry out as well as information on its expectations of its officers. Some officers and former officers attributed their illegal drug use to stressful situations encountered in their work, some other officers attributed their drug use to wanting to relax and socialise with friends while they were off-duty, and a small number credited their illegal drug use to boredom. Potential applicants should be given a description of the nature of police work that balances information about the value of the work to the community with information about the types of stressful situations and boredom that may be encountered. Potential applicants should also be warned how being an officer affects the way that they will be able to behave when they are off duty. This information needs to be available to all potential applicants whether they obtain their information from the NSW Police website, material presented and distributed at Career Days, or from the written information package provided by NSW Police with the Professional Suitability Application forms.

Recommendation R 1:

The PIC recommends that NSW Police provides additional information to potential applicants to discourage those who are unsuitable from applying. This additional information should:

- **alert potential applicants about how they can expect their employment as a NSW Police officer to affect their off-duty life**
- **provide more detail about the nature of police work, balancing the value of the work with a description of the types of stressful situations and boredom that officers may encounter**
- **publicise NSW Police's values and expectations for the integrity standards to be met by its officers**
- **alert potential applicants to the fact that they may be drug tested as part of the recruitment process, while they are students at the NSW Police College and/or as officers once they leave the NSW Police College**
- **be available to potential applicants from a variety of sources - such as the NSW Police website, Career Days conducted by NSW Police, as well as in the written package of materials that accompany the Professional Suitability application forms.**

In addition to providing written information to potential applicants, information about the nature of the work, organisational expectations and how they can expect their employment to affect their off-duty life should be reinforced later in the recruitment process. The PIC suggests that these topics should be discussed with the newly selected students as part of an orientation to their studies. The students should be told that policing is not a career that suits everyone and that if they have reservations about their suitability they should feel free to withdraw from the process.

Recommendation R 2:

The PIC recommends that NSW Police conducts an orientation session for those selected as students to commence the Associate Degree in Policing Practice (or other entry-level training). This orientation session should be used to provide a forum where the topics listed in Recommendation R 1 can be discussed in more detail with these students.

Screening applicants for past drug use: another way of reinforcing the message that illegal drug use is not acceptable

In addition to considering the types of information that NSW Police could provide to potential applicants, the PIC examined whether the screening process adequately addresses past drug use. As stated previously, prior to 2005 NSW Police did not specifically request applicants to declare their current or prior drug use.

Most of the officers and former officers, who had told the PIC that they had used drugs prior to joining NSW Police, said that if they had been asked about their former drug use they would have lied. Regardless of whether applicants answer the questions truthfully, the PIC considers that there is value in asking questions about current and prior drug use to reinforce the message to potential applicants that illegal drug use is a

matter of concern to NSW Police. The PIC, therefore, supports NSW Police's recent addition of questions about past and current drug use as part of the Professional Suitability form.

Recommendation R 3:

The PIC recommends that NSW Police includes questions in its application form on prior and current prohibited drug use.

One way some agencies screen for current drug use is by conducting drug tests on applicants. In the material on pre-employment drug testing which the PIC considered, opinion is divided about the utility of conducting drug tests on applicants. One of the perceived disadvantages of pre-employment drug testing is that applicants are able to estimate when they will be likely to be drug tested and may time any drug use in such a way to ensure that it is not detected through such a test. Some agencies use hair samples for their pre-employment drug tests to overcome this. This is less of a concern in the current NSW Police recruitment process since the process extends over a period of several months making it more difficult to predict when the applicant or student is likely to be drug tested.

Despite its limitations, the PIC sees alerting applicants to pre-employment drug testing as a useful way of reinforcing the message that illegal drug use is not acceptable for a NSW Police officer either on duty or off duty, at a time when the applicant is first discovering what it means to be an officer. To further reinforce this message the PIC considers that it is desirable for applicants, as part of the application process, to sign an acknowledgement of their willingness to be drug tested in accordance with NSW Police policies. The PIC is aware that the Professional Suitability form, designed for use from the beginning of 2005, requires the applicant's written consent for NSW Police to collect one or more urine samples for the purpose of screening for prohibited drugs while they are students at NSW Police College. The PIC believes that this written consent should be extended to allow the collection of hair samples as well as urine samples, consistent with s.211A of the *Police Act*.

Recommendation R 4:

The PIC recommends that NSW Police requires applicants to sign an acknowledgement of their willingness to be drug tested in accordance with NSW Police policies.

In some ways the period spent as a student serves as an induction to being a NSW Police officer. It is beneficial to set standards from the point of induction and to continuously reinforce these standards. The PIC advocates the introduction of drug testing of students at the NSW Police College as a tool for screening for student drug use and as a way of reinforcing the message that any illegal drug use within NSW Police is not acceptable. This drug testing should include random drug testing of all students and targeted drug testing of those students where there is reason to suspect that they have been using illegal drugs. The random drug testing at the NSW Police College should be well publicised and conducted in a highly visible manner to further reinforce messages that NSW Police conducts random drug testing and that any student or officer may be tested. This random drug testing should be undertaken at a sufficient rate that students can expect to be tested at least once during their studies at the NSW Police College. In addition, although it is unlikely that a student will find

themselves involved in a critical incident, in any cases where students are involved in critical incidents during their training they should be subject to mandatory drug testing.

Recommendation R 5:

The PIC recommends that NSW Police introduces random, targeted and mandatory (critical incident) drug testing for students at the NSW Police College.

From the material reviewed by the PIC, psychological testing does not currently seem to be a useful tool to screen for propensity to use illegal drugs.

While the information reviewed for Operation Abelia supports the importance of conducting thorough background checks, the PIC is not in a position to comment on the adequacy of the current background checks that are performed as part of the recruitment process. The PIC is aware that NSW Police currently performs a range of background checks including a criminal history check, driving record check, checks with referees and former employers. Views offered to the PIC during Operation Abelia concerning the adequacy of current NSW Police recruitment procedures were conflicting. Commanders and a number of sworn officers who offered opinions to the PIC suggested that recruitment processes had changed since they had been recruited and that those applying to become NSW Police no longer had to undergo the rigorous checks that they underwent. In contrast those responsible for recruitment within NSW Police, as well some students who had recently been recruited, said that background checks on potential applicants remained rigorous. The main area of contention for those who are critical of the screening process was whether talking to neighbours adds significantly to the information that can discriminate between good and poor applicants over and above the other checks that are conducted. While such a check may provide additional information about some applicants, the PIC does not have any information before it to indicate the benefits of talking to neighbours as a strategy to screen out current or potential drug users.

Limitation: Improved recruitment processes cannot guarantee that future officers will be drug-free

While the PIC believes that NSW Police can more directly use the opportunities presented by the recruitment process to deter unsuitable applicants from applying, it is important to acknowledge that changes to the recruitment process will not be sufficient to prevent drug use by some NSW Police officers. Barker and Carter's warning that 'no matter how careful the selection and training processes, there will always be people who survive the selection assessment, and eventually become involved in misconduct'[1339] needs to be kept in mind. During Operation Abelia the PIC heard evidence that some officers commenced using illegal drugs years after joining NSW Police. For a number of those officers who had used drugs prior to joining NSW Police there appeared to be little relationship between their previous drug use patterns and their subsequent drug use patterns. Given that some of the officers first commence using illegal drugs after joining NSW Police, changes to the recruitment process can only provide part of the answer to minimising illegal drug use amongst NSW Police. Even with a recruitment process that more closely focuses on current and prior drug use by applicants, such changes cannot guarantee that all NSW Police officers will be drug-free.

1339 T. Barker, & D. L. Carter, *Police deviance*. Cincinnati, Ohio: Anderson Publishing, 3rd Edition, 1994, p. v.

Monitoring

NSW Police currently reports on the number of random, targeted and mandatory drug tests that it has conducted and the results of these tests on a monthly basis to the Commissioner of Police and Police Minister, as well as in its Annual Report. The PIC suggests that information on the number of random, targeted and mandatory drug tests conducted on students and the results of these tests should be incorporated under a separate listing in NSW Police's reports of drug tests conducted.

Recommendation R 6:

The PIC recommends that NSW Police reports separately the number of random, targeted and mandatory drug tests conducted on students and the results of these tests both in its monthly statistical report to the Commissioner of Police and Police Minister, as well as in its Annual Report.

6.10 EDUCATION, TRAINING AND COMMUNICATION

DESCRIPTION

This section examines the way in which entry-level training, ongoing training and more general communication strategies within NSW Police are used or could be used to deliver messages that may assist to deter illegal drug use by some police.

The Royal Commission into the NSW Police Service found that at the time it conducted its inquiry there had been insufficient training given to officers about what was expected of them in relation to illegal drugs:

> it became apparent that insufficient training had been given, at the Police Academy or elsewhere, as to what was expected of police in relation to their association with recreational drugs.[1340]

Within NSW Police Education Services, different areas are responsible for entry-level training and ongoing training. The area responsible for entry-level training is known as 'Foundational Studies' while the area responsible for ongoing training is known as 'Continuing Education'. The Healthy Lifestyles Branch of the NSW Police Health Services Directorate also develops and delivers some of the entry-level and ongoing training material concerning alcohol and other drugs.

Entry-level training: The Diploma of Policing Practice[1341]

As discussed in the previous section of this chapter, the Diploma of Policing Practice (DPP) is the principal entry-level training provided for those who join NSW Police. The DPP was introduced following the Royal Commission into the NSW Police Service.

1340 J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Final report. Volume I: Corruption*, May 1997, pp. 100-101.

1341 Although the name of this course changed to the Associate Degree in Policing Practice in January 2005, the term 'Diploma of Policing Practice' (or DPP) is used in this section both because this was the name of the course for the majority of the time Operation Abelia was underway and to minimise confusion.

McClelland (2004) provides the following history of the DPP and description of the collaborative partnership between NSW Police and Charles Sturt University (CSU):

> In 1998 NSW Police and Charles Sturt University (CSU) entered into an agreement for the joint development and delivery of the Diploma of Policing Practice (DPP) to students wishing to enter policing. There have been two further agreements, in 2001 and 2003 …
>
> The current arrangements for the education and induction of police recruits date back to the late 1990s when the Constables Education Program (CEP) was introduced, replacing the Police Recruit Education Program (PREP) …
>
> Since 1998 the Diploma of Policing Practice has been provided under a collaborative model between NSW Police and Charles Sturt University. The arrangement has been formalised in three separate agreements.
>
> Under the current arrangement, formalized in 2003, both parties are involved in the screening of applicants for entry to the program with Charles Sturt University making the actual offer of places. The parties are expected to contribute jointly to the development of the curriculum, teaching and assessment. NSW Police provides the facilities and additional specialist teachers for practical policing subjects such as driver training and the use of firearms, as well as field support staff, student welfare staff, library staff and student administration. There is a joint management structure including a Board of Management, a Course Committee and an Assessment Committee.[1342]

The introduction of the DPP was said to have:

> moved police education and training to embrace the notion of 'professionalising' practice through the academic ethos of a university program … Apart from an extended academic program, the DPP initially expanded the police field placement of PREP into a university-based practicum involving both police and community service placements.[1343]

The DPP 'is designed to meet the educational needs of entry-level police practitioners'.[1344] It has been conducted over five sessions (or trimesters) since May 2002. Most students complete the first two sessions of the DPP at the NSW Police College over a period of approximately six months.[1345] The final three sessions are completed by distance education while employed by NSW Police as a probationary constable.

1342 J. McClelland, Report of the committee to review the Diploma of Policing Practice: 2004, October 2004, pp. 4-5.

1343 NSW Police College & Charles Sturt University, *Review of the Diploma of Policing Practice 2002: Final report.* December 2002, pp. 4-5.

1344 NSW Police and Charles Sturt University, Diploma of Policing Practice. Booklet published by Division of Marketing and Communications, Charles Sturt University, April 2003, p. 5.

1345 Not all students attend both sessions at the NSW Police College. Some students complete the first session of the DPP by Distance Education. This means that they study the first session subjects part-time over a period of eight months from their homes. This is supplemented by compulsory residential sessions that are held at the NSW Police College on some weekends. Small numbers of students who have either completed the Bachelor of Policing offered by the University of Western Sydney or the Bachelor of Justice Studies (Policing) offered by CSU Bathurst campus are given advanced standing and are exempted from attending the first session. These graduate students undertake Session 2 of the DPP at the NSW Police College.

Changes to the DPP

At the time of drafting this report the DPP had undergone two major restructures since its inception.

May 2002 restructure

The first of these occurred in May 2002. This restructure included:

- the removal of a trimester[1346]
- a rearrangement of topics
- deleting the placement in a community organisation, conducted pre-attestation (also known as JST 121 'Police role in society')
- reducing a four-week placement at a local area command to two weeks
- deletion of two subjects (JST 252 'Police intelligence practice' and JST 262 'Ethics and accountability' from the second year of the course).[1347]

Review of the Diploma of Policing Practice in 2002

Following this initial restructure, in August 2002 the NSW Police College and CSU commissioned a review of the DPP with the following terms of reference:

- to examine whether the original intention of the DPP is still reflected in the current program
- to evaluate whether the program currently meets the needs of local area commands of the NSW Police and other identified stakeholders
- to report on the outcomes of the review.[1348]

While this review made 13 findings and 33 recommendations, there were no findings specifically concerning ethics training or other subject content that might be directly related to illegal drug use by police or appropriate off-duty behaviour. However, it is relevant to note that amongst other things this review found that:

> The social context of policing is not covered to an appropriate standard, nor is it assessed, pre-attestation[1349]

1346 Prior to this time the DPP was conducted over six trimesters, three of which were undertaken at the NSW Police College (or 'the Academy' as it was previously known).

1347 NSW Police College & Charles Sturt University, *Review of the Diploma of Policing Practice 2002: Final report*. December 2002, pp. 4, 18.

1348 NSW Police College & Charles Sturt University, *Review of the Diploma of Policing Practice 2002: Final report*. December 2002, p. 4.

1349 NSW Police College & Charles Sturt University, *Review of the Diploma of Policing Practice 2002: Final report*. December 2002, p. 18.

and recommended:

> That social issues affecting policing need to be incorporated into the integrated learning and assessment of students.[1350]

One of a number of constraints in teaching the DPP which was recognised in this review was that the 'probationary constable, while still learning the requirements of the job, is required to be an operational unit from the first day they arrive at the local area command'.[1351]

This review was then considered by the Ministerial Working Party on Recruitment, Training and Retention, that reported in September 2003.[1352]

May 2004 - April 2005 restructure

The second restructure of the course occurred during 2004 and 2005 in response to the 2002 review (described above). Implementation of the restructured course commenced in May 2004 when the new Session 1 distance education material for part-time students came into operation. The implementation continued in September 2004 with the introduction of new Session 1 material for full-time students and in January 2005 with the introduction of new Session 2 material. In order to place a greater emphasis on the practical application of information than previously, the main changes to the course that were introduced over this period included:[1353]

- the introduction of a case study, based on the (hypothetical) activities of a new probationary officer and his partner, that 'threads' material from different subjects together. The case study has been introduced to help students understand how the material they are taught in the different subjects applies to actual policing.
- The 'SPAC' (originally 'Simulated Patrol Assessment Centre' and subsequently retitled as 'Simulated Policing - Acquiring Confidence') is conducted in Sessions 1 and 2 rather than just Session 2 as had previously been the case. This change was made to increase student confidence in carrying out policing duties following the feedback that some students were lacking confidence in applying their knowledge. Within the new course students have approximately 20 weeks of simulated practice in comparison with approximately seven weeks previously.
- A 'Tutor Guide' has been introduced so that all who teach on the course can be aware of the content being covered by the other subjects during any given week to enable better co-ordination across the course.

1350 NSW Police College & Charles Sturt University, *Review of the Diploma of Policing Practice 2002: Final report*. December 2002, p. 18.

1351 NSW Police College & Charles Sturt University, *Review of the Diploma of Policing Practice 2002: Final report*. December 2002, p. 23.

1352 P. Anderson, Ministerial working party on recruitment, training and retention: A report on the review of the Diploma of Policing Practice 2002. A submission to the Minister for Police with comment and recommendations on the review undertaken jointly by Charles Sturt University and NSW Police during 2002. September 2003.

1353 Communication with Course Co-ordinator, 14 December 2004.

- The ethics subject is taught in Session 2 rather than Session 1 to enable the students to have completed a placement at a local area command before they undertake this course.

In addition, graduates (other than those from policing degrees) commence the course in Session 1, rather than Session 2 as had previously been the case. This enables the course material to be more evenly spread over the first two sessions than was the case previously.

Appendix 13 provides a list of the subjects included in the DPP prior to May 2004 as well as a list of subjects included in the course since the 2004-2005 changes.

Information provided to students concerning drug use and appropriate off-duty behaviour

As a consequence of the changes to the DPP outlined above, the content of messages that NSW Police provides to students and the way in which these messages are delivered has changed during the course of Operation Abelia.

From an examination of the material provided to the PIC by NSW Police, the three main types of information provided to students of most relevance to Operation Abelia are those that pertain to:

- the Code of Conduct
- ethics training, and
- other lectures relating to drug and alcohol issues.

The information provided to students in each of these areas is described below.

Code of Conduct

The NSW Police Code of Conduct and Ethics (described in more detail in Section 6.7 of this chapter) does not apply to students. There is a separate 'Code of Conduct for CEP Students'. In relation to drug use, this Code for students states:

> In undertaking their studies with the NSW Police College, students will at all times:
>
> - Recognise that the abuse of alcohol or use of illegal drugs will cause a review of their professional suitability.

In May 2004, both Session 1 and Session 2 students received a lecture on the Code of Conduct for CEP Students.[1354] Relevant points listed on overheads used in both lectures included:

1354 G. O'Dell, S. McNeice, & R. Marchet, DPP 20 – Student Code of Conduct (Session One), Presented 3 May 2004; G. O'Dell, S. McNeice, & R. Marchet, DPP 19 – Professionalism and Student Code of Conduct (Session Two), Presented 3 May 2004.

- Alcohol (NOT in towers[1355]).
- Duty to disclose ***immediately*** any matter which could directly, or indirectly, affect their professional suitability for employment with NSW Police.
- Recognise that the abuse of alcohol or the use of illegal drugs will cause a review of their professional suitability.
- Agreement to Comply: Code of Conduct and Ethics; Drug and Alcohol Policy, Equal employment opportunity; gender based and sexual harassment.

In line with a suggestion made in one of the briefing papers that was prepared by the PIC as part of the Operation Abelia round table discussion process,[1356] NSW Police developed an 'Education Services Student Acknowledgement Form'. Since May 2004, NSW Police has required students to sign this acknowledgement form. In signing this form students are agreeing that they have read, understand and agree to abide by the Code of Conduct for CEP Students, the NSW Police Code of Conduct and Ethics, and the NSW Police Drug and Alcohol Policy. Furthermore they are agreeing that they understand that the use of illegal drugs will result in the immediate removal of their professional suitability for employment with NSW Police and may lead to criminal charges:

> I understand that possession and self-administration of illegal recreational drugs will result in immediate removal of my professional suitability for employment with the New South Wales Police. I also understand that all matters involving possession and use of illegal drugs by policing students will be investigated and may result in criminal charges.

Ethics training

From the period from the course restructure in May 2002 up to August 2004, ethics training was provided in the course JST 111 'Ethical Dimensions of Policing'.[1357] This course was conducted in Session 1 of the DPP and as such was one of the first courses undertaken by students. The aim of this course was stated to be to develop two specific skills in students: 'the ability to identify the reasons which should inform the ethical decisions which police make; and the ability to explain the importance of these reasons and why they led to a specific ethical decision'.[1358]

NSW Police advised the PIC that illegal drug use was not specifically discussed in this course, though it may have been discussed in passing in relation to the role of police, conflicts of interest, integrity, or the Oath of Office:

> In JST 111 they don't specifically mention drug use by police except insofar as it comes up in relation to any particular discussions.

1355 'Towers' refer to student accommodation at the NSW Police College in Goulburn.

1356 For more information on the round table discussions conducted as part of Operation Abelia, refer to Appendix 7.

1357 No ethics training was provided during the September 2004 trimester as a result of the movement of the ethics training from a Session 1 to a Session 2 subject.

1358 Charles Sturt University, JST 111 Ethical Dimensions of the Police Role, Faculty of Arts, Subject Outline, Trimester 1, 2004, p. 2.

The areas where it is most likely to be raised are:

- In a topic on the role of police, the importance of obeying the law if police are to credibly enforce the law is discussed. They also discuss the components of the Oath of Office and the obligations it places on police in terms of their behaviour. In particular, pointing out that the Oath does not suggest that those obligations are only in place whilst police are on duty.
- In a topic on conflict of interest, the need for police to act ethically well in their private life – to avoid conflicts of interest, and to ensure that they don't bring about bad consequences, e.g. undermining their credibility in court is discussed. Personal drug use is sometimes raised in tutorial discussions here by students, and my overall impression is that most students can see the difficulties involved in trying to enforce a law that others in the community see police breaking when off-duty …
- Discussion about integrity and what it means, including the importance of 'being the same person, both professionally and personally', i.e. not engaging in behaviour at home that you would condemn at work, and the importance of being able to 'look yourself in the mirror' in relation to the decisions that you make.
- Throughout the subject, reference is made to the Oath of Office whenever we can and remind students of it being a solemn promise and the ethical importance of doing all it entails …[1359]

The course PPP 123 'Ethical Reasoning and Policing', that replaced JST 111 'Ethical Dimensions of Policing', was first offered in January 2005. This Session 2 subject is divided into twelve topic areas such as 'Discretion' (Week 5) and 'Corruption and Moral Vulnerability (1)' (Week 8). Each topic is supported by a one or 1.5 hour lecture and two 1.5 hour tutorials. Students are required to prepare for each session by reading relevant material. A case study is presented for each topic and students then discuss issues in relation to this case study. The discussion topics most relevant to Operation Abelia are:

- *Role and function of police as influenced by society and government*[1360]: Approximately 15 minutes of one of the tutorials for this topic is specifically allocated for a discussion of appropriate off-duty behaviour with tutors being instructed to:

  > Discuss the specific requirements of the Oath and the Code of Conduct. Introduce the concept of role morality and link this to the Oath and the Code of Conduct to show how the behaviour of police, both on and off duty must be above that of many other professions. For example, students need to consider their response

1359 NSW Police, Briefing note on curriculum delivered to students on drug issues and ethics. Prepared by Sergeant, Constable Education, NSW Police, 7 May 2004. Provided to the PIC by the NSW Police External Agencies Response Unit, 20 August 2004.

1360 This topic is described in the Tutor Guide as exploring 'key issues such as: ethical dimensions of the police role, role morality, oath of office'. The learning outcomes of this topic are that, at the end of this topic, students 'should be able to: explain the role of police in a demographic society, relate the Oath of Office to the roles and functions of police in a democracy, discuss the ethical foundation of policing and its relevance to operational police'. PPP 123 Ethical Reasoning and Policing, Tutor Guide (Draft), Trimester 1 2005, p. 2. (Author not stated.)

> both as students and later as sworn officers when, for example, persons use drugs in their presence.[1361]

- *Ethics and professionals*[1362]: One part of a 20-minute tutor presentation for this topic is said to require tutors to:

> Have students recognise that there is also a high standard of behaviour required of them. Refer to Pg. 35-41 of their readings relating to the Code of Conduct. Emphasise the restrictions of taking, or mixing with persons involved in taking dangerous drugs. Discuss the issues raised in the reading PIC Report, Operation Saigon.[1363]

- *Corruption and Moral Vulnerability*[1364]: One part of a 10-minute tutor presentation for this topic is described as including the following tasks for the tutor:

> Ensure that the students are aware of the effects of corruption on themselves, their families, other police and the police service as a whole. Discuss the Code of Conduct and the Oath of Office and their role in corruption prevention.[1365]

Another 45-minute tutor presentation on this topic is said to require the tutor to:

> Have students conduct role plays and provide students with strategies should they ever be placed in that situation. [1366]

Lectures relating to drug and alcohol issues

When asked how training can be improved in relation to illegal drug use, NSW Police stated that students are required to participate in four lectures relating to drug and alcohol issues:

> All reasonable efforts are made to educate student police officers in relation to the organisation's expectations and formal training is provided to students on this issue. Specifically, students are required to participate in four lectures relating to drug and alcohol issues. These sessions include reference to the law, as well as the physiological effects of these

1361 PPP 123 Ethical Reasoning and Policing, Tutor Guide (Draft), Trimester 1 2005, p. 5. (Author not stated.)

1362 As described in the Tutor Guide, the learning outcomes for this topic are that, at the end of the topic, students should be able to: 'discuss the characteristics of a professional, distinguish between a profession and a craft, point out distinction between professions and being professional, list the principles of professional behaviour, evaluate organisational culture including its strengths and weaknesses'. PPP 123 Ethical Reasoning and Policing, Tutor Guide (Draft), Trimester 1 2005, p. 35. (Author not stated.)

1363 PPP 123 Ethical Reasoning and Policing, Tutor Guide (Draft), Trimester 1 2005, p. 37. (Author not stated.)

1364 As described in the Tutor Guide the learning outcomes for this topic (which is discussed over two weeks) are stated as being that, at the end of the topic, students should be able to: 'define corruption in its varied forms, evaluate theories of behaviour that lead to corruption, discuss the problems that corruption causes to both the individual and the organisation, apply strategies for avoiding corruption, recognise the moral vulnerability of police work, demonstrate appropriate behaviour when corruption is observed'. PPP 123 Ethical Reasoning and Policing, Tutor Guide (Draft), Trimester 1 2005, pp. 39, 44. (Author not stated.)

1365 PPP 123 Ethical Reasoning and Policing, Tutor Guide (Draft), Trimester 1 2005, p. 46. (Author not stated.)

1366 PPP 123 Ethical Reasoning and Policing, Tutor Guide (Draft), Trimester 1 2005, p. 46. (Author not stated.)

> substances. One of the lectures is specially devoted to the NSW Police Drug and Alcohol Policy.[1367]

Prior to January 2005, these lectures were presented by the Drug and Alcohol Educator from the Healthy Lifestyles Branch in a subject referred to as JST 115 'Policing and Crime Prevention (Drugs and Public Places)'. The first five weeks of that subject covered police roles and problem-oriented-policing, while the final two weeks covered young people and demonstrators in public places. NSW Police has informed the PIC that the four weeks in the middle of the course discussed illegal drugs. The objectives and content of these lectures were described as follows:

- *Week 6: Introduction to drug issues* - to explore the way society classifies drugs, contemporary patterns of drug use and theories of drug use. Students, in pairs or groups, briefly investigated one drug in preparation for a short presentation to the tutorial group on its physical and psychological effects, methods of administration, slang names and trafficable amount.
- *Week 7: Pharmacology* - to examine the way drugs impact on the central nervous system, what is meant by physical and psychological dependency, and methods of administration and methods of withdrawal.
- *Week 8: Harm Minimisation* – included a presentation by a Drug Education Officer on the operation of the NSW Police Drug and Alcohol Policy, highlighting the rationale behind the development of the policy and the individual's obligations under the policy. Tutorials were said to allow students to consider their own drug use as a police officer and involve them in examining scenarios relevant to the policy.
- *Week 9: Risk factors and alternatives to prosecution* - to identify and examine both risk and protective factors for harmful drug use and introduced students to a rationale for utilising alternatives to prosecution. The tutorial aimed to walk students through the practical and administrative requirements for the use of these alternatives.[1368]

As part of the 2004-2005 restructure of the course, these lectures have been split between two different courses. One of these lectures (the lecture on Harm Minimisation) is now conducted in the Session 1 subject PPP 115 'Police, Crime and Society 1', while the other three lectures are now conducted in the Session 2 subject, PPP 125 'Police, Crime and Society 2'.[1369]

NSW Police informed the PIC that students received additional information on drug-related issues in the DPP such as two 2-hour lectures and two 2-hour tutorials on drug law enforcement, a two-hour lecture and a two-hour tutorial on driving under the influence (DUI) offences; and one role-play that focuses on a prohibited drug offence where the students are assessed on their knowledge of current legislation relating to drug offences, powers to stop, search and detain, and also their powers of arrest.

1367 NSW Police response to Operation Abelia Round Table 3: Students. May 2004, p. 3.

1368 NSW Police Health Services, Overheads used in lectures for Theories of Drug Use, Pharmacology, Harm Minimisation, Risk Factors and associated comments prepared by the Drug and Alcohol Educator. Provided by NSW Police External Agencies Response Unit to the PIC, 20 August 2004.

1369 Communication with Distance Education Co-ordinator, Associate Degree in Policing Practice, 16 March 2005.

Ongoing education

Ongoing education provides an opportunity of both reinforcing some of the messages initially provided as part of the entry-level training as well as providing additional information. Each local area command has an Education and Development Officer (EDO) who is responsible for co-ordinating the education within that command in consultation with the commander.

One source of material on drug-related issues used in ongoing education is that provided by the NSW Police Healthy Lifestyles Branch. Another source of material for ongoing education is that provided by the NSW Police Continuing Education Directorate.

Healthy Lifestyles Branch

In addition to the introduction of drug and alcohol testing legislation, the Royal Commission into the NSW Police Service recommended 'effective supervision and training of supervisors to detect officers with drug or alcohol problems'.[1370] In response to this recommendation the Healthy Lifestyles Branch developed a course entitled the *Detection & Management of Substance Misuse Problems in the Workplace*. NSW Police has advised the PIC that this workshop, which is available on request:

> was initially designed for supervisors. However, all members of the organisation have been welcome to attend and, over the years, the program has been adapted and presented to a wide range of employees, including such groups as Peer Support Officers (PSOs).
>
> To date over 1,000 police have participated in the workshop, which covers issues such as:
>
> - The Drug and Alcohol Policy
> - Classification of drugs – differentiating between stimulants, depressants and hallucinogens and their impact on safety in the workplace
> - Routes of administration
> - Difference between use, misuse and addiction
> - Short and long term effects of drugs
> - How to detect a substance abuse problem
> - How to expect an officer to react to being approached about such issues
> - The difference between enabling and helping, and
> - The Drug and Alcohol Amnesty.

1370 J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Final report. Volume II: Reform*, May 1997, p. 509.

> The workshop is designed to place an emphasis on rehabilitation and health related issues. However, officers generally are reminded of their Oath of Office and their consequent obligation to report misconduct and inappropriate behaviour.[1371]

The Drug and Alcohol Educator from the Healthy Lifestyles Branch also conducts other education sessions and workshops pertaining to alcohol and other drug issues. The PIC was informed that between July 2001 and October 2003, the Drug and Alcohol Educator conducted 237 workshops state-wide with 10 290 officers attending. These workshops included: BAS courses[1372], Emergency Management course, Field Training Officers' course, Stress Management, Student lectures at the Police College, General Training Days, Supervisors' Training days, Domestic Violence Liaison Officers' Forum, and Peer Support Officers' course.

Continuing Education Directorate

While it has a much broader focus, the NSW Police Continuing Education Directorate also provides information on drug-related issues. The role of the NSW Police Continuing Education Directorate is:

> to develop, deliver and evaluate educational courses, programs and professional development strategies for NSW Police employees. These strategies address operational competence, specialist training needs and capability gaps for sworn officers beyond the level of probationer, and for all non-sworn staff. In this financial year, the Continuing Education Directorate managed 82 different training and development programs across three campus locations … The range included programs that support present roles e.g. the Sergeants Course; programs that train officers for new roles e.g. the Detectives Education Program; and programs that prepare staff for future roles e.g., the Advanced Diploma of Police Management.
>
> The major educational delivery program areas in the Directorate are Operational Safety, Traffic Education, Crime Management, Management and Workplace Programs.[1373]

The initial focus of the Continuing Education Directorate was on developing specialist courses such as traffic courses and detective courses. More recently the Continuing Education Directorate has commenced developing courses for officers holding particular ranks. A Sergeants' Course and a Duty Officers' Course have been developed. In addition, an Inspectors' Course is proposed.

NSW Police has advised the PIC that the Sergeants' Course includes a session covering drug use, identification of drug users and supervisors' responsibilities:

> During this session participants view a video taped program from Stateline concerning 'Abelia'. Following the video a facilitated discussion covers topics including identification of drug users in the workplace (warning signs), the importance of leading by example and setting the tone in the

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1371 NSW Police response to Operation Abelia Round Table 5: *Supporting and equipping sworn officers and supervisors*. May 2004, pp. 7-8.

1372 Breath Analysis

1373 NSW Police Education Services, Business Plan 2003-2004. Education Services Continuing Education Directorate NSW Police, 2003, p. 1.

> workplace, the reporting of suspected drug use and the availability of Health Services to provide advice. The course also covers issues of welfare assistance, the Employee Assistance Program and the role of the supervisor.[1374]

The Continuing Education Directorate uses a range of different media and strategies to communicate its messages in addition to face-to-face workshops. For example, the Continuing Education Directorate prepares and publishes a quarterly *Policing Issues & Practice Journal*. Each officer receives his or her own individual copy of the journal.[1375] Another strategy used to inform officers is the short computer-based scenarios known as 'Six Minute Intensive Training' (also known as 'SMITs').

A review of drug education conducted by NSW Police during 2001 identified that the Continuing Education Directorate provided information on drug-related issues in a range of courses at that time. As is illustrated below, much of the training has been provided to those taking on specialist roles such as Highway Patrol and Youth Liaison Officers. Examples of such drug-related information include:

- information on the effects of drugs such as stimulants, hallucinogens and depressants in the four-day *Highway Patrol Education Course*
- information on the Drug and Alcohol Policy and on critical incidents in the three day *Infra-red Breath Analysis Course*
- self-paced package on what is a drug, consequences of drug use, intoxication, tolerance withdrawal, drug groups, reasons for use, patterns and context of substance abuse, polysubstance use in the *Police Youth Liaison Officer (YLO) Development Program*
- information about the *Drug Misuse and Trafficking Act* to selected trainee prosecutors in the *Prosecutor Education Program*
- information on the definition of drugs, types of drugs, effects of alcohol and other drugs on the body, different patterns of alcohol and drug use in three hours of the five-day *Safe Custody Course*
- information about 'party' drug use, heroin habit, infrequent drug use and cannabis use in the two-day *Specialist Youth Officers Workshop*.[1376]

In October 2003 the Education Innovation and Quality Unit of the Continuing Education Directorate identified the range of drug education that it had provided for officers. The most relevant of these to Operation Abelia are:

- articles published in the *Policing Issues and Practice Journal* on: Driving Under the Influence of Drugs (January 2003), Cannabis (January 1999), Drug and Alcohol Policy (July 1997), and Ecstasy (April 1996)
- the Mandatory Continuing Police Education Scheme (MCPE) has covered the NSW Police Service Drug and Alcohol Policy (M97/7)

1374 Letter from the A/Commissioner of Police to the PIC Assistant Commissioner, received by the PIC 17 May 2005, pp. 4-5.

1375 According the NSW Police Education Services Business Plan 2003 – 2004, 13 500 copies of the journal are produced each quarter.

1376 D. Nanschild, Report on NSW Police Drug Education. Prepared for NSW Police Drug Programs Co-ordination Unit, August 2001.

- Computerised Assessment System and the Leading Senior Constable Test which include 53 drug-related questions
- Six Minute Intensive Training (SMITs) including 10 drug-related SMITs
- Pre-Qualifying Assessment (PQA) including a mandatory field of questions about the Drug and Alcohol Policy for the Sergeants', Inspectors' and Superintendents' assessments.

Training about ethical dilemmas faced while off-duty

Following the completion of their entry-level training, no specific training is provided to officers about the ethical issues or dilemmas that they might face when they are off-duty. For example, appropriate behaviour in scenarios such as an off-duty officer seeing friends use illegal drugs at a party are not explicitly discussed with officers.

OBSERVATIONS

Observation 1:	**Some commentators have identified the importance of informing officers of the integrity risks they may face and how to manage them, in advance of the officers actually confronting these risks, in order to minimise corruption.**

When discussing the provision of information on ethical work practices to those employed within the NSW public sector, the Independent Commission Against Corruption has described the importance of informing employees about the potential corruption risks they face and how to manage these risks:

> One of the most important resources for any organisation is its staff. Providing information to staff about such things as ethical work practices, what constitutes public duty and the potential risks associated with their work is essential to ensure they have adequate information to make appropriate decisions. Organisational standards need to be communicated and reinforced if they are to have an impact.[1377]

and

> Staff also need to understand the potential risks they may face in their area of work. Staff who are not informed about the corruption risks associated with their work are less likely to be able to manage these risks than staff who are aware of the risks.[1378]

Similarly commentators in the policing field have discussed the importance of preparing officers for the situations that they are likely to face. In his report examining New York City Police Department anti-corruption procedures, Mollen (1994) recommended that 'the number of hours devoted to integrity training at the Policy Academy should be

1377 Independent Commission Against Corruption, Profiling the NSW Public sector: Functions, risks and corruption resistance strategies. *Sydney: Independent Commission Against Corruption, January 2003*, p. 50.

1378 Independent Commission Against Corruption, Profiling the NSW Public sector: Functions, risks and corruption resistance strategies. *Sydney: Independent Commission Against Corruption, January 2003*, p. 53.

increased and integrated in other areas of training so that it is perceived as an important part of the curriculum, rather than a required appendage to "real" policing'.[1379]

In educational materials prepared for the Royal Canadian Mounted Police, Gilmartin has emphasised the importance of officers being well-prepared for ethical dilemmas before they face them:

> Officers live and work in a constantly changing and dynamically social context in which they are exposed to a myriad of ethical conflicts. When either unprepared or unaware, officers are more likely to 'go with the flow' than they would be if adequately prepared to face potentially ethical risks. Everyday, officers practice mental preparation as it relates to tactical situations. Officers who are mentally prepared to face a lethal encounter are more likely to be successful than officers who are tactically proficient but mentally unprepared. Just like lethal encounters, ethical dilemmas occur at the most inopportune times, frequently without warning and with little time to stop and think about the situation. When inadequately prepared, even the most honest, above reproach officers can make inappropriate split-second ethical decision … If officers are going to survive ethical dilemmas, they need to be as mentally prepared as they would be for tactical encounters.[1380]

Similarly, the Police Association of NSW has identified that it is important that students understand how the use of illegal drugs can compromise their work as an officer and has suggested that less attention may be dedicated to such issues at the NSW Police College following curriculum changes in 2002:

> Students should also understand the consequences of being compromised as a police officer and the serious impediments such compromise places on the appropriate exercise of their authority. They should explore the ethical and moral dimensions of their office and their role as models in the broader community.
>
> It is our understanding that with the changes to the curriculum after 2002 that some of these elements may have been reduced in significance.[1381]

Observation 2: Some officers and commanders indicated that expectations of off-duty officers who encounter friends or relatives using illegal drugs are not clearly communicated.

When interviewed by the PIC in mid-2003, commanders were asked what they expected off-duty officers to do in the following two situations:

- If off-duty officers are *offered drugs socially,* what would you expect them to do at the time?

1379 M. Mollen, *Commission to investigate allegations of police corruption and the anti-corruption procedures of the Police Department*. Commission Report, City of New York, July 1994. p. 121.

1380 K. Gilmartin, The continuum of compromise. In Royal Canadian Mounted Police Office of Ethics & Integrity (2003) Ethical deliberations for RCMP employees. Royal Canadian Mounted Police Course Code 000166, revised 2003-08-25, p. 125.

1381 Police Association of NSW response to Operation Abelia Round Table 3: Students. May 2004, p. 2.

- If off-duty officers *see others using prohibited drugs socially*, what would you expect them to do at the time?[1382]

While all commanders who were interviewed answered these questions, commanders differed in what they considered to be the most appropriate response for each scenario. Responses to the first scenario concerning being offered drugs ranged from 'Arrest the person' to 'Decline the drug and leave the function'. Before providing his response, a third commander commented:

> We are not providing leadership and direction on this issue because I believe it is seen to be too hard. To my knowledge we do not have a position on this issue.

A fourth commander said:

> This scenario presents the police officer with quite a dilemma. It depends on who the people are. Are they close friends? What should you do – put them on notice? As far as he is concerned they should not partake, they should abstain from drug use and they should give notice that if it ever happens again that they would take action. Either way, you should produce an intelligence report. He thought it unrealistic to expect them to take action. A different story, however, if the persons are not known to them. He would expect action then by the officer, either directly or contact with other officers to take action.

The lack of consensus in the responses from these commanders raises the question of whether or not officers would feel confident of what they should do if they were to face such situations.

Some of the officers who provided evidence to the PIC expressed their uncertainty about the appropriate behaviour in such circumstances. For example, when asked what he understood from his training that he was supposed to do if he was offered a prohibited drug when he was off duty, former Officer G6 said that:

> From my training, I think you're supposed to arrest them. It just depends on the situation. I don't – I don't recall any specifics that we were advised on in regards to that.[1383]

When asked whether he had a sense of what an officer should do in such a situation, former Officer G6 said that he did not think there was any policy or advice that covered this situation.[1384]

Similarly when former Officer V1 was asked what he would do if he had a close friend or relative involved in drug use he replied:

> I don't know. I'd probably talk to them about it. I don't know. There's – I don't know whether you're gonna – if it was like a family member, whether you'd try and think as a police officer or as a family member. I wouldn't

1382 For additional information about the PIC interviews with a sample of local area commanders and commanders of specialist units, refer to Appendix 2.

1383 Operation Abelia, PIC Transcript, Private hearing, APH, 13 August 2004, p. 24.

1384 Operation Abelia, PIC Transcript, Private hearing, APH, 13 August 2004, p. 24.

think of it as a police officer. I'd think of it – 'Shit, that's my sister' or something like that and I'd get her out of it.[1385]

Observation 3: Some of the officers and former officers who gave evidence spoke about the differences between what they thought they should do, and what they actually did, in relation to their off-duty behaviour.

Some officers and former officers said that when they encountered friends or relatives using illegal drugs, they acted contrary to what they thought they were supposed to do as a police officer, for example:

- Former Officer R3 was asked by the PIC what he thought he was required to do as a police officer if when he was off duty he saw other people using a prohibited drug. This former officer replied: 'I guess ring the nearest police station and tell them what's going on and get the squad down there to bust it'.[1386] Former Officer R3 admitted that he has been in situations where he was around people who were taking drugs when he was off duty.[1387] He told the PIC that: 'Well, yes, I guess. As you said, if I was in a social thing and friends were using it, I didn't go and call the police, I didn't arrest them, and stuff like that'.[1388]
- When Officer F4 was asked by the PIC what he understood his obligations were if he was off duty and saw someone using a prohibited drug quite blatantly, Officer F4 replied: 'It should be reported. But realistically, if I'm walking down the beach, or walking along the beach, or something, and I see one of the young local surfers smoking dope, I'm not going to ring up the police station and say, "There's a kid down the beach smoking dope". Realistically, I'm not going to do that. That scale, certainly, I'm not going to be picking up the phone and say, "Go down and arrest young Jimmy Bloggs"'.[1389]
- When asked what he should do if he saw other people using drugs when he was off duty, former Officer C2 said that he understood that he should not be around that type of area or premises. He added that he was under the impression that it was up to the police officer's discretion, so it would be up to the personal choice of that particular officer. This former officer said that when he was in situations where he saw people using prohibited drugs he 'ignored it'.[1390]
- Former Officer G3 was asked by the PIC what he believed he was supposed to do if he was off duty as a police officer and he was offered cannabis or ecstasy. Former Officer G3 said 'from what I can remember, basically to disclude [sic] yourself from those people. This is only from what I remember. My memory is so shot to bits'. This former officer was also asked what he thought he was supposed to do as a police officer if he had a close relative or friend who was using prohibited drugs. He

1385 Operation Abelia, Transcript of Record of Interview, 13 September 2004, p. 19.
1386 Operation Abelia, PIC Transcript, Private hearing, ANX, 13 May 2004, p. 14.
1387 Operation Abelia, PIC Transcript, Private hearing, ANX, 13 May 2004, p. 14.
1388 Operation Abelia, PIC Transcript, Private hearing, ANX, 13 May 2004, p. 15.
1389 Operation Abelia, PIC, Transcript, Private hearing, ANS, 12 May 2004, pp. 22-23.
1390 Operation Abelia, PIC Transcript, Private hearing, ANL, 10 May 2004, p. 16.

> replied 'basically, again, just dismiss yourself from them'. This former officer told the PIC that he has been in situations where he saw friends and associates who used prohibited drugs in his presence, and his reaction was to simply turn away and 'turn a blind eye'.[1391]

Observation 4:	**Three-quarters of the commanders interviewed said they were not satisfied with the training their officers received about drugs and drug use. They suggested that more training was needed about the effects of drugs and to reinforce the message that illegal drug use is not acceptable either on or off duty.**

In mid-2003, the PIC interviewed a sample of commanders about their perceptions of drug use within NSW Police, their experience with different aspects of the NSW Drug and Alcohol Policy and their suggestions for improvement.[1392] Commanders were asked if they were satisfied with the quality of training offered to their staff about drugs and drug use. Over three-quarters of the commanders interviewed (76%) said that either they were not satisfied with the quality of training offered to their staff about drugs and drug use or that no such training was provided. One-third of the commanders (33%) specifically commented that they either thought there was no training or they were not aware of what training was offered.

When asked what more should be done, most of the commanders interviewed said that more training was needed for their staff on the topic of drugs and drug use. More than one-quarter of the commanders interviewed (29%) suggested that officers should be provided with training on the effects of drugs. Several of the commanders interviewed (20%) commented that education should reinforce acceptable standards of conduct and reinforce the message that illegal drug use is not acceptable on duty or off duty. Some examples of the commanders' comments about the type of training they thought was needed are listed below:

> … they don't have a full understanding of the effects of drugs.
>
> would like to know more about the results of studies, the long-term effects of drugs, impairment, the effects on performance and on the cognitive abilities, telltale signs for drug use.
>
> … more reinforcement that drug use is not acceptable, regardless of whether [an officer] was on duty or not.
>
> Constant reinforcement of acceptable standards. Education. Encourage others to inform on workmates who 'let them down' by engaging in illegal activities and leaving work mates vulnerable to both physical attack and at risk of compromise.
>
> They need to know more about the symptoms, the consequences, what to look for and the consequences of actions.

1391 Operation Abelia, PIC Transcript, Private hearing, ANR, 11 May 2004, pp. 24-25.

1392 For additional information about the PIC interviews with a sample of local area commanders and commanders of specialist units, refer to Appendix 2.

Observation 5: Research on illegal drug use in the community has suggested that users should be made aware of the potential health risks associated with using amphetamines and other illegal drugs.

The Australian Government Department of Health and Ageing's *Models of intervention and care for psychostimulant users* was published in 2004 as one of the National Drug Strategy Monograph Series.[1393] The writers of this report observed that 'users are often naïve to the risks associated with using psychostimulants[1394] and many believe that these drugs are relatively safe and benign'. For this reason this report recommended that 'users should be made aware of the potential health and other risks and given information to reduce the possible harms associated with psychostimulant use'.[1395] This report identified that one of the primary risks to users was a lack of knowledge of the contents of the drug.[1396]

Similarly, the final report of the Drugs and Crime Prevention Committee of the Victorian Parliament's *Inquiry into amphetamine and 'party drug' use in Victoria* recommended that accurate and relevant information on the effects of drug use and how to obtain help when needed should be provided to users, including occasional users and polydrug users.[1397]

The Victorian Drug and Alcohol Association has cautioned that mass media scare campaigns about illegal drug use, targeting young people, do not work as young people do not identify with them.[1398]

Observation 6: Many of the officers and former officers who gave evidence to the PIC said that they could not recall receiving any entry-level training about expectations concerning illegal drug use or acceptable off-duty behaviour.

Many of the officers and former officers who gave evidence to the PIC about their drug use could not recall being given any training about personal drug use[1399] or about acceptable off-duty behaviour[1400] when they were at the Academy or the NSW Police

1393 A. Baker, N. K. Lee, & L. Jenner, Models of intervention and care for psychostimulant users. 2nd edition. *National Drug Strategy Monograph Series No. 51*. Canberra: Australian Government Department of Health and Ageing, April 2004.

1394 This report defines 'psychostimulants' as 'amphetamines, cocaine and MDMA (ecstasy)' (p. 7).

1395 A. Baker, N. K. Lee, & L. Jenner, Models of intervention and care for psychostimulant users. 2nd edition. *National Drug Strategy Monograph Series No. 51*. Canberra: Australian Government Department of Health and Ageing, April 2004, p. 51.

1396 A. Baker, N. K. Lee, & L. Jenner, Models of intervention and care for psychostimulant users. 2nd edition. *National Drug Strategy Monograph Series No. 51*. Canberra: Australian Government Department of Health and Ageing, April 2004, p. 53.

1397 Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into amphetamine and 'party drug' use in Victoria: Final report*. Melbourne: Government Printer for the State of Victoria, May 2004, p. 486.

1398 Victorian Alcohol and Drug Association, Beyond 'e': exploring the impact of party drugs on current day youth and culture. *Victorian Alcohol and Drug Association Symposium Report, August 2003*, p. 12.

1399 For example: Operation Abelia, PIC Transcript, Private hearing, ANX, 13 May 2004, p. 14; Operation Abelia, PIC Transcript, Private hearing, ANP, 11 May 2004, p. 29; Operation Abelia, PIC Transcript, Private hearing, ANL, 10 May 2004, p. 15; Operation Abelia, PIC Transcript, Private hearing, ANH, 10 May 2004, p. 17; Operation Abelia, PIC Transcript, Private hearing, ANM, 10 May 2004, p. 16.

1400 For example: Operation Abelia, PIC Transcript, Private hearing, ANX, 13 May 2004, p. 14; Operation Abelia, PIC Transcript, Private hearing, ANL, 10 May 2004, p. 15; Operation Abelia, PIC Transcript, Private hearing, ANH, 10 May 2004, p. 17; Operation Abelia, Transcript of Record of Interview, dated 7 May 2004, p. 18.

College. Some of these did not consider this to be a problem as they thought that appropriate behaviour was merely commonsense.[1401]

Former Officer C2 said that he thought that the ethics training at the Police College mainly revolved around a discussion of bribe taking. He did not recall receiving any training on personal drug use or about appropriate off-duty behaviour. He told the PIC that no one spoke to him about personal drug use or unacceptable behaviour off duty after he graduated. [1402]

When discussing the training he received at the NSW Police College, former Officer V1 was particularly critical of the ethics training:

> I went to two ethics lessons when I was at the Academy … And to pass my ethics lecture I used a speech from my criminal justice and got 98% for ethics, and I turned up twice.[1403]

Speaking more generally about his training, former Officer N2, who was posted to a country location for 15 years, said that he did not recall receiving much training on any topic during that time. He said that the only training he recalled receiving during that 15-year period was about domestic violence or perhaps SIDS.[1404]

Observation 7: Some officers and former officers who gave evidence in hearings said that they thought that more training was necessary to minimise illegal drug use, while others said that they did not think that training would have helped them.

Officers and former officers who gave evidence to the PIC about their illegal drug use were asked what would they do to minimise illegal drug use by officers if they were the Commissioner of Police. Some of these officers and former officers suggested providing more education, for example:

- Former Officer V3 suggested:

> I think it's got to start with education, so right from the academy they are going to have to drum it into the young blokes or kids, the girls coming through about what their expectations are. With any job you sign a contract to say that you'll do your job and do it properly or you won't be there, so maybe something – a legally binding contract that if you breach these rules, then your employment's terminated … We have plenty of education days as a police officer, training days, so maybe have people from the drug agencies come and speak about it and the effects of it … just maybe that the young ones coming through, with the way things are in the world today, they are going to have to have it drummed into them that 'normal life stops now, you are a policeman, and what you have done in the last five years is fine, but from now on this is what we expect from you and if you don't live up to it, then

1401 For example: Operation Abelia, PIC Transcript, Private hearing, ANX, 13 May 2004, p. 14; Operation Abelia, PIC Transcript, Private hearing, ANH, 10 May 2004, p. 17; Operation Abelia, Transcript of Record of Interview, dated 7 May 2004, p. 19.

1402 Operation Abelia, PIC Transcript, Private hearing, ANL, 10 May 2004, pp. 15, 16.

1403 Operation Abelia, Transcript of Record of Interview, 13 September 2004, p. 16.

1404 Operation Abelia, PIC Transcript, Private hearing, ANM, 10 May 2004, p. 16.

> go and dig holes' … I think help the young ones is probably our best bet, and train some good police again.[1405]

- Former Officer C2 suggested 'obviously implementing an educational program discussing the effects of drug taking and the adverse effects from that over the next couple of days, that may assist. I can't think of any other way'.[1406]

On the other hand, some of the officers and former officers did not think that more education would have made a difference to their own drug use, for example:

- Officer Q3 said that he did not think that training would have made a difference to his drug use:

> I don't think it would have made any difference to me anyway. I think I was just one of those young blokes that couldn't be told, and I was going to do it my way and that was it. And I think that's the way – it just went that way. There was not a great deal of thought involved in it.[1407]

- Former Officer A2 said that he did not know what any one could have said that would have stopped him from using drugs or that would have helped him.[1408]

Observation 8: **Although there were mixed attitudes towards ongoing training amongst focus group participants, there was support for increased training, particularly on the subject of how officers should deal with suspected illegal drug use by a fellow officer. Delegates at the Police Association of NSW Biennial Conference also supported the use of education and training to minimise illegal drug use by police.**

Similarly, opinion was divided concerning the desirability of providing more training to officers about illegal drug use amongst those who participated in the focus groups conducted for Operation Abelia.[1409] Some participants expressed the view that further training was unnecessary, would not be effective, or that resources would be better used for other priorities:

> What could prepare you? [Participant:] MCPE [Mandatory Continuing Police Education]. [New speaker:] Oh great, not more training.
>
> [Facilitator:] Any particular kind of education or training useful for the drug use issue? [Participant:] No, no need. [New speaker:] It's commonsense. [New speaker:] We all know what we're supposed to do.

1405 Operation Abelia, PIC Transcript, Private hearing, ANQ, 11 May 2004, pp. 19-20.

1406 Operation Abelia, PIC Transcript, Private hearing, ANL, 10 May 2004, p. 22.

1407 Operation Abelia, PIC Transcript, Private hearing, ANJ, 10 May 2004, p. 19.

1408 Operation Abelia, PIC Transcript, Private hearing, APF, 16 August 2004, p. 11.

1409 For additional information about the how the focus groups were conducted and the principal issues raised in these focus groups, refer to Appendix 4.

> Money that's spent on education is better spent on streamlining the detection. Those figures that people are quoting, you don't know how accurate those figures are. There could be an epidemic.

However, other participants felt that more education or training for officers was needed, and/or that it should be a priority over other strategies for minimising illegal drug use by officers:

> Where's the education? That's what we should be looking at before we do the testing. How about a bit more education?

> Let people know the risks and the costs – e.g. cannabis: effects of sterility on men, psychological problems. [New speaker:] The fear factor. [Facilitator:] So even police officers might not be aware of the [effects of the] drugs they're taking? [Participant:] No. [New speaker:] It's not just the physical effect. [Facilitator:] What would be effective? [Participant:] Television advertising, videos. [New speaker:] Everything we've got. Intranet. [New speaker:] Examples. Have people come and talk to police.

> Education's gotta go a long way to bring home to [officers using drugs] it's not acceptable. Then through that education they can use the amnesty.

The participants in each of the focus groups conducted for Operation Abelia were asked what training they had been offered on how to deal with suspected illegal drug use of a fellow officer, and whether they felt they had been adequately prepared. Some participants indicated that they had not received any training, apart from some relevant elements of the peer support training, or that they felt that they were not adequately prepared:

> [Facilitator:] Is there any training in how to respond to officers who use drugs? [Participant:] None. Only through the peer support program. Nothing directly relevant to that issue.

> [Facilitator:] Has the training you've been given provided an approach you could use [if a colleague is using drugs]? [Participant:] No. [Facilitator:] Have you been adequately prepared? [Participant:] No. [New speaker:] Not at all. [New speaker:] No way in the world.

A number of officers who attended the Police Association of NSW (PANSW) Conference in May 2004 expressed their view that education and training can assist in minimising illegal drug use by officers. The delegates at this conference were divided into twelve groups to discuss their suggestions for strategies that would assist in minimising drug use within NSW Police. In answer to the question 'What are the *top two issues* that must be addressed to reduce the problems of illicit drug use in NSW Police?' six of the twelve discussion groups referred to education.[1410] For example, one of these discussion groups suggested an ongoing education program directed to recruits and officers covering the following topics:

- integrity issues
- health issues

[1410] See Appendix 8 for more information about the discussion groups conducted as part of the Police Association of NSW Biennial Conference in May 2004.

- impact on Occupational Health and Safety
- inappropriate association with criminals
- reinforcement of the Oath of Office.

Another of the discussion groups suggested education and raising awareness regarding dangers of drug use and reasons why drug use causes conflict with police obligations.

Observation 9: **The review of the Diploma of Policing Practice, the Police Association of NSW and some officers who gave evidence to the PIC have each suggested that some students and probationary officers have not been given enough support when they are placed in local area commands.**

One of the findings of the 2002 review of the DPP, commissioned by the NSW Police College and CSU, was that (at that time) students and probationary constables had not always received the support that they require when they are placed in the field:

> Senior managers do not always provide students with all the direction and support they require. As a result, not all students are guaranteed fair and consistent workplace training …
>
> Currently we witness within the NSW Police a situation that involves junior field trainers who have a closeness in age to their subordinates, lack street experience, and are without adequate training in education. We cannot ignore the potential for misconduct and corruption which results from ineffective supervision[1411]

and accordingly this review recommended enhancement of the support available to students and probationary constables in the field:

> 13.1 That the Course Coordinator, in consultation with other relevant parties, undertake research to determine (a) the extent to which this inexperience in the field impacts on students' achievement of the learning objectives of Sessions Three – Five and (b) the need for specific strategies to address any such impacts
>
> 13.2 That the teaching responsibilities of field teachers be recognised as their prime duty whilst they are responsible for the development of a probationary constable
>
> 13.3 That support for students in the field be enhanced through adequately trained EDOs [Education and Development Officers], FTOs [Field Teaching Officers] and Field Supervisors; and that this be undertaken by the Field Support Unit in consultation with the College and CSU.[1412]

1411 NSW Police College & Charles Sturt University, *Review of the Diploma of Policing Practice 2002: Final report*. December 2002, p. 21.

1412 NSW Police College & Charles Sturt University, *Review of the Diploma of Policing Practice 2002: Final report*. December 2002, p. 22.

Former Officer M2, who was a probationary constable at the time he resigned, told the PIC that while he thought Field Training Officers tried to provide peer support, they were very busy and he did not think that they performed the role well:

> I think they tried [to provide peer support], but they seemed very busy. If that was one of their roles, they didn't perform it very well where I was - like in the area I was just talking about, like for emotional comfort, and things like that …
>
> I think they were, yeah, dedicated to do the functions of the field training officers, and they just weren't ever there, you know? I saw my field training officer very rarely and the majority of time I did see him, he was giving lectures.[1413]

Similarly former Officer G6 said:

> When I came out of the academy you were assigned to someone who was your 'buddy'. I think that that needs to be looked at more closely … I think it needs to be looked at where your buddy should not be an alcoholic ex-detective who is quite knowledgeable in criminal procedures and putting together a brief and then, you know, having 26 schooners after work every day.[1414]
>
> I think it's got to – I think it is more to do with the actual nucleus of the police station and having people there who are switched on. In my day, we had a thing called a field training officer, an FTO, and I don't think they were the right people for the job, to be honest. Some of them were, and I was lucky because you went through about three of them to get different aspects of the job, but I think at that level or in that area someone needs to be aware of who is doing what, not so much as prying into their private life, but just keeping a look out for who is doing what, you know.
>
> When I say not prying into their private life, I found that the Police Service was very – or police were very open about their private lives. You spend – I mean, you spend eight hours sitting in a car with someone driving around a shift, you get to know a lot about them.[1415]

The Police Association of NSW has also suggested that NSW Police should review the support and early experience it provides for junior officers:

> Commands should re-examine the way in which they deploy and support their junior staff. After attestation, junior police are expected to 'hit the street running' – that is, they are expected to be able to do everything that a veteran officer can do. These expectations are unrealistic and should be challenged.
>
> During the early years of their police practice, junior officers should have the opportunity to be engaged in learning about the complexities of their profession, with a particular emphasis on the development of practical strategies to deal with ethical and integrity issues. This should be done with the support of highly regarded and experienced officers who can model behaviour in an environment that encourages discussion. There remains a

1413 Operation Abelia, PIC Transcript, Private hearing, ANV, 12 May 2004, pp. 20-21.

1414 Operation Abelia, PIC Transcript, Private hearing, APH, 13 August 2004, p. 9.

1415 Operation Abelia, PIC Transcript, Private hearing, APH, 13 August 2004, pp. 25-26.

> very real concern about the lack of experienced role models in some commands.[1416]

Observation 10: Some commentators have suggested that there may be value in providing specialised training and policies for officers working in specialised areas.

In their guidelines for Australian and New Zealand police workplace substance use policies Martin, Davey and Mann (1998) suggested that the level of risk for substance use differs amongst different areas of policing and that strategies should reflect the level of perceived risk:

> When assessing workplace based risks the manager needs to consider the risks associated with substance use within that occupational setting. Strategies should be put in place based on the level of perceived risk.[1417]

Similarly, in their work on police drug use in the US, Carter and Stephens advocated specialised training and tailored policies for those who work in areas with repeated contact with drugs and the drug environment:

> In dealing with units wherein personnel have consistent contact with drugs and the drug environment, the department should explore both special training and policy needs. This is a critical area where experience indicates continued problems. Again, administrators need to look back at past problems and current practices to identify any known weaknesses. Once this is accomplished, planning needs to be done to ensure that a robust program is implemented … The obvious point being in these cases the greater the contact with drugs, the higher the probability of abuse, and hence the need for special policies.[1418]

Observation 11: Aspects of the PIC's research touched on the most appropriate methods for delivering information to students. The use of real examples including case studies and having former officers who had faced similar situations in the past deliver appropriate messages to students at the NSW Police College emerged from this research as preferred methods.

As part of its research, the PIC reviewed some material on what has been written about methods for delivering messages to students of policing, approaches used by other agencies, as well as the views of students and suggestions of officers and former officers.

In his report investigating allegations of police corruption and examining anti-corruption procedures of the New York City Police Department, Mollen (1994) emphasised that training should use real examples. He recommended that both recruit and in-service training should:

1416 Letter from the President of the Police Association of NSW to the PIC Assistant Commissioner, 12 November 2004, p. 2.

1417 P. Martin, J. Davey, & K. Mann, Australian and New Zealand guidelines for police workplace substance use policy. Queensland Police Service and Queensland University of Technology, 1998, p. 12.

1418 D. L. Carter, & D. W. Stephens, Drug abuse by police officers: An analysis of critical policy issues. Springfield Illinois: Charles C. Thomas Publisher, 1988, p. 151.

- focus on confronting and solving real-life corruption problems
- be realistic and vivid
- include interactive methods such as workshops, group discussions, and role playing
- include presentations of real evidence of corruption, such as tape recordings, video recordings, and other material evidence gathered in internal investigations
- include personal or recorded presentations by former police officers convicted or dismissed from the Department because of corruption. A central message should be the devastating consequences of corruption on these officers, their families, and the Department as well as the importance of reporting corruption
- include instruction on real-life profiles of both corrupt and honest officers to demonstrate how officers should and should not behave when presented with opportunities for corruption.[1419]

Some agencies use, or propose to use, case studies of actual police conduct amongst their training materials. For example, a spokesman from the Metropolitan Police Service in the UK has advised:

> We have recently debriefed an officer for supplying cocaine and he has agreed to take part in a video interview (when he comes out of prison) to discuss his position (low self esteem/not valued in the workplace/ divorced/debts/poor leadership by his line managers/other corruption and corrupt contacts etc). We intend to use the video as a training aid for recruits and managers.[1420]

A second example is the Queensland Police Service (QPS) that uses a case study of the conduct of an officer (now an ex-officer serving a nine year sentence for corruption and drug trafficking offences). This officer was posted in a country area where a local garage owner made it a practice to get to know and befriend all of the local police officers. The case study illustrates the progression in the conduct of one of these officers who:

- initially accepted handouts from the garage
- then at quiet times on night shift accepted a free beer and watched 'blue' movies at the garage
- leased a soft drink machine with the garage owner (in the garage owner's name), installed it at the police station and shared the profits with the garage owner
- turned a blind eye to the garage owner smoking cannabis
- after a few beers decided to try a cannabis joint that the garage owner offered him

1419 M. Mollen, Commission to investigate allegations of police corruption and the anti-corruption procedures of the Police Department. Commission Report, City of New York, July 1994, pp. 122-123.

1420 Personal communication, Detective Sergeant, Strategic Intelligence Desk, Metropolitan Police Service, 24 July 2003.

- as a result of obtaining information from the garage owner about the names of drug dealers and when they were holding drugs, concluded a number of successful arrests for drugs on the basis of information supplied by the garage owner and was seconded to the CIB
- took over dealing to the customers of the drug dealers who had been raided
- informed the garage owner when QPS was organising a raid on the garage so that when the raid took place no drugs were found
- was given $5000 by the garage owner in appreciation of the warning about the police raid.[1421]

Participants in the Operation Abelia focus groups expressed their support for using case studies as an educational tool. One of the focus groups conducted as part of Operation Abelia was conducted at the NSW Police College to seek the views of students. The students who participated in this focus group were supportive of using case studies as part of their ethics training:

> Do you see value in having case studies as part of academy training [relevant to ethics]? [New speaker:] Definitely. [General support from focus group.] [New speaker:] The more that you are exposed to them, the more you can work out the decision you should make. [New speaker:] They're more practical.

Several officer participants from other focus groups also supported the use of actual examples and case studies, for example:

> We need to not be just punitive, we need case examples of what happens to the life of people taking drugs. That would turn people off. For example: [name of former officer] came forward and said, 'this is why I did it, it was wrong'.
>
> … case studies, make it real – not just, 'this is what might happen', but 'this is what's happened in someone's life'. How they screwed their life up.

When giving evidence to the PIC, former Officer P1 suggested that he thought using former officers like him would assist get the message across to students:

> I think you could probably put people like me lecturing the academy - not necessarily me. I think you need to have people a bit in your face, perhaps, lecturers or case studies.[1422]

1421 Queensland Police Service, Contemporary issues: Professional practice within the Queensland Police Service. Queensland Police Service Education and Training Support Program, October 2003, pp. 70-72, 115-120.

1422 Operation Abelia, PIC Transcript, Private hearing, ANP, 11 May 2004, p. 29.

Observation 12: Some have suggested both the importance of reinforcing education and training on a regular basis as well as providing face-to-face and peer group discussions about the topics relevant to Operation Abelia.

The Police Association of NSW has emphasised the importance of both reinforcing education and training on a regular basis and using group discussions to enable officers to engage in discussion about issues affecting them so that they are able to develop a personal understanding of the implications of these issues for their lives:

> Training needs to be reinforced on a regular basis, not only at the Academy. Police should have a good understanding of the codes of conduct and behaviour and why they are important to policing. Training should be interactive – that is, officers should be able to engage in discussion in a way that they are able to develop a personal understanding of the implications of the codes in one's own life. They should be regularly challenged to recommit to these values and be reminded of their significance to their oath of office.
>
> The ethical issues surrounding some of these questions need to be explored in an open way where the codes are applied through practical situations.
>
> Training should also be regularly given to reinforce the dangers (to themselves, their fellow officers and the public in general) of use of illegal substances. The training should include the very real problems that being compromised cause for police. Many officers struggle with the idea of conflicts of interest – this requires very practical examples to be included in training.[1423]

This is similar to a recommendation made by Mollen ten years earlier concerning the New York City Police Department:

> The Department should require in-service integrity workshops for all officers at regular intervals through out their careers. The training sessions should be organized as problem-solving workshops that make participants explore corruption hazards, confront their own attitudes about corruption, and reach conclusions about how to deal with corruption and the pressures of police culture in connection with corruption and corruption tolerance.[1424]

When asked what more should be done in relation to training officers about drugs and drug use, a number of NSW Police commanders also suggested that education should extend throughout an officer's career, for example:

> Complete reinforcement from bottom up – more focus at the college and continual reinforcement by Healthy Lifestyles as mandatory lectures not just when invited by the command.

1423 Police Association of NSW response to Operation Abelia Round Table 5: *Supporting and equipping sworn officers and supervisors*. May 2004, pp. 1-2.

1424 M. Mollen, *Commission to investigate allegations of police corruption and the anti-corruption procedures of the Police Department*. Commission Report, City of New York, July 1994, p. 121.

> The content is good but it needs to be done more often and in an ongoing way. It should be one of the mandatory lectures.
>
> Needs to be done on a regular basis. Scenario based training.

Some Operation Abelia focus group participants suggested that messages that might be delivered in training are more effective when reinforced through relationships with peers or mentors:

> Peer pressure is very strong in being able to influence people's actions and thoughts.
>
> You've got to give people an opportunity for mentoring. People get blasé – heard it before. It's useful to talk about it. Goes back to using examples from real life people.

One of the former officers who gave evidence in a private hearing also spoke about the importance of having these issues discussed on a regular basis. When asked:

> Would it be true to say that a person in your situation who felt that he wasn't a problem drug user and was using drugs recreationally probably wouldn't have been influenced by any degree of training because that was a personal choice you made: is that fair to say?

former Officer C2 replied:

> It's probably not fair to say. I probably would have thought a lot more about doing it if it was in my face, in terms of the police talking about it to me a lot more.[1425]

The NSW Ombudsman has suggested that NSW Police could provide officers with appropriate guiding principles together with the promotion of peer discussion groups and the use of case studies and scenarios in relation to situations they may encounter off duty that involve drugs:

> As part of an educative strategy, NSW Police could provide officers with scenarios that may promote discussion of ethical issues of a similar type to that which may be encountered in their professional and personal lives. Peer forums for discussion of drug related issues may also assist in the educative process. Key themes could include peer pressure, conflict of interests, improper associations and critical incidents. There are any number of actual case studies which could facilitate this discussion.
>
> In relation to situations where officers may encounter drugs whilst they are off duty, clear guidelines could be provided reinforcing that the discretion applied by police in dealing with matters in the workplace is also applicable to dealing with issues whilst off duty. In this regard, further information could be provided to officers as to the factors relevant to the exercise of their discretion. The availability of other police officers to discuss these issues as they arise may also assist. In addition to providing information about the negative effects of commonly used illicit drugs, education could

1425 Operation Abelia, PIC Transcript, Private hearing, ANL, 10 May 2004, p. 16.

> focus on the benefits to officers of not using drugs from health, psychological and social perspectives.[1426]

Observation 13: Some officers were critical of what they termed the 'management by memo' method used to disseminate information within NSW Police.

While participants in the focus groups conducted for Operation Abelia were not specifically asked their opinions about the manner in which information is disseminated within NSW Police, participants in one focus group spontaneously raised this topic. These participants were critical of the way information was disseminated to them. They referred to this process as 'management by memo'[1427]:

> We just get this stuff hammered at us time and time again – management by memo. At no time do they bring commanders together and discuss policy. [New speaker:] Absolutely correct. We get policy memos and say, what's this more crap. We don't have time to go through the specifics of every policy – we've got a general idea.

One of the participants at this focus group suggested that there should be a:

> Properly structured process of training around any introduced policy.

As part of its Qualitative and Strategic Audit of the Reform Process of NSW Police (QSARP), the HayGroup conducted face-to-face interviews with senior staff as well as a number of focus groups. From its research the HayGroup observed that:

> Most respondents believe there is an over reliance on the MEMO system for communication. Both management and staff complained about the volume and relevance of many messages … The MEMO system is the second most important method for receiving reform information, after face-to-face communication at weekly staff meetings and shift parade. Face-to-face communication was cited by most focus group participants as the preferred method of communication because it allows a two-way exchange for clarification of issues to ensure a shared understanding of information.[1428]

When considering communication about the reform process, the HayGroup concluded that the NSW Police communication strategies were not effective:

> At present, the strategies used for internal communication are not effective in either reaching the target audience or in achieving common understanding across the organisation.[1429]

1426 NSW Ombudsman response to Operation Abelia Round Table 3: *Students*. May 2004, pp. 1-2; NSW Ombudsman response to Operation Abelia Round Table 5: *Supporting and equipping sworn officers and supervisors*. May 2004, pp. 1-2.

1427 'Memo' is used within NSW Police to refer to correspondence by email.

1428 HayGroup, *Qualitative and Strategic Audit of the Reform Process (QSARP) of NSW Police: Report for Year 3 (July 2001 – June 2002),* September 2002, pp. 186-187.

1429 HayGroup, *Qualitative and Strategic Audit of the Reform Process (QSARP) of NSW Police: Report for Year 3 (July 2001 – June 2002),* September 2002, p. 191.

Observation 14: Many of the officers and former officers who gave evidence to the PIC about their drug use said that they could not recall the topic of personal drug use being discussed within their command.

The commanders interviewed in mid-2003 were asked whether drug use by police is something that is discussed within their command. While almost two-thirds of the commanders interviewed said that drug use was discussed in their commands[1430], few officers and former officers from whom the PIC obtained evidence said they could recall personal drug use being discussed.

Some of the commanders who said that they had discussions about drug use with officers in their commands made some additional comments regarding these discussions:

> Something that was discussed recently – there was a new presentation done by the Drug Testing Unit for team leaders.
>
> Have discussed – and told officers they won't get a second chance.
>
> I speak to each officer coming to the command.

Commanders, who were interviewed by the PIC in mid-2003, were also asked whether drug use by police is discussed with new trainees in their command. Once again almost two-thirds of the commanders interviewed said that they discussed personal drug use with new trainees. Some of these commanders made some additional comments regarding the nature of their discussions with new trainees in their commands:

> At briefings, the police are made aware that [location of command] is a high risk command and as such we have a higher rate of random drug testing.
>
> I meet all trainees and go through a code of conduct.
>
> But not one-on-one with the commander. At training days.
>
> The EDO includes drug use as part of her induction program and training and that's just associated with a particular environment there at [location of command] where there are substantial drug and alcohol problems in the community.

In contrast, many of the officers and former officers who gave evidence to the PIC about their drug use said that they did not recall personal drug use being discussed in their current command or their most recent command before they resigned, for example:

1430 For additional information about the PIC interviews with a sample of local area commanders and commanders of specialist units, refer to Appendix 2.

- Former Officer M2 said that while there was discussion of alcohol abuse at his last station there was never any discussion of illegal substances.[1431]
- Officer F4 said that there was never any discussion between the people he worked with about drug use.[1432]

Officer D3 said that, while he did not recall personal drug use being discussed within his command at other times, he remembers the Police Chaplain speaking to them about personal drug use one day about 12 to 18 months prior to when he gave evidence to the PIC:

> He, he was basically just talking, it was just a pretty informal talk. He came into our meal room one day at [location] and just started speaking about if you do have any issues and you wanted to speak to him as, as the Chaplain of [location] to go and see him in relation to those issues, yeah.[1433]

Observation 15: Some suggested that the Police Association of NSW could reinforce messages that drug use by officers is not acceptable either on duty or off duty.

Delegates who attended the Police Association of NSW (PANSW) Conference in May 2004 were divided into twelve groups to discuss their suggestions for strategies that would assist in minimising drug use within NSW Police.[1434] In answer to the question 'What do they see as the best *immediate* and *practical* strategy that delegates could adopt in order to reduce the problem of illicit drug use by police' five of the twelve discussion groups referred to messages that should be given by the PANSW, for example:

> Delegates should be immediately active in promoting the unacceptability of illicit/illegal drug use within the Police force. Delegates should do this by raising the issue at a Branch level and tasked with identifying local strategies to aid in the achievement of this objective. A circular should be disseminated by the Association re-iterating the position that illicit drug taking by our members will not be tolerated.
>
> Reinforce Association stance on illegal drug use by a combination of direct contact with Branches via Branch Officials, an Association Circular and an article/editorial in the Police News.

Mollen (1994), when recommending reforms concerning the New York City Police Department, recommended that the police unions 'should be encouraged to play a more active role in educating their memberships about the dangers of corruption to

1431 Operation Abelia, PIC Transcript, Private hearing, ANV, 12 May 2004, p. 14.

1432 Operation Abelia, PIC Transcript, Private hearing, ANS, 12 May 2004, p. 22.

1433 Operation Abelia, Transcript of Record of Interview, 13 May 2004, p. 13.

1434 See Appendix 8 for more information about the discussion groups conducted as part of the Police Association of NSW Biennial Conference in May 2004.

them and the Department, and in changing police attitudes that foster corruption, including the code of silence'.[1435]

ASSESSMENT AND RECOMMENDATIONS

At the outset, the PIC acknowledges that the size and geographically dispersed nature of NSW Police adds to the difficulty of providing consistent messages across the workforce and to the costs involved in conducting training across the organisation. To address these difficulties the PIC notes that NSW Police has attempted to use a range of strategies to disseminate information to its officers. Examples of such strategies include:

- having an officer within each command (the Education and Development Officer or 'EDO') responsible for developing the education program for that command in consultation with the commander
- publishing a quarterly *Policing Issues & Practice Journal* and providing each officer with his or her own copy of the journal
- developing short computer-based scenarios known as 'Six Minute Intensive Training' (or 'SMITs')
- placing information on the NSW Police intranet, and
- making some training 'mandatory' in such a way that participation earns points that are one requirement necessary to obtain a salary increment.

The PIC further notes that the Commissioner of Police has suggested that a review of the NSW Police communications strategy as well as its entry-level and ongoing training may be timely. In a closing statement on the final day of public hearings for Operation Abelia, the NSW Police Commissioner, when foreshadowing possible changes to current procedures and practices following Operation Abelia, said:

> At the very least, NSW Police may need to review its communications strategy, reinforce its code of conduct and examine its recruit and ongoing mandatory education packages to ensure effective education of all of our police officers.[1436]

Effectiveness

A thorough evaluation of NSW Police entry-level education, ongoing training and general organisational communication strategies was beyond the scope of Operation Abelia. Instead, the PIC examined the types of information NSW Police said that it communicated in relation to: illegal drugs, appropriate on-duty and off-duty behaviour, and ethical dilemmas. The PIC also looked at officer recall of messages about these topics and sought commander, officer and student perspectives on their training and related activities.

1435 M. Mollen, *Commission to investigate allegations of police corruption and the anti-corruption procedures of the Police Department*. Commission Report, City of New York, July 1994, p. 127.

1436 Operation Abelia, PIC Transcript, Commissioner K. Moroney, 12 November 2004, p. 1325.

When considering the material collected to inform the PIC's assessment in this section, it is important to take into account that the officers, former officers and students who expressed opinions about training would have been commenting on a range of courses conducted over different years. Hence these experiences and opinions cannot be used to evaluate any one particular course. The officers and former officers who provided evidence to the PIC about their drug use or who offered their opinions in Operation Abelia focus groups had joined NSW Police over a period of three decades. The first of the PIC witnesses to join NSW Police commenced in the early 1970s. At the other extreme the PIC also heard from students who had commenced their studies at the NSW Police College in 2004. Only those who had joined NSW Police since the mid-1990s were asked about their entry-level training.

It is also clear that as a consequence of the modifications to the DPP, the content of messages provided to students and the way these messages are delivered have changed since the introduction of the course and also, more recently, they have changed during the period that Operation Abelia has been conducted. Hence comments made about one version of the DPP need not apply to other versions of the course.

Officer recall of information

One possible way of assessing the effectiveness of NSW Police education, training and communication strategies is by examining officer recall of material about which NSW Police says that it has provided training, such as the Drug and Alcohol Policy and the Code of Conduct and Ethics. While the focus group methodology does not allow for quantification of the proportion of officers who are aware of the different policies and procedures, as has been discussed in earlier sections of this chapter, the comments made by participants in the Operation Abelia focus groups raise some concerns that a number of officers are not able to recall a range of NSW Police policies and/or procedures of relevance to Operation Abelia. From the comments made by focus group participants and the evidence given by officers and former officers the PIC has observed the following examples of lack of recall of information:

- some officers were unable to recall the existence of the Drug and Alcohol Policy
- not all officers who admitted using illegal drugs were aware of the amnesty provision and commanders and officers spoke of the need for greater publicity to be given to the assistance available under the amnesty
- some officers were not aware that NSW Police conducts random drug testing
- some officers do not have a good understanding of their Code of Conduct and Ethics, nor do they see a need for it
- officers and students who participated in focus groups demonstrated little awareness of the Code of behaviour (as outlined in Clause 49 of the Police Regulation 2000).

The PIC acknowledges firstly that the officers and former officers who have provided information to the PIC as part of Operation Abelia may not be typical of all NSW Police officers and secondly that one would not necessarily expect all officers to retain a

detailed knowledge of all aspects of all NSW Police policies. However, with this in mind, in order that officers are able to comply with NSW Police policies and procedures and/or make use of the resources promoted within these policies, it is important that all officers are aware of:

- the existence of policies that pertain to them
- the main messages of those policies
- the circumstances that should trigger officers needing to obtain a more detailed understanding of the policy, and
- how to obtain a more detailed understanding of the policy when necessary.

The picture drawn from the information collected during Operation Abelia was that on the whole some officers do not recall broad aspects of relevant policies (such as the amnesty provision or the existence of random drug testing). That officers are unable to recall such broad aspects of relevant policies suggests that there is room for improvement in the communication of these policies.

Perceived satisfaction with training

Another way of considering the effectiveness of NSW Police education, training and communication strategies is by examining perceived satisfaction with the training provided. In this regard it is relevant to note that three-quarters of commanders said they were not satisfied with the training their officers received about drugs and drug use. They suggested that more training was needed about the effects of drugs and to reinforce the message that illegal drug use is not acceptable either on or off duty.

Gap analysis

Another means of considering the effectiveness of education, training and communication strategies is to look beyond the current training provided and to examine where there are gaps in equipping officers with the skills they require to adequately perform their role. While opinion was divided on the extent to which additional education would assist in minimising illegal drug use by officers, there was support for additional training on a range of topics including:

- the effects of drugs and harms they can cause
- the ways the use of illegal drugs can compromise officers in their work
- what officers should do when they suspect that a colleague is using illegal drugs
- signs of drug use, and
- assistance available.

The issue of possible gaps in equipping officers with the skills they require to perform their role is discussed further in the following section on ‘recognising and responding to integrity risks’.

Areas for improvement

Recognising and responding to integrity risks

The PIC considers that one important objective of the education, training and communication undertaken by NSW Police is to equip its officers with the knowledge and skills that they need in order to carry out their jobs appropriately and effectively.

One set of skills that NSW Police officers require is to be able to recognise situations that may put their integrity at risk or compromise them in their role as an officer, as well as compromise them as an individual and compromise NSW Police. Such situations that can put an officer's integrity at risk are referred to as 'integrity risks' in the discussion that follows. Not only do all officers need to be able to identify integrity risks, they need to know how to manage these risks. The PIC agrees with Gilmartin, cited earlier in this section, who has advocated the importance of officers being well-prepared for ethical dilemmas before they are in a position where they need to respond to them.

The combination of the authority and the discretion that comprises the police officer role results in a diverse range of potential integrity risks. NSW Police has a large and diverse workforce. There are some integrity risks that are common to most policing roles, independent of the specific nature of the position and the geographical location in which the officer works. There are other integrity risks that are specific to a particular type of police work.

In Operation Abelia the PIC has been concerned with one particular set of integrity risks: those that relate to illegal drug use by officers or their associations with drug dealers. The PIC has heard evidence that some officers have not been able to recognise these integrity risks. The PIC has heard evidence of officers and former officers who use illegal drugs not recognising that their drug use posed a problem for them as a police officer as well as for NSW Police. A number of officers and former officers told the PIC that although they used illegal drugs they did not consider that they were an 'addict' or a 'drug user' or they did not consider that they had a 'drug problem'. (This is discussed further in Observation 5 of Section 6.3 on 'Self-reporting illegal drug use' earlier in this chapter.) This is consistent with findings concerning drug use in the community where those who use a range of 'party drugs' do not see themselves as drug users or junkies.[1437] The Victorian Drugs and Crime Prevention Committee, for example, has noted that 'young people who take ecstasy do not necessarily view themselves as "taking drugs" and are therefore unlikely to appear at specialist drug services'.[1438]

The PIC has heard evidence that officers do, from time to time, find themselves in social or family situations where friends or relatives may use illegal drugs. This is not to be unexpected in a society where a significant minority use illegal substances as a means of socialising and/or as a means of relaxing.[1439] These officers and former officers told the PIC that their usual response, when they were off duty, to others using

1437 Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into amphetamine and 'party drug' use in Victoria: Final report*. Melbourne: Government Printer for the State of Victoria, May 2004, p. 197.

1438 Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into amphetamine and 'party drug' use in Victoria: Final report*. Melbourne: Government Printer for the State of Victoria, May 2004, p. 487.

1439 For further information on: estimates of illegal drug use within the Australian community refer to Section 2.7 of Chapter 2; reasons that NSW Police officers and former officers give for using illegal drugs refer to Chapter 5; and the effects of drugs see Appendix 9.

illegal drugs was for them to ignore the illegal drug use, sometimes expressed as, 'to turn a blind eye'. When commanders and officers were asked what the appropriate behaviour in such a situation was, they came up with a range of responses. One commander suggested that NSW Police does not have a position on this issue. Some officers said that they did not know what NSW Police considered the appropriate response for them to take when confronted by friends or relatives using illegal drugs. Other officers said that while they considered that they did know what they should do as officers (though the descriptions of the appropriate actions differed amongst these officers) they generally acted contrary to this by ignoring the illegal drug use. Reference to the 'slippery slope' of escalating acts of misconduct is found in many papers on police corruption. In an attempt to keep officers off this 'slippery slope', efforts should be made to ensure that officers do not find themselves in a position where they act in a manner that is contrary to how they believe an officer should behave.

The PIC notes that discussion of the appropriate behaviour in such situations was not formally incorporated as part of the entry-level training prior to the introduction of the PPP 123 course in January 2005. NSW Police told the PIC that such scenarios might have been discussed in the previous ethics course (JST 111), incidentally as part of a discussion of other material.

When asked how the training for students could be improved to equip students to know how to respond appropriately if, while off duty as sworn officers, they see others use illegal drugs, NSW Police responded that:

> There is an appreciation, of course, that from time to time police may become exposed to situations that pose difficult ethical dilemmas for them. However, in such circumstances, it is expected that officers will be mindful of their Oath of Office and that they will exercise this responsibility with commonsense and discretion, which is outlined in the Statement of Values and the NSW Police Code of Conduct and Ethics.[1440]

Rather than saying that officers should determine the appropriate behaviour in such situations by referring to their Oath of Office, Statement of Values and Code of Conduct and Ethics and use commonsense and discretion, the PIC believes that NSW Police should provide clear and realistic guidance on appropriate behaviour in situations when an off-duty officer or a student encounters people using illegal drugs. This guidance should include a consideration of how the behaviour that is appropriate does or does not vary in terms of whether those using illegal drugs are strangers, acquaintances, colleagues, friends or relatives. At the moment there are no guidelines on what it means for an officer to apply discretion in such a situation. The PIC acknowledges that this is not a simple question and suggests that it may be beneficial for NSW Police to consult relevant stakeholders and external experts when developing guidance on how officers and students should meet NSW Police expectations in this area.

The PIC considers that the example of an officer, or a student of policing, encountering friends or relatives using illegal drugs while the officer is off duty may present an integrity risk to a wide range of officers and students. As such NSW Police expectations in this area should be explicitly discussed as part of the entry-level and ongoing training. Because the officers and students who may find themselves in such a situation are not likely to be readily identifiable from others, this is a scenario that is worth discussing across the board. It should be discussed in terms of the nature of the integrity risks presented by such a situation and how these risks can best be managed.

1440 NSW Police response to Operation Abelia Round Table 3: *Students*. May 2004, p. 3.

Recommendation ETC 1:

The PIC recommends that NSW Police develops a clear position on how it expects off-duty officers to respond if they encounter people using illegal drugs and communicates its expectations as well as practical guidance on how to meet these expectations to all officers. The PIC also recommends that NSW Police develops a clear position on how it expects students to respond in such situations and communicates these expectations to all students.

In developing and communicating its position on this topic, the PIC recommends that NSW Police consults relevant stakeholders and external experts. In addition the PIC recommends that NSW Police considers what are the main factors that should influence how an off-duty officer or a student should respond in such a situation, for example, whether the appropriate response varies in terms of:

a. whether those using illegal drugs are strangers, acquaintances, colleagues, friends or relatives

b. whether the off-duty officer is alone or with others

c. the type of drug used

d. the circumstances of the drug use.

There are many situations that can place an officer's integrity at risk in addition to coming across people using illegal drugs while off duty. For example, Chapter 5 of this report presents the accounts that some officers and former officers gave for their illegal drug use. These accounts identify some of the trigger events that officers saw as leading to their drug use and the conditions conducive to officers using illegal drugs. Some of these trigger events include relationship problems and other personal stress, workplace stress including problems working with other team members, excessive alcohol consumption, physical injury and the desire to self-medicate, and simply socialising with others who use illegal drugs.

The PIC considers that NSW Police should actively seek to equip both students and officers with the skills to recognise and manage the broad range of situations that may put their integrity at risk and compromise them in their role as a police officer, both in terms of general integrity risks and specifically in relation to the integrity risks that relate to illegal drug use. The PIC believes that consideration of the integrity risks that an officer may face and how best to manage these integrity risks needs to be a continuing process, not one that is restricted to a few minutes discussion during one course within the DPP.

Recommendation ETC 2:

The PIC recommends that NSW Police ensures that entry-level and ongoing education for NSW Police officers incorporates structured training of the 'integrity risks' that officers are most likely to encounter, that is, those situations that might put an officer's integrity at risk and compromise them in their role as an officer. This training should include, amongst other topics, integrity risks related to illegal drug use by officers or their colleagues, friends and associates. This training should be designed to achieve the following outcomes:

a. to assist officers and students to recognise what makes such situations an integrity risk, how such situations can compromise their integrity in their future role as a police officer and the consequences of such compromise

b. to provide officers and students with the opportunity to consider and practise how to manage such integrity risks so that they will be equipped to respond appropriately if they find themselves in such situations in the future

c. to let officers and students know of avenues for further guidance if they find themselves in a situation where they are able to seek assistance prior to responding

d. to provide officers and students with guidance about what they should do if they find that they make a mistake when faced with such situations.

Additional training – gap analysis

As stated earlier, the PIC heard that there was some support for additional training on a range of topics including:

- reinforcing the message that illegal drug use is not acceptable either on or off duty
- the ways that the use of illegal drugs can compromise officers in their work and the consequences of such compromise
- the effects of drugs and harms they can cause
- what officers should do when they suspect that a colleague is using illegal drugs, and
- the assistance available.

Additional training reinforcing the message that illegal drug use is not acceptable either on or off duty and clarifying the ways the use of illegal drugs can compromise officers in their work has also been discussed earlier in this section, see Recommendations ETC 1 and ETC 2. It has also been discussed in earlier sections of this chapter (refer specifically to Recommendations SR 2, CCE 1, CCE 2, CCE 3, R 1 and R 2.)

Promotion of the assistance available to officers who have used illegal drugs has also been discussed earlier (refer specifically to Recommendation SR 3).

Within the section describing the roles and responsibilities of all officers, the current NSW Police Drug and Alcohol Policy provides advice as to what an officer should do if

he or she suspects that a colleague has an alcohol problem. In such circumstances, officers are advised that they are expected to encourage colleagues who appear to have a drinking problem to seek help from the NSW Police Drug and Alcohol counsellors. However, the policy does not clearly address the issue of what an officer should do if he or she suspects a colleague has a problem with drugs other than alcohol. Some of the officers who participated in the Operation Abelia focus groups said that they felt that they were not adequately prepared to deal with suspected illegal drug use by a fellow officer. It should be noted that the PIC's Recommendation SR 7 concerning clause 20 of the Police Regulation, presented earlier in the chapter, is also relevant to this issue.

Recommendation ETC 3:

The PIC recommends that NSW Police develops guidelines for officers on what they should do if they suspect illegal drug use by a fellow officer and communicates these guidelines to officers of all ranks.

Recent research on amphetamine and other 'party drug' use in the Australian community has recommended that accurate and relevant information on the potential health and other risks should be provided to drug users.[1441] The PIC is aware that NSW Police already provides education on the effects of drugs as one aspect of existing courses such as the Highway Patrol Education Course, the Police Youth Liaison Officer (YLO) Development Program and the Safe Custody Course. The PIC considers that NSW Police should consider the possibility of making this information (and the associated information about the dangers and harms of drug use, including non-prescribed steroid use) available to a wider range of NSW Police officers.

Recommendation ETC 4:

The PIC recommends that NSW Police considers making information on the effects of drugs (and associated information about the dangers and harms of drug use, including non-prescribed steroid use) available to a wider range of NSW Police officers than is currently the case.

Police Association support in communicating the message that illegal drug use by officers is not acceptable either on or off duty

The PIC has welcomed the support of both NSW Police and the Police Association of NSW (PANSW) in the conduct of Operation Abelia. In addition to sharing some of its research with the PIC and participating in round table discussions, the PANSW also dedicated one part of its Biennial Conference to the discussion of issues related to Operation Abelia. As part of that discussion some participants suggested that delegates should be immediately active in promoting the unacceptability of illegal drug use within NSW Police, raise the issue at Branch level and identify local strategies to promote the unacceptability of illegal drug use. Some delegates suggested using an Association Circular and an article in the Police News. The PIC supports the role of the PANSW in any efforts to reinforce the message that illegal drug use is unacceptable

1441 A. Baker, N. K. Lee, & L. Jenner, Models of intervention and care for psychostimulant users. 2nd edition. *National Drug Strategy Monograph Series No. 51*. Canberra: Australian Government Department of Health and Ageing, April 2004, pp. 51, 53; Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into amphetamine and 'party drug' use in Victoria: Final report*. Melbourne: Government Printer for the State of Victoria, May 2004, p. 486.

either on duty or off duty, why it is unacceptable, and to communicate to its members how illegal drug use may compromise their role as a police officer. The PIC would welcome the opportunity to assist with information and advice in any proposed effort by the PANSW in this regard.

Support for probationary constables in the field

Some of the information reviewed by the PIC suggested that some students and probationary officers may not have been given enough support during their placements in local area commands. While the PIC did not conduct any detailed research on this topic, the PIC recognises that this early period in an officer's career is an important one for developing an officer's understanding of what it means to be a police officer and shaping his or her understanding of what is the appropriate behaviour for an officer. Accordingly the PIC believes in the importance of providing appropriate support and experience to students and probationary constables during this training phase.

Communication strategy

Operation Abelia examined communication strategies in relation to information pertaining to a small range of topics: those relevant to minimising illegal drug use by NSW Police officers. It did not seek to conduct a broader examination of the strategies used by NSW Police to communicate its policies and procedures to its staff.

Throughout this chapter, the PIC has identified the need for NSW Police to communicate and reinforce a range of messages concerning:

- NSW Police expectations of officer behaviour
- knowledge and skills to equip officers and supervisors to perform their role
- policies and procedures, and
- resources available.

These messages and the audiences to which these messages are relevant are summarised in Table 6.5.

TABLE 6.5: MESSAGES AND TARGET AUDIENCES IDENTIFIED IN OPERATION ABELIA

Message or information	Target audience	Reference*
NSW Police expectations		
Illegal drug use by an officer is not acceptable at any time, no matter whether the officer is on duty or off duty.	Potential applicants, students and officers of all ranks	CCE 1
Any illegal drug use by an officer is a problem for the officer and for NSW Police, even if that officer considers that he/she does not have a physical or psychological addiction or that officer considers it to be 'social' or 'recreational' drug use. The strategies that NSW Police develops and implements in this area should also ensure that officers understand how such drug use can compromise their position.	Officers of all ranks.	SR 2
NSW Police values and expectations for the integrity standards to be met by its officers.	Potential applicants and those selected to undertake entry-level training	R 1 R 2
The ways in which applicants should expect that employment as a NSW Police officer may affect their off-duty life.	Potential applicants and those selected to undertake entry-level training	R 1 R 2
The nature of police work, balancing the value of the work with a description of the types of stressful situations and boredom that officers may encounter.	Potential applicants and those selected to undertake entry-level training	R 1 R 2
Drug testing is one of the conditions of working as a NSW Police officer.	Potential applicants, students, officers of all ranks	RDT 1 R 1 R 2 R 4
Expectations outlined in the Code of behaviour (Clause 49 of the *Police Regulation 2000*).	Students and officers of all ranks	CoB 1 CoB 2
NSW Police position on how it expects off-duty officers to respond if they encounter people using illegal drugs and practical guidance on how to meet these expectations in order to promote a common understanding across NSW Police officers of how such situations should be managed.	Students and officers of all ranks	ETC 1

TABLE 6.5: MESSAGES AND TARGET AUDIENCES IDENTIFIED IN OPERATION ABELIA (CONT'D)

Message or information	Target audience	Reference*
NSW Police position on what it expects officers to do if they suspect illegal drug use by a fellow officer.	Officers of all ranks	ETC 3
NSW Police position on what it expects officers to do if they find that they make a mistake when faced with a situation that could compromise their integrity.	Students and officers of all ranks	ETC 2
NSW Police position on what it expects supervisors to do if they suspect that one of their officers may have used or is using illegal drugs.	Supervisors of all ranks**	SS 1
NSW Police position on what it expects an officer to do if they suspect that they have accidentally ingested illegal drugs.	Students, officers of all ranks	M 4
Knowledge and skills to equip officers to perform their role		
How to recognise and manage situations that may put an officer's integrity at risk and compromise them in their role as a police officer, both in terms of general integrity risks and specifically in relation to risks that relate to illegal drug use.	Students and officers of all ranks	ETC 2
Effects of drugs and associated information about the dangers and harms of drug use, including non-prescribed steroid use.	Students and officers of all ranks	ETC 4
The uses and limitations of targeted drug tests and issues CMT members should consider when determining whether or not a targeted drug test should be conducted including: alternatives to targeted drug tests, the role of the CMT in relation to a targeted drug test, the resources a CMT should consult when considering a targeted drug test, and the review by Professional Standard Command.	Potential Complaints Management Team members	TDT 1
Broader lessons from the reviews of how the recording and/or decision-making processes could be improved.	Potential Complaints Management Team members	TDT 5
The nature of the information to be recorded when the CMT considers whether or not to conduct a targeted drug test.	Potential Complaints Management Team members	TDT 6, TDT 4
The commonalities and differences between supervisors' responsibilities under the NSW Police Drug and Alcohol Policy, NSW Police Psychological Wellbeing of Staff Policy, NSW Police Occupational Health and Safety Management Policy, NSW Police Rehabilitation Policy and associated policies and regulations including when a supervisor has a responsibility to act.	Supervisors of all ranks**	SS 1
What action a supervisor should take if he or she has reason to suspect that one of their officers has used or is using illegal drugs.	Supervisors of all ranks**	SS 1

TABLE 6.5: MESSAGES AND TARGET AUDIENCES IDENTIFIED IN OPERATION ABELIA (CONT'D)

Message or information	Target audience	Reference*
How to approach an officer and how to provide feedback on work performance or conduct, when illegal drug use is suspected.	Supervisors of all ranks**	SS 1
How to respond to acute alcohol or other drug related situations.	Supervisors of all ranks**	SS 1
How to balance a supervisor's welfare and staff management responsibilities.	Supervisors of all ranks**	SS 1
Training on the detection and management of substance abuse problems.	Supervisors of all ranks** with a particular focus on the commander level	SS 2
Types of injuries that would be classified as 'serious' for the purpose of defining the circumstances that require directly involved officers to be mandatorily drug tested.	Students and officers of all ranks	MDT 3
Policy and procedures		
Officers may be randomly drug tested on any day at any time when they are on duty in accordance with a roster.	Potential applicants, officers of all ranks	RDT 1
Off-duty drug use by an officer may be detected through the use of hair samples and/or off-duty targeted drug testing.	Potential applicants, officers of all ranks	TDT 8 TDT 9 RDT 5
The existence of the NSW Police Code of Conduct and Ethics and how the Code of Conduct and Ethics applies to officers' behaviour when they are on duty and when they are off duty.	Students and officers of all ranks	CCE 2
The NSW Police Drug and Alcohol Policy.	Students and officers of all ranks	CoB 2
Resources available		
Nature and availability of the amnesty provision, including: • the existence of this assistance • how it works, including in what ways the assistance is kept confidential and the circumstances under which any information would be disseminated and to whom it could be disseminated • the benefits of this assistance • other rehabilitation options • anonymous case studies of how those who have come forward and admitted their prior drug use under the amnesty have been assisted in the past	Officers of all ranks	SR 3 SS 1

TABLE 6.5: MESSAGES AND TARGET AUDIENCES IDENTIFIED IN OPERATION ABELIA (CONT'D)

Message or information	Target audience	Reference*
Avenues for further guidance if officers or students find themselves in a situation that might compromise their integrity.	Students and officers of all ranks	ETC 2
The NSW amnesty provision, the EAP and organisational procedures for referral of staff to other sources of assistance.	Supervisors of all ranks**	SS 1
Avenues of support and assistance available to supervisors when they are unsure of how to respond.	Supervisors of all ranks**	SS 1

** Recommendation code.*
*** The term 'supervisor' is used to refer to any officer of any rank who is responsible and/or accountable for the performance of one or more other officers, or the well being of these officers.*

In addition to identifying the nature of the messages to be communicated, the PIC obtained some information concerning the strategies that NSW Police sometimes uses to communicate its messages.

The PIC has observed that sometimes NSW Police takes a 'one size fits all' approach when a tailored approach to communication may be more effective. For example, NSW Police informed the PIC that when it produced its Complaint Practice Note 04/07 'Guidelines for commanders and CMTs dealing with drug use allegations made against NSW Police' it placed this Complaint Management Note on its intranet, emailed it to all NSW Police officers and published it in the Police Weekly. While this Complaint Management Note was disseminated widely, rather than targeted to those to whom it was most relevant: commanders and other CMT members. Emailing all officers copies of material that may not necessarily be relevant to them can desensitise officers to the relevance of other emails that contain information that may be directly relevant to them.

A small number of officers expressed their dissatisfaction with what they referred to as 'management by memo' or dissemination of policy and procedural information by email. One of these officers suggested that there should be a properly structured process of training around any introduced policy. The PIC sees value in holding discussion sessions, in appropriate circumstances, with those to whom policies are most relevant to help them understand the specific implications of the policy for them in their particular policing role.

The PIC suggests that NSW Police develops an integrated communication strategy to communicate each of the messages outlined in Table 6.5. In developing this communication strategy, NSW Police should consider each of the following:

- clearly communicating to whom and under what circumstances each message is relevant
- recognising that disseminating a written document does not, in itself, ensure that the messages contained within that document will be read, understood or retained; hence the communication strategy should seek to do more than deliver the message, it should also seek to develop each officer's understanding of the specific impact of the message on how the officer should behave while on duty and off duty

- using case studies and practical examples to assist officers to understand how the message applies to them and how they would put the principles into practice
- further promoting information that NSW Police has disseminated to its officers in the past and that has not necessarily been retained
- taking a targeted approach to the dissemination of information so that more resources are devoted to communicating the policy to those to whom it is most relevant and less resources devoted to communicating the policy to those to whom it is least relevant
- facilitating access to information by consolidating material contained in a number of documents and clarifying the overlap and disparities between different policies
- holding discussion sessions, in appropriate circumstances, with those to whom policies are most relevant to help them understand the specific implications of the policy for them in their particular policing role
- being selective in the choice of material to email to officers so that officers are not overwhelmed and remain receptive to the information they receive electronically
- reinforcing the messages in different ways
- incorporating a mechanism for evaluating the effectiveness of the communication strategies for at least some of the policies disseminated.

Recommendation ETC 5:

The PIC recommends that NSW Police develops and implements an integrated communication strategy to communicate each of the messages outlined in Table 6.5.

In developing this communication strategy, NSW Police should give consideration to each of the points identified in the preceding discussion.

Evaluation and monitoring

In earlier sections of this chapter the PIC has recommended that NSW Police conducts regular surveys to evaluate the effectiveness of its communication strategies regarding random drug testing (see Recommendation RDT 9) and the Code of Conduct and Ethics (see Recommendations CCE 3 and CCE 4).

The PIC considers that NSW Police should also evaluate:

- the strategies it introduces in response to Recommendations ETC 1 and ETC 2 to equip officers with the skills to recognise and manage situations that may put their integrity at risk and compromise them in their role as a police officer
- the communication strategy developed and implemented in response to Recommendation ETC 5.

Recommendation ETC 6:

The PIC recommends that NSW Police should evaluate the effectiveness of:

a. the strategies it introduces in response to Recommendations ETC 1 and ETC 2 to equip officers with the skills to recognise and manage situations that may put their integrity at risk and compromise them in their role as a police officer

b. the communication strategy developed and implemented in response to Recommendation ETC 5.

6.11 SUPERVISION AND SUPPORT OF SWORN OFFICERS

This section acknowledges the important role played by managers and supervisors in reinforcing acceptable behaviour and modelling expected standards to officers. It also examines the way in which supervision and support for staff may assist in minimising illegal drug use, as well as considering the training needs of supervisors.

In one of the Operation Abelia round table discussions it became apparent that NSW Police sometimes equates the term 'supervisor' with an officer holding the rank of sergeant. This is not the case in this report, where the term 'supervisor' is used to refer to any officer of any rank who is responsible and/or accountable for the performance of one or more other officers, or the wellbeing of these officers. Hence, in this section the term 'supervisor' is used to include commanders and managers as well as officers of higher or lower ranks who are responsible for the work of other officers.

DESCRIPTION

NSW Police supports and equips its staff in a variety of ways. Some forms of support and assistance are broad ranging, while other forms of support are specifically directed to drug-related problems.

Two forms of support provided by NSW Police have been examined in earlier sections of this chapter. While they will not be considered in detail in this section it is worth briefly mentioning them at this point, as a reminder that NSW Police provides these forms of support. One form of support is the education and training NSW Police provides to equip its officers with knowledge and skills to carry out their jobs. (This was discussed more fully in the previous section, 6.10.) The second form of support that has already been discussed is the help that is provided to any officer who voluntarily comes forward to disclose their drug use to a drug and alcohol counsellor under the amnesty provision of the NSW Police Drug and Alcohol Policy. (See Section 6.3 for more information on the amnesty provision.)

Specific assistance for drug-related problems

Under the heading 'Availability of help and financial assistance', the NSW Police Drug and Alcohol Policy describes the assistance available to staff who recognise that they are experiencing alcohol or other drug-related problems. It states that NSW Police is committed to providing all reasonable rehabilitation support for individuals experiencing drug-related problems, states that NSW Police may pay the full cost of reasonable

inpatient treatment and lists the range of counselling and other assistance offered by NSW Police drug and alcohol counsellors:

> There is a wide range of professional support programs available for individuals experiencing alcohol or other drug related problems and the Service is committed to providing all reasonable rehabilitation support through these channels for its employees.
>
> Any officer wishing to avail him/herself of professional support at the Service's expense should approach a Service Drug and Alcohol Counsellor. Consultations with Police Service Drug and Alcohol Counsellors can be undertaken in the Service's time and at the Service's expense. Initial contacts can also be anonymous, if the officer so chooses.
>
> Subject to the concurrence of a Service Drug and Alcohol Counsellor, the Service may pay for the full cost of reasonable inpatient treatment at private rehabilitation centres or the cost of other professional medical and community support, if needed, irrespective of whether an alcohol or other drug related problem is claimed to be related to an officer's duty. This assistance applies to both sworn and non sworn members and includes reasonable support which might be needed by an employee's family as a direct result of the member's condition.
>
> The type of rehabilitation offered by our Drug and Alcohol Counsellors may include:
>
> - Assessment of current personal situation and future need,
> - Counselling to facilitate harm minimisation or moderate drinking,
> - Referral to inpatient or outpatient centres,
> - After care and relapse prevention counselling, and
> - Introduction to alcoholics/narcotics anonymous meetings.

The NSW Police Drug and Alcohol Policy also lists the roles and responsibilities of supervisors, commanders and managers. Amongst other responsibilities, supervisors, commanders and managers are required to ensure that all personnel under their supervision comply with the provisions and spirit of the Drug and Alcohol Policy. This policy also states that commanders and branch managers are required to arrange for an officer who tests positive to a drug or alcohol test to see a drug and alcohol counsellor as soon as practicable and to monitor the officer's progress. The ongoing monitoring of an officer's performance is specifically stated to be the responsibility of the local area commander or the branch manager.

Assistance with stress management

NSW Police seeks to provide more broad-ranging support to its officers in the form of assistance with stress management. While not specifically targeted at officers who use illegal drugs, such assistance may serve as a potential means of minimising illegal drug use, given that some officers cite personal and workplace stress as triggers for their illegal drug use. NSW Police has informed the PIC that it has taken 'extensive steps' to address stress management and it has argued that it 'is at the forefront of policing

organisations in Australasia in the introduction of initiatives designed to prevent and/or minimise psychological injuries'.[1442]

Stress management resources

In August 2002, the NSW Police Continuing Education Directorate developed some resources to assist officers and supervisors to recognise and manage stress. Two videos and accompanying electronic slide show presentations were prepared as part of the Mandatory Continuing Police Education Scheme. One video, *The Job - The Stress - The Solution,* was prepared to assist officers. The second video, *Stress Management and Employee Support,* was prepared to assist supervisors. Both videos remind viewers of avenues of assistance that are available to NSW Police, including the drug and alcohol counsellors and the Employee Assistance Program.

The Employee Assistance Program

NSW Police advised the PIC that it outsourced its welfare function to a private Employee Assistance Program (EAP) provider, enabling officers 'to gain ready access to counsellors anywhere within the State'. The assistance provided by the EAP supplements that provided by NSW Police psychologists and drug and alcohol counsellors. Amongst other things, the EAP provides a 'hotline' consultancy for supervisors and managers who wish to discuss particular staffing issues of concern.[1443] During the 2002-2003 financial year:

- 933 employees and 265 family members utilised face-to-face counselling through this Employee Assistance Program
- the usage rate by employees was calculated at 5.45% based on 17000 employees
- 17 managers or supervisors used the Manager Hotline
- 1% of those accessing the service used it for substance abuse issues.[1444]

Other stress management initiatives

NSW Police has advised the PIC of a number of other 'key stress management initiatives introduced by NSW Police in recent years'. NSW Police has described these initiatives as follows:

- Devolution of the rehabilitation function to the local level and an increase in the number of Rehabilitation Co-ordinators from 7 to 16 staff.
- In order to ensure that there are no delays in the treatment of officers experiencing difficulties, the Workers' Compensation Section has introduced a program whereby all reasonable medical expenses are

1442 NSW Police response to Operation Abelia Round Table 5: *Supporting and equipping sworn officers and supervisors*, May 2004, p. 2.

1443 NSW Police response to Operation Abelia Round Table 5: *Supporting and equipping sworn officers and supervisors*, May 2004, p. 2.

1444 OSA Group, Annual Report of NSW Police *Employee Assistance Program 1 July 2002 to 30 June 2003*. OSA Group Employee Assistance Services.

met, on a 'without prejudice' basis, prior to the acceptance of HOD [Hurt on Duty] claims. Similar provisions apply to post-1988 officers, through the WorkCover 'Provisional Liability' scheme.

- The organisation's internal Psychology Section has been refocused to ensure that a comprehensive critical incident stress management program is available for all employees.
- Development of a policy entitled 'The Commander's Role in Helping to Maintain the Psychological Wellbeing of the Staff'. This policy, which sets out protocols and procedures that can be followed when concern is held for the welfare of staff members, is available on the Intranet for the information of all supervisors.
- Inclusion of formal accountability for monitoring the wellbeing of staff in the job stream responsibilities of all supervisors, commanders and managers.
- Annual medical, fitness and psychometric testing procedures have been put in place for all specialist squads and units that have been identified as 'high risk' areas.
- Introduction of a 'WellCheck' scheme within the Child Protection and Sex Crimes Squad, which has been identified as a 'high risk' area for psychological injury. As part of the WellCheck program, all staff attached to the Squad are required, as a condition of employment within the Squad, to participate in a quarterly 'check-up' with an EAP psychologist. The scheme was launched in October 2003 and is designed to provide an ongoing heath support program for 'at risk' staff. Subject to the availability of funds, NSW Police has said that it hopes to eventually extend the program to all specialist squads within the organisation that have been identified as being at risk of psychological harm.[1445]

OBSERVATIONS

Observation 1: Commentators have identified the importance of managers and supervisors in setting ethical standards and the importance of providing support and training for supervisors.

The influence of managers' and supervisors' behaviour in establishing the nature of the organisational culture is well recognised.[1446] For example, the Independent Commission Against Corruption (ICAC) refers to research by Soutar, McNeil and Molster that found that the behaviour of managers, and in particular, senior executives, is far more influential on staff behaviour than is formal policy. The ICAC also refers to research reviewed by Andrews that found that staff are more likely to do what they see

1445 NSW Police response to Operation Abelia Round Table 5: *Supporting and equipping sworn officers and supervisors*, May 2004, pp. 2-3.

1446 See for example, Independent Commission Against Corruption, *Ethics: The key to good management*., pp. 14-16; Independent Commission Against Corruption, *What is an ethical culture?: Key issues to consider in building an ethical organisation. Summary report*. Independent Commission Against Corruption, September 2000, pp.10-14, 31-34; K. R. Andrews, Ethics in practice. *Harvard Business Review, Sept-Oct 1989*, 99-104; B. Z. Posner, & W. H. Schmidt, Values and the American manager: An update. *California Management Review, 1984, XXVI, 202-216*; W. E. Stead, D. L. Worrell, & J. G. Stead, An integrative model for understanding and managing ethical behavior in business organizations. *Journal of Business Ethics, 1990, 9*, 233-242.

their supervisor doing than adhere to ethics policy.[1447] In its own research, the ICAC found:

> The most critical aspect of creating an ethical workplace is the behaviour of leaders (both senior executives and managers). The perception that leaders were honest was associated with staff having positive perceptions about colleagues, their job, and the workplace as a whole.[1448]

Several commentators have emphasised the importance of providing support and training to supervisors within policing agencies, to assist them in setting and modelling expected standards, monitoring staff behaviour and knowing how to respond when drug use is suspected. For example, Mann (2003) has identified that:

> One of the structural features of a police organisation that can be strengthened is the role of first-line supervisors. In the case of workplace drug-and-alcohol use, the supervisor should play a key role in setting ethical standards, detecting breaches, and providing appropriate early intervention.[1449]

In the material it provided to the PIC for Operation Abelia, the Police Association of NSW emphasised the importance of the monitoring and early intervention role of supervisors and of equipping first line supervisors with the skills they need:

> Supervisors and managers who have a solid knowledge of their staff and who exercise a close leadership style of an intrusive nature are better able to recognise emergent problems before they take hold. Remedial and preventative action is both supportive and cost effective.
>
> Much more effort needs to be directed at skilling first line supervisors who should have the care of junior officers. Often these officers … [ignore] their own responsibility to reinforce the messages of ethical behaviour. Modelling of appropriate behaviour is essential to ensure maintenance of standards. Messages that drug use and its potential impact on an officer's integrity require continual reinforcement at the 'coalface'. Supervisors should be trained to recognise problems.
>
> … Supervisors need skills in appropriate supervision – problems emerge when they are too remote as well as when they are too close to their staff. Often the balance is difficult to achieve without help.[1450]

1447 Independent Commission Against Corruption, *Ethics: The key to good management*. Independent Commission Against Corruption, December 1998, pp. 14-15.

1448 Independent Commission Against Corruption, *What is an ethical culture?: Key issues to consider in building an ethical organisation. Summary report*. Independent Commission Against Corruption, September 2000, p. 31.

1449 K. Mann, Substance use in a police workplace: emerging issues and contemporary responses. Queensland Police Service, 2003, p. 19.

1450 Letter from the President of the Police Association of NSW to the PIC Assistant Commissioner, 12 November 2004.

Observation 2: The importance of supervisors being properly trained in substance abuse identification and in how to approach those who are suspected of using illegal drugs is widely recognised.

Those who provide advice on the development of drug and alcohol policies in a broad range of workplaces have advocated that supervisors should be properly trained in substance abuse identification and in how to approach those suspected of using illegal drugs.[1451] For example, the Worksafe Western Australia Commission has written:

> Identifying persons affected by alcohol and other drugs is a complex process, therefore designated persons who approach employees should be properly trained in substance abuse identification and the use of the most effective style of approach.[1452]

In his report investigating allegations of police corruption and examining anti-corruption procedures of the New York City Police Department, Mollen (1994) recommended periodic in-service training for all supervisory ranks on the topics of corruption, brutality, substance abuse detection and prevention.[1453] The Royal Commission into the NSW Police Service also identified the need for 'the effective supervision and training of supervisors to detect officers with drug or alcohol problems'.[1454]

When discussing the identification of officers who use illegal drugs, Carter (1988) has written that 'the supervisor has a responsibility to be cognizant of indicators which point to a potential drug problem', and has discussed some of the particular difficulties in identifying officers who use illegal drugs:

> This is not a necessarily easy task. Although limited training is provided to police officers in the academy and on the job on how to recognize drug users 'on the street' for purposes of enforcement action, attempting to ascertain if an employee has been using drugs, the criteria are somewhat different. The reason is that the police employee takes a great deal of care to hide signs of drug use and will overtly take actions to make such use undetectable. Thus, supervisors must be aware of criteria that may be used to identify the employee user.
>
> There are a few indicators which typically point to some form of employee problem, whether it is drugs, alcohol, or some form of emotional distress.

1451 See for example: Boylan, Simpson & Simpson, Assisting organisations manage fitness for work. Boylan, Simpson & Simpson, Corporate Psychology Services Pty Ltd, West Perth (n.d.), p. 2; T. Browne, Managing drugs & alcohol in the workplace. *Paper presented at the Australian Workers' Union Testing the limits: An exploration of drug and alcohol testing in the workplace, Melbourne, 2nd May 2003*; E. Connors, Legal issues in drug testing. In D. L. Carter & D. W. Stephens (Eds) *Drug abuse by police officers: An analysis of critical policy issues*. Springfield Illinois: Charles C. Thomas Publisher, 1988 p. 94; K. Mann, Substance use in a police workplace: emerging issues and contemporary responses. Queensland Police Service, 2003, p. 38; P. Martin, J. Davey, & K. Mann, *Australian and New Zealand guidelines for police workplace substance use policy*. Queensland Police Service and Queensland University of Technology, 1998, p. 12; National Council on Alcoholism and Drug Dependence Policy statement: *Alcohol and other drug testing*. National Council on Alcoholism and Drug Dependence, Inc. October 1993; Professional Resource Screening Inc (PRSI), Drug testing: Integrated employment screening and drug testing. *PRSI Screening News, September 2002*, p. 1.

1452 Worksafe Western Australia Commission, *Guidance notes: Alcohol and other drugs at the workplace*. Worksafe Western Australia Commission Perth, 2000, p. 19.

1453 M. Mollen, *Commission to investigate allegations of police corruption and the anti-corruption procedures of the Police Department*. Commission Report City of New York, July 1994, p. 136.

1454 J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Final report. Volume II: Reform*, May 1997, p. 509.

> Factors such as notable changes in behavior and work performance, unusual nervousness, and physiological changes (e.g. weight, coloring, appetite) are common signs of personal problems. Similarly, different or extensive sick leave use and tardiness for work indicate a disruption in an employee's behavioral pattern. In the arena of drug use, these factors may be particularly indicative of drug dependence and not just recreational use. The dependence may have its genesis in recreational or experimental use or may be a product of dependence on prescribed drugs following some form of accident or illness. Regardless of the source, these are among the more obvious signs that a supervisor may use to explore if a problem exists.[1455]

Carter also provided a number of somewhat less obvious indicators including: changes in friends or associates (particularly persons who are on the periphery of crime), an unusually 'tight' circle of police friends and ex-friends, the officer's presence during off-duty hours in areas of a city or on establishments where one would not typically expect the officer, rumors about the officer's problems, and alienation by former friends or associates.[1456] He added:

> Typically, no single indicator will be immediately apparent, nor will it necessarily lead to the discovery of drug use. Rather the supervisor should be cognizant of these indicators and view them in their cumulative state.[1457]

Joiner (1988) has suggested that supervisors who are trained to look for indicators of drug abuse are better equipped to detect other emerging problems experienced by officers, such as alcohol abuse, excess stress or personal problems affecting job performance.[1458]

Within the literature reviewed by the PIC for Operation Abelia, commentators also identified the need for supervisors to be equipped to intervene constructively and know how to provide objective feedback and evidence to support their concerns if they suspect substance abuse (or any other performance problem). For example, Duffy and Ask (2001) state that an effective drug and alcohol policy should contain instructions and procedures for how to approach a drug impaired worker and should also provide information on treatment interventions.[1459]

Some of the policies of other agencies reviewed by the PIC also either specifically include information on signs of substance abuse and how to approach an employee suspected of using illegal drugs, or make reference to the training the agency provides to supervisors on these topics. For example, the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO) developed a 'Policy and Guidance

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1455 D. L. Carter, Identifying officers who are substance abusers. In D. L. Carter & D. W. Stephens (Eds) *Drug abuse by police officers: An analysis of critical policy issues*. Springfield Illinois: Charles C. Thomas Publisher, 1988, p. 64.

1456 D. L. Carter, Identifying officers who are substance abusers. In D. L. Carter & D. W. Stephens (Eds) *Drug abuse by police officers: An analysis of critical policy issues*. Springfield Illinois: Charles C. Thomas Publisher, 1988, pp. 64-65.

1457 D. L. Carter, Identifying officers who are substance abusers. In D. L. Carter & D. W. Stephens (Eds) *Drug abuse by police officers: An analysis of critical policy issues*. Springfield Illinois: Charles C. Thomas Publisher, 1988, p. 65.

1458 L. J. Joiner, In opposition to mandatory random drug testing of police officers. In D. L. Carter & D. W. Stephens (Eds) *Drug abuse by police officers: An analysis of critical policy issues*. Springfield Illinois: Charles C. Thomas Publisher, 1988, p. 56.

1459 J. Duffy, & A. Ask, Ten ingredients for developing and implementing a drug and alcohol policy in your workplace. In S. Allsop, M. Phillips, & C. Calogero (Eds) (2001) *Drugs and work: Responding to alcohol and other drug problems in Australian workplaces*. East Hawthorn, Victoria: IP Communications Pty Ltd, p. 81.

Document' in 2000 for use as a model for implementation within the police services of England, Wales and Northern Ireland. This Policy and Guidance Document provides an appendix that lists possible signs of substance abuse under the following subheadings: cannabis, opiates, central nervous system stimulants, central nervous system depressants, hallucinogens, inhalants, anabolic steroids, poor attendance, poor work performance, and frequent accidents.[1460] Another appendix in this ACPO document provides a step-by-step guide to assist a supervisor to prepare for and subsequently conduct an interview with a staff member about poor performance where alcohol or other drug abuse is suspected.

On the other hand, the US Federal Bureau of Investigation specifies the types of training it provides to supervisors as part of its policy and procedural document:

> This training program is designed to assist managers and supervisors to recognize and effectively deal with illegal drug use and its related problems. Such training will include but is not to be limited to:
>
> - explaining the content and intent of the Executive Order and all related guidance provided by governmental agencies
> - discussing the FBI's overall policy regarding employees who illegally use drugs
> - helping supervisors recognize behavioral symptoms which may interfere with performance on the job
> - assisting supervisors on proper documentation of employee performance or behavior
> - providing guidance regarding how to approach employees suspected of drug abuse, and
> - explaining the functions and capabilities of the EAP.[1461]

Similarly the Charlotte Mecklenburg Police Department describes the training it provides to supervisors as follows:

> Supervisors are provided training that emphasizes responsibilities regarding reasonable suspicion termination; detection and recognition of substance and alcohol use, including the physical, behavioral, speech, and performance indicating, methods of confronting suspected substance or alcohol abusers, and rehabilitation processes and resources.[1462]

1460 Association of Chief Police Officers of England, Wales and Northern Ireland, Substance misuse by police personnel – Policy and guidance document, October 2000, pp. 30-33.

1461 US Department of Justice Federal Bureau of Investigation, *Drug deterrence program: Drug-free workplace policy and procedure*. US Department of Justice, Federal Bureau of Investigation, April 1997, p. 28.

1462 City of Charlotte, Maintenance of a drug and alcohol-free workplace, City of Charlotte Regulations, Policy HR4, March 2002, p. 13 of 38.

Observation 3: **Some NSW Police commanders said that they had not received training about the detection and management of substance abuse and that they thought that such training would be helpful.**

In mid-2003, the PIC interviewed a sample of local area commanders about their perceptions of drug use within NSW Police, their experience with different aspects of the NSW Drug and Alcohol Policy and their suggestions for improvement. Some of these commanders' comments pertained to training and other support for supervisors.

Commanders were asked if they had ever received training from NSW Police on how to identify officers who might be affected by drugs.[1463] Despite the existence of a course on 'Detection & Management of Substance Misuse Problems in the Workplace'[1464], only a minority of the commanders interviewed (19%) said that they had received this type of training. Of those who had received training from NSW Police, commanders' comments suggested that the training that they had received was not formal in nature and quite limited, for example:

> Very basic.
>
> Although not training as such, Healthy Lifestyles apparently have visited management meetings and have described telltale signs to them. There could be more training.

When asked whether they believed training of this nature would be beneficial, nearly three-quarters (71%) of the commanders interviewed said that they thought that this type of training would be beneficial. Most commented on their need for more knowledge on this topic, for example:

> He suspects he may have a problem officer and is not sure whether it's a problem or not and he'd like further information.
>
> He needs to know what's available on long-term effects of drugs, tell-tale signs.
>
> This would be very beneficial as most of us don't know how certain officers react to different drugs.
>
> Thought more information about symptoms, outward signs of drug use, behavioural changes, what to do and what to look for.
>
> Training/assistance required to assist in identification of drug use by officers.

On the other hand, two commanders gave their reasons for thinking that this type of training would not be effective. One expressed doubts about such training being adequate to properly identify drug use by staff, and he suggested that such training might lead to a risk of industrial challenges as to whether a commander who had

1463 For additional information about the PIC interviews with a sample of local area commanders and commanders of specialist units, refer to Appendix 2.

1464 This course was described in the previous section, 6.10 Education, training and communication.

undertaken such a course would be suitably qualified to assess whether officers were using drugs. The second commander said that he believed this type of training would not be effective in regard to detecting the types of 'recreational' stimulants he considered some officers were currently using.

Observation 4: **NSW Police commanders who had sought advice from Healthy Lifestyles or the Employee Management Branch said that they were satisfied with the assistance they received.**

Commanders who were interviewed by the PIC in mid-2003 were asked if they had ever sought advice from Healthy Lifestyles or Employee Management in regard to an officer who was causing them concern about possible prohibited drug use. Over half of the commanders interviewed (57%) said that they had sought such advice. Nearly all of the commanders who had sought such advice said that they were very satisfied with that advice, for example:

> They provide good support, particularly for a new commander. They were more than helpful.
>
> The advice was quite practical, very helpful and Healthy Lifestyles and Employee Management were helpful and responsive.
>
> We have worked closely with Healthy Lifestyles. The Director provides an excellent service and provides excellent advice.

Over three-quarters of the commanders interviewed (76%) said that they thought there was sufficient advice and assistance on possible prohibited drug use by officers available to them when they needed it. Most of these commanders commented that they were generally satisfied with the availability and the quality of the advice when sought, for example:

> …..only a matter of looking on the Intranet site or making a phone call.
>
> You can go either directly to the source or it was available over the Police Intranet.
>
> I have no doubts – Healthy Lifestyle's very efficient.

Observation 5: **Few stimulant users in the community seek treatment. This community response to treatment may be reflected in officer response to the assistance provided to officers by NSW Police for drug-related problems.**

It should be noted that in the broader community those who use 'party drugs' such as amphetamines, ecstasy and cocaine tend not to seek treatment for problems caused by these drugs, other than for the after-effects of use.[1465] Those working in the area have noticed that, 'relative to opioid drugs or alcohol, methamphetamine users appear to have relatively low contact with treatment services, specifically for their

1465 National Drug and Alcohol Research Centre, Submission to House of Representatives Standing Committee on Family and Community Affairs: Inquiry on substance abuse In Australian communities. National Drug and Alcohol Research Centre, University of New South Wales, (n.d.), p. 16.

amphetamine use … The low level of contact with services may reflect a low demand for services, or lack of appropriate and accessible services for this population'.[1466] Those who do seek assistance tend to seek advice from a general practitioner in the first instance. Such stimulant users generally seek assistance for associated problems such as malnourishment, sleeping disorders and mood disorders rather than seeking assistance specifically for drug use.[1467]

One of the reasons offered for why some drug users may not seek treatment in the community is that those who use a range of party drugs do not see themselves as drug users or junkies.[1468]

As was discussed earlier in this chapter, relatively few officers have sought assistance for their illegal drug use through NSW Police under the amnesty provision. Like drug users who do not seek treatment in the broader community, one of the reasons that some officers and former officers gave for not seeking any assistance from NSW Police was that they did not see themselves as 'drug users' or as 'having a drug problem'.

Observation 6:	**Commentators have identified the need for organisations to address the potential causes of substance abuse by introducing preventative measures such as stress management skills.**

The Royal Commission into the NSW Police Service recommended that 'attention be paid to factors that might contribute to the development of drug or alcohol dependency, for example stress or exposure to activities that might increase the risk, such as undercover drug work'.[1469]

More recently, the Independent Inquiry into Drug Testing at Work in the UK observed that an unhealthy and/or excessively stressful work environment can contribute to substance problems. This Inquiry stated that all organisations have a responsibility to address the causes as well as the consequences of drug use.[1470]

While the PIC has not specifically examined stress management strategies used amongst different law enforcement agencies, it is of interest to note that stress management is part of the 'drug abuse training' that the Virginia Department of Criminal Justice says that it provides to all of its employees.[1471] Similarly, in their 'Guidelines for drugs, alcohol and the workplace', the WorkCover Corporation of South

1466 A. Baker, N. K. Lee, & L. Jenner, Models of intervention and care for psychostimulant users. 2nd edition. *National Drug Strategy Monograph Series No. 51*. Canberra: Australian Government Department of Health and Ageing, April 2004, p. 30.

1467 Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into amphetamine and 'party drug' use in Victoria: Final report*. Melbourne: Government Printer for the State of Victoria, May 2004, pp. 194, 599.

1468 Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into amphetamine and 'party drug' use in Victoria: Final report*. Melbourne: Government Printer for the State of Victoria, May 2004, p. 197.

1469 J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Interim Report*. February 1996, p. 129; J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Final report. Volume II: Reform*, May 1997, p. 509.

1470 Independent Inquiry into Drug Testing at Work (IIDTW), *Drug testing in the workplace: The report of the Independent Inquiry into Drug Testing at Work*. York, UK: Joseph Rowntree Foundation, June 2004, p. 71.

1471 Virginia Department of Criminal Justice Services (1995) Drug Testing Policy from the Model Manual of Policies and Procedures from the Virginia Department of Criminal Justice Services, p. 8. IACP Net Database.

Australia also recommends that employees should be educated about personal stress reduction methods.[1472]

The Police Association of NSW has advocated stress management training for all officers and suggested including it as a mandatory part of supervisor training:

> With respect to stress – every officer is likely to be placed under extreme stress at some point in their career, particularly in the context of critical incident stress. There is a large body of knowledge now available as to the impact of such stress and also a great deal of research on the positive effect of appropriate training in dealing with it. This should be incorporated in training from the Academy onwards. It should be a mandatory part of supervisor training.[1473]

Observation 7: Some officers and former officers attributed their illegal drug use to personal or work-related stress.

As was described in Chapter 5, while many of the officers and former officers who gave evidence to the PIC said that their work brought them into contact with prohibited drugs, most did not believe that their policing duties put them at any higher risk of illegal drug use than if they had been doing other work. These officers and former officers gave a range of reasons for their illegal drug use, including family or relationship problems, other personal stress, work-related stress and illegal drugs being part of the way they socialise or what they referred to as a 'lifestyle choice'.

Of those who mentioned workplace stress, some described major and rare events. For example, one former officer spoke about finding the body of his supervisor who had committed suicide. On the other hand, other officers and former officers spoke of more recurring day-to-day stresses, such as having conflicts with members of his or her work team.

In relation to workplace stress in a policing environment, it is interesting to note that that research by Hart and Cotton (2002) has concluded that police work is not inherently stressful and police are similar to other occupational groups in terms of the factors influencing levels of wellbeing. They found that it is organisational factors, particularly those related to organisational climate, which are the most influential determinant of occupational wellbeing among police officers. From this Hart and Cotton concluded that:

> Accordingly, these findings indicate that police officers' level of occupational well-being will only be improved if there is a focus on improving the leadership and management practices, as well as the organisational structures and processes (e.g. appraisal and recognition processes, decision-making styles, clarity of roles, goal alignment, etc.),

1472 WorkCover Corporation of South Australia, *Guidelines for drugs, alcohol and the workplace*. WorkCover Corporation of South Australia, February 2001, pp. 3-4.

1473 Police Association of NSW response to Operation Abelia Round Table 5: *Supporting and equipping sworn officers and supervisors*. May 2004, p. 2.

> that underpin the climate of police stations and other work teams within police organisations.[1474]

ASSESSMENT AND RECOMMENDATIONS

From the literature examined by the PIC, it is clear that commanders, managers and other supervisors play an important role in:

- setting ethical standards and reinforcing acceptable behaviour
- monitoring officer behaviour
- supporting the officers for whom they are responsible, and
- responding when illegal drug use is suspected.

It is equally clear that it is important to equip managers and supervisors, at all levels, with the skills to carry out these roles effectively. For example, supervisors need to know how to recognise circumstances that could potentially trigger illegal drug use and how and when they should intervene.

Some of the officers who participated in Operation Abelia focus groups expressed being overwhelmed by the amount of information that they are required to assimilate as a result of the number of policies, the volume of general information they receive and their other work priorities. It is likely that the number of policies and the amount of general information disseminated places a greater burden on supervisors who need to understand how the individual policies and procedures impact on their role as supervisors as well as on their work as officers.

A number of NSW Police policies and procedures are relevant to early intervention to minimise the likelihood of some circumstances triggering drug use and/or to possible responses when illegal drug use is suspected. Some of these policies and procedures are directly related to drug use, while others are relevant to a range of officer safety issues, including providing assistance in managing stress. Examples of such policies and related legislation include the NSW Police Drug and Alcohol Policy, the NSW Police Psychological Wellbeing of Staff Policy, the NSW Police Occupational Health and Safety Management Policy, the NSW Police Rehabilitation Policy, the *Occupational Health and Safety Act 2000* and the *Occupational Health and Safety Regulation 2001.*

It is important that all supervisors have a clear understanding of the overlap and the differences in the responsibilities that these policies place on the supervisor, including when a supervisor has a responsibility to act. In order to appropriately manage and support the officers for whom they are responsible, the PIC is of the view that supervisors require training and support to enable them to know:

- what action to take if they have reason to suspect that one of their officers may have used, or is currently using, illegal drugs

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1474 P. M. Hart, & P. Cotton, Conventional wisdom is often misleading: Police stress within an organisational health framework. In M. F. Dollard, A. H. Winefield & H.R. Winefield (Eds) *Occupational stress in the service professions*. London: Taylor & Francis, 2002, p. 130.

- how to approach an officer, and how to provide feedback on work performance and conduct, when illegal drug use is suspected
- how to respond to acute alcohol or other drug-related situations
- how to balance their welfare and staff management responsibilities
- how to manage an officer who has come forward to disclose his or her illegal drug use under the amnesty, including how to manage the confidentiality issues
- what avenues of support and assistance are available to officers (such as the NSW Police amnesty provision and the EAP) and organisational procedures for referral of staff to these and other sources of assistance
- what avenues of support and assistance are available to them as supervisors when they are unsure of how to respond.

Recommendation SS 1:

The PIC recommends that NSW Police reviews the training it currently provides for supervisors in the areas listed below, and, where appropriate, develops and implements strategies to equip supervisors of all ranks so that they are aware of:

a. the overlap and the difference in the responsibilities that the NSW Police Drug and Alcohol Policy, the NSW Police Psychological Wellbeing of Staff Policy, the NSW Police Occupational Health and Safety Management Policy, the NSW Police Rehabilitation Policy and associated policies and regulations place on them, including when a supervisor has a responsibility to act

b. what action to take if they have reason to suspect that one of their officers may have used or is using illegal drugs, including:

- **how to balance their welfare and staff management responsibilities**
- **how to approach an officer and how to provide feedback on work performance or conduct, when illegal drug use is suspected**
- **how to respond to acute alcohol or other drug-related situations**
- **how to manage an officer who has come forward to disclose his or her illegal drug use under the amnesty, including how to manage the confidentiality issues**
- **the NSW Police amnesty provision, the EAP and the organisational procedures for referral of officers to these and other sources of assistance**

c. what avenues of support and assistance are available to them as supervisors when they are unsure of how to respond.

The literature and the policies of other jurisdictions reviewed by the PIC also indicate the importance of supervisors being properly trained in substance abuse identification.

The PIC notes that, although NSW Police has developed and periodically conducts a course entitled the *Detection & Management of Substance Misuse Problems in the Workplace*, most of the commanders interviewed for Operation Abelia thought that

such a course would be useful but were unaware that one already existed. The PIC understands that this course is currently run on request.

Recommendation SS 2:

The PIC recommends that NSW Police more broadly promotes, particularly to commanders, the availability of training on the detection and management of substance abuse problems.

6.12 MANAGING OFFICERS WHO HAVE BEEN FOUND TO USE PROHIBITED DRUGS

DESCRIPTION

While the NSW *Police Act 1990* outlines the options for managing officer misconduct in general, the NSW Police Drug and Alcohol Policy and the *Police Regulation 2000* specify the options for officers detected using prohibited drugs. These options, as well as the current NSW Police practice, are outlined below.

NSW Police Drug and Alcohol Policy

The NSW Police Drug and Alcohol Policy describes two possible outcomes for officers who test positive to a prohibited drug. While this policy states that officers who test positive to prohibited drugs will be liable to dismissal, the policy also allows for the possibility of such officers continuing their service with NSW Police subject to regular drug tests:

- Any police officer who tests positive to a prohibited drug is liable to dismissal.
- If a police officer is permitted to remain in police employment following a positive drug test, he/she will be subject to unscheduled testing for the following five years. He/she will also be monitored by a Service Drug and Alcohol Counsellor and will be expected to comply with the rehabilitation program developed for him/her.

The Drug and Alcohol Policy does not clarify the circumstances under which an officer is likely to be dismissed or not, nor does it provide the procedural details of how officers who have been found to use prohibited drugs should be managed if not dismissed.

Part 9 of the *Police Act 1990*

Part 9 of the *Police Act 1990,* which concerns the management of conduct within NSW Police, enables the NSW Police Commissioner to choose amongst three categories of action with respect to managing a police officer's misconduct or unsatisfactory performance:

- non-reviewable action, as defined under Schedule 1, including coaching, mentoring, training and development, increased supervision, counselling, reprimand, warning, retraining, personal development, performance

enhancement agreements, non-disciplinary transfer, change of shift, restricted duties, recording of adverse findings

- reviewable action, as defined in s.173(1) to mean a reduction of the police officer's rank or grade, a reduction of the police officer's seniority, a deferral of the police officer's salary increment, or any other action (other than dismissal or the imposition of a fine or non-reviewable action) that the Commissioner considers appropriate
- s.181D summary removal of a police officer in whom the Commissioner does not have confidence.

The Police Commissioner also has the option of taking no action.

Part 6 of the *Police Act 1990* – Dismissal of probationary officers

Under s.73(3) of Part 6 of the Act concerning the appointment of constables and sergeants, the Police Commissioner is also empowered to dismiss a probationary officer at any time.

Clause 54 of the *Police Regulation 2000*

Clause 52 of the *Police Regulation 2000* specifies the consequences for police officers consuming alcohol and Clause 54 specifies the consequences for police officers using prohibited drugs. Both Clauses 52 and 54 provide the opportunity for officers to be given a second chance on the first occasion that they are detected as either having the prescribed concentration of alcohol while rostered on duty or as using a prohibited drug.[1475] Clause 54 provides for an officer who tests positive to a prohibited drug being given the choice between rehabilitation and reviewable or non-reviewable action under s.173. Under Clause 54(5), the Police Commissioner is not required to give the officer this choice where the Police Commissioner, having regard to all the circumstances, considers that a s.173 order or s.181D order would be more appropriate. The powers and functions conferred on the Police Commissioner in these clauses have been delegated to the local area commanders and members of the NSW Police Senior Executive Service.

Clause 54 states:

> (1) This clause applies if:
>
> a. the Commissioner considers, as a result of a test conducted under section 211A of the Act or this Part, that a police officer has breached the code of behaviour by using a prohibited drug, and
>
> b. the police officer has not breached the code of behaviour in that manner in the last 5 years preceding the breach.

1475 For officers detected having the prescribed concentration of alcohol in his or her blood while rostered on duty, this option is available under clause 52(1)b if the police officer has not breached the code of behaviour in that manner in the 3 years immediately preceding the breach. For officers detected as using prohibited drugs this option is available under clause 54(1)b if the police officer has not breached the code of behaviour in that manner in the 5 years preceding the breach.

(2) In such a case, the Commissioner may ask the police officer to choose whether to undergo counselling and rehabilitation or whether to face the possibility that a section 173 order may be made with respect to the officer.

(3) If the police officer chooses to undergo counselling and rehabilitation, the Commissioner must direct the police officer:

a. to attend any interview organised by the officer's commander or manager, and

b. to attend an interview with a NSW Police drug and alcohol counsellor for assessment, and

c. to participate in any rehabilitation program recommended by that counsellor.

(4) If a police officer:

a. chooses not to undergo counselling or rehabilitation, or

b. without reasonable excuse, fails to attend an interview or counselling session after choosing to do so, or

c. without reasonable excuse, fails to participate in a rehabilitation program after choosing to do so,

the Commissioner may make a section 173 order with respect to the officer.

(5) The Commissioner is not required to ask the police officer to choose whether to undergo counselling if the Commissioner, having regard to all the circumstances, considers that it would be more appropriate to make a section 173 order or a section 181D order with respect to the officer.

When describing the legislative and regulatory changes introduced following the Royal Commission into the Police Service (RCPS) interim report, Wood observed that the 'one chance' rehabilitation approach that exists for a positive alcohol test also applies for a positive drug test. He further observed that 'in relation to prohibited drugs however, the timeframe in which the officer must not have previously breached the code to avoid reference to the Police Medical Officer or possible dismissal is five years'.[1476] Wood suggested that the approach taken in what was then recently introduced legislation and policy:

> seems to strike an appropriate balance between discipline, health and welfare issues, recognising the purely punitive approach may increase the likelihood of substance abuse problems being denied or covered up.[1477]

1476 J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Final report. Volume II: Reform*, May 1997, p. 508.

1477 J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Final report. Volume II: Reform*, May 1997, p. 509.

Current NSW Police practice when officers test positive to prohibited drugs

While options of non-reviewable action and reviewable action (including removal under s.181D) are available for managing police misconduct in general, in practice all officers who have tested positive to prohibited drugs[1478] have been subject to an automatic s.181D nomination. This is consistent with the information given in an article published in the *Police Service Weekly* on 23 July 2001:

> Any officer who tests positive or refuses to submit to a test, will be automatically nominated for Section 181D consideration (i.e. removal of police officers in whom the Commissioner does not have confidence) (p. 6).

This practice has been formalised in the NSW Police Targeted Drug Testing Protocols and Procedures:

> A police officer who tests positive to a prohibited drug may be liable to removal and will be subject to mandatory notification for consideration of loss of Commissioner's Confidence under Section 181D of the Police Act.[1479]

Section 181D of the *Police Act 1990* states:

> The Commissioner may, by order in writing, remove a police officer from NSW Police if the Commissioner does not have confidence in the police officer's suitability to continue as a police officer, having regard to the police officer's competence, integrity, performance or conduct.

Section 181D of the *Police Act 1990* was introduced as the result of a recommendation of the RCPS.[1480] In its second interim report the RCPS advocated that the Police Commissioner and his management team be given the capability to deal with disciplinary matters 'in a quick, fair, straightforward and managerial way, without undue procedural or bureaucratic restraints'.[1481] The RCPS saw the Police Commissioner's power to remove those officers in whom he has no confidence as 'absolutely integral to proper management' and that 'such a procedure needs to be understood as a managerial and not a disciplinary procedure … [that] does not involve any adverse consequences other than termination of employment'.[1482]

A nomination for s.181D action initiates a process in which possible management action against an officer is considered. It does not necessarily result in an officer being removed from NSW Police.

1478 Other than officers who resigned soon after they were drug tested.

1479 NSW Police, Targeted drug testing protocols and procedures, December 2003, p. 5.

1480 J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Interim Report. Immediate measures for the reform of the Police Service of New South Wales*, November 1996, p. 19, Recommendation 5(a).

1481 J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Interim Report. Immediate measures for the reform of the Police Service of New South Wales*, November 1996, p. 3.

1482 J. J. R. T. Wood, *Royal Commission into the New South Wales Police Service: Interim Report. Immediate measures for the reform of the Police Service of New South Wales*, November 1996, p. 4.

Changes to the process in 2003

The administration of s.181D action changed at the beginning of 2003. Until the end of 2002, the s.181D and s.173(2) processes were administered separately, with the s.181D process being administered by a unit within the Special Crime and Internal Affairs (SCIA) area of NSW Police. Since the beginning of 2003 the s.181D process has been administered by a different area of NSW Police: the Process Unit of the Employee Management Branch. At the same time the system of 'mandatory nominations' for s.181D was replaced by a system of 'mandatory notifications'. The Management Action Procedures prepared by the Employee Management Branch describe this change in the following manner:

> Notification is a concept that has been developed to ensure a fairer process for an officer, and replaced the previous mandatory nomination policy.[1483]

Commanders are required to notify the Employee Management Branch prior to initiating appealable action under s.173(2) or s.181D:

> to ensure that the process for initiating appealable management action is consistent throughout the organisation.[1484]

The Process Unit's role includes processing notifications, nominations and s.181D submissions. The Employee Management Branch co-ordinates 'preliminary panels', 'internal review panels' for s.173 action, and 'Commissioner's advisory panels' for s.181D action. These panels are designed to assist in achieving an aligned process for s.181D notifications, s.173(2) reviewable actions and s.173(2) non-reviewable actions. According to the Management Action Procedures the Process Unit is responsible for monitoring the timeliness of the process and the local area commander is responsible for providing feedback to the officer:

> Process Unit will closely monitor nominations, ensuring that each nomination is dealt with within a reasonable timeframe. As an ongoing concern, the Commander should provide appropriate feedback to the subject officer concerning the progression of the nomination.[1485]

In January 2003, the Employee Management Branch established a database of information relating to all notifications received including s.181D, s.173 and s.73(3) matters. This database includes information on officer details such as name, registered number, location and rank; milestones in the process; current status; comments including administrative issues; resubmit section to ensure timely follow-up of matters; complaint file references; recommended action; final management action taken with officer; and appeal section. NSW Police has advised that it uses this Notifications Database to manage and track current notifications for management action and for reporting purposes.[1486]

1483 NSW Police Employee Management Branch (2003) Management action procedures: Section 73(3), 173(2) and 181D of the Police Act 1990. Employee Management Branch, February 2003, p. 12.

1484 NSW Police Employee Management Branch (2003) Management action procedures: Section 73(3), 173(2) and 181D of the Police Act 1990. Employee Management Branch, February 2003, p. 12.

1485 NSW Police Employee Management Branch (2003) Management action procedures: Section 73(3), 173(2) and 181D of the Police Act 1990. Employee Management Branch, February 2003, p. 15.

1486 Email from Manager of NSW Police Employee Management Branch, 23 December 2004.

OBSERVATIONS

Observation 1: Different law enforcement agencies manage officers detected using prohibited drugs in different ways.

The PIC's review of substance abuse policies from other law enforcement agencies has revealed that some agencies have a disciplinary response while others have a rehabilitative response to illegal drug use by their officers. Law enforcement agencies in the USA most often take a disciplinary response to illegal drug use. For example, according to the Commanding Officer of the Medical Division of the New York City Police Department (NYPD), all officers of the NYPD who test positive for illicit drugs are suspended and terminated. Any officer who refuses testing or attempts to subvert a test is also suspended and terminated.[1487] Similarly a representative of the Chicago Police has informed the PIC that Chicago Police takes a 'zero tolerance' position and if an officer tests positive to illegal drugs it will seek to terminate that officer.[1488] From the information provided to the PIC, it can be seen that while US policies may state that the consequences for detection are discipline 'up to and including termination', the reality is that most officers detected using drugs either resign or are terminated. An exception to this would be the Federal Bureau of Investigation (FBI) where a number of employees have been terminated or resigned, but others have received letters of reprimand or suspensions.

In the case of the FBI the severity of the management response is determined on a case-by-case basis. Criteria to determine the management response include 'the nature of the position, the risk to the public of the employee's drug use, and the employee's personnel and/or performance records'. Disciplinary actions available include a written reprimand, enforced leave, suspension, or dismissal.[1489] Reports on the positive drug test result are also forwarded to an Employee Assistance Program (EAP) counsellor. The EAP run by the FBI provides assessment, short-term counselling and referral services to employees for problems that include drug misuse. A counsellor is expected to initiate contact with the employee to advise them of the assistance services available to them.[1490] The FBI policy is to initiate action to dismiss an employee who has been found to use illegal drugs if they refuse counselling or rehabilitation, or if they fail to refrain from further use.[1491]

Some agencies distinguish between the use of different types of illegal drugs in the way they manage those detected using drugs. For example, the Australian Federal Police (AFP) provides rehabilitation options for those who have tested positive to cannabis, while the management of officers detected using other forms of illegal drugs is treated on a case-by-case basis.[1492] The AFP Commissioner's Order on Professional Standards outlines a range of potential actions that can be taken when an officer tests

1487 Correspondence from Commanding Officer Medical Division, New York City Police Department, 24 October 2003.

1488 Correspondence from Sergeant, Random Testing Unit, Chicago Police Department, 15 December 2003.

1489 US Department of Justice Federal Bureau of Investigation, *Drug Deterrence Program: Drug-Free Workplace Policy and Procedure*, April 1997, p. 38.

1490 US Department of Justice Federal Bureau of Investigation, *Drug Deterrence Program: Drug-Free Workplace Policy and Procedure*, April 1997, pp. 23-24.

1491 US Department of Justice Federal Bureau of Investigation, *Drug Deterrence Program: Drug-Free Workplace Policy and Procedure*, April 1997, p. 38.

1492 Australian Federal Police, National Guideline on the Use of Prohibited Drugs, Canberra, p. 6; Communication with Professional Standards, Australian Federal Police, 29 August 2003; Communication with Drug Program Project Officer, Australian Federal Police, 29 August 2003.

positive to the use of one or more prohibited drugs. These options include the commencement of disciplinary proceedings, other actions under the *Australian Federal Police Act 1979*, or being dealt with in accordance with the rehabilitative outcomes provided by the prohibited drug policy.[1493]

The San Francisco Police Department (SFPD) is another agency which may modify its response depending on the nature of the drug detected. While the SFPD 'General Order on Drug Use by Members' states that any officer found in possession of a drug or controlled substance, or who tests positive for illegal drugs, will be severely disciplined and may be terminated; the General Order also states that there are further options when an officer's test results fall within specified levels for marijuana and cocaine. Such officers can either be ordered to participate in a two-year program of random drug tests, or be recommended for discipline, including possible termination.[1494] While there is a range of possible actions available, the Commanding Officer of the Risk Management Office has stated that termination from employment is generally recommended.[1495]

Recently introduced legislation has provided a range of possible responses to Queensland Police Service (QPS) officers who return a positive drug test. The *Police Service Administration Act 1990*, as amended by the *Police Service Administration (Alcohol and Drug Testing) Amendment Act 2003*, which was proclaimed in October 2004, provides the Queensland Police Commissioner with a variety of possible actions when responding to a positive alcohol or targeted substance test and it specifies that the Commissioner may use one or more from the list. Options included counselling and rehabilitation, fitness for duty tests and disciplinary action amongst others (s.5A.16 of the *Police Service Administration Act 1990*). Some of these responses only apply where the person has tested positive to a dangerous drug and not to the other drugs in the targeted substances category. The QPS's 'Alcohol and Drug Policy and Procedures' provides that the consequences of a positive targeted drug test is a disciplinary response with the provision of a welfare response being an option:

> A positive drug test for an illicit substance will result in disciplinary action. A welfare response may occur in parallel with disciplinary action.[1496]

In Canada, the UK and the Netherlands, where there is minimal drug testing, there is a much greater emphasis in their policies on rehabilitation with the aim of having the officer return to duty. Additional detail on the policies of overseas policing agencies can be found in Appendix 15, while additional detail on the policies of other Australian policing agencies can be found in Appendix 14.

1493 AFP, 'The Australian Federal Police Commissioner's Order on Professional Standards'. Canberra, June 2000.

1494 San Francisco Police Department, General Order 2.03, pp. 2-3.

1495 Correspondence from Commanding Officer Risk Management Office, San Francisco Police Department, 6 August 2003.

1496 Queensland Police Service, 'Alcohol and Drug Policy and Procedures', Brisbane, 17 December 2004, p. 11.

Observation 2: **Officers who have tested positive to one or more prohibited drugs have either:**

- **resigned**
- **been removed under s.181D**
- **received a Commissioner's Warning Notice and remained in NSW Police, or**
- **been medically discharged.**

In order to better understand how NSW Police has managed officers who have been identified as having used prohibited drugs, the PIC examined the disciplinary outcomes for those NSW Police officers who had tested positive to drug tests. Officers whose drug use has been detected as a result of a drug test were used in this analysis because they are a readily identifiable subgroup of all officers who have been identified as using prohibited drugs.

Between December 1998 and the end of May 2005, 30 NSW Police officers had tested positive to one or more prohibited drugs at a level above the NSW Police Service Standard[1497] resulting in an adverse finding being recorded in their complaints history.[1498]

1497 For more information about the 'NSW Police Service Standard' refer to the section on 'sample collection and testing procedures' within the description of Targeted Drug Testing in Section 6.4 of this report.

1498 Actually, between December 1998 and the end of May 2005, 34 NSW Police officers had returned a positive drug test result. Disciplinary outcome data for all 34 officers were obtained from NSW Police. Four officers were excluded from the sample because NSW Police did not regard the test results for these officers as being indicative of prohibited drug use. Three of these four officers tested positive for 'traces only' where the detected concentration of the drug(s) was below the NSW Police Service Standard. The fourth officer's positive test result could have been due to the ingestion of prescribed 'over-the-counter' medication, thus his result was deemed 'inconclusive'. At the time of drafting this report, all four are still serving police officers. Hence the analysis in this section is based on data for 30 officers. While the final sample of 30 officers is small, it includes all officers with adverse findings in relation to positive drug tests from the inception of drug testing in NSW Police up until the end of May 2005.

FIGURE 6.5: FLOW-CHART OF DISCIPLINARY OUTCOMES FOR OFFICERS WITH POSITIVE DRUG TEST RESULTS

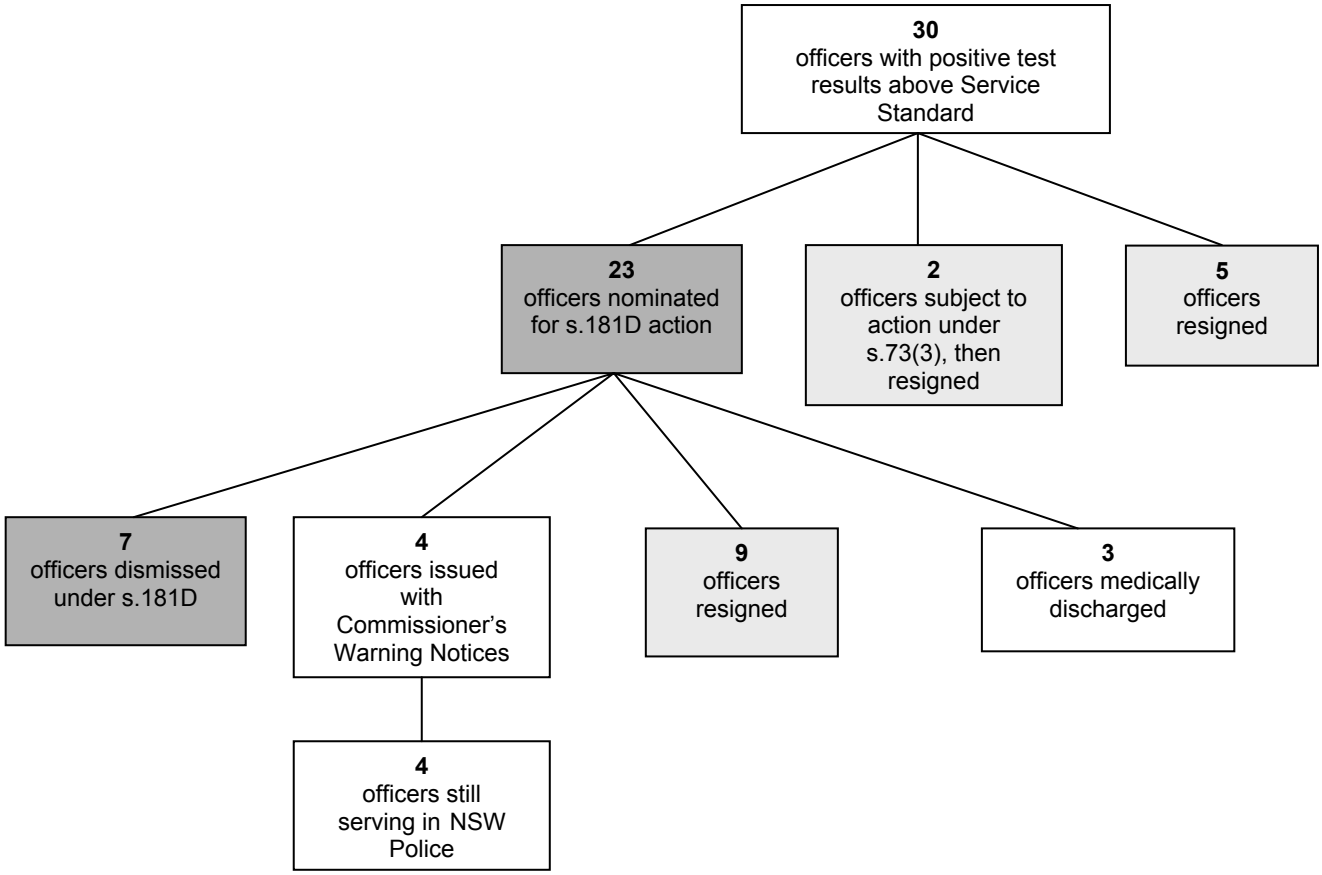


Figure 6.5 illustrates the outcomes for the 30 officers who were included in the analysis. These 30 officers can be grouped into four categories:

- those who resigned (16 officers or 53%)
- those who were removed under s.181D (7 officers or 23%)
- those who were issued with a Commissioner's Warning Notice and continued to serve as NSW Police officers (4 officers or 13%)[1499], and
- those who were medically discharged (3 officers or 10%).

Observation 3: **Officers who relied on explanations involving 'accidental ingestion' to excuse their positive drug test results did not report these concerns to NSW Police prior to being drug tested.**

Eight of the 30 officers who returned a positive drug test result claimed 'accidental ingestion' of a prohibited drug. While the explanation offered by each officer differed in content, each explanation can be reduced to a central theme: that they ingested the

1499 At the time of drafting this report, three of these officers continued to work as NSW Police officers and one has since left NSW Police for unrelated reasons.

drug unwittingly. For example, one officer claimed that he mistook a 'joint' for a roll-your-own cigarette. Another officer claimed that he ate some chocolate cake that must have been 'laced' with cannabis and a similar claim was made by another officer in regards to a 'laced' cookie. More than one officer claimed that his or her drink must have been spiked at a party and yet another officer claimed that he inadvertently took his wife's ADHD medication.

The outcomes for the eight officers who claimed 'accidental ingestion' are as follows:

- 4 officers resigned[1500]
- 2 officers, who were subject to s.181D action, were issued with a Commissioner's Warning Notice and continued to work as NSW Police officers, and
- 2 officers were removed under s.181D.

From the analysis of the documentation provided by NSW Police[1501], it appears that prior to being drug tested none of these officers had reported any concerns to NSW Police that they had accidentally ingested illegal drugs. In addition, none of the officers could provide any evidence to substantiate their claims when they did rely on these excuses after returning a positive test result.

The different outcomes for these officers reflect the consideration given to the merits of each case by the Commissioner of Police when making a s.181D determination. In addition to considering the matter that led to the nomination, the Commissioner considers factors such as the officer's previous complaint history, submissions made by the officer's legal representatives and reports on the officer's work performance.[1502]

Observation 4: On average it took almost a year from the time of the drug test to the finalisation of a s.181D outcome.

To examine the time taken, as part of its analysis the PIC calculated the number of calendar days between the date of the drug test and the date of the final outcome. The date of the final outcome was taken to be the date that the s.181D process was finalised (whether the officer was removed or served with a Warning Notice), date of resignation or date of medical discharge.

As can be seen from Table 6.6, on average it has taken 344 days (or almost one year) to finalise the outcome for those removed under s.181D. Overall, when those who resigned, were medically discharged or received warning notices are included it has taken an average of 291 days (or almost ten months) for a final outcome to be reached. The maximum time taken was 753 days (or more than two years) for an officer who was medically discharged. The minimum period was 3 days and this, unsurprisingly, relates to an officer who resigned.

1500 In the case of one of these officers, the Commissioner of Police had determined to issue him with a Warning Notice and to reinstate him to duty. However, the officer refused to return to work and his employment contract was eventually terminated, with the official termination reason recorded as 'resignation'.

1501 The documentation included copies of records of interview, s.181D Notices, submissions made by the officers in response to s.181D Notices, Commissioner's Warning Notices with attached Statement of Reasons.

1502 Correspondence from Commissioner, NSW Police, 27 April 2005, p. 8.

TABLE 6.6 TIME TAKEN FOR DIFFERENT OUTCOMES TO BE REACHED

Outcome	Average No. of days	Maximum No. of days	Minimum No. of days
Resigned (n=16)	184	576	3
Removed (n=7)	344	517	204
Warning Notice (n=4)	437	678	243
Medical discharge (n=3)	539	753	402
All outcomes combined (n=30)	291	753	3

One-third of the cases took more than one year to be finalised (see Table 6.7).

TABLE 6.7: DISTRIBUTION OF TIME TAKEN BY OUTCOME TYPE

Time taken between drug test and final outcome	No. of Officers			
	Resigned (n=16)	Removed (n=7)	Warning Notice (n=4)	Medical Discharge (n=3)
0 – 6 mths	9			
6 mths^{+} – 1 yr	5	4	2	
1 yr^{+} - 18 mths	1	3	1	2
18 mths^{+} - 2 yrs	1		1	
2 yrs^{+}				1

When considering the timeliness of the disciplinary process it is useful to focus on those officers who have awaited the outcome of the s.181D process. In most cases, the officers who chose to resign effectively reduced the time between their drug test and the finalisation of the outcome (resignation), while the officers who have been medically discharged have effectively stepped outside the disciplinary framework. This is not to say that their medical discharges were not legitimate, but rather that their cases would have been judged against different criteria.

Overall, 23 officers were nominated for Loss of Commissioner's Confidence under s.181D. The average period between the drug test and the date of nomination for s.181D action was 80 days (or almost three months). At its longest, it took 214 days (approximately seven months) for the officer to be nominated. The reasons for the time taken are unclear. Evidence suggests that the local area commanders are not waiting for the complaint investigation to be finalised before nominating officers.[1503]

1503 In many cases, it has taken even longer for the complaint investigation to be finalised – with the date of the investigator's 'adverse finding' being recorded over a year after the officer was nominated for s.181D action in more than one case.

Observation 5:	**Some of the delays in finalising disciplinary outcomes appear to be related to inaction by individuals and a lack of oversight of the process.**

In response to a request from the PIC, NSW Police provided a chronology and other relevant observations concerning an officer whose matter had taken 491 days (or more than 16 months) from the time of the drug test to the time of resolution. This example should not be seen as an extreme case as the outcomes had taken longer to finalise for several other officers.

The chronology (summarised in Figure 6.6) revealed that the major delays in the disciplinary process for this officer were:

- the three months that elapsed after the Internal Affairs interview before the local area commander prepared the s.181D nomination
- the three months that elapsed after the local area commander signed the s.181D nomination before it was endorsed by the regional commander
- the five months that elapsed after the assessment was completed by the Strategic Assessment and Security Centre (within the Special Crimes and Internal Affairs Command) before the Commissioner's confidence submission was drafted for submission to Legal Services.

No information was provided to the PIC on what led to these individual delays. Furthermore it should be noted that these delays occurred prior to the changes that were made in early 2003 to the way s.181D nominations were processed.

FIGURE 6.6: CHRONOLOGY OF EVENTS IN THE PROCESSING OF AN INDIVIDUAL OFFICER WHO TESTED POSITIVE TO PROHIBITED DRUGS

Chronology of events[1504]

- 2 weeks after the drug test was conducted the results of the drug test were received
- 1 day after the test results were received the officer was interviewed by Internal Affairs and that day the officer 'reported off duty on sick report, suffering from a stress related condition'
- 3 months after this interview the Local Area Commander prepared the s.181D nomination
- 3 months after the Local Area Commander signed the s.181D nomination it was endorsed by the Regional Commander
- 2 weeks later the Strategic Assessment & Security Centre (SASC) prepared a briefing of the Police Service history of the officer
- 5 months after the SASC Assessment was completed the Commissioner's confidence s.181D submission was drafted for submission to Legal Services
- 2 weeks later Counsel advised that the submission and Notice were in an 'appropriate form'
- 1 month later a submission was forwarded to the Commissioner for his consideration
- in less than a week the Commissioner of Police directed the preparation of a 'Show cause' Notice, signed this notice and forwarded it to the relevant Local Area Commander
- 1 month later the notice was served
- the solicitors acting on behalf of the officer requested an extension of time to respond to the 'show cause' notice
- the solicitors acting on behalf of the officer responded to the show cause notice within 5 weeks of it being served
- within 10 days the officer's response was provided to the Commissioner of Police who directed the preparation of a s.181D order
- 1 week later the Commissioner of Police signed the Order and the Statement of Reasons
- 2 weeks later the order was served, removing the officer from NSW Police.

1504 Summary of material provided by NSW Police in response to Operation Abelia Exhibit 37C.

Observation 6: **Although attempts were made to streamline the s.181D process in early 2003, one officer resigned in 2004 after having a 'show cause' notice served more than 18 months after his drug test.**

In December 2003, when asked in hearings about the causes for the delay in processing matters where an officer tested positive to prohibited drugs, the Manager of the Employee Management Branch, said that those delays were the result of processes used by the former s.181D Unit. He suggested that the earlier processes involved too many matters being considered for s.181D action and that all of the matters were inappropriately processed in the same manner:

> The causes of delay, when the processes were administered by the 181D Unit, were the same for the mandatory nominations for positive drug tests as they were for everything … There was no quick sorting for matters in relation to 181D nominations that were never going to result in the removal of an officer for those matters which should have been concentrated upon which there was always going to result in the removal of an officer …
>
> Indeed, when we took the 181D Unit over in January/February [2003], we received 61 outstanding nominations, some of which were three, three and a half years old. It's basically taken us, I think a year to work through the outstanding matters and to start to be able to refine the processes so much that we're able to put time limits in relation to our internal actions.
>
> … We were experiencing delays of anything up to five months to receive a legal advice from - an advice from legal services. On occasion – and this is sometimes still true today – we would seek a response to a show cause notice[1505] that had a time limit by legislation of 21 days of four or five months. On one occasion a response had not been received for a year in relation to a show cause notice.[1506]

As noted earlier, the way s.181D notifications and nominations are processed changed in early 2003. NSW Police has advised that the changes that commenced in early 2003 are aimed at streamlining the process. Four officers tested positive to prohibited drugs during 2004. Given all four of these officers resigned, rather than waiting for the outcome of the management action, it is difficult to determine whether or not the processing times have been reduced. [1507]

Prior to this, the most recent example of an officer testing positive to prohibited drugs was an officer who was drug tested in November 2002. That officer resigned in 2004, soon after a 'show cause' notice was served, after waiting 576 days (or almost 19 months) for his matter to be resolved.

1505 The 'show cause notice' is that referred to in Section 181D (3) of the Police Act 1990. This section states that before making an order under this section, the Commissioner must give the police officer a notice setting out the grounds on which the Commissioner does not have confidence in the officer's suitability to continue as a police officer, and must give the police officer at least 21 days within which to make written submissions to the Commissioner in relation to the proposed action, and must take into consideration any written submissions received from the police officer during that period.

1506 Operation Abelia, PIC Transcript, P. Gallagher, 15 December 2003, p. 187.

1507 Two of these officers resigned within three days of being drug tested, one resigned more than 11 months after the drug test and the other resigned more than two months after the drug test.

Observation 7: Five of the seven officers removed under s.181D following a positive drug test were suspended with pay for an average period of more than ten months.

Information was obtained from NSW Police concerning whether or not officers who tested positive to one or more prohibited drugs were suspended following their drug test. No information was available for one officer. Of the 29 officers where some information was available:

- 19 officers were suspended from duties for some period
- 6 officers resigned soon after the drug test and were not suspended
- 2 officers were not suspended but were on restricted duties
- 2 officers were on sick leave (and not suspended).

Of the 19 officers who were suspended, it is known that 17 were suspended with pay[1508], though the period of suspension was not stated in two of these cases and one officer was eventually medically discharged (which is not a disciplinary outcome). The variation in suspension periods (with pay) for the remaining 14 officers, where the duration is known, is illustrated in Figure 6.7. As can be seen from this graph, the majority of officers suspended with pay, following a positive drug test result, remained on suspension for more than six months (182.5 days) but for less than one year (365 days).

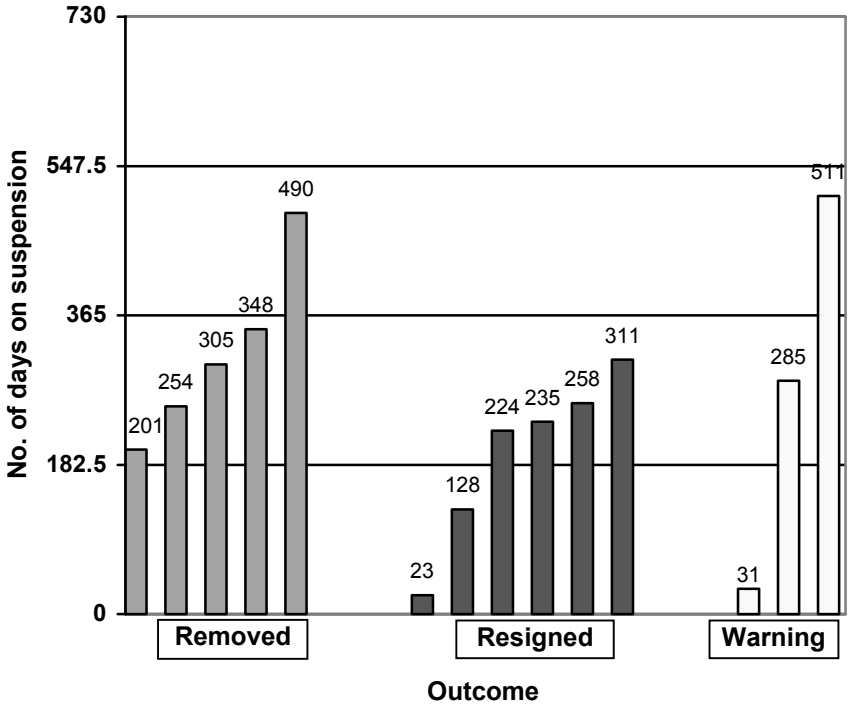
The average periods for suspension with pay were:

- 320 days (or about 10.5 months) for five of the officers who were removed under s.181D
- 197 days (or about 6.5 months) for the six officers who resigned whilst subject to s.181D nominations or s.73(3) action[1509]
- 276 days (or about 9 months) for three of the officers served with Commissioner's Warning Notices.

1508 Two officers were said to be suspended for some periods with pay and some periods without pay, although the lengths of these periods are not known.

1509 Section 73(3) of the Police Act 1990 allows the Commissioner to dismiss a probationary constable from NSW Police at any time and without giving any reason.

FIGURE 6.7: VARIATION IN SUSPENSION PERIODS FOR OFFICERS SUSPENDED WITH PAY



Note: Only officers who were on suspension with pay for the entire period of their suspension are represented in the graph.

In evidence given in Operation Abelia in December 2003 the (then) Manager of the Employee Management Branch expressed concern about officers being suspended with pay rather than being suspended without pay. When asked whether the officers subject to s.181D action who had been suspended would have been suspended on pay, the Manager of the Employee Management Branch responded:

> In the majority of instances, suspended with pay. It's a very significant concern. We [NSW Police] sought legal advice very early in respect of the Premier's guidelines for suspension which date back to 1994 to suspension - I beg your pardon, suspension without pay. The legal advice, basically, is there are three times you can suspend without pay. Once is where an officer has been convicted of a criminal offence, the second one is where they have been bail refused. And the third one, which causes me most concern is where they have admitted to their wrongdoing.[1510]

The Manager of Employee Management subsequently gave the following example:

> … an example of that was during the Mascot/Florida hearings held [at the PIC]. Two officers appeared facing similar allegations. One officer, because he denied the allegations in what I would consider the face of somewhat overwhelming evidence, was suspended with pay. The other officer, who admitted the allegations and assisted the inquiry, was suspended without pay.[1511]

1510 Operation Abelia, PIC Transcript, P. Gallagher, 15 December 2003, p. 188.

1511 Operation Abelia, PIC Transcript, P. Gallagher, 15 December 2003, p. 188.

In 2004 the Police Ministry wrote to the PIC on this issue. In its response the PIC disagreed with the advice that NSW Police had previously received which indicated that the examples in guidelines provided in the Premier's Memorandum[1512] limited the circumstances under which the Commissioner of Police could suspend officers without pay to only those occasions where:

- an officer had been remanded in custody, or
- an officer had admitted to behaviour that under the circumstances renders him/her unfit to continue in paid employment with the agency.[1513]

Rather, the PIC advised that the guidelines in this Premier's Memorandum, as they presently stand, would enable the Commissioner of Police to suspend officers without pay in other exceptional circumstances:

> … the examples provided in the Premier's Memorandum … tend to reflect, in all practicality, the kind of circumstances which might need to exist before the chief executive officer of an ordinary public authority may have sufficient grounds to suspend an ordinary public sector employee without pay … [However] they can neither be taken to exemplify nor circumscribe the range of circumstances which the Commissioner of Police will frequently have before him. Properly applied in the context of a statutory regime for the investigation of alleged misconduct …[I]t would seem to the Commission that the Memorandum as it presently stands accommodates circumstances whereby the Commissioner of Police might conclude … that allegations of misconduct against an officer are sufficiently made out so as to justify the officer's suspension without pay. This indeed would involve consideration of the 'weight of evidence', and require no admissions to be made by the officer concerned.[1514]

Observation 8: Not all officers appear to understand the way in which NSW Police manages those who test positive to prohibited drugs.

While participants of the focus groups that were conducted as part of Operation Abelia were not asked explicitly for their views on the management of officers detected using drugs, the topic arose spontaneously in discussion in several groups. Most frequently these comments indicated these officers' views on the way they thought things should be, rather than demonstrating knowledge of the current practices. However, some of the officers' comments indicate a lack of understanding of the process, for example:

> What's the outcome if you get tested [positive]? [New speaker:] Counselling and rehabilitation.
>
> What's the department's policy? Is it dismissal or what?

1512 Premier's Memorandum 94-35 – Suspension of Public Employees from Duty.

1513 The Premier's Memorandum provides these two examples of 'exceptional circumstances' - specific mention is also made of an employee convicted of a crime.

1514 Letter from the Commissioner of the PIC to the Director-General of the Ministry of Police, dated 12 May 2004, concerning a proposed amendment to the 'Premier's Memorandum 94-35 – Suspension of Public Employees from Duty'.

> Don't you get a [formal warning] letter from the Commissioner if you have tested positive and you get tested for the next 12 months? [1515]

Observation 9: The power given to the Commissioner of Police to offer rehabilitation to officers who test positive to prohibited drugs has not been exercised.

Clause 54 of the Police Regulation enables the Commissioner of Police (and by delegation local area commanders) to offer officers who test positive to using prohibited drugs (and who have not breached the code of behaviour in that manner in the preceding five years) a choice between receiving rehabilitation and facing the possibility of an order under s.173. Alternatively, after having regard to all the circumstances, the Commissioner is empowered to make a s.173 or s.181D order if he considers it would be more appropriate. In practice, those who are detected using prohibited drugs have all been subject to a s.181D nomination or notification.

As a result, there is a perception of inconsistency between the practice that results in every case leading to a s.181D nomination or notification and the possibility of the offer of counselling and rehabilitation contained in clause 54.[1516] NSW Police has acknowledged this and taken some steps towards resolving the issue.[1517] The PIC has been advised of a proposal that involves the amendment of clause 54. The course being considered is one which, while preserving the Commissioner's option to offer rehabilitation, would make more plain the Commissioner's right to determine in each case whether to make orders under s.173 or s.181D. Such a right already exists in the present clause but the proposed change would remove the perception referred to above.

Observation 10: Some officers who had been through the disciplinary process spoke of its length and the lack of information or support they received.

The PIC asked some of the officers and former officers who had admitted prior illegal drug use what had happened to them after their drug use had been detected. In private hearings they were asked about:

- the information they were given between coming to attention for illegal drug use and being served with a s.181D notice (or other outcome)
- the support they were given while waiting for the outcome of their disciplinary procedures and whether they found this support helpful
- whether they continued carrying out policing duties after coming to notice for illegal drug use, and
- their suggestions for how the disciplinary process could be improved.[1518]

1515 For further information about how the focus groups were conducted and the responses of participants refer to Appendix 4.

1516 Operation Abelia, PIC Transcript, P. Gallagher, 16 December 2003, p. 208.

1517 Operation Abelia, PIC Transcript, P. Gallagher, 16 December 2003, p. 208.

1518 See Appendix 3 for further information about the questions asked in private hearings of officers and former officers who admitted illegal drug use.

Some of these former officers said that they considered that their dismissal was appropriate while others told the PIC that they would not have used drugs again if they had been given a second chance of remaining in NSW Police. The examples that follow provide the accounts given by seven of these officers and former officers. When considering these accounts it is important to acknowledge that they reflect the views of those who had been detected using prohibited drugs. Other people, such as those administering the disciplinary process, may have had a different perspective.

- Officer F4 who resigned after about six years service commented on his difficulty in obtaining information about the process:

> At no stage had anyone been able to say, 'This will be sorted out within two weeks time'. It was just, 'Keep on turning up for work and keep on answering the phones and we'll wait and see'. You felt like you were left to blow in the breeze. No-one seems to be taking responsibility for your actual case. No-one can offer you any guidance. You can't sort of talk to people about it. You're isolated. There's no support. You don't know when this is going to be finalised, you don't know what your future is going to be. One day you could be told that it looks like its going to be dealt with by way of caution, a week later you get a s.181D nomination … if they wanted to give me a s.181D, why didn't they give it to me a month after I tested positive? Why not? [1519]

  Officer F4 suggested that it would have been helpful if 'someone could have been put in charge of my case and they could have sort of developed a rehabilitation program for me, and they could have worked with me on that – just so there was – you felt like you weren't doing it totally on your own'. He added that 'Well, the process at the moment is a nightmare. I just don't know what the answer is. The period of the 181D, 18 months, it's just too long'.[1520]

- Former Officer M2 joined NSW Police when he was 19 years old and was dismissed after a little more than a year's service. This former officer said that he felt hard done by to lose his job. He said 'If I'd have been given the chance to stay on, I would not have used anymore. I was a bit sad, and it's hard for a police officer that's just starting. I think it's very hard. I think more leniency should be used, but I think twice caught, there's no way that they should keep their job. But if I'd have been kept on and randomly tested, there's no way I would have continued to use, and I felt I was a good police officer and good for the community. Yeah, that's all'.[1521]

- Former Officer G4 joined NSW Police when he was 19 years old and served for more than ten years before being dismissed. He said after he was detected as having used drugs 'it virtually felt like they just wiped you, just "No, you are gone". I felt there was no honesty in their communications as well. Every boss I spoke to, they said, "Oh, no, we couldn't tell you what had happened".' He said: 'I believe it was wrong for me to use cannabis. However, for something that a member of the public would have been lucky to get a $50 fine for, they threw away a police officer with 11 years experience, that they'd spent time training.

1519 Operation Abelia, PIC Transcript, Private hearing, ANS, 12 May 2004, pp. 19-20.

1520 Operation Abelia, PIC Transcript, Private hearing, ANS, 12 May 2004, pp. 19-21, 25.

1521 Operation Abelia, PIC Transcript, Private hearing, ANV, 12 May 2004, p. 19.

My recent work performance was above average'. He added: ' … no-one, apart from friends and legal advice, - no-one from the Police Service had come out and said, "Hey, look, there's a 99.9 per cent chance you're going". You know, it wasn't until … some seven, eight months down the track, where they've made a decision, too lengthy a process and especially – like, well, the documentation I was handed. I couldn't see how it had taken them eight months to put it together and make a decision'.[1522]

- Former Officer V3 joined NSW Police when he was 21 years old and was medically discharged four years later. He was on sick leave and then suspended on full pay. When asked whether he was kept informed about the process he said 'No I didn't hear from them at all until 12 months later, when they said the 181D had come through, but by then it had already gone through the Commissioner's office that I wasn't going to get a 181D, I was going to get a medical discharge'. When asked for suggestions on how to improve the process former Officer V3 said: 'Probably just a bit more advice and a bit more support through that time, because, as I said, 12 months from the time the notice is served until they come back to you, and that's a long time for a family to be sort of hanging on the edge waiting to see what's going to happen. Maybe expedite that somehow, that process, but I think keep the – not only the police officer, his family needs to be informed of what's going on'. When asked what is his attitude now about the manner in which his career in the police ended he replied 'Oh, shattered, still shattered over it, I love the police and I'd go back today, if I could. But it's something that's going to be there for the rest of my life, that big regret of what's happened'. Former Officer V3 said that he did not think there should be any exceptions. He said that any police who use prohibited drugs should be dismissed 'If you break the law, you've got to pay'.[1523]
- Former Officer N2 was dismissed six months after he was drug tested. He said that he thought that he was kept informed about the process. His colleagues from his command dropped in to see him. When asked 'apart from the men from the station dropping in, and that sort of thing, was there any formal support mechanism put in place by the Police Service' he said 'Not that I know of'. He suggested that for others in the same situation NSW Police should 'look into the person's background, which they did with me, of course, but I believe I deserved a second chance. For what I was doing, it's a $50 fine in court I think they do these days. I got fined over $100 000 [in terms of loss of income].[1524]
- Former Officer V2 joined NSW Police when he was 21 years old and resigned more than 20 years later. When asked what was going on between his going on sick leave and the disciplinary action (six or eight months later) he said: 'I don't know. Yeah, I was just told to sit back, and, you know, do nothing, basically'. When asked about what led to his decision to resign he said 'Oh, I just got fed up with sitting around doing nothing, waiting for the Police Service to make their minds up, what they wanted to do'. He later added 'Well it would have been nice if it could happen a bit quicker, yes', and provided 'more assistance, instead of

1522 Operation Abelia, PIC Transcript, Private hearing, ANW, 12 May 2004, pp. 23-25.
1523 Operation Abelia, PIC Transcript, Private hearing, ANQ, 11 May 2004, pp. 16-18.
1524 Operation Abelia, PIC Transcript, Private hearing, ANM, 10 May 2004, pp. 21-22.

> sitting there going "You're bad, go and sit in the corner, we'll get to you when we want to" '.[1525]

- Former Officer R3 joined NSW Police when he was 19 years old and was dismissed after more than ten years service. When asked whether he remembered how long it was from the time of the drug test to the time he received his s.181D notice former Officer R3 said that he thought that it was at least a year. Police officers did come to visit him from time to time to keep him informed, but he thought that they did not know what was going on themselves. This former officer thought that his dismissal was a fair outcome: 'Yeah, I did the wrong thing'. He also said: 'I think it was just and fair, yes. I think – I was suspended with full pay for that 12 months, or more. I sort of shook my head at that a few times. I thought they could have been probably a lot quicker, to save the government money as well as to put me out of my misery, so to speak … Yeah. I mean, it was good in a way. I was getting full pay and didn't have to go to work, but it didn't seem quite right'. Former Officer R3 said that he did not get another job in that time because up until the s.181D he still had hope that he could stay in NSW Police.[1526]

Further information about the perceived lack of support given to officers awaiting the outcome of the disciplinary process and the potential impact of that lack of support came from an earlier PIC investigation. In the PIC's Operation Dakota, outlined in Section 2.4 of Chapter 2 of this report, a senior constable said that he commenced illegal drug use while he was on sick leave from NSW Police. This then senior constable said that he had been on sick leave during the previous 19 months as a result of work-related anxiety and depression. He said that his psychologist had explained that the work-related anxiety and depression were the result of the lack of support provided to this officer during two previous periods of suspension from duty. This officer told the PIC that he was first charged in 1992 and even though he was cleared it took two years before the matter was finalised. He said that he was charged again a year and a half after coming back to work. He said that once again he was cleared. On this second occasion it took 14 or 15 months before the matter was finalised. [1527] He described the reception that he received when he returned to work after this second matter was finalised:

> no-one said boo to me. No-one said even, maybe, you know, 'Sorry' or whatever. No-one said, 'Would you like to get any help?'.[1528]

During the current period of sick leave the then senior constable said that he received very little support:

> Oh, that's right, the welfare did do one thing for me – they sent me a relaxation tape after about four months of sick leave, and that was the only thing I've heard from them.[1529]

1525 Operation Abelia, PIC Transcript, Private hearing, ANK, 10 May 2004, pp. 19-20.

1526 Operation Abelia, PIC Transcript, Private hearing, ANX, 13 May 2004, pp. 18, 20, & 21.

1527 Operation Dakota, PIC Transcript, Private hearing, AJQ, 31 October 2001, pp. 33-34.

1528 Operation Dakota, PIC Transcript, Private hearing, AJQ, 31 October 2001, p. 34.

1529 Operation Dakota, PIC Transcript, Private hearing, AJQ, 31 October 2001, p. 34.

ASSESSMENT AND RECOMMENDATIONS

It is outside the scope of Operation Abelia to attempt to assess the appropriateness or the effectiveness of the disciplinary outcomes for individual officers who have tested positive to illegal drug use in the past. Instead this section has been largely descriptive in its documentation of how officers who have tested positive to using prohibited drugs have been managed by NSW Police in the past. This documentation exercise has revealed several areas where NSW Police should consider strategies to improve its processes.

Areas for improvement

Processing times

The amendment of the *Police Act* to include the s.181D provisions for removal of officers for the loss of the Commissioner's confidence followed from a recommendation made in one of the interim reports of the Royal Commission into the NSW Police Service (RCPS). The interim report stated that the Police Commissioner and his management team should have the capacity to deal with disciplinary matters in 'a quick, fair, straightforward and managerial way, without undue procedural or bureaucratic restraints'. Based on the information collected as part of Operation Abelia, the process by which s.181D notifications have been considered and resolved does not appear to operate in this 'quick and straightforward' manner. While no guidance was given by the RCPS as to what it meant by 'quick', information provided by NSW Police to the effect that one individual's disciplinary process was delayed when it took three months for the commander to prepare the s.181D nomination and a further three months for it to be endorsed by the regional commander suggests that there is scope for reducing the processing times.

Although evidence was given that the delays in finalising s.181D actions resulted from previous NSW Police practices that were subsequently amended in early 2003, the PIC also learnt that one officer resigned in 2004 after having a 'show cause' notice served more than 18 months after his drug test. This does not suggest that the processing times have reduced for officers who have returned a positive drug test.

A prolonged disciplinary (or 'management action') process is inadequate for three reasons. Firstly it does not provide a clear and sharp message to those subject to management action or to their colleagues. Secondly leaving the officers in a state of uncertainty imposes unnecessary stress on the officers and their families. Finally, public money is wasted through suspending officers with pay for what appear to be unnecessarily long periods of time.

The PIC suggests that NSW Police should examine ways of minimising delays at the beginning of the management action process as a first step to reducing the overall time taken to finalise a s.181D matter. NSW Police has advised the PIC that the time frame for the first stage of the process, which involves the notification being placed before the Commissioner's Advisory Panel (CAP), is dependent upon all relevant information being forwarded to the Employee Management Branch:

> Upon receipt of **all required documentation** from the officer's Commander - aim to have matter scheduled at CAP within 28 days. This will depend on availability of Commander as well as vacancy on fortnightly panel.[1530]

In order to minimise the delays at the beginning of the process for those who test positive to a drug test, the PIC considers that NSW Police Health Services should inform both the officer's commander and the Employee Management Branch[1531] that the officer has tested positive to prohibited drugs as soon as the notification is received from the testing laboratory. This would enable Employee Management Branch to commence monitoring the process and intervening to minimise delays from an early stage.

Recommendation M 1:

The PIC recommends that, as soon as possible after a positive confirmatory test result is received from the analytical laboratory, NSW Police Health Services notifies the Employee Management Branch in addition to the officer's commander that an officer has tested positive to prohibited drugs, the identity of that officer and the drug or drugs to which the officer tested positive.

The PIC heard evidence that the management of officers who are detected as using prohibited drugs follows the same process as that used for all officers who are notified for s.181D action. Given that the process is the same, timeliness is likely also to be an issue in the management of officers considered under s.181D for other forms of misconduct.

The PIC considers that there is likely to be scope to further reduce the processing times for s.181D and possibly other reviewable management actions. To this end the PIC believes that NSW Police should conduct a review of its management action process to identify and implement strategies to improve the timeliness of the process.

One strategy, amongst others, that NSW Police should consider in its review, is ways that it might streamline the process. While the PIC recognises that positive drug tests are relatively rare events for NSW Police, in some ways the processing of officers who return a positive drug test should be more straightforward, and perhaps faster, than those who are notified for reviewable management action following the wide range of other forms of misconduct. In fact the PIC does not see any reason why it should take longer than three months between the date a notification is received that an officer has tested positive to one or more prohibited drugs and a 'show cause' notice is issued to the officer.

The PIC suggests that NSW Police should establish guidelines for the steps to be undertaken to finalise reviewable management action that is initiated by a positive drug test result and timeframes for each of those steps.

As part of the proposed review, the PIC believes that NSW Police should also identify who is responsible for the individual steps in the process and who has overall

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1530 Email from Manager of NSW Police Employee Management Branch, 23 December 2004. The emphasis on 'all required documentation' is as provided in this email from NSW Police.

1531 Throughout this section, several recommendations refer specifically to the Employee Management Branch. These recommendations are intended to refer to the Employee Management Branch or any subsequent unit that, through restructuring, takes over the responsibilities of the current Employee Management Branch.

responsibility for ensuring that all of the steps are conducted in a timely manner. For example, rather than the responsibility for monitoring the timeliness of the management action process being assigned to an administrative unit within NSW Police[1532], the PIC suggests that NSW Police should consider a trial in which individual officers (referred to as 'case officers' below) from the Employee Management Branch are allocated a caseload of reviewable management action matters and these officers are assigned the responsibility of ensuring each of their matters progress in a timely manner.

As part of its review of the management action process, the PIC believes that NSW Police should also identify tools that might assist in monitoring the progress of individual matters. For example, NSW Police has advised the PIC that it maintains a Notifications Database of information relating to all notifications concerning s.181D, s.173 and s.73(3) matters. It might be that this database, perhaps with some modification, would provide a useful tool to assist case officers to monitor the progress of individual matters, or there may be other tools which might better assist in the monitoring of individual cases.

Recommendation M 2:

The PIC recommends that NSW Police reviews its management action processes, particularly in relation to officers who test positive to prohibited drugs, in order to reduce the processing times and to clarify responsibility for the different parts of the process. Amongst other strategies identified by NSW Police to achieve these objectives, this review should include:

a. an examination of the steps involved in the process with a view to streamlining these steps and establishing guidelines, including realistic timeframes, to be followed for such reviewable management action matters

b. consideration of the use of case officers to monitor each step and to act to minimise possible delays in the process

c. the use, and adaptation as necessary, of the Notifications Database as a tool to assist in oversighting the progress of reviewable management action matters

d. a method of assessing the effectiveness of the strategies to be implemented as a result of this review in reducing the processing times and clarifying the responsibility for the process.

Provision of information to officers detected using illegal drugs

The PIC was repeatedly told by officers who had been detected using prohibited drugs that these officers had not been given information about how long the process was likely to take before a decision would be reached or about the likely outcome of that decision. The impact of the lack of information on the officer's health and well-being is exacerbated by the length of the process.

The provision of information to officers is likely also to be an issue in the management of officers considered for reviewable management action in connection with other forms of misconduct.

1532 Since early 2003 NSW Police has assigned the responsibility for monitoring the timeliness of the disciplinary process to the Process Unit of the Employee Management Branch.

The Management Action Procedures produced by the Employee Management Branch in early 2003 state that the local area commander is responsible for providing feedback to the officer. Many of those who gave evidence before the PIC would have been describing experiences that occurred prior to the production of these procedures. However, the information provided to the PIC suggests that during 2003 and 2004 some officers who had tested positive to using prohibited drugs were still not being given such feedback. Given the very small number of cases examined by the PIC it is not possible to determine whether any such lack of feedback reflects on the performance of an individual commander or on the effectiveness of the procedures that state that local area commanders should be responsible for providing this feedback.

It may be that local area commanders are not in the best position to provide feedback to officers awaiting the finalisation of management action. Those working in the Employee Management Branch are likely to have a better overview of the entire process and any changes in the process than are local area commanders. It may be beneficial for case officers from the Employee Management Branch to be responsible for contacting and updating the local area commanders about the status of a reviewable action matter.

While there might be times, given the relationship between the commander and the officer, when it would be best if the commander provided feedback to the officer subject to the notification for reviewable management action; there might be other times when it would be best if the case officer provided the feedback to the officer. In each case a decision would need to be made and communicated to the officer subject to reviewable management action, as to who will be the one to provide regular updates concerning the status of their matter and how frequently those updates will be provided.

The PIC considers that an additional objective of a NSW Police review of its management action process (described in Recommendation M 2) should be to improve the information available to those who are subject to a notification for reviewable management action.

Recommendation M 3:

The PIC recommends that the NSW Police review of its management action processes (described in Recommendation M 2) should also seek to improve the information available to those who are notified for reviewable management action. Amongst other strategies identified by NSW Police to achieve this objective, this review should include:

a. the development of a system for the reliable provision of information, both to officers who are the subject of reviewable management action and to their commanders, concerning how the process works and regular updates on the status of the matter

b. a method of assessing the effectiveness of the strategies to be implemented as a result of this review.

Managing incidents of 'accidental ingestion'

Eight of the 30 officers who returned a positive drug test result claimed 'accidental ingestion' of a prohibited drug. A number of these officers claimed that they had suffered ill effects at the time of the incident and suspected that they had in fact ingested an illegal drug of some kind. These officers did not, however, report their concerns to anyone within NSW Police.

The PIC considers that it may be useful for NSW Police to develop some guidelines or a directive concerning action officers should take if they believe they have unwittingly ingested an illegal drug. If a requirement is placed on officers to report these incidents to their supervisor prior to being made subject to any kind of drug testing, it will be more difficult for officers to rely on false 'accidental ingestion' claims in the aftermath of returning a positive result to a drug test. An officer's failure to report the incident, or in contrast their compliance with the requirement to report the incident, would no doubt be a relevant factor to consider in s.181D determinations.

Recommendation M 4:

The PIC recommends that NSW Police develops guidelines whereby officers are required to report any suspected accidental ingestion of illegal drugs to their supervisor, as soon as practicable after the incident, so that the incident can be recorded. Following the development of these guidelines, NSW Police should clearly communicate this requirement to all officers.

Managing the risk

Illegal drug use by officers is likely to come to notice in a variety of ways. For example, some drug use will come to notice as the result of a positive drug test while other drug use will come to notice through other investigative techniques or in some cases by the officer's own admissions.

In each case, any immediate safety or integrity risks posed by the officer's drug use need to be managed while longer-term outcomes ranging from rehabilitation to dismissal are being determined. Current NSW Police Management Action Procedures involve an assessment of interim management action once a notification has been received. Current procedures involve a consultant from the Employee Management Branch conducting an assessment of the matter with the Commander. The assessment includes a consideration of 'interim management action, the officer's welfare, clarifying any support provided, risk assessment and suspension, if applicable'.[1533]

While the current NSW Police procedures do not specify what needs to be considered when undertaking the risk assessment to determine suitable interim action, the following considerations would seem to be appropriate when determining how best to manage any safety or integrity risk posed by the officer's drug use:

- the type(s) of drug used
- the frequency and circumstances of that drug use

1533 NSW Police, Management Action Procedures Section 73(3), 173(2) and 181D of the Police Act 1990, February 2003, p. 13.

- nature of the officer's current duties and scope for change in duties (for example change from administrative duties to more active duties)
- the officer's length of service in NSW Police and past work performance
- the options available for managing any potential safety or integrity risks
- counselling or other assistance available while the management action process is undertaken.

Perceived inconsistency concerning clause 54 of the Police Regulation

A perception of inconsistency has been identified between the NSW Police practice of automatic s.181D notification and the procedures outlined in clause 54 of the Police Regulation. The PIC considers that NSW Police should act to resolve this inconsistency.

The PIC does not intend to dictate the form that such resolution should take. However, the resulting procedures should continue to allow for each case to be considered on its merits (weighing up the factors listed above) and should take account of what should follow if rehabilitation, despite being offered and accepted, fails.

Recommendation M 5:

The PIC recommends that NSW Police resolves the inconsistency between NSW Police practice and the procedures outlined in clause 54 of the Police Regulation, such that:

a. the resulting practice and procedures allow for consideration of each case on its merits (weighing up factors such as the type(s) of drugs used, the frequency and circumstances of that drug use, the officer's length of service and past work performance) and should take account of what should follow if rehabilitation, despite being offered and accepted, fails

b. NSW Police informs the PIC concerning the steps taken to resolve this inconsistency.

Monitoring

The PIC considers that NSW Police should continue to actively oversight the process for officers who are notified for reviewable management action. The PIC also considers that NSW Police should monitor the processing times (that is, the time between the date of the incident leading to the notification for reviewable action and the finalisation of the outcome) as well as the information provided to officers subject to the notification and their commanders.

Recommendation M 6:

The PIC recommends that NSW Police:

a. reports how it intends to conduct the review proposed in Recommendations M 2 and M 3, and the results of that review to the PIC, and

b. continues to monitor its processing times for reviewable action matters and the provision of information to officers subject to notifications and to their commanders.

The PIC considers the supervision of reviewable management action matters a subject of ongoing interest. To enable the PIC to continue to monitor the time such matters take to finalise, the PIC proposes that NSW Police should regularly provide the PIC with information about the management of those officers subject to reviewable action notifications.

Recommendation M 7:

To enable the PIC to audit progress in this area, the PIC recommends that NSW Police submits a schedule, concerning officers who are or have been subject to reviewable management action, to the PIC at the end of each quarter. This schedule should provide the following types of information for each of the officers currently subject to reviewable management action and for any officer for whom such action was finalised during the quarter:

a. officer identification details (such as name, registered number, location)

b. information about the incident leading to the notification (such as date of the incident, date of the notification, reason for the notification)

c. status of the notification (including what has been achieved and any changes in status in the past quarter)

d. contact by the case officer with the officer subject to the notification

e. officer status (normal duties, restricted duties, suspended with pay, suspended without pay, sick leave, etc).

7. MINIMISING ILLEGAL DRUG USE BY OFFICERS: A NINE-PART STRATEGY

7.1 OVERVIEW

In Operation Abelia, the PIC sought firstly to develop a better understanding of the nature of the problem of illegal drug use by some NSW Police officers. The understanding that the PIC developed of the nature of the illegal drug use by some NSW Police officers and circumstances surrounding this drug use is described in Chapter 5. Secondly, the PIC sought to examine NSW Police policies, procedures and training materials, with a view to advising NSW Police how it can most effectively strengthen its approach to minimising illegal drug use by its officers. The PIC's examination and assessments of current NSW Police policies, procedures and practices are detailed in Chapter 6.

This chapter consolidates the information from these two earlier chapters and demonstrates the linkages among the individual recommendations that were proposed in Chapter 6. After first describing the context in which Operation Abelia was undertaken and the context in which policy and procedural changes are to be made, this chapter then describes the proposed nine-part strategy to strengthen NSW Police's approach to minimising illegal drug use.

For ease of reference, a consolidated list of the recommendations made in Chapter 6 is provided at the end of Volume 1.

7.2 CONTEXT

1. POLICE OFFICERS PERFORM A SPECIAL ROLE IN SOCIETY

As was discussed in Chapter 1, the principal reason that the PIC decided to undertake Operation Abelia was the potential seriousness of the consequences of illegal drug use by officers. Illegal drug use by officers is of particular concern because of the special role police officers perform in the community. In his address on the final day of the Operation Abelia public hearings, Ken Moroney, the Commissioner of Police, spoke of the special position of police in society and the obligations it places on officers:

> I remain of the belief, and believe the community is right to expect, that police officers fall into a special category of practitioner because of the role and function that they serve within the community. Not only do police officers swear an oath of office, they do so to uphold and enforce the law, a law which they are required to act in accordance with at all times. Police officers have powers of arrest and the ability to deprive others of their liberty. In the very extreme of instances, police officers also have a legal ability to take life.
>
> But more fundamentally, police officers using illegal drugs are engaging in criminal behaviour and no explanation by them alters this fact. It is the very same criminal behaviour for which New South Wales police officers arrest and charge other members of the community. We cannot employ a double

> standard and we cannot allow any level of criminal activity to go unchecked.[1535]

For the vast majority of non-policing workplaces, drug prevention and detection systems are driven by a desire for improved safety and reduced production costs. The special nature of policing and the unique integrity risks that arise when officers use illegal drugs require that drug prevention and detection systems in police agencies are designed to address integrity issues in addition to impairment issues. Impairment issues are of particular concern for alcohol and other legally obtainable drugs. In the case of illegal drugs, a clear message must be provided that integrity issues are paramount. It is not sufficient to simply say that an officer should not come to work impaired by illegal drugs. An officer should not use illegal substances at any time. If the officer does not use illegal drugs at any time, then it also follows that the officer will not be impaired by illegal drugs.

2. SUPPORT FOR OPERATION ABELIA BY NSW POLICE AND BY THE POLICE ASSOCIATION OF NSW

Both NSW Police and the Police Association of NSW have expressed their support for Operation Abelia. In his closing statement, the Commissioner of Police said:

> In my opening statement, I indicated my full support for Operation Abelia and from which I have not backed away.[1536]

Similarly, the President of the Police Association of NSW stated:

> At the conclusion of the public hearings into Operation Abelia, the Police Association wishes to reiterate its support for the Commission's work. We are particularly grateful for the Commission's wide ranging consultative approach to the difficult and complex matters being investigated.
>
> The Association remains committed to assisting in the promotion of a drug-free NSW Police. We do not support corrupt police officers who engage in the illegal drug trade. At the same time we recognise the very complex issues that surround the prevalence of so-called 'recreational' drug use in contemporary Australia.[1537]

The support given by NSW Police and the Police Association of NSW has provided a strong foundation for both the development of a comprehensive framework for minimising illegal drug use by NSW Police officers and for a receptive environment in which positive change can be introduced. As Assistant Commissioner the Hon. Mervyn Finlay QC observed in the final day of the Operation Abelia public hearings:

> the investigation had a common goal in the welfare of the NSW Police and the community generally. This goal was best achieved by a constructive and collegiate approach of this Commission, the NSW Police and the Police Association. This factor was acknowledged by me in opening the public hearing of the investigation in November last year in these words:

1535 Operation Abelia, PIC Transcript, Commissioner K. Moroney, 12 November 2004, p. 1321.

1536 Operation Abelia, PIC Transcript, Commissioner K. Moroney, 12 November 2004, p. 1325.

1537 Letter from President of Police Association of NSW to Assistant Commissioner Finlay, dated 12 November 2004.

> In this public hearing, I wish to acknowledge the helpful and constructive approach of the Commissioner of Police, Mr Moroney, to this inquiry. I further acknowledge the cooperation of the Police Association of NSW. This is as it should be where the subject of an investigation is the use of illegal drugs by some NSW police which has the capacity to adversely impact on the professionalism and effectiveness of the NSW Police, the integrity and health of individuals concerned and the safety and welfare of colleagues and the community.[1538]

Such support from both the Commissioner of Police and the Police Association of NSW is an important first step in minimising illegal drug use by officers. However, history has shown that reforms based solely on the commitment of individuals are not sustained. It is important that the reforms are embedded within the organisational culture, systems and procedures so that they can continue to have an effect after individuals move on or attention is diverted elsewhere.

3. THE FUTURE

NSW Police has recognised the need to change its practices to meet emerging community issues:

> As our agencies grow and social norms and the communities in which we work and in which we live also change, the NSW Police needs to ensure that its practices evolve accordingly.[1539]

The PIC concurs with the Commissioner of Police who observed that NSW Police has the opportunity to be a leader in the field of minimising illegal drug use by officers:

> New South Wales Police has the opportunity to be a leading agency in keeping our officers drug free and of implementing a suitable benchmark for other law enforcement agencies in their own attempts to provide a safe workplace.[1540]

For NSW Police to take a leading role it is important that the discussion of illegal drug use by police does not end with the finalisation of Operation Abelia and the publication of the Operation Abelia report.

7.3 A NINE-PART APPROACH TO MINIMISING DRUG USE BY NSW POLICE OFFICERS

Operation Abelia has identified ways to strengthen NSW Police's approach to minimising illegal drug use by its officers.

As noted in Chapter 3, one of the main lessons from the approaches to minimising illegal drug use in the community is that there is no one accepted solution. For example, the Victorian Drugs and Crime Prevention Committee has argued 'given the complexities of amphetamine and "party drug" use and the differences between and within these classifications, it is quite clear that a "one size fits all" approach will be

1538 Operation Abelia, PIC Transcript, 12 November 2003, p. 1318.

1539 Operation Abelia, PIC Transcript, Commissioner K. Moroney, 12 November 2004, p. 1325.

1540 Operation Abelia, PIC Transcript, Commissioner K. Moroney, 12 November 2004, p. 1325.

inadequate to address this issue'.[1541] Similarly, given that the officers who do use illegal drugs use a wide range of different drugs for different reasons, it cannot be expected that there will be a single simple solution which will minimise illegal drug use by officers. The PIC has made 64 recommendations in Chapter 6, many of which propose policy, procedural or legislative change to strengthen NSW Police's capacity to minimise illegal drug use by its officers. The PIC's recommendations combine to form a nine-part integrated strategy. In summary the nine parts involve:

1. Providing clear messages early and reinforcing them in different ways
2. Equipping officers with the knowledge and skills to respond appropriately
3. Addressing the welfare of officers
4. Deterring illegal drug use
5. Detecting illegal drug use that has occurred
6. Effectively managing officers found to have used illegal drugs
7. Demonstrating accountability
8. Review and evaluation
9. Monitoring the implementation of recommendations made in the Operation Abelia report.

The strength of this nine-part approach lies in the integration of the different recommendations rather than on the impact of any individual recommendation. Amongst other things, various parts of this approach are directed towards further developing an organisational culture that considers illegal drug use to be inappropriate and strengthening the capacity of peers to help reinforce and support the appropriate behaviour of their colleagues. Others are directed at enhancing the capacity of NSW Police to deter illegal drug use and to detect illegal drug use that has occurred.

1. PROVIDING CLEAR MESSAGES EARLY AND REINFORCING THEM IN DIFFERENT WAYS

The PIC considers that a starting point to minimising illegal drug use is for NSW Police to establish a foundation whereby all officers know what is expected of them. NSW Police currently provides messages about its expectations concerning illegal drug use in its Drug and Alcohol Policy, Code of Conduct and Ethics, and also in a separate Code of behaviour. In relation to illegal drug use, the Drug and Alcohol Policy states:

> No officer of the Police Service is permitted to use any prohibited drug.

To provide further guidance on appropriate behaviour, the 'Drugs and Alcohol' section of the Code of Conduct and Ethics is incorporated within the Drug and Alcohol Policy. It states:

> You must not perform your job, remain at work or undertake any Police Service related activity if you are impaired by alcohol or other drugs,

1541 Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into amphetamine and 'party drug' use in Victoria: Final report*. Melbourne: Government Printer for the State of Victoria, May 2004, p. 634.

> including drugs prescribed by your doctor. This includes training functions and seminars. If you are off duty and impaired, you are not permitted to visit the workplace. If you are responsible for driving a car, working machinery or carrying a gun, you must tell your supervisor if you are taking any drugs which carry a warning.

NSW Police has attempted to ensure that all officers have received training about its Drug and Alcohol Policy and about its Code of Conduct and Ethics. It has done this by making training on this policy and this code mandatory for all officers employed by NSW Police at the time the policy and code were introduced. It has also required that training on these topics be included as part of the training for recruits who have joined NSW Police since these policies were introduced. Furthermore, it has included training on the Drug and Alcohol Policy within other courses that some officers may elect to undertake, such as Peer Support Officers training.

The PIC notes the efforts that NSW Police has made to ensure that its officers receive the messages contained in its Drug and Alcohol Policy and its Code of Conduct and Ethics. However, the PIC has found that officers do not always retain these messages. Some officers who participated in the Operation Abelia focus groups were unable to recall major components of the Drug and Alcohol Policy. Some of these officers appeared to be unaware that NSW Police conducts random drug testing. Some officers were also unaware that officers are encouraged to voluntarily disclose their drug use under an amnesty provision.

The PIC has made specific recommendations concerning steps that NSW Police can take to clarify and reinforce the messages that it provides to its officers. Some examples of the nature of these recommendations are outlined below.

Separating the messages about legal and illegal drugs

The PIC is of the opinion that the impairment issues associated with the use of alcohol and other legal drugs such as prescription and over-the-counter medication are quite different from the integrity issues associated with the use of illegal drugs. For this reason the PIC has recommended that NSW Police amends its current practice of conveying its expectations concerning the use of legal and illegal drugs in a single message within its Code of Conduct and Ethics, and other documentation that specifically refers to the Code of Conduct and Ethics (such as the Drug and Alcohol Policy). The PIC considers that a clearer understanding can be communicated by providing separate messages for what NSW Police expects of its officers in relation to legal drug use (that is, alcohol use, prescription and over-the-counter drugs) and what it expects in terms of illegal drugs.[1542]

The PIC agrees with NSW Police that, in principle, officers should not need to be told that it is inappropriate for them to engage in illegal behaviour such as the use of illegal drugs. However, while it should perhaps be obvious to all that because the use of prohibited drugs is an illegal activity it is unacceptable for all officers, this is not necessarily the case. For example, although the majority of officers and former officers who admitted to the PIC that they had used prohibited drugs said that they knew that it was wrong for an officer to use such drugs, a minority made comments such as: 'what I do in private is what I do in private'.

1542 Refer to Recommendation CCE 1 and the discussion preceding it in Section 6.7 on 'Code of Conduct and Ethics' in Chapter 6.

The PIC also recommends that NSW Police clarify that the use of prohibited drugs is not appropriate at any time – whether the officer is rostered on duty or not.[1543]

Communicating how illegal drug use can compromise an officer's position and how it can compromise NSW Police

Some officers did not seem to be aware, or at least did not acknowledge, that drug use could compromise their position as well as compromise NSW Police. For example, some officers who gave evidence in Operation Abelia did not consider their illegal drug use to be a problem for them. These officers said that they did not consider that they had an addiction. Some referred to their illegal drug use as a social activity they engaged in when off duty. Some of the officers who had admitted prior illegal drug use said that they did not believe that their drug use interfered with their work or affected their ability to perform their job.

Also, officers in the Operation Abelia focus groups were divided in their opinions when they were asked whether it was possible for an officer to use drugs occasionally or regularly and to still be 'a good cop who does the job well'. Some focus group participants said that an officer who uses illegal drugs occasionally cannot be a good cop. However, some participants thought that an officer who uses drugs occasionally could be a good cop, and others indicated their uncertainty.

Some officers and former officers also drew a distinction between the acceptability of different types of illegal drugs. For example, even though he did not believe that there were any circumstances were it was acceptable for an officer to use prohibited drugs, one former officer expressed his view that steroids 'stuffed with your mind' in comparison to ecstasy, which he considered more acceptable because it is 'just like a party drug'.

Hence the PIC has recommended that NSW Police develops and implements strategies to communicate to officers how such drug use can compromise their position and compromise NSW Police even if the illegal drug use is confined to when they are off duty.[1544]

Communicating messages from the time a potential applicant first contacts NSW Police

The PIC is of the opinion that messages about NSW Police expectations of its officers should commence from the time a potential applicant first contacts NSW Police, and that these messages should be reinforced regularly. Accordingly, the PIC has recommended that NSW Police provides additional information to potential applicants, including its values and expectations for the integrity standards to be met by officers and that drug testing is one of the conditions of working as a NSW Police officer. The PIC has also recommended that NSW Police should include questions on its application form about the applicant's prior and current drug use and that potential

1543 Refer to Recommendation CCE 1 and the discussion preceding it in Section 6.7 on 'Code of Conduct and Ethics' in Chapter 6 as well as Recommendation CoB 1 and the discussion preceding it in Section 6.8 on 'Code of behaviour' in Chapter 6.

1544 Refer to Recommendation SR 2 and the discussion preceding it in Section 6.3 on 'Self-reporting illegal drug use' in Chapter 6.

applicants should be alerted to the fact that they may be drug tested as part of the recruitment process.[1545]

Reinforcing messages in different ways throughout an officer's career

At the time of this investigation, the PIC found that, while serving officers had been provided with information on both the Code of Conduct and Ethics and on the Drug and Alcohol Policy through the Mandatory Continuing Police Education or through their entry-level training at the NSW Police College, this information was not regularly reinforced to improve understanding or recall.

The PIC considers that for messages to be retained they need to be reinforced in different ways from the time a potential applicant seeks information about joining NSW Police, through the recruitment process, during initial training as a student at the NSW Police College, and during the officer's entire career with NSW Police. Amongst other ways, the PIC has suggested that the messages from the Drug and Alcohol Policy should be reinforced by introducing drug testing of students at the NSW Police College. The PIC has also recommended increasing the number of random drug tests conducted on sworn officers to increase the visibility of random drug testing to all officers.[1546]

The PIC has recommended that NSW Police continues to reinforce the message of the unacceptability of illegal drug use to its officers by further promoting the Drug and Alcohol Policy; taking appropriate action to support officers' awareness, understanding and use of the Code of Conduct and Ethics; and training officers in how to recognise and manage the drug-related integrity risks they may face.[1547]

Developing an integrated communication strategy

Many of the messages NSW Police currently seeks to communicate, as well as additional messages proposed by the PIC, are interrelated. For this reason, the PIC has recommended that NSW Police develops an integrated communication strategy to communicate and reinforce messages about:

- its expectations
- knowledge and skills to assist officers and supervisors perform their roles
- policies and procedures, and
- resources available to assist officers.[1548]

1545 Refer to Recommendations R 1, R 3 and R 4 and the discussion preceding each of these in Section 6.9 on 'Recruitment' in Chapter 6.

1546 Refer to Recommendation R 5 and the discussion preceding it in Section 6.9 on 'Recruitment' and Recommendations RDT 1 and RDT 2 and the discussion preceding each of these in Section 6.5 on 'Random Drug Testing' in Chapter 6.

1547 Refer to Recommendations CCE 2 (Section 6.7 on 'Code of Conduct and Ethics'), CoB 2 (Section 6.8 on 'Code of behaviour'), ETC 1 and ETC 2 (Section 6.10 on 'Education, Training and Communication') and the relevant discussion preceding each of these in Chapter 6.

1548 Refer to Recommendation ETC 5 and the discussion preceding it in Section 6.10 on 'Education, Training and Communication' in Chapter 6.

Furthermore, the PIC has stated its support for a role for the Police Association of NSW to reinforce appropriate messages to NSW Police officers.

2. EQUIPPING OFFICERS WITH THE KNOWLEDGE AND SKILLS TO RESPOND APPROPRIATELY

After providing a clear message of what NSW Police expects of its officers, it is important that officers have the knowledge and skills to enable them to respond appropriately and effectively to meet these expectations. NSW Police already provides a broad range of training to equip its officers with the knowledge and skills they require to perform their roles. The PIC has identified four areas in which additional knowledge and skills may assist in minimising illegal drug use by officers. These areas are:

- how to identify and manage integrity risks that officers may encounter when they are off duty
- how officers should respond if they suspect that a colleague may be using illegal drugs
- the uses and limitations of drug testing (for the information of those who are responsible for determining whether officers should be the subject of a targeted drug test), and
- the responsibilities of supervisors under the Drug and Alcohol Policy and other related policies.

Identifying and managing off-duty integrity risks

The PIC has heard evidence that officers do, from time to time, find themselves in situations where friends or relatives may use illegal drugs. This is not unexpected in a society where a significant minority use illegal substances as a means of socialising or as a means of relaxing. From the information that it obtained from its interviews with commanders, private hearings with officers and former officers who admitted prior illegal drug use, and the focus groups with officers, the PIC formed the view that officers do not have a clear understanding of how NSW Police expects them to respond if, while off duty, they encounter people such as friends or relatives using illegal drugs.

For this reason the PIC has recommended that NSW Police should develop a clearly stated position on how it expects off-duty officers and students to respond if they encounter people using illegal drugs and communicate its expectations and guidance on how to meet these expectations to all officers. The PIC recognises the importance of equipping officers to identify and respond to situations that may compromise their integrity and their role as an officer in advance of such a situation occurring.[1549]

The PIC has also recommended that NSW Police develops and communicates guidelines to clarify that officers are required to report any suspected accidental

[1549] Refer to Recommendations ETC 1 and ETC 2 and the discussion preceding each of these in Section 6.10 on 'Education, Training and Communication' in Chapter 6.

ingestion of illegal drugs to their supervisor as soon as possible after such an incident.[1550]

Responding when an officer suspects a colleague may be using illegal drugs

Some officers who participated in the Operation Abelia focus groups said that they felt that they were not adequately prepared to deal with suspected illegal drug use by a fellow officer. Hence the PIC has recommended that NSW Police develops guidelines for officers on what they should do if they suspect illegal drug use by a fellow officer and that NSW Police communicates these guidelines to officers of all ranks.[1551]

Understanding the uses and limitations of targeted drug tests

The decision as to whether or not an officer should be the subject of a targeted drug test is now made at the command level by the local Complaints Management Team (CMT). It is important that CMT members who need to make decisions about using targeted drug testing as a detection tool understand the circumstances under which the tool is useful and those under which it is not.

From its review, the PIC noticed that the minutes of CMT decisions about targeted drug tests recorded in 2004 indicated that some CMTs may not understand the current targeted drug testing procedures. It is possible that not all of the CMT members are aware of all of the sources of information available to them. Even those that are aware may not consistently refer to these resources.

For these reasons, the PIC has recommended that NSW Police trains those who may need to make decisions about whether or not a targeted drug test should be conducted (that is, members of CMTs) about the uses and limitations of targeted drug tests and the issues that they should consider when making such a decision. The PIC has also recommended that NSW Police should provide guidelines and associated training to the CMT members on the nature of the information to be recorded when they consider whether to conduct a targeted drug test.[1552]

Responsibilities of supervisors

Some of the officers who participated in Operation Abelia focus groups said that they felt overwhelmed by the amount of information that they are required to assimilate as a result of the number of policies, the volume of general information they receive and their other work priorities. It is likely that the number of policies and the amount of general information disseminated places a greater burden on supervisors, who need to understand how the individual policies and procedures impact on their role as supervisors as well as on their work as officers.

1550 Refer to Recommendation M 4 and the discussion preceding it in Section 6.12 on 'Managing officers who have been found to use prohibited drugs' in Chapter 6.

1551 Refer to Recommendation ETC 3 and the discussion preceding it in Section 6.10 on 'Education, Training and Communication' in Chapter 6.

1552 Refer to Recommendations TDT 1, TDT 2, TDT 4 and TDT 6 and the discussion preceding each of these in Section 6.4 on 'Targeted Drug Testing' in Chapter 6.

There are a number of NSW Police policies and procedures that are relevant either to early intervention to minimise the likelihood of some circumstances triggering illegal drug use or to possible responses when illegal drug use is suspected. A few examples of these policies and procedures include: the NSW Police Drug and Alcohol Policy, the Psychological Wellbeing of Staff Policy, the Occupational Health and Safety Policy, and the Rehabilitation Policy. The PIC considers that it is important that all supervisors have a clear understanding of the overlap and the differences in the responsibilities that these policies and legislation place on them, including when a supervisor has the responsibility to act and the appropriate action for the supervisor to take. For this reason the PIC has recommended that NSW Police equips supervisors of all ranks with the relevant knowledge and skills so that they can confidently undertake the responsibilities assigned to them under these many policies and regulations.[1553]

3. ADDRESSING THE WELFARE OF OFFICERS

As noted earlier, by adopting a focus on health and welfare, rather than considering illegal drug use exclusively as a disciplinary matter, the NSW Police Drug and Alcohol Policy is consistent with international best practice in the area. In order to strengthen the support available to officers, the PIC has made a number of recommendations, which are summarised below.

Provision of support to those who voluntarily disclose their illegal drug use

The PIC has recommended that NSW Police continues to arrange assistance, in the form of rehabilitation, counselling and/or relapse prevention, for officers who come forward to voluntarily disclose their illegal drug use. The PIC has also recommended that NSW Police continues to promote awareness of the nature and availability of the amnesty provision as well as of other forms of assistance or rehabilitative options available to officers who have used illegal drugs. In addition, the PIC has recommended that NSW Police seeks an amendment to the current legislation and regulations so that commanders, supervisors and colleagues are able to refer officers to the amnesty, where the illegal drug use has come to notice only through the officer's own admissions, without contravening clause 20 of the Police Regulation.[1554]

In addition, the PIC has recommended that supervisors receive training in how to balance their welfare and staff management responsibilities and how to manage an officer who has come forward to disclose his or her illegal drug use under the amnesty, including how to manage the confidentiality issues.[1555]

Addressing welfare issues associated with off-duty targeted drug testing

As is discussed later in this chapter, the PIC has recommended improving the capacity of NSW Police to detect off-duty illegal drug use by amending the *Police Act 1990* to enable NSW Police to conduct off-duty targeted drug testing when it is reasonable to do so under the circumstances. In doing this, the PIC has recommended that NSW

1553 Refer to Recommendations SS 1 and SS 2 and the discussion preceding each of these in Section 6.11 on 'Supervision and Support' in Chapter 6.

1554 Refer to Recommendations SR 1, SR 3 and SR 7 and the discussion preceding each of these in Section 6.3 on 'Self-reporting illegal drug use' in Chapter 6.

1555 Refer to Recommendation SS 1 and the discussion preceding it in Section 6.11 on 'Supervision and Support' in Chapter 6.

Police develops guidelines and procedures which incorporate relevant industrial, health and welfare considerations in relation to off-duty targeted drug testing.[1556]

Provision of information to officers subject to reviewable management action

The PIC was told by officers who had been detected using prohibited drugs that these officers had not been given information about how long the process was likely to take before a decision would be reached or about the likely outcome of that decision. As a result of this, the PIC has recommended that NSW Police develops a system for the reliable provision of information, to both officers who are the subject of reviewable management action and their commanders, concerning how the process works and in the form of regular updates about the status of the matter.[1557]

Provision of support and guidance

In addition, the PIC has recommended that NSW Police provides students and officers with guidance about what they should do if they find they make a mistake when faced with a situation that could put their integrity at risk or compromise them.[1558] It has also recommended that supervisors receive training about what avenues of support and assistance are available to them as supervisors when they are unsure of how to respond.[1559]

4. DETERRING ILLEGAL DRUG USE

An individual officer who may be considering using illegal drugs is likely to be deterred from such drug use when he or she believes the risks outweigh its attractions. Officers may be deterred from using illegal drugs because of risks to their health, to their reputation or to their livelihood. There are, in turn, many factors that may affect an officer's perception of the likelihood of having his/her drug use detected, with consequent possible loss to reputation and/or livelihood. For example, some officers who live and work in small communities may consider that their off-duty behaviour is under greater scrutiny than those who live and work in larger communities, where they feel more anonymous. Officers who are considering using illegal drugs may also weigh up the risks of such drug use coming to notice through a positive result to a drug test, a NSW Police internal investigation or an investigation by the PIC.

In addition to using education to deter illegal drug use, by setting clear expectations and equipping officers with the knowledge and skills to meet these expectations, the PIC has advocated three further deterrence strategies. The first is to increase the perceived risk of being caught and being punished by increasing the visibility, publicity, unpredictability and inability to influence the chances of being detected through drug testing. The second is to discourage those who may be prone to using illegal drugs from applying to join NSW Police. The third is to provide officers with more information about the health risks associated with using illegal drugs.

1556 Refer to Recommendation TDT 9 and the discussion preceding it in Section 6.4 on 'Targeted Drug Testing' in Chapter 6.

1557 Refer to Recommendation M 3 and the discussion preceding it in Section 6.12 on 'Managing officers who have been found to use prohibited drugs' in Chapter 6.

1558 Refer to Recommendation ETC 2 and the discussion preceding it in Section 6.10 on 'Education, Training and Communication' in Chapter 6.

1559 Refer to Recommendation SS 1 and the discussion preceding it in Section 6.11 on 'Supervision and Support' in Chapter 6.

Increasing the perceived risk of being caught through a drug test

NSW Police introduced random drug testing in September 2001. It currently tests between 500 and 600 (or between 3% and 4%) of its 15 000 officers each year. Nine of the 80 local area commands were not visited at all by a drug testing team during the first three years of random drug testing. On average, each local area command was only visited 1.5 times during this initial three-year period.

The overall impression from the information collected as part of Operation Abelia was that, in its current form, the NSW Police random drug testing program was not a highly visible deterrent. A fundamental limitation of the current testing program was that some officers do not know that NSW Police conducts random drug testing. Officers disposed to using illegal drugs are not going to be deterred by a program of which they are unaware.

Secondly, some officers and former officers told the PIC that, although they knew about random drug testing, they became less concerned about their illegal drug use being detected as time elapsed because they did not see any random drug testing happening.

On the other hand, the PIC also heard evidence that random drug testing does result in some officers using illegal drugs only at the start of periods of rostered days off. In this way it acts as a deterrent to illegal drug use at work or at a time close to when the officer is rostered on duty.

In order to increase the perceived risk of being caught, the PIC has recommended that NSW Police increases the number of officers tested as part of the random drug testing process to the equivalent of at least 15 out of every 100 officers (or not less than 2250 random drug tests conducted annually) for a trial period of five years. The PIC has also recommended that NSW Police increases the publicity given to random drug testing and that it trials different strategies to increase the visibility and unpredictability of random drug testing. Examples of such strategies might include testing larger numbers of officers within some individual work areas, and testing and then retesting officers from a work area in quick succession.[1560] Other recommendations made by the PIC to increase the perceived risk of officers who use illegal drugs being caught through a drug test include strategies to ensure that officers cannot influence or avoid selection to participate in a random drug test, as well as a strategy to minimise the possibility of officers avoiding being drug tested once they have been selected to participate.[1561]

The PIC has also recommended that, in order to deter off-duty drug use, NSW Police widely publicises its intention to base some drug tests on hair samples, that can be used to detect drug use over a longer period than the current procedure, which is based on urine samples.[1562]

1560 Refer to Recommendations RDT 1, RDT 2, RDT 3 and RDT 4 as well as the discussions preceding each of these in Section 6.5 on 'Random Drug Testing' in Chapter 6.

1561 Refer to Recommendations RDT 6, RDT 7, and RDT 8 as well as the discussions preceding each of these in Section 6.5 on 'Random Drug Testing' in Chapter 6.

1562 Refer to Recommendations TDT 8 (in Section 6.4 on 'Targeted Drug Testing') and RDT 5 (in Section 6.5 on 'Random Drug Testing'), as well as the discussions preceding each of these, in Chapter 6.

Discouraging those who may be prone to using illegal drugs from applying to join NSW Police

To date, the NSW Police recruitment process has largely focused on seeking information from applicants rather than providing information to them. The PIC has recommended that NSW Police should modify the information package that is sent to potential applicants to more actively deter unsuitable applicants.

In late 2004, NSW Police included information about the NSW Police Drug and Alcohol Policy and drug testing in one of its application forms. The PIC supports the inclusion of this material that seeks to send a clear message to potential applicants that no NSW Police officer is permitted to use any prohibited drug either on or off duty.

To enable some potentially unsuitable applicants to decide for themselves that policing is not the appropriate career for them, the PIC has recommended that NSW Police should further increase the information provided to potential applicants. In particular, the PIC has recommended that NSW Police advises potential applicants how being an officer will affect the way that they will be able to behave when they are off duty, as well as providing a description of the nature of police work that balances information about the value of the work to the community with information about the types of stressful situations and boredom that officers may encounter. The PIC has also recommended that NSW Police introduces drug testing for students at the NSW Police College and requires applicants to sign an acknowledgement of their willingness to be drug tested in accordance with NSW Police practices.[1563]

Informing officers about the health risks associated with using illegal drugs

Research by the Australian Government Department of Health and Ageing concerning community drug use has found that drug users are often unaware of the risks associated with using psychostimulants, with many believing that these drugs are relatively safe and benign. For this reason, the Department of Health and Ageing has recommended that users should be made aware of the potential health and other risks. This report identified that one of the primary risks to users was a lack of knowledge of the contents of the drug.

The PIC is aware that NSW Police already provides education on the effects of drugs as one aspect of existing courses such as the Highway Patrol Education Course, the Police Youth Liaison Officer Development Program and the Safe Custody Course. The PIC has recommended that NSW Police should consider making this information (and the associated information about the dangers and harms of illegal drug use, including non-prescribed steroid use) available to a wider range of NSW Police officers.[1564]

1563 Refer to Recommendations R 1, R 2, R 3, R 4 and R 5 as well as the discussions preceding each of these in Section 6.9 on 'Recruitment' in Chapter 6.

1564 Refer to Recommendation ETC 4 and the discussion preceding it in Section 6.10 on 'Education, Communication and Training' in Chapter 6.

5. DETECTING ILLEGAL DRUG USE THAT HAS OCCURRED

Illegal drug use by officers is not easy to detect. Some officers take steps to hide their illegal drug use, particularly from other police. Officers and former officers who admitted their illegal drug use to the PIC did not believe that other officers with whom they worked would be aware that they were using illegal drugs.

NSW Police detects illegal drug use by its officers through targeted drug tests and other investigative techniques, as well as by encouraging officers to voluntarily disclose their drug use under a provision known as 'amnesty'. The PIC has made a number of recommendations to enhance the tools available to NSW Police to detect illegal drug use that has occurred. These recommendations are summarised below.

Improving the capacity of NSW Police to detect off-duty illegal drug use

The illegal drug use that came to notice in Operation Abelia was primarily off-duty use rather than use while on duty. However, under the current legislation, officers who are not on duty in accordance with a roster cannot be drug tested. Some officers said that they used drugs early in their days off to avoid being detected by a drug test when they were at work. For this reason, the PIC has recommended improving the capacity of NSW Police to detect off-duty illegal drug use by trialling the use of drug tests based on hair samples that can detect drug use over a longer period than the current procedure that is based on urine samples. The PIC has also recommended that the *Police Act 1990* be amended to enable NSW Police to conduct off-duty targeted drug testing when it is reasonable to do so in all the circumstances.[1565]

Considering alternatives to drug testing to detect illegal drug use

Drug testing is not the only tool for detecting or investigating illegal drug use by officers. Despite the fact that the PIC has recommended increasing the range of drug testing tools available to be used by NSW Police, the PIC believes NSW Police should not rely solely on drug testing when investigating illegal drug use by officers. The PIC considers that the CMT should be required to consider the alternative investigative techniques that are available whenever a targeted drug test is proposed. In addition, the PIC has recommended that the CMT should document its consideration of the alternatives.[1566]

Furthermore, the PIC has recommended that NSW Police enhances its capacity to detect illegal drug use by training commanders and supervisors on the detection and management of substance abuse problems.[1567]

Encouraging officers to voluntarily disclose their illegal drug use

Although the numbers who have come forward to voluntarily disclose their drug use under the amnesty (24 officers) are small, the officers who have come forward have come from a cross-section of ages, duty types and ranks within NSW Police. Without

1565 Refer to Recommendations TDT 8 and TDT 9 and the discussion preceding each of these in Section 6.4 on 'Targeted Drug Testing' in Chapter 6.

1566 Refer to Recommendations TDT 3 and TDT 6 and the discussion preceding each of these in Section 6.4 on 'Targeted Drug Testing' in Chapter 6.

1567 Refer to Recommendation SS 2 and the discussion preceding it in Section 6.11 on 'Supervision and Support' in Chapter 6.

the amnesty provision, the illegal drug use of these officers may not have come to notice and may have continued.

The PIC considers that further encouraging officers to voluntarily disclose their personal drug use is another way of assisting NSW Police to detect illegal drug use amongst its officers. In order to increase voluntary disclosure of illegal drug use, the PIC has recommended that NSW Police promotes officer and commander awareness of the nature and availability of the amnesty provision, including using anonymous case studies of how the amnesty has assisted officers in the past. It has also recommended that NSW Police seeks an amendment to the current legislation and/or regulations, as necessary, so that, in cases where an officer's illegal drug use has come to notice only through the officer's own admissions, commanders, supervisors and colleagues are able to refer officers to the amnesty without having to report this past drug use. The PIC has also recommended that NSW Police asks those who access the amnesty, three to six months after they have completed the program, why they chose to come forward at the time they did and whether there was anything else that could have encouraged them to come forward earlier than they did.[1568]

Incorporating the capacity to test for non-prescribed use of anabolic androgenic steroids

Under the current legislation, NSW Police can only be tested for drugs that are prohibited substances under Schedule 1 of the *Drug Misuse and Trafficking Act 1985*. Steroids are not classified as prohibited substances under this Act. As a result, the NSW Police drug testing program does not include steroids.

The PIC has formed the view that since the non-prescribed use of anabolic androgenic steroids might lead to an increase in aggressive or violent behaviour, it poses a safety risk to the officer, to those with whom the officer works and to the broader community. During Operation Abelia, evidence was heard about the use of steroids obtained illegally by some NSW Police officers and the effects these steroids had on the officers' behaviour. Further support for the belief that steroid use is a potential concern for NSW Police came from the literature reviewed, the comments made by commanders and from the expert participants in the round table discussion.

For these reasons, the PIC has recommended that the *Police Act 1990* be amended to enable testing for non-prescribed use of anabolic androgenic steroids on a targeted basis.[1569]

6. EFFECTIVELY MANAGING OFFICERS FOUND TO HAVE USED ILLEGAL DRUGS

The PIC has made a number of recommendations concerning the management of those individuals who either voluntarily disclose their personal drug use or who are found to have used illegal drugs as a result of an investigative process.

1568 Refer to Recommendation SR 1, SR 3, SR 5, SR 7 and SR 8 and the discussion preceding each of these in Section 6.3 on 'Self-reporting illegal drug use' in Chapter 6.

1569 Refer to Recommendation TDT 7 and the discussion preceding it in Section 6.4 on 'Targeted drug Testing' in Chapter 6.

Taking a risk management approach

The PIC advocates taking a risk management approach to determining the best way of managing officers who are identified as having used illegal drugs, no matter how they come to notice, whether by voluntary disclosure, through positive drug tests or other investigative techniques. In relation to those who voluntarily disclose their illegal drug use, this risk assessment will need to consider the nature of what information, if any, is required to be given to the commander or manager of the officer who is seeking assistance.[1570]

Reducing the time to finalise the outcome of management action

The practice within NSW Police has been that officers who test positive to illegal drugs have been subject to an automatic notification under s.181D of the *Police Act 1990*. This initiates a process in which management action against an officer, including possible dismissal, is considered. On average, it has taken almost one year from the date of the drug test to finalise the outcome for officers removed under s.181D.

Accordingly, the PIC has recommended that NSW Police reviews its management action processes to reduce the time between when an officer is detected using illegal drugs through a drug test and when the outcome of the management action is finalised.[1571]

Extending the minimum period of unannounced drug testing for those who come under the amnesty

The PIC has recommended that NSW Police extends the period of unannounced drug testing, so that all officers who access assistance for their illegal drug use are intermittently drug tested for a minimum of 12 months following completion of counselling or any other assistance provided.[1572]

7. DEMONSTRATING ACCOUNTABILITY

The PIC has made several recommendations concerning fair and transparent systems and decision making, as a safeguard that current or new detection and deterrence tools are applied, and individuals are managed, in a fair and transparent manner.

Improving documentation and transparency of decisions concerning targeted drug tests

Some officers expressed their concerns about the fairness of the operation of current and possible future systems to detect illegal drug use. NSW Police has already incorporated a checking process in its targeted drug testing procedures. This process involves a centralised monthly review of the minutes of Complaint Management Team decisions to undertake a targeted drug test across the state.

1570 Refer to Recommendation SR 5 and the discussion preceding it in Section 6.3 on 'Self-reporting illegal drug use' in Chapter 6.

1571 Refer to Recommendations M1 and M2 and the discussion preceding each of these in Section 6.12 on 'Managing officers who have been found to use illegal drugs' in Chapter 6.

1572 Refer to Recommendation SR 6 and the discussion preceding it in Section 6.3 on 'Self-reporting illegal drug use' in Chapter 6.

In order to ensure that targeted drug testing systems and decision-making are fair and transparent, the PIC has recommended that NSW Police:

- improves the documentation and transparency of the targeted drug testing decision making process, by providing guidelines and associated training on the nature of the information to be recorded[1573]
- ensures that any decisions to conduct off-duty targeted drug tests are registered and documented in such a way as to enable the matter to be oversighted by the NSW Ombudsman or, in some cases, the PIC[1574]
- continues to conduct a centralised review of the records of CMT minutes of decision-making concerning targeted drug tests and provides to the PIC, on a quarterly basis, a copy of these reviews and the associated documentation.[1575]

Selection of officers to be randomly drug tested

The current processes for selecting both the locations where random drug testing will be conducted and the officers to be tested in those locations is open to individual discretion. While the PIC accepts that there needs to be the capacity for some flexibility in the selection process, the PIC has expressed the view that the procedures for selecting officers for random drug testing must be transparent and accountable. For this reason, the PIC has recommended that NSW Police selects which officers at a work site will be drug tested in a statistically random manner.[1576]

Allocating responsibility for officers being available for random drug testing

While the PIC did not receive evidence to suggest that evasion of random testing is widespread, the PIC accepts that there is a need to recognise the possibility that some officers may attempt to evade random testing. For this reason, the PIC has recommended that the commander of the unit undergoing random testing should be responsible for ensuring that officers do not leave the site prior to being randomly tested or, if an officer does need to leave the site for operational or personal reasons, then the commander or officer-in-charge at the site should record the reasons for this on the list of officers to be tested.[1577]

8. REVIEW AND EVALUATION

Many of the individual recommendations proposed in Operation Abelia involve communication, detection or deterrence strategies for NSW Police that are new to the organisation and need to be tested, and perhaps further developed, to optimise their

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1573 Refer to Recommendation TDT 6 and the discussion preceding it in Section 6.4 on Targeted Drug Testing in Chapter 6.

1574 Refer to Recommendation TDT 9 and the discussion preceding it in Section 6.4 on 'Targeted Drug Testing' in Chapter 6.

1575 Refer to Recommendations TDT 4 and TDT 10 as well as the discussion preceding each of these recommendations in Section 6.4 on 'Targeted Drug Testing' in Chapter 6.

1576 Refer to Recommendations RDT 6 and RDT 7 as well as the discussion preceding each of these recommendations in Section 6.5 on 'Random Drug Testing' in Chapter 6.

1577 Refer to Recommendation RDT 8 and the discussion preceding it in Section 6.5 on 'Random Drug Testing' in Chapter 6.

utility. Other recommendations require NSW Police to review and evaluate its current procedures to see whether they can be improved.

Associated with this, the PIC has recommended that NSW Police collects relevant information to enable it to evaluate the effectiveness of its strategies and to make informed decisions about whether or not its strategies can be improved. For example, the PIC has recommended that NSW Police:

- collects information from officers who come forward under the amnesty, so that the organisation can better understand the dynamics of what leads some officers to use illegal drugs, and also collects their suggestions of what NSW Police could do to help other officers facing similar situations[1578]
- seeks information from those who have recent experience of the amnesty about what could be done to improve the assistance available and whether there was anything that could have encouraged them to come forward earlier than they did[1579]
- uses the information from its centralised review of the records of CMT minutes of decision-making concerning targeted drug tests to improve current practices[1580]
- trials the use of drug testing based on hair samples in addition to its current drug testing based on urine samples for all targeted drug tests where off-duty use is suspected[1581]
- trials, for the next five years, increasing the number of officers who are drug tested as part of the random drug testing program and trials different strategies to increase the visibility and unpredictability of random drug testing[1582]
- regularly surveys a sample of officers about their knowledge and perception of random drug testing, to gauge the need to further publicise drug testing or for other strategies to increase the visibility and unpredictability of the testing (and uses the results of these surveys at the end of the five year trial to reassess the level of random drug testing required)[1583]

1578 Refer to Recommendation SR 4 and the discussion preceding it in Section 6.3 on 'Self-reporting illegal drug' use in Chapter 6.

1579 Refer to Recommendation SR 8 and the discussion preceding it in Section 6.3 on 'Self-reporting illegal drug use' in Chapter 6.

1580 Refer to Recommendations TDT 4 and TDT 5 as well as the discussion preceding each of these in Section 6.4 on 'Targeted drug Testing' in Chapter 6.

1581 Refer to Recommendation TDT 11 and the discussion preceding it in Section 6.4 on 'Targeted Drug Testing' in Chapter 6.

1582 Refer to Recommendations RDT 2, RDT 3 and RDT 11 and the discussion preceding each of these in Section 6.5 on 'Random Drug Testing' in Chapter 6.

1583 Refer to Recommendation RDT 9 and the discussion preceding it in Section 6.5 on 'Random Drug Testing' in Chapter 6.

- reviews the technological developments in drug testing and alternative assessment methodologies on an ongoing basis to determine what, if any, developments might be usefully incorporated into NSW Police practices[1584]
- assesses officer understanding of the revised wording of the Code of Conduct and Ethics[1585] and evaluates the effectiveness of new or revised measures to support the awareness and understanding of the Code of Conduct and Ethics[1586]
- evaluates the effectiveness of the strategies it has introduced to equip its officers with the skills to recognise and manage situations that may put their integrity at risk and compromise them in their role as a police officer[1587]
- assesses the effectiveness of its strategies to reduce the processing times[1588] and to improve information available to those who are notified for reviewable action[1589]
- continues to monitor its processing times for reviewable action matters and the provision of information to officers who are subject to notifications and their commanders.[1590]

In this way, the outcomes of the recommendations made in Operation Abelia need not be static but can rather act as starting points that can be further built upon and improved following review and evaluation by NSW Police.

9. MONITORING THE IMPLEMENTATION OF RECOMMENDATIONS

The PIC considers that monitoring the implementation of its recommendations is an important part of its efforts to prevent police misconduct.

Following the release of this report, the PIC will seek a written response from NSW Police to each of the recommendations made in this report. The PIC will provide an evaluation of the final NSW Police response to these recommendations in its Annual Report, as it is required to do under s.99(2)(c) of the *Police Integrity Commission Act 1996*, and will report progress in the implementation of the recommendations.

1584 Refer to Recommendation MDT 6 and the discussion preceding it in Section 6.6 on 'Mandatory Drug Testing' in Chapter 6.

1585 Refer to Recommendation CCE 3 and the discussion preceding it in Section 6.7 on 'Code of Conduct and Ethics' in Chapter 6.

1586 Refer to Recommendations CCE 2 and CCE 4 as well as the discussion preceding each of these in Section 6.7 on 'Code of Conduct and Ethics' in Chapter 6.

1587 Refer to Recommendation ETC 6 and the discussion preceding it in Section 6.10 on 'Education, Training and Communication' in Chapter 6.

1588 Refer to Recommendation M 2 and the discussion preceding it in Section 6.12 on 'Managing officers who have been found to use prohibited drugs' in Chapter 6.

1589 Refer to Recommendation M 3 and the discussion preceding it in Section 6.12 on 'Managing officers who have been found to use prohibited drugs' in Chapter 6.

1590 Refer to Recommendation M 6 and the discussion preceding it in Section 6.12 on 'Managing officers who have been found to use prohibited drugs' in Chapter 6.

In addition to providing a catalyst to support the successful implementation of the PIC recommendations, this monitoring process also enables dialogue between NSW Police and the PIC to assist in resolving any issues that may act as impediments to minimising illegal drug use and its associated consequences.

To assist with this monitoring, a number of the Operation Abelia recommendations have been phrased in such a way as to require NSW Police to provide a response to the PIC in regard to specific issues. For example, in its recommendations the PIC has specified the nature of the information to be provided to the PIC, and the frequency with which NSW Police should provide this information, in relation to:

- reviews of targeted drug testing decisions[1591]
- the trial of drug testing based on hair samples[1592]
- the results of surveys of officers to determine the extent to which officers are aware that NSW Police conducts random drug testing, and their perceptions as to whether they are likely to be drug tested and whether they believe that any officers using illegal drugs would be detected through this testing[1593]
- its review of technological developments in drug testing and alternative assessment methodologies[1594]
- its assessment of officer understanding of its revised Code of Conduct and Ethics and its evaluation of the effectiveness of its new or revised measures to support the awareness and understanding of the Code of Conduct and Ethics[1595]
- how NSW Police intends to conduct the review of its management action processes, and the results of this review[1596]
- a schedule of officers who are or have been subject to reviewable action each quarter.[1597]

The PIC will, however, monitor progress towards the implementation of all of the recommendations made in this report, not only those listed above.

1591 Refer to Recommendation TDT 10 and the discussion preceding it in Section 6.4 on 'Targeted drug Testing' in Chapter 6.

1592 Refer to Recommendation TDT 11 and the discussion preceding it in Section 6.4 on 'Targeted drug Testing' in Chapter 6.

1593 Refer to Recommendation RDT 10 and the discussion preceding it in Section 6.5 on 'Random drug Testing' in Chapter 6.

1594 Refer to Recommendation MDT 6 and the discussion preceding it in Section 6.6 on 'Mandatory Drug Testing' in Chapter 6.

1595 Refer to Recommendation CCE 5 and the discussion preceding it in Section 6.7 on 'Code of Conduct and Ethics' in Chapter 6.

1596 Refer to Recommendation M 6 and the discussion preceding it in Section 6.12 on 'Managing officers who have been found to use prohibited drugs' in Chapter 6.

1597 Refer to Recommendation M 7 and the discussion preceding it in Section 6.12 on 'Managing officers who have been found to use prohibited drugs' in Chapter 6.

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