Police Integrity Commission

Project Odin

Identifying and Managing High Risk Officers in the NSW Police Force



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Project Odin: Identifying and Managing High Risk Officers in the NSW Police Force

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ABBREVIATIONS

AVO	Apprehended Violence Order
CARA	Complaint Allocation Risk Appraisal
c@ts.i	Customer Assistance Tracking System
CIS	Complaints Information System
CMF	Command Management Framework
CMP	Conduct Management Plan
CMT	Complaint Management Team
COPS	Computerised Operational Policing System
CAN	Court Attendance Notice
DCoP	Deputy Commissioner of Police
DMF	Decision Making Framework
EDO	Educational Development Officer
EIS	Early Intervention System
EWS	Early Warning System
HR	Human Resources
HRO	High Risk Officer
JSR	Job Stream Responsibilities
LAC	Local Area Command
LMI	Local Management Issue
LMID	Local Management Issue Database
MCPE	Mandatory Continuing Police Education
OCA	Officer Complaint Analysis
PSC	Professional Standards Command
PSM	Professional Standards Manager
ORA	Officer Risk Assessment
SCIA	Special Crime and Internal Affairs
SMT	Senior Management Team
SOPS	Standard Operating Procedures
TIN	Traffic Infringement Notice

SUMMARY

In February 2007, the Police Integrity Commission ('the Commission') commenced a project examining the practice of identifying and managing high risk officers in the NSW Police Force. By the term 'high risk officer', the Commission means officers who because of their histories pose a risk of engaging in misconduct. The project was undertaken by the Commission to develop a better understanding of how NSW Police Force commands identify and manage these officers and to recommend improvements, if required. To the extent that the term high risk officer is used by NSW Police Force commands to identify officers with conduct risks, the project was also concerned with assessing the effectiveness of that practice. This report presents the research findings of the project as well as the recommendations.

METHODS EMPLOYED

The methods used in carrying out the project are discussed within the report. The main strategy the Commission used was to approach 20 local area commands, which had been known to identify 'high risk officers' so named, to collect information on how and why officers were identified as being high risk and how they were managed.

The Commission also consulted extensively with the NSW Police Force on the findings and recommendations of the report. The level of consultation between the Commission and the NSW Police Force was unprecedented and contributed significantly to strengthening the report, particularly the recommendations.

RESEARCH FINDINGS

The report is comprised of nine chapters and describes research findings under six main headings. Some key research findings are summarised below.

CORPORATE GUIDANCE

Corporately, the NSW Police Force does not have a policy or issue specific guidance to commands on high risk officers. Some commands reported that they were nonetheless expected to identify and manage high risk officers. Some also emphasised that they had been provided little in the way of guidance or corporate direction.

The absence of such direction appears to have contributed to the lack of consistency among the commands concerning how they defined the term high risk officer and identified and managed officers who attracted this label. The absence of any corporate direction also appeared to contribute to uncertainty among the commands concerning the existence of any requirements on them to identify and manage high risk officers so named.

LOCAL AREA COMMAND DOCUMENTATION

The Commission analysed local area command documentation for references to high risk officers. From its analysis, the Commission found that the documented references lacked a consistent use of terminology and were marked by the absence of definitions.

One significant implication of this was that commands appeared to differ markedly in the purpose they sought to achieve by identifying high risk officers. For example, at some commands the documentation indicated that high risk officers were identified and managed in relation to complaints management. At other commands, the documentation indicated that high risk officers were identified and managed only in relation to specific misconduct risks such as improper computer access.

AT RISK OF WHAT?

There is no corporately defined meaning of the term high risk officer. The Commission was advised by the NSW Police Force that the term high risk officer has wide currency in the agency and that local area commands are responsible for attributing their own meaning to the term. In the past, it appears that the term was intended to be applied only to officers with proven or demonstrated serious conduct issues.

From the commands it approached for information, the Commission found that the term high risk officer had been used in connection with a range of different risks, and not only serious conduct risks, let alone *demonstrated* serious conduct risks. Some commands indicated that the term could potentially refer to any behavioural risks, although it was most common for commands to apply the term to officers with conduct, performance or welfare issues.

However, even where the term high risk officer was used by commands to identify a type of risk, such as conduct or performance, the Commission found that commands could rarely specify the precise nature of the conduct or performance risk that was posed by the concerned officer. This appeared to affect how such officers were managed: it raised the prospect that their management was not tailored to address the specific risk they posed.

The Commission also found that the use of the term high risk officer to identify officers posing different types of risks such as welfare and conduct confused the different objectives behind identifying these officers. Under such an arrangement, an officer with family welfare issues could potentially be regarded as presenting the same or at least an equal risk as an officer with demonstrated serious conduct issues.

The Commission was informed that there were concerns within the NSW Police Force about the continuing use of the term high risk officer. Such concerns related to the danger that officers who attracted the label would be stigmatised. The Commission regards these concerns as being legitimate and is seized, in particular, of the risks of stigmatisation that potentially flow from the use of the term. The Commission considers that it is a matter for the NSW Police Force as to whether the term will be used in the future.

IDENTIFYING HIGH RISK OFFICERS

While there is no corporately endorsed tool for identifying high risk officers, many participating commands reported using tools or processes of one description or another to identify these officers. In practice, however, most adopted informal methods, which usually meant an ad hoc assessment by the command's Complaint Management Team on the basis of 'local knowledge'.

Where documented tools or processes were used, one of the most common operated on point systems. Examples of these processes identified high risk officers, often during the course of annual command-wide assessments, on the basis of how they scored against standard variables such as complaints, sick leave, duty type and secondary employment.

The Commission found that the absence of a corporate tool resulted in commands employing their own methods to identify high risk officers in ways that may not have been easily understood by other commands. It could mean, for example, that an officer at one command might be identified as being high risk but not at another. Where there were internal inconsistencies at individual commands, it could also mean that officers within these commands could be identified as being high risk on the basis of very different considerations.

The use of ad hoc informal processes which rely on local knowledge also appeared to promote overly subjective decision making. It meant that an assessment process could be coloured by bias, particularly where such knowledge was the sole basis of a decision to classify an officer as high risk.

The Commission found that the use of annual command-wide risk assessments based on point systems could lead to officers being incorrectly identified as posing a high risk. This could occur, for example, where risk assessments included variables that were irrelevant to identifying officers with conduct risks or where officers were rated against variables that did not apply to them. If assessed against some of the tools that were used by some participating commands, an officer could be high risk if: he or she was a detective who has been at a command for more than five years; had a history of secondary employment; had issues with excessive sick leave; and had no registered informants.

The Commission also found that there was no standard process for declassifying high risk officers. While some commands indicated that officers would lose their rating only after a lengthy period of good behaviour, others indicated that the identification processes they employed were static. This meant that once identified there was no process to declassify these officers.

MANAGING HIGH RISK OFFICERS: CORPORATE GUIDANCE

The NSW Police Force does not provide commands with specific guidance on how to manage high risk officers. However, it does provide guidance on how to manage officers generally.

In its advice to the Commission, the NSW Police Force stated that the management of high risk officers is covered by policies and legislation which already apply to all NSW Police Force officers. Depending on the circumstances, this may include: action under the provisions of Part 9 of the *Police Act*; remedial performance plans; conduct management plans; and a range of non-punitive measures, such as the provision of advice, which commands may take to manage issues arising in the workplace.

From its analysis, the Commission observes that all of the existing options and measures that may be taken against officers are reactive in nature. By this, the Commission observes that the options are largely predicated on the occurrence of specific breaches of either policy or law and follow directly from that breach. The

Commission could find no guidance concerning the types of action, if any, that commands could take against officers in the absence of these discrete breaches. By way of example, the guidance does not appear to explicitly address the situation of how to manage an officer who has a history of sustained complaints and a history of management actions; and who because of that history might be regarded as being high risk.

MANAGING HIGH RISK OFFICERS: LOCAL PRACTICE

Consistent with the foregoing, at the command level the Commission found that it was common for commands to adopt a reactive approach to the management of high risk officers. The Commission does not regard such an approach as having no place. However, from a risk management perspective it regards proactive strategies as preferred.

One way that the reactive approach was exhibited was by the practice of commands waiting for a sustained complaint to occur before taking action against these officers. In the large majority of cases, this meant that high risk officers were not subject to any management outside complaint outcomes. In some cases, it could also mean that when action was taken against these officers, it was only taken in respect of the issue or issues identified in the subject complaint. Accordingly, it appeared to the Commission that the practice of waiting for a sustained complaint meant that commands managed high risk officers in ways that were responsive only to single instances of misconduct; and that the management of these officers took place in a formal and legalistic disciplinary system, and was entirely dependent on proof of specific charges and punitive outcomes.

The Commission also found that claimed strategies such as ‘monitoring’ and ‘intrusive supervision’ were not detailed strategies for managing high risk officers. Indeed, only a few commands that claimed to manage their high risk officers in these ways could demonstrate either strategy by way of an identifiable and documented process.

However, apart from these unconstructive practices, the Commission found a number of positive examples of how commands managed their high risk officers. The most exceptional of these saw commands managing high risk officers through documented monitoring arrangements; the use of structured management plans and audits; the use of conduct management plans, transfers and assignments; duty rotations; and the use of Warning Notices in a hierarchy of management actions. These and other examples are showcased in the penultimate chapter of the report.

THE WAY FORWARD

The Commission considers that it is critical for the NSW Police Force to identify and manage police officers with demonstrated serious misconduct risks. The Commission also considers that the identification and management of these officers must be focused and not confused by the identification and management of officers with other behavioural risks.

To the extent that the practice of identifying and managing high risk officers accords with the above focus, the Commission sees merit in the practice and its continuation. However, the Commission would like to see improvements implemented by the NSW Police Force to standardise the practice and make it more effective.

The recommendations for change which the Commission makes are detailed in the final chapter of the report. The Commission consulted extensively with the NSW Police Force on these recommendations, which broadly seek to achieve the following:

- the creation of a policy on high risk officers, which clarifies the corporate position on the practice of identifying and labelling high risk officers;
- for the purpose of such a policy, a definition of the term high risk officer which is confined to the risk of misconduct;
- the creation of a standard identification tool or process for use by commands to identify high risk officers;
- the development of an intervention framework, which brings together and coordinates a range of policies that target the management of individual officer behaviours and allows commands to tailor interventions from a suite of policies;
- the development and promulgation of guidelines accompanying the high risk officer policy and identification tool or process, which includes an overview of the management options that are available to commands and recommends strategies for managing high risk officers; and
- the allocation of overall responsibility for the high risk officer policy, identification tool and management guidelines to a NSW Police Force command.

The Commission considers that the implementation of its recommendations will be best served by ongoing consultation between the Commission and the NSW Police Force.

1. INTRODUCTION

OVERVIEW

This report presents the research findings of a project examining the practice of identifying and managing high risk officers in the NSW Police Force. The project was undertaken by the Police Integrity Commission ('the Commission') to develop a better understanding of how NSW Police Force commands identify and manage high risk officers and to recommend improvements, if required. The report also represents the culmination of a longstanding interest of the Commission in knowing what the term high risk officer means for the NSW Police Force, what behavioural risk the term connotes, and what strategies are put in place to manage the risks posed by officers who are deemed by their commands to be high risk.

THE ROLE OF THE POLICE INTEGRITY COMMISSION

The project is consistent with the functions of the Commission to prevent police misconduct.

The principal objects of the Commission are to detect, investigate and prevent police misconduct in the NSW Police Force. These functions are provided in section 13 of the *Police Integrity Commission Act 1996* (NSW) ('the Act'), which states as follows:

> (1) The principal functions of the Commission are as follows:
>
> (a) to prevent police misconduct,
>
> (b) to detect or investigate, or manage or oversee other agencies in the detection or investigation of, police misconduct,
>
> (c) (Repealed)
>
> (d) to receive and assess all matters not completed by the Police Royal Commission, to treat any investigations or assessments of the Police Royal Commission as its own, to initiate or continue the investigation of any such matters where appropriate, and otherwise to deal with those matters under this Act, and to deal with records of the Police Royal Commission as provided by this Act.[1]

The Act specifies 'other functions', including the making of recommendations to the NSW Police Force on how to prevent and eliminate police misconduct. Some of these other functions are provided in section 14 of the Act, which states as follows:

> Other functions of the Commission include the following:
>
> (a) to undertake inquiries into or audits of any aspect of police activities for the purpose of ascertaining whether there is police misconduct or any circumstances that may be conducive to police misconduct

[1] Section 13, *Police Integrity Commission Act 1996* (NSW)

> (b) in particular, to monitor the quality of the management of investigations conducted within the NSW Police Force and to undertake audits of those investigations
>
> (c) to make recommendations concerning police corruption education programs, police corruption prevention programs, and similar programs, conducted within the NSW Police Force or by the Ombudsman or the Independent Commission Against Corruption for the NSW Police Force
>
> (d) to advise police and other authorities on ways in which police misconduct may be eliminated.[2]

Further information on the role and functions of the Commission is provided in Appendix 1.

HOW THE PROJECT ALIGNS WITH THE STATE AND CORPORATE PLANS

The project is also consistent with the *NSW State Plan* and the Commission's *Corporate Plan*.

THE NSW STATE PLAN

The *NSW State Plan* was released on 14 November 2006 as a foundation document for improving the quality of results that the community expects from Government services. The Plan sets out the goals the community wants the NSW Government to work towards and identifies priorities for Government action that will help achieve these goals. Priority F4, which is relevant to the project, advocates the need for the NSW Government to embed:

> the principle of prevention and early intervention into Government Service delivery in NSW.[3]

COMMISSION'S CORPORATE PLAN

A key directive in the Commission's *Corporate Plan 2007-2011* is for the Commission to:

> Contribute to the integrity of the NSW Police Force by detecting, investigating and preventing serious police misconduct.[4]

Consistent with the preventative focus of this directive, one of the Commission's three key goals is to:

[2] Section 14, *Police Integrity Commission Act 1996* (NSW).
[3] NSW Government 2007, *State Plan*, Priority F4 - Embedding the principle of prevention and early intervention into Government Service delivery in NSW.
[4] Police Integrity Commission 2007, *Corporate Plan 2007-2011*.

> Prevent serious police misconduct by supporting improvements to NSW Police Force systems and practices.[5]

In achieving this goal the *Corporate Plan* lists two objectives, which are relevant to the project:

> Provide informed advice on improvements to NSW Police Force systems and practices.
>
> Regular consultation and feedback to NSW Police Force to improve the quality of Police investigations and accept reform recommendations. [6]

WHY THE INTEREST IN HIGH RISK OFFICERS?

The risk of police misconduct may be managed by police agencies in a variety of ways. One approach is to identify and manage the risk of misconduct that is posed by specific individuals.[7] The interest that the Commission has in high risk officers broadly relates to that approach. The use of the term by some local area commands in relation to some NSW Police Force officers suggests an attempt to identify, if not manage, the misconduct risks they pose. The need for police agencies to identify these types of officers has been recognised repeatedly by commissions of inquiry into police misconduct, as detailed below.

The Commission has also had a long standing interest in the use of the term high risk officer by the NSW Police Force. As described below, it first sought to examine the meaning of the term in the context of Operation Whistler.[8]

THE NEED TO IDENTIFY AND MANAGE AT RISK OFFICERS

The failure to identify and manage officers who pose misconduct risks has the potential to cause harm to the community and to the reputation of police agencies. The failure is also a management issue, meaning a deficiency in the management of police agencies. This has been recognised by a number of commissions of inquiry into police misconduct, which have emphasised the need for police agencies to identify and manage officers with known conduct issues.

In the United States, for example, the Christopher Commission found that at least one factor in the problem of excessive use of force in the Los Angeles Police Department (LAPD) was the failure to control police officers who had repeatedly misused force and persistently ignored department polices and guidelines regarding the use of force:

> The Commission has found … that there is a significant number of officers who repetitively misuse force and persistently ignore the written policies and guidelines of the Department regarding force.

[5] Police Integrity Commission 2007, *Corporate Plan 2007-2011*.
[6] Police Integrity Commission 2007, *Corporate Plan 2007-2011.*
[7] For example, see: A Ede, R Homel & T Prenzler 2002, 'Reducing complaints against police and preventing misconduct: A diagnostic study using hot spot analysis', *The Australian and New Zealand Journal of Criminology*, Vol. 35, No. 1, pp. 28-29; J Warburton, 'Driving to anti-corruption utopia without a roadmap: assessing the theoretical basis for corruption prevention strategies of global institutions', *CIES e-Working Paper*, No. 31, pp. 10-15.
[8] Police Integrity Commission 2005, *Report to Parliament: Operation Whistler*.

> While there are broader issues of LAPD 'culture' and community relations that bear on the problem of excessive force in ways that we discuss in subsequent chapters, we concentrate here on the failure to control these problem officers. This is a management issue that we see as the heart of the problem of excessive force.[9]

Similarly, the St. Clair Commission, when reporting on police brutality in Boston, concluded that:

> The failure to monitor and evaluate the performance of police officers – particularly those with established patterns of alleged misconduct – is a major deficiency in the management of the department … No police department and no community should tolerate a situation where officers with long histories of alleged physical abuse of citizens remain on the street largely unidentified and unsupervised.[10]

The need to identify officers who are particularly vulnerable to misconduct was also recognised by the Royal Commission into the NSW Police Service as being part of a multi-pronged strategy to combat police misconduct. As indicated in its final report on police reform:

> Individual managers need to identify high-risk areas and implement strategies to reduce that risk. They also need to be aware of the conditions which allow or lead to corruption, and of the staff who are vulnerable. In this regard, they need to look for a pattern of disciplinary charges or complaints involving matters such as excessive force and identify any danger signs.
>
> Risk assessment and management should be part of a comprehensive anti-corruption program of the Service in which supervisors are given specific training.[11]

OPERATION WHISTLER

Operation Whistler was an investigation by the Commission into allegations of use of excessive force by some officers attached to the Southern Region of the NSW Police Force. The investigation was focused on the events surrounding the arrest of Allan Fredrick Hathaway in Wagga Wagga, NSW, on 6 February 2003 by police from the Wagga Wagga command.[12]

During its investigation the Commission became aware that one officer involved in the arrest of Hathaway had been identified as a 'high risk officer' by his Command. Interested to know what the term meant and how it had been applied to the officer, the Commission asked questions about the use of the term in both public hearings and interviews with a view to considering whether there had been any management issues behind the events on 6 February 2003. This strategy produced mixed results.

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[9] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, p. 31.

[10] St Clair Commission, quoted in B E Armacost 2004, 'Organizational culture and police misconduct', *George Washington Law Review*, Vol. 72, p. 502.

[11] J J R T Wood 1997b, *Royal Commission into the New South Wales Police Service Final Report, Vol. 2: Reform*, May, p. 531.

12 Police Integrity Commission 2005, *Report to Parliament: Operational Whistler*, December, p. 1.

In public hearings, a line of questioning on the meaning and application of the term were cut short by the objection of opposing counsel. The objection was raised on the ground that the relevant witness was not competent to answer the questions. The evidence of two other witnesses, however, did provide some indication as to what the term high risk officer might mean:

- One witness 'assumed' that the term had 'something to do with complaints'.
- Another witness stated that the term was applied to an officer who because of their 'actions or inactions lead them to come under notice'.

In an interview the Commission learnt a bit more about the term high risk officer from another source. The Commission was told by a senior officer within the Wagga Wagga Command that the term was applied to officers in one of two ways:

- First, officers might be classified as being high risk on the basis of their internal affairs history by Special Crime and Internal Affairs (SCIA), the forerunner to the Professional Standards Command (PSC).
- Second, the command identified high risk officers through an annual risk assessment process. This assessment process rated officers against a number of variables such as sick leave, performance and complaints. The source expressed the view that this assessment process was something that the Industrial Relations Commission said that they should not do.

The source also advised the Commission that high risk officers within the Wagga Wagga command were subject to quarterly or half-yearly reviews and some form of management.

OBJECTIVES & PURPOSE OF THE PROJECT

OBJECTIVES OF THE PROJECT

Project Odin began with the objectives of developing a better understanding of the following matters:

- how the NSW Police Force conceives the risk that is posed by high risk officers;
- how the NSW Police Force identifies high risk officers; and
- how the NSW Police Force manages high risk officers once they have been identified.

PURPOSE OF THE PROJECT

The purpose of the project was to assess the effectiveness of the practice of identifying and managing high risk officers and to provide the NSW Police Force with advice on:

- how best to define the term high risk officer;

- how best to identify high risk officers; and
- how best to manage officers who attract the label.

To support its advice, the Commission presents within this report information and assessments regarding:

- how the NSW Police Force uses the term and understands the meaning of the term high risk officer;
- effective and ineffective examples of how local area commands identify and manage high risk officers in practice; and
- improvements the NSW Police Force can implement based on corporate experience.

METHODOLOGY & TYPES OF INFORMATION COLLECTED

HOW THE COMMISSION UNDERTOOK THIS PROJECT

The Commission employed a variety of research methods in carrying out this project. In particular, the Commission:

- searched for complaint documents on c@ts.i, the NSW Police Force's computerised complaint management system, to locate instances where officers had been labelled as being high risk by their commands;
- searched for other references to high risk officers in documents on the NSW Police Force intranet;
- sought the advice of the Commissioner of Police on the use of the term high risk officer within the NSW Police Force;
- contacted senior police officers at 20 local area commands out of a total of 80 such commands for information on how they identified and managed high risk officers;[13]
- conducted a review of relevant literature on corruption prevention strategies and the practice of identifying and managing police officers with known conduct problems; and
- consulted at senior levels with the NSW Police Force, NSW Police Association and NSW Ombudsman.

The Commission also examined its own holdings for information relevant to high risk officers. Among its holdings, it examined documents which it had obtained for Project Manta – another Commission project which examines command-level misconduct risks and how to manage them.

[13] The 20 local area commands were selected from a total of 39 which the Commission knew had identified high risk officers. The 20 local area commands included commands from each of the six Regions, which oversee the operations of local area commands in NSW. The sample comprised five local area commands from the Central Metropolitan Region; two from the North West Metropolitan Region; four from the Northern Region; four from the South West Metropolitan Region; two from the Southern Region; and three from the Western Region. Information was obtained directly from these commands. The senior officers involved included Duty Officers as well as Commanders. In one case, the information was provided by a command's Executive Officer.

INFORMATION COLLECTED

The Commission collected information on the following broad areas of interest:

- the nature of the risk that high risk officers posed as understood within the NSW Police Force both corporately and at a command-level;
- the stated strategies used to identify and manage the misconduct risks posed by individual officers both corporately and at a command-level; and
- the practice of identifying and managing high risk officers at the command-level.

The source materials gathered by the Commission for this project included:

- NSW Police Force documents attached to c@ts.i, which explicitly refer to high risk officers;
- local area command Complaint Management Team meeting minutes from participating commands, where these referred to high risk officers;
- written advice from the Commissioner of Police responding to questions on the meaning and use of the term high risk officer within the NSW Police Force;
- local area command documents detailing strategies relating to the identification and management of high risk officers; and
- written and interview responses from 20 local area commands relating to the identification and management of high risk officers.

WHAT WE ASKED

The Commission approached 20 local area commands for information on the practice of identifying and managing high risk officers. The Commission provided each command with a series of questions relating to:

- individual officers, which the Commission knew had been identified by these commands as being high risk; and
- the practice of identifying and managing high risk officers, where this was stated to occur in one or another command level document (such as a corruption resistance plan).

More specifically, the Commission sought the following types of information:

- the number of officers identified by each of the 20 commands as being high risk within the last 6-12 months;
- the reason they were identified as high risk;
- the type of risk they were thought to present;
- the process used to identify them;

- the triggers that lead to their identification;
- the range and types of management action that followed their identification;
- the meaning of the term high risk officer;
- the process used to declassify high risk officers;
- the existence of documented policies and procedures relating to their identification and management;
- the guidance received from other commands with regard to their identification and management; and
- the existence of any corporate compliance requirements relating to high risk officers.

Commands were also asked to describe the content of certain types of management actions, which were stated as pertaining to high risk officers. Some recurrent examples were:

- 'a watching brief';
- 'monitoring';
- 'supervision'; and
- 'intrusive supervision'.

In addition, commands were asked to provide relevant documentation relating to the identification and management of high risk officers. The types of documents sought included:

- risk assessments;
- Complaint Management Team meeting minutes;
- Conduct Management Plans;
- Corruption Resistance or Prevention Plans; and
- local policy documents relating specifically to high risk officers.

NOTES ON TERMINOLOGY

POLICE MISCONDUCT

The term 'police misconduct' is used in this report in preference to 'police corruption' and takes its meaning from section 5 of the *Police Integrity Commission Act 1996* (NSW). As defined by that section:

> 'police misconduct' means misconduct (by way of action or inaction or alleged action or inaction) of a police officer.[14]

[14] Section 5(1), *Police Integrity Commission Act 1996* (NSW)

Examples of police misconduct which are provided in section 5 include, but are not limited to:

- police corruption;
- the commission of a criminal offence by a police officer;
- misconduct in respect of which the Commissioner of Police may take action under Part 9 of the *Police Act 1990*;
- corrupt conduct within the meaning of Part 3 of the *Independent Commission Against Corruption Act 1988* involving a police officer; and
- any other matters about which a complaint can be made under the *Police Act 1990.*[15]

The above broadly reflects the definition of unlawful conduct under sections 121 and 122 of the *Police Act 1990* (NSW).

PROBLEM OFFICER

The term 'problem officer' appears in the literature on police misconduct as a label for various types of officers including, amongst others:

> officers who repetitively misuse force and persistently ignore the written policies and guidelines of the Department regarding force;[16]
>
> officers with performance problems;[17]
>
> officers … who frequently used excessive force and received a large number of citizen complaints;[18]
>
> officers with a propensity for wrongdoing;[19]
>
> officers who are frequently the subject of complaints or who demonstrate identifiable patterns of inappropriate behaviour.[20]

Unless otherwise indicated, the term 'problem officer' is used in this report to refer to officers with conduct issues. The term is not used, unless indicated, to identify officers with performance problems.

The term 'conduct' is to be understood in reference to the definition of police misconduct under section 5 of the *Police Integrity Commission Act 1996* described above.

[15] Section 5(2), *Police Integrity Commission Act 1996* (NSW)
[16] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, p. 31.
[17] S Walker 2003, *Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide*, US Department of Justice, Office of Community Oriented Policing Services, p. 8.
[18] S Walker 2003, *Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide*, US Department of Justice, Office of Community Oriented Policing Services, p. 11.
[19] H Goldstein 1977, quoted in G Pogarskyand & A R Piquero 2004, 'Studying the reach of deterrence: Can deterrence theory help explain police misconduct?', *Journal of Criminal Justice*, Vol. 32, No. 4.
[20] U.S. Commission on Civil Rights 1981, *Who's Guarding the Guardians*, US Civil Rights Commission, p. 81.

STRUCTURE OF THIS REPORT

This report is divided into nine chapters. Following this chapter:

- Chapter 2 touches on some themes in the literature on problem officers and police misconduct generally in order to situate this project within the wider literature on police misconduct.
- Chapter 3 reports on the perceived requirement of commands to identify and manage high risk officers and provides an overview of corporate guidance on the issue.
- Chapter 4 examines local area command documents to reveal what local area commands say they do with regard to the identification and management of high risk officers.
- Chapter 5 examines the term high risk officer and presents corporate and command-level understandings of the meaning of the term.
- Chapter 6 provides an overview of the methods used by local area commands to identify high risk officers.
- Chapter 7 examines the types of corporate guidance commands receive on how to manage officers.
- Chapter 8 reports on the practice of managing high risk officers by the commands that participated in this project.
- Chapter 9 provides concluding remarks and recommendations on how the NSW Police Force can improve on how commands identify and manage high risk officers. It also outlines the consultation process that took place between the Commission and the NSW Police Force and records the outcomes of that process.

A glossary of terms, reference list and two appendices are provided at the end of the report.

2. WHERE DOES THIS PROJECT FIT IN THE LITERATURE?

OVERVIEW

This chapter touches on some themes in the literature on problem officers and police misconduct generally. It does not provide a comprehensive review of the literature on these matters, but simply posts a few pertinent themes as background for the remainder of the report. Its main intention is to situate the report and project within the literature and wider work on police misconduct.

The main body of the discussion concerns two theories of police misconduct. The two theories are best known as the theory of the bad or rotten apple and the theory of the rotten barrel.

TWO THEORIES OF POLICE MISCONDUCT

It is often remarked that theories of police misconduct directly impact on the types of prevention strategies that are selected to deal with the problem. Armacost, for example, notes that 'every prescription for controlling police violence is based on some theory of why police officers behave the way that they do':

> Consider the way in which police departments describe and defend controversial actions by individual cops: either as well-intentioned but unfortunate responses to dangerous and ambiguous situations or as the aberrant behavior of rogue cops. The first kind of explanation – the kind that was offered to justify the Rodney King beating and the more recent shooting of Amadou Diallo – seeks to place the incident in question outside of the category of police wrongdoing altogether. Occasional beatings or shootings of suspects whom police reasonably but mistakenly believed were armed or posed a serious threat of harm to the officers or others are regrettable but not culpable. They are the unavoidable consequences of the job that law enforcement officers are called to do in a dangerous and unpredictable world. The second explanation, by contrast, accepts certain kinds of police actions as unquestionably wrong but as the product of a small minority of police-officers-gone-bad and therefore as telling us little or nothing about the experience or motivation of the well-behaved and well-intentioned majority.
>
> These explanations are powerful and important because they frame the way police departments respond to police brutality. Indeed, every prescription for controlling police violence is based on some theory of why police officers behave the way they do.[21]

Amongst its conclusions, the Royal Commission into the NSW Police Service made a similar point when stating that it was important to take into account 'certain myths' in relation to policing when developing strategies for the prevention or minimisation of corruption:

> 2.5 A number of factors impact upon the emergence of corruption within police services. These factors, and an awareness of certain myths in

[21] B E Armacost 2004, 'Organizational culture and police misconduct', *George Washington Law Review*, Vol. 72, p. 445.

> relation to policing, need to be taken into account when developing strategies for the prevention, or more realistically the minimisation and control of corruption.[22]

Two theories stand out in the literature on police misconduct and are important for understanding where the phenomenon of the high risk or problem officer might fall. The theories are commonly known as the theory of the bad or rotten apple and the theory of the rotten barrel.

THE ROTTEN APPLE THEORY OF POLICE MISCONDUCT

It is well recognised that the rotten apple theory of police misconduct is one that is most often expounded by police agencies. At the most basic level, the theory appears to be mirrored in the reported claim of some police chiefs that ten percent of their officers cause 90 percent of the problems.[23] In its essentials, the theory is grounded in notions of individual deviance or opportunism, with the causes of misconduct being found in personal characteristics such as:

- lack of values or personal integrity;
- individual moral failure;
- a corrupt personality;
- personal problems;
- substance abuse;
- addiction to gambling;
- financial hardship; and
- relationship breakdowns.

When linked to prevention, the rotten apple theory of police misconduct produces responses that only target individuals by way of:

- termination of employment;
- problem solving through transfer;
- public denunciation of corrupt officers; and
- criminal prosecution.

In the wider literature on police misconduct, it is argued that the effect of the theory is to deflect blame as well as questions about organisational integrity and the character of police institutions. As stated by Lersch and Mieczkowski:

> For police administrators, blaming misconduct on a few bad apples maintains the integrity of an otherwise clean barrel. This explanation serves to absolve the department of responsibility and blame, focusing attention on a few unsuitable individuals who somehow slipped through the

[22] J J R T Wood 1997a, *Royal Commission into the New South Wales Police Service, Vol. 1: Corruption*, May, p. 26.
[23] Cf. S Walker 2001, 'Early Warning Systems: Responding to the problem police officer', National Institute of Justice, *Research in Brief*, July, p. 1.

> cracks and were able to become sworn law enforcement personnel. Organizational-level problems of control and accountability are not considered. Stark (1972) argues that, 'The effect of the rotten apple theory is to offer scapegoats to public indignation and to evade basic questions about the organization and character of police institutions.[24]

Similar conclusions have been reached by other commentators. Newburn, for example, states that:

> When confronted with allegations of corruption for which there is supporting evidence, police agencies will generally claim that the problem identified is limited to a small number of corrupt officers who are quite unrepresentative of the wider standards exhibited by the organisation.[25]

Others have argued that the rotten apple theory also shields the police leadership from criticism. The point is made by Armacost, when commenting on 'the nearly universal reaction by local politicians and chiefs of police to publicized incidents of police brutality':

> they view these incidents as isolated, aberrant acts of rogue cops whose criminal conduct does not reflect on either the leadership or the rest of the rank and file.[26]

As a more general comment, it is observed that the rotten apple theory functions as an obstacle to reform. The point was made by the Knapp Commission, which reported on police misconduct in New York in 1972:

> According to this theory, which bordered on official Department doctrine, any policeman found to be corrupt must promptly be denounced as a rotten apple in an otherwise clean barrel. It must never be admitted that his individual corruption may be symptomatic of underlying disease ... A high command unwilling to acknowledge that the problem of corruption is extensive cannot very well argue that drastic changes are necessary to deal with the problem.[27]

Bryett and Harrison make a similar point when describing the types of strategies that accompany the rotten apple theory:

> [A]cceptance by police managers and political elites of a rotten apple concept of police corruption is a defensive, face-saving exercise. The solution is simply seen as removing 'bent' officers without a need to evaluate organisational procedures. It is, in essence, a means of 'papering over the cracks' without admitting that there is a fundamental problem of major significance.[28]

[24] K M Lersch & T Mieczkowski 1996, 'Who are the problem-prone officers" An Analysis of citizen complaints', *American Journal of Police*, Vol. 15, Is. 3, September, p. 24.
[25] T Newburn 1999, *Understanding and preventing police corruption: lessons from the literature*, UK Home Office, Police Research Series Paper 110, p. 14.
[26] B E Armacost 2004, 'Organizational culture and police misconduct', *George Washington Law Review*, Vol. 72, p. 458.
[27] The Knapp Commission Report on Police Corruption 1972, pp. 6-7, quoted in J J R T Wood 1997a, *Royal Commission into the New South Wales Police Service, Vol. 1: Corruption*, May, p. 27.
[28] K Bryett & A Harrison 1993, *Policing in the Community*, Sydney, p. 74.

THE ROTTEN BARREL THEORY OF POLICE MISCONDUCT

Bearing in mind the criticisms of the rotten apple theory of police misconduct it is no surprise that it is now viewed with suspicion as a 'myth' or 'as as a mask for broader, system-wide problems'.[29] In its place, theories of police misconduct have tended to look at the organisations in which police work. The reason was explained by Patrick V Murphy, New York City's police commissioner many years ago:

> The 'rotten apple' theory won't work any longer. Corrupt police officers are not natural-born criminals, nor morally wicked men, constitutionally different from their honest colleagues. The task of corruption control is to examine the barrel, not just the apples – the organization, not just the individuals in it – because corrupt police are made, not born.[30]

Globally, the trend to look beyond individuals appears to have gathered momentum after the Fitzgerald Inquiry into police and political corruption in Queensland. That inquiry appears to have been among the first to seriously challenge the view that corruption could be attributable to rotten apples in an otherwise healthy barrel. As the Inquiry observed:

> There is no single 'rotten apple' or small number of 'rotten apples' in the Police Force, and its problems are not confined to specific sections, although there are major concentrations of misconduct in some areas of police activity.[31]

The findings of the Fitzgerald Inquiry were reinforced by other inquiries into police misconduct, including the Royal Commission into the NSW Police Service. Among its findings, the Royal Commission concluded after uncovering systematic corruption that:

> In truth the rotten apple theory has always involved a distorted image of policing which has aided the interests of police services in resisting any suspicion of organisational deviance.
>
> …
>
> So far as the NSW Police Service is concerned the findings of this Royal Commission must dispel, for all time, any explanation based upon individual deviance or opportunistic corruption. The problem to be addressed is much more fundamental.[32]

In addressing this fundamental problem, the Royal Commission gave priority to such measures as:

- changing the organisation;
- introducing a new managerial structure;
- reforming the police complaint system;

[29] K M Lersch & T Mieczkowski 1996, 'Who are the problem-prone officers" An Analysis of citizen complaints', *American Journal of Police*, Vol. 15, Is. 3, September, p. 24.
[30] T Newburn 2007, *Criminology*, Willan Publishing, Devon, p. 625.
[31] G E Fitzgerlad 1989, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, July, p. 208.
[32] J J R T Wood 1997a, *Royal Commission into the New South Wales Police Service, Vol. 1: Corruption*, May, pp. 27-28.

- improving recruitment practices;
- reviewing systems and procedures;
- putting into effect meaningful supervision and support mechanisms; and
- focusing on improved education and training.

The above views of the rotten apple theory are echoed in the wider literature on police misconduct. Newburn, for instance, when reporting on a review of research literature on police misconduct, notes that:

> the 'bad apple' theory of corruption has been all but fully discredited. Successive major commissions of inquiry have catalogued the ways in which corruption is frequently highly organised and systematic.[33]

Walker, when commenting on a new framework of police accountability, also notes that the focus is now on organisational change:

> The basic thrust of the new police accountability is a focus on organizational change. This is a departure from past reform efforts that have focused too much on individual officers who may have used excessive force or made a racially based arrest. The result has been a misplaced attention to symptoms (the rotten apples) rather than underlying organizational causes (the rotten barrels).[34]

Punch also makes the point that it is more appropriate to speak of 'rotten orchards' as a metaphor for system failure than rotten apples:

> This article, for instance, has posed the issue of 'system failure'. It argues that deviance in the apparatus of formal social control may become systematic, whereupon it is no longer possible to speak of 'rotten apples' which conveys a model of individual rule-bending by weak or bad people predisposed to deviance. Here the emphasis has been on how systems can become the contexts for widespread and 'institutionalized' rule-bending and illegality. It is less a matter of bad people and more an issue of bad systems. When that happens it is more appropriate, I would maintain, to speak of 'rotten orchards' as a metaphor of wider 'system failure'.[35]

What can be described more generally as the organisational or rotten barrel theory of police misconduct takes a number of forms. Two, which are identified by Ede, Homel and Prenzler, include:

- structural perspectives, which 'account for police deviance in terms of the police task environment'; and

[33] T Newburn 2007, *Criminology*, Willan Publishing, Devon, p. 625.
[34] S Walker 2005, *The new world of police accountability*, Sage, London, p. 4.
[35] M Punch 2003, 'Rotten orchards: pestilence, police misconduct and system failure', *Policing and Society*, vol. 13, No. 2, June, p. 194.

- the concept of organisational culture, which focus attention on the 'distinctiveness of police culture' such as the 'values and practices of secrecy and solidarity'.[36]

A similar approach is identified by Larmour and Wolanin, which they call 'organisational integrity'. The focus of this approach locates individual deviance within the structure of organisations, and advocates integrated prevention strategies which link operational systems with control strategies and ethical standards. As they explain:

> Organisational integrity … refers to the integration of an organisation's operational systems, corruption control strategies and ethical standards. In other words, it is about establishing a social norm in an organisation which accurately defines and resists corruption … The use of the word 'integrity' is similar to its use when describing a building or a bridge as having structural integrity, which is to say a robust stability founded in an informed use of physical laws.
>
> …
>
> A key assumption in the organisational integrity approach is that deviance stems largely from the nature of the organisation rather than the nature of the individual
>
> …
>
> It is the inverse of the 'rotten apple theory', which blames corruption on the attributes of individuals.[37]

ACKNOWLEDGING THE PROBLEM OFFICER

The overwhelming view of public inquiries and commentators would tend, at first sight, to render a project looking at high risk officers outmoded. This is a mistaken conclusion that can be made when faced with some clear comments regarding the spurious value of the rotten apple theory of police misconduct. The better view, as expressed by Warburton, is to recognise that while individual theories of police misconduct may be tainted by the rotten apple theory, a wholesale rejection threatens to throw the 'baby' out with the 'bathwater.'[38]

Other commentators also recognise the importance of identifying problem officers as part of a comprehensive approach to preventing police misconduct. As noted by Ede *et al*.:

> The 'rotten apple' explanation, traditionally favoured by politicians and police commissioners, is now rightly viewed with suspicion as a rationalisation of management failure and a means of avoiding systemic change (Lusher, 1981). Nonetheless, a comprehensive approach to misconduct prevention will attempt to prevent the entry of individuals predisposed to non-compliance with organisational standards. It is also a key management responsibility to develop forms of early identification to

[36] A Ede, R Homel & T Prenzler 2002, 'Reducing complaints against police and preventing misconduct: a diagnostic study using hot spot analysis', *The Australian and New Zealand Journal of Criminology*, Vol. 35, No. 1, p. 28.
[37] P Larmour & N Wolanin 2001, 'Introduction'. In P Larmour & N Wolanin 2001, *Corruption & Anti-Corruption*, Asia Pacific Press, Canberra, pp. xx-xxi.
[38] J Warburton 2007, 'Driving to anti-corruption utopia without a roadmap: assessing the theoretical basis for corruption prevention strategies of global institutions', *CIES e-Working Paper*, No. 31, p. 10.

> correct behavioural problems or to remove non-compliant officers, using tools such as complaints profiling. In that regard, an important element of many reform programs has been to hold line managers responsible for misconduct problems in their section (Mollen, 1994; Sherman, 1977).[39]

Armacost makes a similar point, noting that organisational and individual explanations are 'both … necessary to a satisfactory explanation of police brutality':

> One need not choose between the systemic or organizational and the individual or psychological explanations for police brutality in departments that display a pattern of repeat offenders. Both are necessary to a satisfactory explanation of police brutality. There is reason to think, however, that the organizational factors may actually be the more important contributor to conduct. Studies by police scholars and sociologists indicate that individual personality traits provide (at best) only a very partial explanation for police misconduct. The most sensible conclusion is that whatever effect officers' personalities and beliefs have on their propensity toward violence, these factors are mediated by the characteristics of the relevant police organization. Thus, so-called rogue cops cannot be explained away by identifying their alleged violent propensities and ignoring organizational pathologies.[40]

And again:

> Focusing *only* on isolated actors, however, may divert attention away from needed institutional reform.[41]

> Sanctioning *only* individual cops may satisfy society's need to find someone to blame, while diverting attention from harmful organizational structures that contributed to the individual actions. Without addressing the institutional component, however, there will be little hope of rooting out the web of causes that led to the term. The complicated interaction between individuals and their organizations, means that *both* must be held responsible.[42]

The need to be aware of problem officers is also supported by research and commissions of inquiry into police misconduct, which have often found that only a small proportion of police officers in any one policy agency ever attract complaints or are proven to have engaged in some form of misconduct. Herman Goldstein was the first to document this reality in the 1970s, when he noted that officers with a propensity for wrongdoing were well-known to their supervisors, to the top administrators, to their peers, and to the residents of the areas, but that little was done to correct their conduct:

> In city after city situations arise in which a few officers acquire a reputation for being physically abusive and riding roughshod over the rights and dignity of citizens. Such officers are well known to their supervisors, to the top administrators, to their peers, and to the residents of the areas in which they work. And yet little is done to alter their conduct.[43]

[39] A Ede, R Homel & T Prenzler 2002, 'Reducing complaints against police and preventing misconduct: a diagnostic study using hot spot analysis', *The Australian and New Zealand Journal of Criminology*, Vol. 35, No. 1, pp. 28-29.
[40] B E Armacost 2004, 'Organizational culture and police misconduct', *George Washington Law Review*, Vol. 72, p. 504.
[41] B E Armacost 2004, 'Organizational culture and police misconduct', *George Washington Law Review*, Vol. 72, p. 494.
[42] B E Armacost 2004, 'Organizational culture and police misconduct', *George Washington Law Review*, Vol. 72, p. 514.
[43] H Goldstein 1990 (1977) *Policing a free society*, University of Wisconsin La School, Madison, p. 171.

In 1981, the US Committee for Civil Rights Commission published a report, *Who is Guarding the Guardians?* which provided an empirical foundation for these observations. Its report on police officers in Houston, Texas, found that:

> officers who had received five or more complaints over a two-year period represented only 12 percent of all officers receiving complaints but accounted for 41 percent of all complaints.[44]

These findings were later replicated in other US cities. In Los Angeles, for instance, the Christopher Commission found that the police department had consistently failed to identify and manage officers with excessive complaints or disturbing patterns of use of force. The commission observed that this 'problem group of officers . . . leaps out from the Department's own statistics'. A retired police veteran, who testified before the Commission, also commented on the lack of management attention to these officers.

> 'We know who the bad guys are. Reputations become well known, especially to the sergeants and then of course to lieutenants and the captains in the areas. We know the ones who are getting into trouble more than anyone else. But, I don't see anyone bringing these people up and saying: "Look, you are not conforming, you are not measuring up. You need to take a look at yourself and your conduct and the way you're treating people and so forth". I don't see that occurring'.[45]

Similar data exists for Kansas City, Boston and Washington D.C. As reported by Walker *et al.*:

> Investigative journalists have found the problem officer phenomenon in other police departments. In Kansas City, Missouri, 2% of the sworn officers were responsible for 50% of citizen complaints ('Kansas City Police' 1991). In Boston, 11% were responsible for 61.5% of complaints ('Wave of Abuse' 1992), and in Washington, D.C., a small number of officers were responsible for a large proposition of multiple discharge of firearms ('DC Police' 1998).[46]

Bearing the forgoing comments in mind, the real criticism of the rotten apple theory may lie in its use by police agencies to shield themselves from criticism and calls for system wide reform. As was observed by the Royal Commission into the NSW Police Service:

> It is inevitable within any organisation of the size of the NSW Police Service, that some persons will be recruited who lack the personal integrity or strength of character required for the job, or who for any one of a number of reasons will slip into criminal or corrupt conduct. It is, however, inappropriate and potentially dangerous for a police service to rush to its own defence once a pocket of corruption emerges, on the basis that it was the product of individual deviance, or was merely 'opportunistic', and could not have been prevented, even by best practice.

[44] S Walker 2003, *Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide*, US Department of Justice, Office of Community Oriented Policing Services, p. 46.
[45] Independent Commission on the Los Angeles Police Department 1991*, Report of the Independent Commission on the Los Angeles Police Department*, p. 32.
[46] S Walker, G P Alpert & D J Kenney 2000, 'Early Warning Systems for Police: Concept, History and Issues', *Police Quarterly*, Vol. 3, No. 2, June, p. 135.

> 2.11 It may well fall into that category. However, it may also be the tip of a much deeper problem which will escape detection if dismissed, routinely or instinctively, by reference to theories of individual police deviance.[47]

LESSONS FROM THE LITERATURE

From the literature, it may be observed that the rotten apple theory of police misconduct has fallen out of favour as a 'myth' or a 'mask for broader system-wide problems' in police agencies. The theory has been substantially replaced by structural or organisational perspectives and strategies, which aim to deal with the problem of police misconduct at this level. In light of these changes, a project examining high risk officers might be questioned for being outdated. This, however, is mistaken. As the literature also reveals, small pockets of problem police with demonstrated conduct risks can and do develop in police agencies. This reality is reflected in a broad recognition of the need for police agencies to identify and manage these officers.

The literature would also seem to suggest that the best approaches to preventing police misconduct are multi-pronged and that they do not exclude a focus on individual officers. Rather, while organisational reform may in the end be critical, it is recognised that the need to identify and manage problem-prone officers forms an indispensable part of a comprehensive approach to preventing police misconduct. This project recognises that importance and seeks to assist the NSW Police Force in improving its processes for identifying and managing officers who have demonstrated by their histories that they are at risk of engaging in misconduct.

[47] J J R T Wood 1997b, *Royal Commission into the New South Wales Police Service, Vol. 1: Corruption*, May, p. 27.

3. CORPORATE GUIDANCE

OVERVIEW

Some commands reported to the Commission that there are corporate expectations that high risk officers be identified and managed. This chapter outlines the information provided to the Commission to this effect. It also reports on the types of support that commands stated they had or had not received in carrying out this function. Against this, the chapter describes the forms of advice and guidance contained in NSW Police Force corporate documents on the identification and management of high risk officers.

TYPES OF INFORMATION COLLECTED

The 20 commands that participated in this project were all asked to respond to the following questions.

- What, if any, support or guidance has the command received with regard to the identification and management of high risk officers?
- Is the command required to comply with any policies or procedures with regard to the identification and management of high risk officers? If so, please provide details on how the command is required to comply and to whom it is required to report.

The Commission also obtained and reviewed information about command responsibilities for identifying and managing high risk officers from the NSW Police Force intranet. The information included an intranet resource guide on the role of Complaint Management Teams and corporate documents, including:

- Command Management Framework;
- Compliance Manual;
- Complaint Management Team Policy;
- Complaint Management Manual; and
- Police Handbook.

(A description of the general form and content of these documents in provided in Appendix 2.)

The Commission also sought and obtained the advice of the Commissioner of Police on the meaning and use of the term high risk officer.

KEY RESEARCH FINDINGS

SUPPORT, GUIDANCE AND AN EXPECTATION TO IDENTIFY AND MANAGE HIGH RISK OFFICERS

The commands that participated in the project provided differing views regarding the level of support and guidance available as to how to identify and manage high risk officers. Some commands stated that they received little or no guidance. However, others indicated that they had received some support from either the Region or the Professional Standards Command (PSC). For example:

> Region PSM [Professional Standards Manager] organised a training day … where all Duty officers exchanged ideas and gained some direction of what was expected of them.
>
> If required, guidance is sought from the Region or the PSC with regard to the management of high risk officers.
>
> [An officer from the PSC] came up [to the command] and discussed management strategies and answered questions about the Officer Complaint Analysis.
>
> When the command has a high risk officer it contacts PSC for advice on whether we can place the officer on a Conduct Management Plan.
>
> Command contacted PSC for advice and was told that corporate guidelines were not available regarding high risk officers … informally advises the command of the types of risk factors that can be taken into account to identify them.

In a few cases, commands indicated that external support for the identification and management of high risk officers consisted of simply being provided with risk assessment tools by the PSC. Where this had occurred, one command indicated that no accompanying guidance was provided as to how the command should use the tool. None these tools had been endorsed corporately.

At least four commands expressed the view that there was a positive expectation on them to identify and manage high risk officers, but that little was provided in the way of guidance. For example:

> [The command is] obliged to identify high risk officers but is not given any guidance or direction.
>
> [The] biggest problem is that the organisation has left it up to commands to manage themselves … the organisation expects commands to identify high risk officers but takes the view that these officers are high risk only within their own commands
>
> [The] command has an obligation to manage all staff but guidance hasn't been provided. There's an expectation, it's commonsense, that a command will identify at risk or high risk officers.
>
> There's no compliance requirement – apart from an expectation to identify high risk officers.

The commands that participated in the project also provided differing advice as to whether commands were under any obligation to comply with a corporate standard or requirement. While many were unaware of any such requirements, others were less equivocal. For example:

> I don't believe so. I think local area commands are very autonomous in how they manage their staff ... Direction was given [by the Region] that commands had to include high risk officers in the CMTs about four years ago … The high risk officer list goes down on DCoP [Deputy Commissioner of Police] Return every month. This return is submitted through Region's PSM [Professional Standards Manager].

> Command is required to provide an updated copy of the high risk officers list each month to the Region.

> Commissioner's Inspectorate took a hard copy of the risk assessment tool [which identified high risk officers] … but the tool is only there to satisfy auditors.

> Region asks about high risk officers as part of audits conducted of commands … Region will ask about high risk officers and how they are managed.

> The Region provided the command with a risk matrix [which the command uses to identify high risk officers] and obtains a copy when it conducts its audit … the Region simply wants to see the matrix. They don't ask about the management of high risk officers.

CORPORATE ADVICE AND DOCUMENTATION

The Commission has been advised by the NSW Police Force that it does not have a dedicated policy on the identification and management of high risk officers. Nor does it have a process for identifying and managing high risk officers, which is corporately sanctioned.[48] This advice should not be taken to mean, however, that NSW Police Force policy is silent on the issue of high risk officers.

As described in Table 3.1, there are at least six corporate documents of the NSW Police Force which describe duties relating to at risk or high risk officers. These documents include the CMT Hints and Guidelines pages on the NSW Police Force intranet, which states, amongst other things, that:

> The identification, risk assessment and management of High Risk Officers (HROs) should be an integral part of the CMT process.[49]

The Commissioner of Police advised the Commission in May 2007 that this information is not a statement of policy but simply a practical guide:

> This intranet page is part of the *CMT Hints and Guidelines* resource on the intranet and, as the title suggests, is not a policy document. This Hints and Guidelines resource was developed with significant consultation and input from the NSW Ombudsman.

[48] Advice from the NSW Police Force, Commissioner of Police, 9 May 2007.
[49] NSW Police Force intranet, 'CMT Hints and Guidelines', downloaded 1 April 2008.

> This particular entry is aimed at encouraging CMTs to view subject officers within the context of their overall conduct, not just an individual complaint matter. However, no over-arching or corporately sanctioned process for doing this exists (…) and it is left to individual CMTs to decide.[50]

Other documents described in Table 3.1 indicate that responsibility for identifying and managing high risk officers falls:

- to commanders and nominated management teams in the context of monitoring computer use;
- to the Command Management Team in the context of corruption resistance planning;
- to Complaint Management Teams in the context of complaint management; and
- to Duty officers in charge of Professional Standards as part of their performance agreement under the Duty Officer Deployment Model.

Table 3.1: References to identifying and managing high or at risk officers in NSW Police Force documents

Document	Nature of Responsibility	Position responsible
CMT Hints and Guidelines, NSW Police Force intranet[51]	The identification, risk assessment and management of **High Risk Officers (HROs)** should be an integral part of the CMT process. In identifying **HROs** and to eliminate future allegations of bias CMTs should adopt a formal risk assessment process. To lessen the likelihood of **HROs** attracting further complaints, CMTs may choose to inform officers of their High Risk status and initiate behavioural change. In addition to **HROs**, it is important for CMTs to monitor officers who may not reach the **HRO** threshold but whose complaint history shows an emerging pattern of behaviour that could present a risk to the organisation or themselves	Complaint Management Teams
'Computers', Police Handbook[52]	Nominate a coordinator (usually your executive officer) and a supervisor/s (usually duty officers/team leaders or equivalent) to run computer access audits in your command. Nominate an officer to audit the coordinator. Ensure you and/or your management team identify any **high risk officers**.	Commander and Management Team
'Complaints', Compliance Manual[53]	[Lists documents that may be used by commands to audit the effectiveness of their complaints handling system under the Command Management Framework:] • Most recent Command Management Framework return • Complaint files • CMT minutes • Completed **High Risk assessments** – (complaints,	Commanders and Managers

[50] Advice from the NSW Police Force, Commissioner of Police, 9 May 2007.
[51] NSW Police Force intranet, 'CMT Hints and Guidelines', downloaded 1 April 2008.
[52] NSW Police Force intranet, *Police Hand Book*, 'Computers', p. 1, downloaded 1 April 2008.
[53] NSW Police Force intranet, *Compliance Manual*, 'Complaints', downloaded 18 July 2008.

	complainants & officers) • **High Risk Officer** lists • C@tsi files (hard copy and electronic) • Statistical Reports and printouts • List of suspended officers and officers under remedial conduct or performance agreements	
Corruption Resistance, Command Management Framework[54]	Command Management Team reviews: • CMT Minutes • CMF returns • Staff Ethical Culture Surveys • **'at risk' officers** • Trends in complaints/LMIs etc. to ensure risks within [Corruption Resistance] Plan are appropriate	Command Management Team
Duty Officer Deployment Model, Performance Agreement for Duty Officer – Professional Standards[55]	• Ensure Corruption Resistance Plan is revised biannually, and linked to Command Management Framework • Ensure performance measures are included in the Corruption [Resistance] Plan • Written report to Senior Mgt Team on performance measures from Corruption [Resistance] Plan quarterly • Documented evidence of the review of **high risk officers** • Evidence of regular COPS access audits and appropriate action taken • Coordination of computer access audits ensuring 100% of command completed annually • 100% audit of staff entering and leaving command	Duty Officer in charge of Professional Standards portfolio
Complaint Management Team Policy[56]	Complaint Management Team should also identify opportunities to correct immediate problems and provide constructive ideas for: … • identifying **officers at risk of attracting complaints**	Complaint Management Team

While not using the term high risk officer, other NSW Police Force documents also provide indications that commands are expected to identify problem officers. The Complaint Management Manual, for example, states that it is important to take an officer's complaint history into account at various stages in the management of a complaint:

> The CMT should identify any previous complaints that may be relevant or related to the current matter and provide this information to the investigator in the context to which it belongs. The CMT and the investigator must use their discretion and judgment in assessing the relevance of the officer's complaint history at each stage of the complaint management process. A complaint history may be of significance to the contemporary complaint even where past allegations were not substantiated. It may reflect a pattern of behaviour or 'steps in the sand' towards more serious behaviour.
>
> …

[54] NSW Police Force intranet, *Command Management Framework*, 'Corruption Resistance', downloaded 1 April 2008.
[55] NSW Police Force intranet, 'Duty Officer Deployment Model – Model and Summary' & 'Performance Agreement' for Professional Standards portfolio holder, downloaded 1 April 2008.
[56] NSW Police Service 2003, *Complaint Management Team Policy*, June, p. 7.

> At the assessment stage, an officer's complaint history may affect the categorisation of the complaint. For example, if the complaint involves allegations of harassment and discrimination relating to sex, race, marital status, age, disability, homosexuality, transgender or carer responsibilities, the officer's complaint history is critical to deciding whether the complaint fits the criteria under s122 (2) or as a notifiable complaint when there is evidence of a previous similar incident. The officer's complaint history is also relevant when selecting the level of investigation required addressing the issues of the complaint.
>
> …
>
> At the investigation phase, the officer's complaint history may help you establish avenues of inquiry … Reviewing an officer's complaint history supplements the information already available to CMTs and may assist with decisions about the degree of investigation required.
>
> …
>
> Finally, at the action/outcome stage the officer's complaint history is a relevant consideration for the CMT in determining the appropriate management outcome. An officer who has previously been dealt with managerially in relation to similar matters will attract more significant management action than someone with no previous record of complaints on the same issue.[57]

SUMMARY DISCUSSION

There were differing views communicated to the Commission by the commands that participated in this project as to the extent to which there are corporate expectations to identify and manage high risk officers. At least four of the commands that participated in the project clearly believed that such an expectation did exist. An equal number provided advice that there were at least some corporate compliance requirements with regard to the task.

The commands that participated in the project also appear to have been provided with little in the way of corporate advice or guidance on how to identify and manage high risk officers. A corporate policy on the topic does not exist. NSW Police Force documents which contain references to high risk officers are also not consistent or clear as to the responsibilities concerning the task.

However, from the Commission's review of corporate documents, there does appear to be an expectation that commands will identify high or at risk officers. With respect to complaints management, for instance, there appears to be a specific requirement that commands will also assess officers on the basis of their complaint histories.

At least five implications may be drawn from the information in this chapter:

- There is an implicit corporate acceptance that the identification and management of high risk officers may be a common management activity at the command level.

[57] NSW Police Force 2005-2007, *Complaint Management Manual*, 'Assessment', pp. 17-19.

- The fact that the NSW Police Force commands have not been provided with clear advice on whether there is an expectation on them to identify and manage high risk officers is a cause of confusion among commands on what their responsibilities are.
- The types of guidance that NSW Police Force documents provide on the topic do not provide a clear message to commands on what their responsibilities are with regard to high risk officers.
- The absence of a corporate policy on high risk officers risks a situation where there is inconsistency between commands on how they identify and manage officers.
- Inconsistency in regard to compliance risks a situation where only some commands will be held responsible for identifying and managing high risk officers.

The forgoing implications underpin the need for a corporate policy and guidance on the issue of high risk officers. The Commission notes that the NSW Police Force is seized of this need. [58]

[58] NSW Police Force, 'Project Odin: Professional Standards Command – Outcomes of the Workshop & Senior Management Consultation', 19 January 2009, p. 10.

4. LOCAL AREA COMMAND DOCUMENTATION

OVERVIEW

Most of the commands that participated in this project (18 of 20) maintained some form of local policy document on misconduct prevention which refers to high risk officers. This appears to be matched by the wider existence of documents of this type in other NSW Police Force commands. This chapter describes the form and content of these types of documents to obtain a better understanding of what commands say they do with regard to high risk officers.

TYPES OF INFORMATION COLLECTED

Documentation from a total of thirty local area commands was analysed for this chapter. The documents were sourced from:

- 18 of the 20 local area commands that participated in the project;
- other local area commands, which maintain sites and documents on the NSW Police Force intranet; and
- the Commission's own holdings.

The discussion in this chapter focuses only on two document-types which carry references to the identification and management of high risk officers:

- corruption resistance or prevention plans; and
- local policy documents which specifically address the identification and management of high risk officers.[59]

Of the above two, corruption resistance or prevention plans are the most common. The Commission identified only two local policy documents which specifically address the identification and management of high risk officers.

KEY RESEARCH FINDINGS

CORRUPTION RESISTANCE PLANS

Many NSW Police Force commands maintain a form of local policy document which describes their strategies for preventing police misconduct at the command level. Corruption Resistance or Prevention Plans are the most common form of these documents. These plans come in a variety of designs and are sometimes known by different names, for example:

- Corruption Prevention Plan;

[59] The Commission found other documents types, which will not be discussed in this chapter. They include: three examples of local area command business plans, one example of a performance agreement, and one example of a duty officer deployment chart.

- Corruption Minimisation Plan;
- Professional Standards Plan.

Broadly speaking, the plans define misconduct risks and the strategies that are in place to manage these risks.[60] In the context of defining these risks and strategies, many plans also feature some form of reference to the identification and management of high risk officers.

The Types of References

The types of references to high risk officers that appear in the Corruption Resistance Plans obtained by the Commission are diverse. This diversity results from differences in the terminology used in these plans and the contexts in which the terminological references appear. To summarise, it is useful to break the reference types into three broad, but overlapping groups.

In some Corruption Resistance Plans, the reference to high risk officers appears in relation to complaint management or the role of Complaint Management Teams (CMT). Some examples of these include:

- a reference to the role of a CMT in preparing a list of a command's 'top five high risk officers' as a 'strategy' to manage the risk of 'misuse of police power';
- a reference to the 'identification and management of high risk officers' in relation to a 'focus' or 'risk area' labelled 'complaint management';
- a reference to the 'regular analysis of complaints to identify high risk officers, or any trends concerning bad practices, within the command' in relation to a 'risk area' also headed 'complaints management';
- a reference to 'supervision and management of identified high risk officers' as one of three 'strategies' related to a 'risk' headed 'officer complaint analysis';
- a reference to the 'identification and management of high risk officers' as a 'people management initiative' requiring four 'actions':
    - 'risk assessment carried out',
    - 'causation identified by CMT',
    - 'strategies developed by CMT to minimise risks',
    - 'strategies implemented by staff supervisors'; and
- the use of 'high risk officers' as a heading with the following description:

> High risk officers to be identified by the Senior Management Team and monitored by the Complaints Management Team in accordance with policy.

[60] The types of risks featured across these plans are diverse. Some common risks include: abuse relating to legal process, arms and appointments, brief management, computer access, COPS access, customer service, excessive use of force, exhibits, high risk officers, improper associations, noble cause corruption, off-duty behaviour, search warrants, secondary employment, sick leave, substance abuse, and workplace harassment.

In other Corruption Resistance Plans, the references to high risk officers appear in relation to other objects – apart from 'complaints management' or the 'role of the CMT'. Such objects include 'objectives', 'risk factors', or specific risks such as 'computer access'. Some examples of these include:

- a reference to 'identifying' and 'monitoring high risk officers' in relation to three 'objectives' described as:
    - 'increasing the awareness of officers regarding the use of illegal drugs and responsible behaviour whilst consuming alcohol or duty',
    - 'minimising unethical and possible corrupt behaviour by police with respect to short term sick leave', and
    - 'providing a safe working environment and eliminating harassment and discrimination in the workplace';
- a reference to the 'identification and management of high risk officers' as a 'risk factor' with five 'strategies' including:
    - 'risk assessment conduct on staff',
    - 'review of complaint and sick leave history',
    - 'supervision of high risk work areas',
    - 'identified high risk officers to be monitored and managed closely via intrusive supervision',
    - 'where appropriate inform officer of perceived risks, offer opportunity to correct their conduct, performance or behaviour'; and
- a reference to 'identifying and monitoring high risk officers' in relation to a 'risk' headed 'computer access'.

Finally, a third group of Corruption Resistance Plans refer to high risk officers in relation to 'risk assessment'. Examples of these include:

- a reference to the 'identification and management of high risk officers' as an 'identified area of potential risk' under a heading 'Risk Assessment/Management Team Responsibilities'; and
- a reference to high risk officers under a heading 'Risk Assessment' with the following description:

> **Risk Assessment**
>
> …
>
> Risk assessment concerns itself with assessment of risk related to the individual and the position that person occupies within the LAC.
>
> The assessments are linked to the individual performance agreements of each member of the command …

> The key principles of risk assessment as it relates to corruption prevention are:
>
> - Any assessment of staff must be based not just on work performance, but also on a wide range of variables that include service history, and other variables.
> - Risk management is an ongoing process that requires the active involvement of management.
>
> The [command name] Local Area Command Management Team has developed a Risk Assessment process for the identification of high risk officers within the command. This process bases risk on a number of variables, those being:
>
> - Complaint history (both CIS and c@ts.i),
> - Tenure within the local area command,
> - Duty type,
> - Whether the officer has registered informants/sources,
> - Sick leave record (whether in breach of policy), [and]
> - Secondary employment.
>
> Through this process high risk officers within the command will be identified. Management plans, depending on the risk analysis, will be created for each high risk officer and monitored by the Complaints Management Team.

Other Information in plans

Some corruption resistance plans provide other types of information concerning high risk officers. As described in Table 4.1, this information includes the positions that are responsible for identifying and managing high risk officers and overseeing the task. In a small number of cases identified by the Commission, it also includes information on 'performance indicators' and 'frequency' of conducting command-wide risk assessments.

However, most plans do not include the following:

- a clear definition of high risk officers;
- information relating to how high risk officers are specifically identified, managed and reviewed; and
- information on the administration of these tasks.

Table 4.1: Other information in Corruption Resistance Plans concerning the identification and management of high risk officers

List of positions responsible for identifying and managing high risk officers	List of positions responsible for overseeing the identification and management of high risk officers	Performance indicators on the identification and management of high risk officers	Frequency of conducting command-wide risk assessments to identify high risk officers
• Complaint Management Team; • Command Management Team; • Senior Management Team; • a group comprising the Commander, Executive Officer, Duty Officers, Crime Manager, and Team Leaders; • a group comprising the Complaint Management Team and Duty Officers; • Duty Officers with oversight of a command's Professional Standard portfolio; • Team Leaders; • Section Leaders; • Crime Manager; • Local Area Manager; • Executive Officer.	• Local area commander; • Executive Officer; • Duty Officers; • Team Leaders; • Crime Manager; • Senior Management Team; • Management Team; • Complaint Management Team.	• Officers identified; • Management Plans developed by Complaint Management Team; • Monitoring reports submitted by supervisors; • Issues to Complaint Management Team regarding officers identified whilst plans in place; • Number of officers identified as high risk in the previous quarter; • Number of officers removed from high risk register; • Number of high risk officers involved in internal investigations/local management issues during quarter; • High risk officer list tabled.	• Annually; • Quarterly; • Monthly; • Needs basis; • Random basis.

TWO OTHER EXAMPLES

Of the 20 local area commands that participated in this project, two provided the Commission with examples of stand-alone policy documents on high risk officers. The two examples include definitions; detailed information on processes for identifying, managing and reviewing high risk officers; and information on the administration of these tasks. The documents are headed 'High Risk Officer Policy' and 'High Risk Officer SOPS' (Standard Operating Procedures). Both commands documented their processes in response to this project. The documents they prepared are reproduced below.

Example 1: High Risk Officer Policy

The … Complaints Management Team recognises the importance of risk management in terms of officers identified as posing a high risk in relation to integrity or conduct issues.

Should any member of the Complaints Management Team become concerned regarding the level of risk associated with any particular officer those concerns should be raised and relevant discussion and outcomes recorded within the Complaints Management Team minutes. Discussion in relation to the assessment of potential high risk officers should include factors relevant to the circumstances of the officer including, the subject officer's complaint history, type of complaints, recency, personal background, possible complaint trends and duty type.

Action taken in relation to officers identified by the Complaints Management Team as 'high risk' will be determined by the members of the Complaints Management Team and clearly documented within the minutes. Such action may include placing the subject officer on a strict conduct/performance management plan, intrusive mentoring and supervision, restrictions of duties or rotation of duty type and appropriate referrals to welfare and support services.

A review should be minuted at the conclusion of each calendar quarter (or on a needs basis), clearly recording decisions on whether nominated officers should maintain a 'high risk' status.

A decision in relation to whether individual officers are advised of a 'high risk' status should be left to the discretion of the Complaints Management Team. (Western Region command)

Example 2: High Risk Officers SOPS

The following SOPS [Standard Operating Procedures] are to be utilised in the management of High Risk Officers in accordance with the … LAC Corruption Resistance Plan.

Initial risk assessment conducted on all staff annually. Assessments carried out by Senior Management and, where necessary, involve respective Team Leaders responsible for the officer.

The assessment is to include a review of the following:

- Complaints
- Sick Leave
- Duty type – including length of service on current duty and length of service at current LAC
- Other considerations – reports of poor performance, secondary employment, COPS audits, dismissed proceedings in past 12 months, work capacity, knowledge, attitude, motivation, personal knowledge re activities/associates outside working hours and personal knowledge re alcohol consumption, gambling and debt.

An action plan will be developed for those officers identified as 'high risk'. The officer will be monitored and managed closely through this plan. The

plan will include appropriate strategies, allocated supervisors and reporting formats.

An individual folder will be created for the officer within the 'high risk officers' folder.

The completed risk assessment and action plan will be uploaded into this folder.

Allocated supervisors for the high risk officer will complete summary reports on a regular basis and as outlined by the plan. The summary reports will be forwarded to the Professional Standards Manager (PSM) and up loaded into the high risk officer's individual folder.

Further assessments will be conducted quarterly or as required and in accordance with the high risk officer's action plan

Where appropriate, after discussion with the PSM inform officer of perceived risks, offer opportunity to correct their conduct, performance or behavior.

An inactive high risk officer's folder will be maintained to include those high risk officers that have been re assessed as either a medium or low risk. (Central Metro Region command)

SUMMARY DISCUSSION

The references to high risk officers that appear in Corruption Resistance Plans obtained by the Commission are diverse, but appear to be of two general kinds.

In one small set of examples, the reference to high risk officers appears under column or table headings such as 'risk factor'. In these cases, the plans appear to define the existence of high risk officers or a failure to identify and manage them as being a risk among other risks (such as those relating to 'source management' or 'sick leave') for the command.

In another larger set of examples, the reference is to a strategy relating to some other object. These other objects include:

- managing other risks such as 'computer access' or 'misuse of police power'; or
- management areas such as 'people management' or 'complaints management'.

Aside from these generalisations, however, there are few similarities between the plans and the references that appear in them to high risk officers. Indeed, the findings show that these references lack a consistent terminology. To summarise, they refer to the identification and management of high risk officers as:

- 'strategies' relating to 'objectives';
- 'initiatives' relating to 'people management';

- ‘strategies’ relating to specific ‘risks’ such as ‘computer access’;
- ‘risk factors’;
- ‘complaints management’; and
- ‘areas of potential risk’.

The plans also disclose a diverse range of methods on how commands say they identify and manage high risk officers. Of the documentation examined, the Commission noted:

- a plan by one command that sets a target to identify its ‘top five high risk officers’;
- plans by a number of commands that include ‘performance indicators’ to measure the commands performance in identifying and managing high risk officers; and
- differences as to the officers within the commands responsible for identifying and managing high risk officers.

In many cases, the plans that the Commission reviewed were also silent on the actual processes that were in place to identify and manage high risk officers. This was matched by a general absence of definitions or information indicating the types of behavioural risk that high risk officers were through to present.

These shortcomings may be contrasted with the two policy documents obtained by the Commission from two of the 20 commands that participated in this project. These documents provided clearer definitions; detailed information on the processes for identifying, managing and reviewing high risk officers; and information on how these tasks were to be documented and administered.

Several implications may be drawn from the review undertaken in this chapter:

- The absence of a common terminology relating to high risk officers is a potential cause of confusion between commands concerning how they conceptualise the identification and management of these officers. It can lead to idiosyncratic outcomes, such where an officer at one command is identified as being high risk for one reason but not at another command for the same reason.
- Restricting the identification and management of high risk officers to only particular objects such as computer access also risks the situation where officers will not be identified as high risk in relation to other objects.
- The inclusion of targets in plans such as the identification of a command’s top five high risk officers is arbitrary. Among other risks, targets such as these threaten to divert attention from underlying organisational priorities. They risk the situation where meeting a performance indicator can become an end in itself. Target setting also risks both under- and overestimating the problems to be managed.

- By the same token, a lack of performance indicators fails to provide commands with the means to measure or self-audit their performance. However, to be effective these indicators must be tailored to reflect processes.
- The lack of information about the process of identifying and managing high risk officers does not promote transparency. Nor does it provide a readily identifiable procedure for commands to follow. This risks institutionalising an ad hoc approach to the issue. The lack of information about processes also means that individual officers are not in a position to know why they may be identified as high risk or what they can expect in terms of management once they are identified.
- Finally, neglecting to define high risk officers creates a situation where the underlying objective of identifying and managing these officers is either unclear or inconsistently shared by commands. It creates confusion through the organisation about what risk is being identified and managed as well as about what purpose is being achieved.

5. AT RISK OF WHAT?

OVERVIEW

This chapter reports on the meanings attributed by the NSW Police Force to the term high risk officer. It provides an overview of corporate and command-level perspectives on the meaning of the term as well as the risks the term has been used to describe. These descriptions are provided on the view that the way that the NSW Police Force defines the risk posed by high risk officers has implications for how commands respond to these officers. The descriptions are aided by case studies of why officers were identified as being high risk by the commands that participated in this project.

LITERATURE REVIEW

TERMINOLOGY

A number of terms are used in the literature on policing to describe officers who are 'at risk' for conduct or other behavioural issues. The most common is 'problem officers'.[61] Other terms include:

- 'at risk officers';[62]
- 'behaviour problematic officers';[63]
- 'potential problem offices';[64]
- 'problem-prone officers';[65]
- 'problematic officers';[66]
- 'officers with performance problems';[67]
- 'officers with a propensity for wrongdoing';[68] and
- 'high risk officers'.[69]

[61] B E Armacost 2004, 'Organizational culture and police misconduct', *George Washington Law Review*, Vol. 72, p. 504; Commission to Combat Police Corruption 2001, *The New York City Police Department's Non-IAB Proactive Integrity Program*, p. 46; B Davies 2003, 'High speed pursuits – A police agency and community problem', EMU School of Police Staff and Command, p. 19; Human Rights Watch 1998, *Shielded from justice: Police brutality and accountability in the United States*; K M Lersch, T Bazley & T Mieczkowski 2006, 'Early intervention programs: an effective police accountability tool or punishment of the productive', *Policing: An International Journal of Police Strategies & Management*, Vol. 29, Is. 1, p. 60.
[62] Western Australian Police 2007, *Annual Report*, p. 153.
[63] A R Roberts 2003, *Critical Issues in Crime and Justice*, Sage, p. 158.
[64] W Terrill & J McClunskey 2002, 'Citizen complaints and problem officers: examining officer behaviour', *Journal of Criminal Justice*, Vol. 30, Is. 2, pp. 143-155.
[65] K M Lersch & T Mieczkowski 1996, 'Who are the problem-prone officers? An analysis of citizen complaints', *American Journal of Police*, Vol. 15, p. 23; R Wolf 2003, 'Perceptions of misconduct: an examination of ethics at one correctional institution', May, p. 1; C Lumina 2006, 'Police accountability and policing oversight mechanisms in the Southern African Development Community', *African Security Review*, Vol. 15, No. 1, p. 1.
[66] C Wilson 1996, 'Combating the risk of patrol: guidelines for management', *Australasian Centre for Policing Research*, Report Series No. 117.4, p. 9.
[67] S Walker 2006, *EIS Guide: Strategies for intervening with officers through early intervention systems: a guide for front-line supervisors*, February, US Department of Justice COPS Officer, p. 13.
[68] H Goldstein 1990 (1977), *Policing a free society*, University of Wisconsin Law School, Madison, p. 171.
[69] Human Rights Watch 1998, *Shielded from justice: Police brutality and accountability in the United States*; Officer of the Inspector General Los Angeles Police Commission 1997, *Status Update: Management of LAPD high-risk officers,*

None of the above is a term of art. The term 'problem officer', for example, has been used in the literature to refer to:

- 'officers who may be using force improperly';[70]
- 'officers who repeatedly misuse force and persistently ignore the written policies and guidelines of the Department regarding force';[71]
- officers who engage in 'high speed pursuits';[72]
- officers 'who frequently used excessive force and received a large number of citizen complaints';[73]
- 'officers with performance problems';[74]
- officers with conduct issues who 'are well known to their supervisors, to the top administrators, to their peers, and to the residents of the areas in which they work';[75]
- officers 'who demonstrate identifiable patterns of inappropriate behaviour';[76] and
- 'violence prone officers'.[77]

The term high risk officer has less currency within the literature but exhibits a similar variety in how it has been used. Some examples from the literature indicate that the term has been used in reference to:

- officers who are at risk of 'suicide';[78]
- officers at risk of psychological trauma following involvement in shooting incidents;[79]
- officers who are at risk of being attacked;[80]
- 'officers with recent sustained administrative discipline for integrity-related offenses';[81]
- 'officers who are facing criminal charge or who are on criminal probation';[82]

Inspector General Los Angeles Police Department, p. 1; M McNeil 1996, 'Drinking to belong – The influence of the process of defeminisation on the alcohol consumption of female police officers', Paper presented at the Australian Institute of Criminology Conference, First Australasian Women Police Conference, Sydney, July, p. 3.

[70] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, p. xviii.

[71] Independent Commission on the Los Angeles Police Department 1991*, Report of the Independent Commission on the Los Angeles Police Department*, p. 31.

[72] Davies 2003, 'High speed pursuits – A police agency and community problem', EMU School of Police Staff and Command, p. 18.

[73] S Walker 2003, *Early intervention systems for law enforcement agencies, a planning and management guide*, Office of Community Oriented Policing Services, p. 8.

[74] S Walker 2003, *Early intervention systems for law enforcement agencies, a planning and management guide*, Office of Community Oriented Policing Services, p. 7.

[75] H Goldstein 1990 (1977), *Policing a free society*, University of Wisconsin Law School, Madison, p. 171.

[76] US Commission on Civil Rights 1981. In L Siegel & J Senna 2004, *Introduction to Criminal Justice*, Thomson Wadsworth, p. 227.

[77] US Department of Justice 1999, *Use of force by police: overview of national and local data*, October, p. 66.

[78] The Central Florida Police Stress Unit 2008, 'Suicide', The Central Florida Police Stress Unit website.

[79] C E Jones 1989, 'After the smoke clears: surviving the police shooting – an analysis of the post officer-involved shooting trauma', National Criminal Justice Reference Service, Abstract.

[80] N Seelal & R Branwarie 2008, 'Murder in bar', Trinidad and Tobago's News day website, 11 March.

[81] Officer of the Inspector General Los Angeles Police Commission 1997, *Status Update: Management of LAPD high-risk officers, Inspector General Los Angeles Police Department*, p. 1.

- 'officers with significant and recent disciplinary histories';[83]
- officers 'who are current defendants in either single or multiple civil lawsuits';[84]
- officers who are at risk of using 'excessive force' or other 'improper tactics';[85]
- 'high risk drinkers';[86] and
- 'officers who attract three or more complaints within 12 months'.[87]

It is noteworthy that the term high risk officer has some currency in Australia. In Western Australia, for example, it was used in the context of the Kennedy Royal Commission, which concluded in its Final Report that evidence of the histories of at least two officers provided indicators that they were 'high risk'.[88] These histories included:

- non selection for consecutive police intakes;
- a large number of complaints with recurring themes and some sustained findings;
- gambling problems; and
- a history of disturbing allegations.

The term high risk officer has also been used by the NSW Ombudsman to refer to 'officers with complaint histories of significance'.[89]

A THEME OF SIGNIFICANCE: HIGH PERFORMERS

In the literature on high risk or problem officers, one theme is especially pertinent to this chapter. This concerns the perception of some police agencies that officers with significant complaint histories are simply 'productive' and attract complaints as a result of their high work rate. As observed by Lersch and Mieczkowski:

> When the characteristics of officers accused of higher levels of misconduct were presented to several high ranking state law enforcement administrators, the initial comment was that the officers with a greater number of complaints were just the more productive, aggressive officers performing their duties to the best of their abilities. Far from being problem

[82] Officer of the Inspector General Los Angeles Police Commission 1997, *Status Update: Management of LAPD high-risk officers, Inspector General Los Angeles Police Department*, p. 2.
[83] Officer of the Inspector General Los Angeles Police Commission 1997, *Status Update: Management of LAPD high-risk officers, Inspector General Los Angeles Police Department*, p. 1
[84] Officer of the Inspector General Los Angeles Police Commission 1997, *Status Update: Management of LAPD high-risk officers, Inspector General Los Angeles Police Department*, p. 5
85 US Department of Justice 1999, *Use of force by police: overview of national and local data*, October, p. 9.
[86] M McNeil 1996, 'Drinking to belong – The influence of the process of defeminisation on the alcohol consumption of female police officers', Paper presented at the Australian Institute of Criminology Conference, First Australasian Women Police Conference, Sydney, July, p. 3.
[87] Her Majesty's Inspectorate of Constabulary 2005, *Baseline assessment*, Police Service of Northern Ireland, October, pp. 12-13.
[88] G A Kennedy 2004, *Royal Commission into whether there has been corruption or criminal conduct by any Western Australian Police Officer*, Final Report, Vol. 1, Pt 2, Operation Farfalle, pp. 305-309, 326-327.
[89] NSW Ombudsman 2002, *Improving the management of complaints: Identifying and managing officers with complaint histories of significance*, p. 8.

> prone, these officers were the only individuals who were performing their duties and earning their paychecks
>
> While the 'rotten apple' theory of police deviance has been met with disdain due to the tendency to ignore organizational-level variables, this 'good apple' theory is even more disturbing because complaints of misconduct against officers are viewed as an indicator of productivity.[90]

The Independent Commission on the Los Angeles Police Department made comparable observations in its 1996 report.

> The Department not only failed to deal with the problem group of officers but it often rewarded them with positive evaluations and promotions.
>
> …
>
> A review of personnel files of the 44 officers identified from the LAPD database who had six or more allegations of excessive force or improper tactics for the period 1986 through 1990 disclosed that the picture conveyed was often incomplete and at odds with contemporaneous comments appearing in complaint files. As a general matter, the performance evaluation reports for those officers were very positive.
>
> …
>
> To be sure, misconduct is not established merely by the fact that an officer has many use of force reports, repeated personnel complaints, or even several shootings. It may be argued that active officers assigned to high-crime areas or specialized duties will appropriately use force more often and may generate more complaints against them, than the 'average' officer. Yet, there are many 'productive' officers in high-crime areas who do not accumulate complaints, shootings, and use of force reports in relatively large numbers. The extreme concentration of these data cannot be explained solely by officer assignment or arrest rates.[91]

Research conducted by the Queensland Crime and Misconduct Commission provides some support for this caution. Reporting in 2007 on the results of a study looking at which officers attract the most misconduct complaints, it reported that there was no clear relationship between more complaints and greater work activity. Indeed, the work activity of officers with five or more complaints in its sample was lower than the work activity of officers with no complaints and officers with between one and four complaints.[92]

[90] K M Lersche & T Mieczkowski 1996, 'Who are the problem-prone officers? An analysis of citizen complaints', *American Journal of Police*, Vol. 15, Is. 3, pp. iv, x, 40.
[91] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, p. 38.
[92] M Legosz 2007, 'Cameo of recent police ethics, Crime and Misconduct Commission', Queensland, Australian Public Sector Anti-Corruption Conference, Sydney, p. 33.

TYPES OF INFORMATION COLLECTED

The Commission obtained the following sources of information to develop an understanding of the meanings that are attributed by the NSW Police Force to the term high risk officer:

- advice from the Commissioner of the NSW Police Force outlining the corporate view of the meaning and use of the term high risk officer;
- corporate documents from the NSW Police Force which refer to high risk officers; and
- responses and documented risk assessments from the 20 commands that participated in this project concerning how they define the risk relating to high risk officers.

KEY RESEARCH FINDINGS

CORPORATE PERSPECTIVES

In 2004, the Commission requested advice from the NSW Police Force regarding the policies and procedures related to the classification of high risk officers. The Commission was advised at that time that there was no agreed definition of the term:

> In relation to the term 'high risk' officers I can advise generally that, although it is used regularly, there is no agreed definition of a 'high risk' officer and there does not appear to be any policy documents [on the topic]. The term appears to have developed in an ad hoc manner for management convenience.
>
> Who is a high risk' officer, if the term is used, is determined at the LAC/Command level and each Command may have different criteria [such as number of complaints, number of adverse complaints etc.].[93]

In providing this advice, the NSW Police Force expressed some concerns about the continued use of the term.

> NSWPF wants to get away from the use of the term 'high risk' officer as it is believed to be misleading and unfair; alternatives suggested included terms such as 'officers who require additional auditing.[94]

In 2007, the Commission sought further advice on the meaning and use of the term from the Commissioner of the NSW Police Force. The Commission was again advised that the term had not been officially defined, although it had been widely used for some time. The Commission was also advised that the term may have originally been used to describe officers with 'demonstrated serious conduct issues':

> The term 'high risk officer' has not been officially defined by the NSW Police Force …

[93] Advice from the NSW Police Force, Professional Standards Command, 29 July 2004.
[94] Advice from NSW Police, Professional Standards Command, 29 July 2004.

> The concept of a 'high risk officer' is one that has been widely used throughout the NSW Police Force for some time. It is applied to officers that present concerns to management for a variety of reasons including integrity or performance and perceived potential problems where risk indicators exist. The term may have originally derived from the phrase 'high risk offenders', gaining currency initially in reference to officers with demonstrated serious conduct issues. In practice, however, the threshold for applying it to officers appears at times to be lower than serious misconduct.[95]

The Commissioner also appeared to reiterate some concerns within the NSW Police Force about the continued use of the term:

> It is the proposal of the Professional Standards Command (PSC) that in developing an early intervention system to replace the ORA [Officer Risk Assessment Guidelines] the term 'high risk officer' will be examined in closer detail with a view to determining an appropriate definition and application. If these cannot be determined, consideration will have to be given to removing the term. [96]

In the consultation between the NSW Police Force and Commission on the results of Project Odin, described fully in the final chapter, the NSW Police Force raised continuing concerns about the use of the term high risk officer and the risk of labelling and stigmatisation, which were said to flow from its use. The Commission is seized of these concerns, which it regards as being valid. However, it is also of the opinion that it is a matter for the NSW Police Force as to whether the term will be used in the future.

CORPORATE DOCUMENTATION

The absence of a definition of the term high risk officer is evinced by the contexts in which the term appears in the corporate documents of the NSW Police Force. In the NSW Police Force Handbook, for example, the term is used specifically in relation to 'computer access audits' and the risk of inappropriate computer use. [97]

In other contexts, a defined risk is lacking. The *CMT Hints and Guidelines* page on the NSW Police Force intranet, for example, provides that:

> The identification, risk assessment and management of High Risk Officers (HROs) should be an integral part of the CMT [Complaint Management Team] process …
>
> In addition to HROs, it is important for CMTs to monitor officers who may not reach the HRO threshold but whose complaint history shows an emerging pattern of behaviour that could present a risk to the organisation or themselves.[98]

When the Commissioner of Police was approached for advice in 2007 concerning this entry, he stated that:

> This particular entry is aimed at encouraging CMT's to view subject officers within the context of their overall conduct, not just an individual complaint

[95] Advice from the NSW Police Force, Commissioner of Police, 9 May 2007.
[96] Advice from the NSW Police Force, Commissioner of Police, 9 May 2007.
[97] NSW Police Force intranet, *Police Handbook*, 'Computers', downloaded 18 July 2008.
[98] NSW Police Force intranet, 'Management of Actions & Outcomes', downloaded 1 April 2007.

> matters. However, no over-arching or corporately sanctioned process for doing this exists (…) and it is left to individual CMTs to decide.[99]

LOCAL AREA COMMAND PERSPECTIVES AND USAGES

Overview

The 20 local area commands that participated in this project had all identified high risk officers. They each indicated that the term did not have a single meaning but might connote a range of risks.

Three commands in particular indicated that the range of risks connoted by the term was especially broad. They indicated by their responses that the term connoted:

> a gamut of risks ranging from performance and excessive leave through to misconduct

> performance or conduct or any other issue that might indicate there is an issue that needs to be monitored

> anything. It simply categorises a group of officers who we think we should be mindful of.

Overall, the commands indicated that the term may be applied to officers posing:

- risk of misconduct or criminal misconduct (20 commands);
- risk of adverse performance (17 commands);
- risk relating to officer welfare such as risk of committing suicide (five commands);
- risk of taking excessive sick leave (five commands);
- risks relating to domestic or family issues (five commands);
- risk of high performance arising from a proactive style of policing (four commands);
- risk of attracting complaints (three commands);
- risk relating to secondary employment (three commands);
- risk of bringing disrepute to the NSW Police Force (two commands); and
- risk of exercising a negative influence on staff (two commands).

The participating commands provided information on a total of 71 officers who had been assessed as high risk. This included information about the type or types of risk they were thought to pose. Of these types, it was most common for commands to identify officers as being high risk for conduct issues, that is, because they were regarded as being at risk of engaging in some form of misconduct. This was the case for at least 36 officers. Some other reasons included:

[99] Advice from the NSW Police Force, Commissioner of Police, 9 May 2007.

- ‘complaint histories’ (16 officers);
- officer ‘welfare’ (14 officers);
- a history of ‘reviewable action’ (13 officers),
- ‘poor performance’ (12 officers);
- a ‘risk of attracting complaints’ (three officers);
- ‘excessive sick leave’ (two officers);
- a risk of high performance (two officers);
- risks related to ‘secondary employment’ (two officers).

All commands indicated that the term high risk officer might be applied to officers posing more than one type of risk. Of the 71 officers about whom the Commission obtained information, this appears to have been the case for at least 39.

The following describes some of the above risks in further detail. These descriptions are aided by case studies to develop a better understanding of why officers were identified as being high risk. The case studies include some consequences for management that flowed from these understandings. The precise consequences will be discussed in more detail in Chapter 8.

Conduct risks

All commands that participated in this project indicated that the term high risk officer could, in theory, be applied to officers posing conduct or criminal conduct risks. Seventeen commands demonstrated that they used the term in this way and that some of their high risk officers posed this type of risk, either specifically or in combination with another type of risk. To be clear, this risk related to the risk that the officers were vulnerable to engaging in some form of misconduct. However, only four commands could describe the nature of that risk with any degree of precision. These risks concerned four officers and related to:

- ‘risk of forming inappropriate relations with informants’;
- ‘risk of assaulting juvenile offenders’;
- ‘risk of illicit drug use’; and
- ‘risk of indecently assaulting women’.

The ability of commands to define the conduct risks of individual officers had consequences for how they managed the risk they posed.

Case Studies 5.1 and 5.2 describe examples of officers who were identified as high risk for posing defined and undefined conduct risks, respectively.

Case Study 5.1: A defined conduct risk

A Duty Officer at a local area command stated at interview that the command reserved the term high risk officer for officers who were at risk of misconduct or criminal misconduct. This was the case with one officer at the command who was thought to pose a 'risk of indecently assaulting women'. That assessment was based on the officer's complaint history, which at the time totalled 35 complaints and included: a sustained finding in a complaint involving the harassment of a prostitute; an internal police complaint from a neighbouring command that the officer was seen in a marked police vehicle outside his command talking to prostitutes; and a complaint of alleged misuse of office to obtain sexual favours.

The last two complaints were sustained and were known to the Duty Officer at the time the Commission conducted its interview.

One consequence of this identification was that the officer was removed from general duties and placed in the station in a position where his contact with women could be monitored.

Case Study 5.2: An undefined conduct risk

An officer at a local area command was broadly identified as being high risk because of his 'conduct'. The officer had been identified as high risk during an annual, command-wide risk assessment. The specific reasons that he was high risk were difficult to determine. Command documents indicated that he was flagged 'because of his complaint history'. During the course of an interview with the command's Executive Officer, the Commission was advised that the officer was also flagged because of domestic issues and for the fact that he was known to visit sex workers.

Further details were not provided by the command and from the many reasons given, the risk or risk types that the officer was thought to pose remained unclear.

A closer examination of the officer's history may have revealed risks relating to authorised computer access and abuse of office. From looking at the officer's complaints history, it appeared that the officer had accessed information about a woman with whom he had sought a sexual relationship.

One consequence of the inability to adequately identify and articulate the risk that the officer posed was that the officer, while subject to a range of management actions, was not managed in terms of the risk he posed. For example, the command had neglected to ensure that the officer would be the subject of regular COPS access audits as part of his management.

Performance risks

Seventeen participating commands indicated by their responses or risk assessment practices that the term high risk officer could be applied to officers posing a behavioural risk of poor performance of duties. Of these commands, however, only seven demonstrated that they had identified high risk officers on the basis of performance related risks. Six of these could also flag a specific type of performance risk that at least some of these officers were thought to pose.

The seven commands that had identified high risk officers on performance grounds had flagged a total of 12 officers. Of these officers, only seven were described as posing specific performance risk. These related to:

- risk of providing 'poor customer service';

- poor ‘compliance’ and ‘poor work management’;
- ‘failed prosecutions’;
- ‘poor decision making’; and
- risk of failing to ‘comply with brief handling and procedural responsibilities’.

As with conduct risks, how commands defined and articulated the performance risks of individual officers had consequences for how they managed the risk they posed.

Case Studies 5.3 and 5.4 describe examples of officers who were identified as high risk for posing defined and undefined performance risks, respectively.

Case Study 5.3: A defined performance risk

An officer at a local area command was identified by his command as being high risk following his involvement in a Local Management Issue (LMI). The LMI involved ‘non compliance with procedural and legislative requirements with regard to the filing of Court papers within the specified 7 day period following arrest’. Although the complaint was identified as being a low level management issue, the command decided to flag the officer as being high risk on account of a history of similar complaints. An examination of that history reveals that the officer had, at that time, attracted 14 complaints. Seven of these had involved compliance or procedural issues and resulted in some form of managerial action: counselling on three occasions; a Warning Notice on one occasion; coaching on another occasion; and entry into a performance enhancing agreement on the most recent occasion.

The performance risk that the command identified related to the officer’s failure to ‘comply with brief handling and procedural responsibilities’.

The officer was subject to targeted action, for example, being required to submit all briefs for checking.

Case Study 5.4: An undefined performance risk

A local area command identified an officer as being high risk for having performance risks because he had not progressed from the rank of Constable in 11 years. Documents provided by the command stated that there had been issues with the officer’s ‘work performance’.

Further details were not provided by the command and from the reasons given, the risk or risk types that the officer was thought to pose were unclear.

An examination of the officer’s complaint history reveals a pattern of complaints that could have been used by the command to define the nature of risk that the officer posed. The officer’s history included complaints involving failure to comply with procedural requirements, including two sustained counts of failure to attend court.

The command purported to manage the officer simply by referring him to the Police Medical Officer.

High performers

Four participating commands appeared to use the term high risk officer to identify officers who had attracted conduct-related complaints, but had been viewed by their commands as being 'high performers'.

This usage had implications for how commands viewed complainants, the risks that the officers posed, as well has how they investigated complaints and managed officers.

Some of the ways that these Commands described their high performers included the following:

- 'works a million miles an hour';
- 'flies close to the [sun]';
- 'streetwise';
- 'quintessential street police officer';
- 'always on the front foot';
- 'second to none';
- 'irreplaceable';
- 'leads the charge';
- 'does not shy from using force';
- 'well regarded by his peers';
- 'proactive';
- 'valued officer';
- 'every command has one';
- 'always be a high risk officer because of complaints and style of policing'.

Case Studies 5.5 and 5.6 describe examples of where the term high risk officer was used to classify high performers**.** The first relates to a risk of attracting vexatious complaints, the second to the risk of noble cause corruption.[100]

[100] The term 'noble cause corruption' or 'process corruption' was referred to by the Royal Commission into the NSW Police Service in the following terms: 'This is the kind of corruption whereby unnecessary physical force is applied, police powers are abused, evidence is fabricated or tampered with, or confessions are obtained by improper means. Its is often directed at those members of the community who are least likely or least able to complain, and is justified by police on the basis of procuring the conviction of persons suspected of criminal or anti-social conduct, or in order to exercise control over sections of the community'. J J R T Wood 1997a, *Royal Commission into the NSW Police Service 1997, Final Report, Volume 1: Corruption,* p. 26.

Case Study 5.5: Risk of high performance and attracting vexatious complaints

A local area command has consistently flagged an officer as being high risk since 2002. In the most recent instance, the officer was flagged because of his lengthy complaint history. This followed a complaint of alleged drug supply, which was not sustained. At the time, the officer's complaint history totalled above 60 complaints. The majority had not been sustained.

The officer's command adopted the view that the officer had attracted complaints because of his proactive style of policing; and that all complaints were vexatious and had emanated from within the command's 'criminal element'. This had defined the risk the officer presented in the command's view. The command stated that the officer had attracted complaints because he 'led the charge' and had been proactive as the arresting officer.

The command adopted the view that the officer was not at risk of engaging in misconduct. It adopted the view that the officer was a 'high performer' who had one of the 'highest arrest rates in the command'. The officer's commander also stated at interview that it was because of the officer's efforts that the command was ranked high in the state with respect to drug-related arrests.

The officer was the leader of a proactive crime group within the command. The position he occupied was unusual for unlike other senior positions at the command, it was not subject to rotation. At interview, his commander stated that this was because the officer was 'irreplaceable' and 'second to none'.

Although subject to a wide range of actions, no consideration was given to changing the officer's duties. This was despite the fact that the command recognised that the officer attracted complaints because of this position.

Case Study 5.6: Risk of high performance and noble cause corruption

An officer at a local area command was identified as being high risk because of high performance issues and the risk of noble cause corruption.

The officer had been flagged because of an increase in complaints, local knowledge concerning his activities and associations outside working hours, and concerns about his source management and 'proactive style of policing'.

At interview, the command described the officer as a being a 'high performer' who 'works a million miles an hour' and 'flies close to the [sun]'. It indicated that, while there were no immediate concerns with regard to the officer's conduct, the officer presented a risk of engaging in some form of misconduct (noble cause corruption) given his style of policing. The officer was described as being 'streetwise'.

The command implemented specific management actions to offset at least some of the risks that the officer was thought to pose. Among these, he was not permitted to leave the station without informing a senior officer or to have any interaction with informants.

At the same time, other management actions appear to have been less obviously focused on the risks he posed. Among other examples, the officer was put to work with the detectives and, for a time, the command's proactive crime unit. These duty changes were instituted because of the officer's 'ability' as well as the view that the changes would offset the risks he posed as a uniformed police officer.

Welfare risks

Five participating commands indicated that the term high risk officer could be applied to officers posing 'welfare' risks. Four of these demonstrated that they had identified officers on this basis, providing information on 14 officers. From this information, however, only three were identified as posing a specific welfare related risks. In two cases, the risk related to suicide and in another because of threatened self-harm.

In some examples, commands sought to determine how welfare risks could impact on their conduct. Case study 5.7 describes an example.

Case Study 5.7: Welfare risks as conduct risks

An officer at one local area command was identified as being high risk on the basis of mostly welfare issues. The officer first came to the attention of the command because of her relationship with another police officer at the command. That relationship had led to an adverse finding that the officer had colluded with her partner in attempting to pervert the course of justice. The finding resulted in the officer losing a pay increment for a period of 12 months.

The officer was reassessed as being a high risk following an attempted drug overdose incident. The command advised that the officer had been examined by the Police Medical Officer and been cleared from suffering any psychiatric condition, but that she was still a concern to the command.

The officer was flagged as being high risk because it was felt that the welfare concerns could impact on her 'performance, behaviour or conduct'.

Family issues

Five participating commands indicated by their responses or practices that the term high risk officer could be applied to officers with domestic or family issues. In most cases where this was the case, the precise risk was not defined. In some instances, however, commands sought to consider how these issues had the potential to impact on the officer's performance or conduct. Case Study 5.8 describes an instance where this was the case.

Case Study 5.8: Family issues as conduct risks

An officer at another local area command was identified by the command as being high risk because a complaint of misuse of authority relating to her son. The officer's son was a known person of interest and the potential risks arising out of the relationship were known to the command and had been monitored for some time.

At interview, the officer's commander stated that while the officer posed a 'conduct risk', she did not pose a risk of 'criminality'. The commander explained that the officer was 'grappling with difficult issues' relating to her son and that the line between being a parent and police officer had blurred.

Supervisors at the command were aware of the relationship and had closely monitored the officer.

Risk of attracting complaints

Three participating commands stated that the term high risk officer defined officers who were 'at risk of attracting complaints'. This use of the term is different from the practice of some other commands that identified officers as being high risk 'because of their complaint histories' (see below).

There were variations in how the three commands understood the 'risk of attracting complaints'. In one instance, the risk was defined as a 'risk of attracting vexatious complaints'. In another it was a risk of attracting complaints of any type. In a third, the risk was defined as a 'risk of attracting complaints under Pt 8A of the Police Act'.

Multiple Risks

All participating commands indicated that the term high risk officer could be applied to officers posing multiple or overlapping risks. This was matched in practice at most commands, with three risks in particular commonly being bundled together. These risks related to conduct, performance and welfare.

Case Study 5.9 describes an example of where the term high risk officer was used to describe an officer with multiple risks. A risk assessment found that the officers posed an 'extreme' risk in these areas'.

Case Study 5.9: Multiple risks

An officer at a local area command was identified as being a high risk in view of performance, conduct and welfare issues.

The officer had attracted 11 complaints. His most recent had concerned 'improper disposal procedures of exhibits'. The officer had been counselled over similar matters in the past. At the time of his assessment, the officer was also subject to other complaints. One concerned 'unacceptable brief preparation and non-appearance at court', another related to improper use of authority.

Among other issues, the officer lived in the command and was known to associate with persons of interest to police including known high risk offenders. The assessment that was carried out on the officer found that he was unable to recognise the risk that this posed either to himself or the command.

The officer was separated from his wife, an Asian prostitute, and was suspected of accessing information about Asian women through COPS. It was also alleged that he had targeted these women for investigation through immigration channels. There were concerns that the officer had also sought out illegal Asian immigrants whilst off duty outside the command.

The officer was subject to a number of management actions. He was restricted to station duties and Team Leaders and Duty Officers were advised of the need for him to be 'strictly supervised in the workplace'. Particular attention was to be paid to his preparation of briefs and his 'court commitments'. The officer was also placed on a Conduct Management Plan 'to monitor his performance'.

Conduct versus Performance

Many of the participating commands recognised that it was difficult it draw a clear line between conduct and performance issues. As stated by one command:

> Performance and conduct risks cannot always be distinguished. Sometimes it might be that the term [high risk officer] is applied to an officer who seems to have only performance issues.

Case Study 5.10 describes an example of how one command has sought to understand the relationship between conduct and performance risks and how to distinguish between the two.

Case Study 5.10: The line between conduct and performance

One local area command together with others spoke of the difficulty of drawing a distinction between performance and conduct risks. The command provided an example of how it had sought to distinguish these risks.

The command had identified an officer as being high risk because of his failure to complete a rostered shift without permission. The command expressed the view that, while the issue may have raised only a performance issue, there was an underlying integrity issue (truthfulness) that brought the issue within the realm of conduct. The command sought to explain the difference between the two as the difference between 'not knowing what to do' (performance) and 'knowing what to do but not doing it' (conduct).

Having said that, the command stated that the term high risk officer was not confined to officers with only conduct issues. Officers who had 'significant performance issues' might also attract the term given the potential consequences of their poor performance.

At risk versus high risk

Three of the 20 commands that participated in the project were alive to a need to distinguish between officers who posed conduct risks and officers who posed other types of risk. A strategy that they all used was to distinguish these officers by using different terms to describe the risks they posed.

- One command drew a distinction between 'high risk officers' with conduct issues and officers who were 'at risk' of misusing computers.
- Another command divided its officers into three categories: high risk, medium risk, and 'potential performance-related'. The terms high and medium risk related to officers with conduct related issues. The term 'potential performance-related' was applied to officers with other types of risks including, for example, an officer whose driving licence was downgraded to Bronze for six months and an officer who had issues with excessive sick leave.
- A third command employed the term 'high risk officer' to designate officers with conduct issues and the term 'at risk' to denote officers with other type of risks, including risks relating to poor performance and officer welfare.

Undefined risks

The term high risk officer was sometimes applied by local area commands without a clear understanding of the risk that it identified.

Seven commands, for instance, indicated that the term was simply applied to officers 'because of complaints' or 'complaint histories'. In these instances, no attention was paid to the types of complaints that these officers had attracted or to complaint outcomes. A common effect in such cases was that officers were subject to few management actions apart from 'monitoring' – something that commands were often unable to demonstrate through documented processes.

Some participating commands also used the term high risk officer as a response to isolated management outcomes. In some examples, commands applied the term to officers who had, mostly in the past, been nominated for removal from the Police Force under s. 181D of the *Police Act 1990* (NSW). This occurred at seven commands, and in most cases a risk was not assigned by the commands. The usual effect was that such officers were also subject to few, if any, management actions.

Other risks

The commands that participated in the project noted that the term high risk officer could be applied for many others reasons. Some, which have not been examined in this chapter, include:

- instances were the term had been applied on the basis of individual intuition;
- an instance where an officer was rated as being high risk 'in view of matters known only to a Superintendent';
- an instance where a commander stated that 'innuendo' alone might be enough to flag an officer as being high risk;
- an instance where two officers who were married to each other were thought to be exercising a negative impact on the command;
- instances where the term had been applied to probationary constables;
- an instance where an officer was flagged because of the risk of 'adverse media publicity for the Command and NSW Police as a whole'; and
- instances where officers were flagged following identification by the NSW Ombudsman as being 'high risk'.

SUMMARY DISCUSSION

The term high risk officer has a wide currency in the NSW Police Force but lacks a corporately defined meaning. The NSW Police Force advises that the term is one that is used by commands, which are responsible for attributing their own definitions to the term. In the past, it appears that the term was intended to apply only to officers with serious demonstrated conduct issues.

At the command level, the term high risk officer has been used to connote a range of disparate risks. These include, as one command stated, risks potentially related to 'anything'. While there is no typical attribution, common usages nonetheless indicate that term is applied to officers posing:

- conduct risks;
- performance risks; and
- welfare risks.

Some other meanings which commands identified included:

- risk relating to high performance;
- risk of attracting complaints;
- risk relating to family issues; and
- risk of adverse media publicity.

None of the above appears to have been mutually exclusive and the term high risk officer could be applied to officers posing more than one risk type.

However the term might have been used, in most cases commands demonstrated that they could not usually specify the precise nature of the risk posed by high risk officers. Commands often applied the term to officers to denote broad risks, without a clear definition of what risk the term was defining. This had consequences for how commands responded to the perceived risks posed by officers who were deemed high risk. It affected their choice, if any, of management actions to address the risk posed by these officers.

At the same time, some commands recognised the difficulty of drawing a distinction between different risks types. Some commands which sought to draw this distinction had done so by using different terms to identify officers posing these risk types.

Several implications may be drawn from the information that appears in this chapter:

- The absence of corporate direction on the meaning of the term high risk officer allows for inconsistency at the command level. It leads to the situation where commands provide their own definitions, resulting in a lack of shared understanding among them of what the term connotes. The danger of this situation is that officers at different commands will be perceived to be high risk for radically different reasons. It also risks the situation that commands will be inconsistent in the meanings that

attribute to the term. Commands need to have a shared understanding so that the reasons that lead to an officer being identified as high risk at one command are readily understood by another command. Underlying these issues, there is also an issue of fairness and transparency. Officers working at NSW Police Force commands need to understand what it means to be identified as a high risk officer.

- Beyond broad connotations, such as risks relating to conduct or performance, the term high risk officer is usually not used by commands to denote specific risks. This raises questions concerning the management of the risk posed by these officers and tailoring of strategies to treat these risks. This implication flows from a basic tenet of risk management, which requires that risks be properly identified as a precursor to being treated.
- The use of the term high risk officer to identify officers who pose different risks such as performance, conduct or welfare also confuses the different objectives behind identifying these officers. In particular, it confuses the purpose of identifying officers with known conduct issues who are at particular risk of engaging in misconduct. Classifying officers with different risks under the same rubric is also unfair. The danger is that these officers will be perceived to be the same, that their needs will be overlooked and that they will be mismanaged.
- Problem employees within any organisation can pose a variety of risks. There is merit in using different labels to distinguish the employees that pose these different risks. For one thing, it enlivens recognition that the risks are different. The use by some local area commands of the terms ‘at risk’ and ‘high risk’ would appear to achieve this in practice. The issue is not merely one of semantics.
- There are significant risks involved in using the term high risk officer as an epithet of high performer. Commands may dismiss complaints against these officers on the grounds that they are vexatious and made by disgruntled criminals. They may reward inappropriate behaviour through promotion or neglect to take certain actions, like changing an officer’s duties, in the belief that an officer can not be replaced. The use of the term in this way also sends a wrong message to junior officers about risks such as noble cause corruption. It can send the message that officers who walk a fine line and cut corners to secure arrests and convictions are doing a good job, with the term high risk officer having a positive connotation.

6. IDENTIFYING HIGH RISK OFFICERS

OVERVIEW

This chapter describes some of the methods used by the commands that participated in this project to identify high risk officers and provides an overview of the strengths and weaknesses of these methods. It is anticipated that this information will assist in the development a corporate risk assessment tool or process for use within the NSW Police Force to identify high risk officers.

LITERATURE REVIEW

It is often remarked in the literature on policing that 'problem officers' are well known to police agencies.[101] Neglecting to identify and manage these officers has emerged as an ongoing concern for a number of inquiries into police misconduct.

In the United States, for example, the Christopher Commission identified a group of 44 officers with extremely high rates of complaints who had not been identified or managed by their police department. As reported by Walker:

> The Christopher Commission pointed out that these 44 officers were 'readily identifiable' on the basis of existing departmental records. Yet, the LAPD appeared to have made no effective use of these records to identify the officers and take any corrective action. The Commission found, for example, that citizen complaint data were not used in making routine performance appraisals.[102]

These findings were repeated by the Kolts Commission, which was formed to investigate the Los Angeles County Sheriff's Department in 1992. It too found a similar group of 62 'problem officers'.[103]

The St Clair Commission, which was created in 1992 to investigate police brutality in Boston, concluded that:

> No police department and no community should tolerate a situation where officers with long records of alleged misconduct, including some with histories of alleged physical abuse of citizens remain on the street largely unidentified and unsupervised.[104]

The New York Commission to Combat Police Corruption also reported in 2001 that it was important to identify problem officers and locations:

> Consistent with maintaining integrity standards, it is important to identify problem officers and locations. Early and timely identification of problem

[101] Commission to Combat Police Corruption 2001, *The New York City Police Department's Non-IAB Proactive Integrity Program*, p. 46; H Goldstein 1977, in S Walker, G P Alpert & D J Kenney 2004, 'Early Warning Systems: Responding to the problem police officer', *National Institute of Justice Journal*, July, p. 1.
[102] S Walker 2003, Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide, US Department of Justice, Office of Community Oriented Policing Services, p. 27.
[103] S Walker 2005, *New world of police accountability*, Sage, London, p. 107
[104] B E Armacost 2004, 'Organizational culture and police misconduct', *George Washington Law Review*, Vol. 72, p. 502

> officers can reduce a precinct's level of corruption and/or misconduct by confronting potentially troublesome situations before they can escalate.[105]

The literature on problem and high risk officers does not provide a list of identifiers for officers who pose demonstrated misconduct risks. However, some potential identifiers that may apply to these officers, apart from other officers, such as those that might present with performance risks or other early warning signs of future misconduct, include:

- 'repeated complaints' or 'extremely high rates of complaints';[106]
- disproportionate involvement in 'use of force' incidents;[107]
- involvement in several 'shootings';[108]
- 'six or more allegations of excessive force or improper tactics' over a four year period;[109]
- 'five or more complaints over a two year period';[110]
- 'previous criminal allegations, previous adverse findings and number of complaints they have received throughout their career';[111] and
- officers 'who demonstrate identifiable patterns of inappropriate behaviour'.[112]

TYPES OF INFORMATION COLLECTED

The Commission obtained the following types of information to better understand how high risk officers have been identified in the NSW Police Force:

- corporate advice from the NSW Police Force concerning the processes used to identify high risk officers;
- information from the 20 local area commands that participated in this project concerning the methods they used to identify high risk officers; and
- documented risk assessments from the participating commands where these had been used to identify high risk officers.

[105] Commission to Combat Police Corruption 2001, *The New York City Police Department's Non-IAB Proactive Integrity Program*, p. 45.
[106] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, p. vii; S Walker 2003, Early intervention systems for law enforcement agencies: A planning and management guide, Officer of Community Oriented Policing Services, p. 27; K M Lersch & T Mieckowski 1996, 'Who are the problem-prone officers" An Analysis of citizen complaints', *American Journal of Police*, Vol. 15, Is. 3, September, p. 31; NSW Ombudsman 2002, *Improving the management of complaints: Identifying and managing officers with complaint histories of significance*, p. 8.
[107] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, p. 38; L Siegel & J Senna 2004, *Introduction to Criminal Justice*, Thomson Wadsworth, p. 226.
[108] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, p. 38.
[109] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, p. x.
[110] US Civil Rights Commission 1981. In S Walker 2003, *Early intervention systems for law enforcement agencies: A planning and management guide*, Officer of Community Oriented Policing Services, p. 27.
[111] Committee on the Office of the Ombudsman and Police Integrity Commission 2002*, Research report on trends in police corruption, NSW Parliament*, p. 70.
[112] S Walker, G P Alpert & D J Kenney 2004, 'Early Warning Systems: Responding to the problem police officer', *National Institute of Justice Journal*, July, p. 1.

KEY RESEARCH FINDINGS

CORPORATE ADVICE

As indicated earlier in this report, the NSW Police Force does not have a corporately endorsed tool or process for identifying high risk officers. Where commands identify high risk officers, the advice that the NSW Police Force provided the Commission in 2004 remains current:

> [W]ho is a 'high risk' officer, if the term is used, is determined at the LAC/command level and each command may have different criteria.[113]

Even so, as noted earlier in this report, there appears to be a corporate expectation that commands will identify high risk officers by means of a formal risk assessment process. This can been gleaned from the advice provided to commands under the heading 'High Risk Officers' on the *CMT Hints and Guidelines* page on the NSWPF intranet, which states as follows.

> The identification, risk assessment and management of High Risk Officers (HROs) should be an integral part of the CMT [Complaint Management Team] process.
>
> In identifying HROs and to eliminate future allegations of bias CMTs should adopt a formal risk assessment process.[114]

In 2007, the Commissioner of Police was contacted for updated advice as to whether or not the NSW Police Force had endorsed a corporate tool or process for identifying high risk officers. In the context of providing that advice, the Commissioner stated that a set of guidelines, known as the Officer Risk Assessment Guidelines (ORA), had been:

> intended to contribute such a process…[even though] that document did not rely on or employ the term 'high risk officer'.[115]

These guidelines were 'retired' by the NSW Police Force in April 2007 in view of several shortcomings (discussed below).

The Commissioner also referred to current work on the development of 'a new early intervention scheme to replace the ORA [Guidelines]'. He stated in his letter to the Commission that the project 'will specifically consider the appropriate use, if any, of the term 'high risk officer'.

The Commissioner of Police also advised the Commission that the NSW Police Force did not maintain a centrally managed repository of high risk officers.

[113] Advice from the NSW Police Force, Professional Standards Command, 29 July 2004.
[114] NSW Police Force intranet, 'Management of Actions and Outcomes', CMT Hints and Guidelines, downloaded 1 April 2008.
[115] Advice from the NSW Police Force, Commissioner of Police, May 2007.

Background to ORA and the development of an Early Intervention System

In 2002 the Committee on the Office of the Ombudsman and Police Integrity Commission (2002) ('the Committee') recommended that the Commission and the Ombudsman's Office provide assistance to the NSW Police Force in the development of an early intervention system (EIS) (then referred to as an early warning system (EWS)):

> the Police Integrity Commission and the NSW Ombudsman consider assisting NSW Police in establishing the indicators for an Early Warning System to identify and assist vulnerable police officers.[116]

This recommendation followed research undertaken by NSW Police Special Crime and Internal Affairs, entitled 'Analysis of Sustained Criminal Allegations 1999-2001', which had also proposed the establishment of an EWS/EIS.

The Committee endorsed the development of such a system in New South Wales on the view that 'police corruption starts with a series of small acts, and, most often, escalates':

> One issue that emerges clearly from a range of sources, including the testimony of corrupt officers at various inquiries, and research from other jurisdictions, is that police corruption starts with a series of small acts, and, most often, escalates. These acts form a recognisable series of critical indicators that can help identify officers at risk of corruption. Corruption risk indicators can include things such as an officer's complaints history and environmental issues, including working in areas with high levels of community dysfunction or areas with entrenched drug markets.[117]

In January 2003, the Commission became involved in a joint research committee, which had been established to progress the Committee's recommendation. The joint research committee included a number of stakeholders including the NSW Ombudsman. It met on thirteen occasions over a two year period before the NSW Police Force decided to defer further consideration of an EWS/EIS in May 2005. In its place, the NSW Police Force released a draft version of an alternative system, the Officer Risk Assessment (ORA) Guidelines.

The Officer Risk Assessment (ORA) Guidelines consisted of a two-part process for general use within the NSW Police Force. The first part, known as the Risk Assessment Screen (RAS), consisted of a short risk assessment process to which all sworn officers within a command were to be subject in any 12 month period. It had been intended that a RAS would also be conducted on requests for transfer, on permanent changes of duty type, or when incidents occur that may have the effect of altering the level of risk posed by an officer.

The RAS was intended as a filtering process to identify officers who might require a more in-depth assessment. It assessed officers against 11 yes/no questions relating to seven areas of risk:

[116] Committee on the Office of the Ombudsman and Police Integrity Commission 2002, *Research report on trends in police corruption*, NSW Parliament, p. iv.
[117] Committee on the Office of the Ombudsman and Police Integrity Commission 2002, *Research report on trends in police corruption*, NSW Parliament, p. ii.

> **Environmental**: the suitability of an officer to their work environment.
>
> **Operational**: whether an officer meets operational requirements and acts within standards.
>
> **Performance**: whether an officer is performing at a satisfactory level.
>
> **Extraneous Employment Activities**: is secondary employment, user pay duty, overtime etc. affecting an officer's capacity as a police officer.
>
> **Leave**: assessing whether the use of sick or other types of leave is an issue.
>
> **Conduct**: considering whether the officer's conduct is an issue.
>
> **Personal**: considering aspects of the officer's personal life and whether this may impact on their capacity as a police officer.[118]

Where a 'yes' response was recorded against any question, the officer was to be brought to the attention of the commander; and, unless there were strong reasons for not doing so, the officer was to be subject to the second part of the assessment process, the longer Officer Risk Assessment, which assessed officers against more detailed questions relating to the seven areas of risk.

In August 2005, a six-month trial of the Officer Risk Assessment (ORA) Guidelines commenced at seven commands. In August of the following year, the Commission was advised that the ORA Guidelines had been rolled out to 13 other commands. Due to concerns raised by the Commission and NSW Ombudsman, however, a further roll out was deferred in September 2006 pending an evaluation of the trial. The Commission had earlier declined a request by the NSW Police Force to endorse the ORA Guidelines as did the NSW Ombudsman.

In April 2007, the Commission was advised by the NSW Police Force that the ORA Guidelines had been 'retired'. The NSW Police Force acknowledged that the decision to 'retire' the ORA Guidelines had been 'heavily influenced by recent discussions with [the Commission] … as well as the concerns previously raised by other stakeholders'.[119] Some concerns, which had been raised by the Commission, were that:

- the ORA process had not been supported by research or the experiences of other police jurisdictions;
- the inclusion of all officers in the risk assessment screening process could dilute the attention given to officers whose conduct warrants intervention and possibly lead to a perfunctory process;
- the assessment process was subjective, and in many cases relied only on the observations of local managers;
- the process was not centrally supported or managed, and therefore posed a risk of inconsistency across commands;

[118] NSW Police Force 2005, Officer Risk Assessment Guidelines, pp. 19-20.
[119] Advice from NSW Police Force, Professional Standards Command, 16 April 2007.

- the ORA Guidelines did not articulate an objective, apart from stating the circumstances in which an assessment ought be conducted; and
- the risks included in the risk assessments were far too broad, and not necessarily connected with misconduct.[120]

When it withdrew the ORA Guidelines, the NSW Police Force commenced work on the development of a new risk assessment model. Initially, this model was to be focused on identifying officers who were at risk of serious misconduct. The Commission was invited, along with Office of the NSW Ombudsman and Police Association of NSW, to participate in its development.

Throughout 2007, the Commission met and exchanged correspondence with the NSW Police Force on the development of an alternative model. In these meetings and exchanges of correspondence, the Commission sought to urge the NSW Police Force as to the value of an EIS. Accepting this advice, the NSW Police Force endorsed a project to develop such a system in November 2007 'as an organisational priority to support corruption resistance within the NSWPF'. At the same time, it endorsed a 'project to develop a [separate] managerial risk management tool on the basis that':

> it is resourced separately from any EIS project; and
>
> the project will not commence until after
>
> - the EIS project has been scoped and endorsed, and
> - PIC has handed down the Project Odin report.[121]

Details of this managerial risk management tool are as yet unclear. However, from information provided to the Commission by the NSW Police Force it would appear that the object of this tool will be to identify and manage officers at risk of serious misconduct.

The relationship between an EIS and a tool targeting officers who are at risk of serious misconduct is discussed in the final chapter of this report.

LOCAL AREA COMMAND TOOLS AND PROCESSES

The local area commands that participated in this project had all identified high risk officers. As seen in chapter 4, the participating commands used the term to identify officers who posed different types of risk. To recap, these risks types included:

- risk of misconduct or criminal misconduct;
- risk of poor performance;
- risk relating to officer welfare such as risk of committing suicide;
- risk of taking excessive sick leave;
- risks relating to domestic or family issues;

[120] Police Integrity Commission 2006, 'Discussion Paper: Early Intervention Processes', March.
[121] NSW Police Force intranet, Commissioner's Executive Team Meeting of 6 November 2007.

- risk of high performance arising from a proactive style of policing;
- risk of attracting complaints;
- risk relating to secondary employment;
- risk of bringing disrepute to the NSW Police Force; and
- risk of exercising a negative influence on staff.

The remainder of this chapter describes some methods that had been used by the participating commands to identify high risk officers.

Overview of identification methods

At least three methods were used by participating commands to identify high risk officers:

- documented risk assessments;
- informal assessments by Complaint Management Teams (CMT); and
- external assessments by oversight agencies and the Professional Standards Command (PSC).

In most cases, commands indicated that they had used more than one of these methods to identify high risk officers.

Documented Risk Assessments

Fifteen of the 20 local area commands that participated in the project indicated that a documented risk assessment process or tool had at some time been used to identify high risk officers at their commands. Each of these commands provided the Commission with information or documented examples of how the risk assessment process or tool had been used.

However, it appeared from the information provided that only five commands routinely used the process or tool to identify high risk officers. At ten commands, it appeared that the use of these tools or processes had been ad hoc. In four cases, the Commission was also informed by the commands that they had only ever used the tool or process once. In other cases, it also appeared that the assessment tools or processes were not used currently, although they had been used in the past.

The documented assessment tools or processes that local area commands provided the Commission can be grouped into the following types:

- Excel risk assessment matrices;
- Officer Risk Assessment Guidelines;
- locally produced check lists or assessment templates; and
- an intelligence-based approach (one example).

Excel Risk Assessment matrices

Four participating commands indicated they had used an Excel risk matrix to identify high risk officers. These commands stated that they conducted command-wide assessments using the tool on either an annual or periodic basis, with one stating that assessments were done every three to six months. However, only one of the four commands could provide documentation from different years showing that the assessments had been conducted as stated over a four year period. The other three commands could provide only between one and two documented examples.

Each of the Excel matrices used at the four commands had a common format. In each, the matrix rated officers on a point system against a set of variables. Officers with an overall point score of 10, and in one case 20, or more were identified on that basis as being 'high risk'. Five variables were common to the four:

- complaints, either as a stand alone category or as a supra category with sub categories, for example: criminal, customer service, adverse findings, poor performance or Category 1, Category 2, adverse findings, Local Management Issues (LMIs);
- sick Leave;
- duty type;
- tenure; and
- secondary employment.

Other variables, which were not common to all, included:

- 'COPS audit';
- 'excessive leave';
- 'registered informants'; and
- 'other contributing factors', such as off-duty associations or known alcohol and gambling problems.

The four commands that used these matrices calculated risk in a mixture of two ways. The most straightforward method assigned an automatic rating against the variables. Risk calculations for tenure in three matrices, for example, assigned five points to officers who had been at the command for more than five years; and two points to officers who had been at the command for less. Similarly, risk calculations for informants and secondary employment in two matrices assigned two points each to officers who had registered informants or had engaged in secondary employment; and one point if they had not. Risk calculations for officers engaged in certain duty types in three matrices followed a similar logic. In three of the four matrices, three points or an automatic rating of high was assigned to detectives; two points or a rating of medium to highway patrol officers; and one point or a low rating to general duty officers.

The second method to calculate risk employed a subjective approach. One command indicated that it used such an approach against all variables, assigning a rating of 1 to 3, or high, medium and low, against each.

A mixture of the two methods appears to have been used by three local area commands when assigning risk against complaint variables. At one command, the Commission was advised that 'local knowledge' was 'brought into the assessment' when deciding on what rating to assign; at two other commands, the commands stated that they took into consideration length of service, the type and frequency of complaints, and whether the officer was subject to any recent complaints.

One command used the following risk rating scale in determining what ratings to assign to different complaints:

- Where an officer had attracted a Category 1 complaint, the officer was designated as being an 'automatic high risk officer';
- Where an officer had attracted Category 2 complaints, the officer was designated as being high risk if they had more than two Category 2 complaints;
- Where the officer had an adverse findings, the officer was rated as high risk if they had an adverse finding in two or more complaints; and
- Where an officer had been the subject of local management issues (LMIs), they were assigned a medium rating where they attracted more than three complaints.

The Officer Risk Assessment Guidelines

Four commands reported to the Commission that they used the Officer Risk Assessment (ORA) Guidelines to identify high risk officers. In one case, the guidelines were used to conduct command-wide assessments – in other words, to assess all officers within the command. In three other cases, the guidelines were used in other ways, for example:

- to assess an officer with 'known performance and conduct issues';
- to assess an officer in response to exceptional 'events' such as a serious complaints, alleged criminal events, or a medical event such as attempted suicide; and
- to assess officers as part of a command's complaint management practices.

Where the ORA was used as part of a command's complaint management practices, the Commission was advised that ORAs were sometimes requested by the command's Complaint Management Team (CMT) at the end of an investigation. This was done to determine if the officer who was the subject of the investigation presented a high risk and, if so, the appropriateness of any proposed management action. The command also indicated that ORAs had also been requested before the end of an investigation to determine if any interim management action was also required.

In using the ORA, most commands appear to have been aware of its shortcomings and the fact that it had been withdrawn by the NSW Police Force. One command stated that it had used the ORA 'as a matter of course' in the absence of an alternative tool. Even with its shortcomings, the command felt that by using the ORA it overcame a 'risk

of perceived bias' as the assessment process involved more than one person and had to be ratified by the CMT.

Locally-produced assessment tools

Six local area commands that participated in the project indicated they had sometimes used other types of locally-produced tools or processes to identify high risk officers. In terms of actual frequency, most commands stated that they had only used their respective tools on an ad hoc basis; for example, to assess suspected high risk officers. In two cases, the commands indicated that they had only ever used the tool once. Only one command could demonstrate that it had used the tool more frequently; it had indicated that it had used the tool to assess all officers annually.

While all utilised some common variables such as complaints and most used similar formats, no two tools were the same.

One local area command (Southern Region) that participated in the project sometimes utilised a risk assessment system made up of 12 questions to identify high risk officers. These questions concerned:

- number of complaints in the previous twelve months;
- instances of unreported sick leave in the last twelve months;
- type of secondary employment;
- known substance abuse or gambling problems;
- attitude in the workplace;
- level of motivation;
- level of current supervision;
- duty type;
- security access level;
- tenure;
- management history; and
- off-duty environment.

Under the system, officers were assigned points against each question. An overall risk rating was determined by their overall scores against the 12 questions. The ratings awarded in relation to complaints in the last 12 months, for instance, provide an indication of how the system is supposed to work:

Rating	**No.**	**Rating scale**
Critical	10	Excess of 5 complaints
High	8	5 complaints
Moderate	6	3 to 4 complaints

Minor	4	2 to 3 complaints
Low	2	1 to 0 complaints.

The command indicated that, while the assessment tool had been used, it was not typical for the command to use it to identify high risk officers.

Another local area command utilised a one page risk assessment tool made up of 16 variables to identify high risk officers. The variables, which were grouped under four main headings, related to: complaints, sick leave, duty type, and other considerations. Included within the 'other considerations' were matters such as reports of poor performance, COP audits, and personal knowledge regarding off-duty associates. Under the system an officer's risk rating was determined by taking into account quantitative data – for example, number of complaints, number of sustained complaints, number of sick days, reports of poor performance – and then assigning a risk rating of high, medium or low. The assessment tool did not provide a guide for assigning these ratings. The command indicated that all officers were subject to an annual assessment using the system. The command indicated that once identified high risk officers were subject to assessments every six months.

A rural local area command used a similar system. Its one-page tool consisted of an identical list of variables and a tick list of high to low. The command indicated that it had only ever used the tool once to reassess an officer who had been flagged as a high risk officer for many years. The command did not typically use such a tool to determine the status of high risk officers at the command, relying instead on local knowledge.

The provenance of most local tools was difficult to determine. In some cases commands simply stated that they had 'borrowed' or 'sourced' their tools from other commands or that they had always been used at the command. Case study 6.1 describes how one local area command developed a tool following a serious complaint involving one of its officers. The case study also provides a rare case of a tool indicating the sources of information that the command could use to undertake its assessments.

Intelligence-based Approach

One command which participated in the project had used what appeared to be an intelligence-driven risk assessment to rate an officer as high risk. The assessment is in narrative form. It identifies a specific risk relating to the officer and goes on to provide background information and an assessment of the risk level supported by evidence. The evidence is in the form of witness statements, notes, intelligence reports, and duty officer's log. The information from these sources appear to support the risk assessment, which in this case related to an alleged conflict of interest involving the officer and the officer's son, a person of interest to local police. It appeared from the evidence that the officer had involved themselves in interactions between their son and local police.

Case Study 6.1: How one local area command developed a risk assessment tool to identify high risk officers

A local area command stated that it had developed a risk assessment tool for the command in 2005 following a complaint against an officer of sexual assault. The investigating officer noted in his report that the officer had not been identified by the command as being a high risk prior to the incident, although there were some indications that the officer should have been.

After the incident, two senior officers at the command were taken off-line to develop a risk assessment tool for a command-wide assessment of officers. The command indicated that the resulting tool borrowed aspects of tools being used by other commands, but was developed with the risks of the command in mind. Some of the information for the tool was drawn from the history of the officer who had been complained about. The tool that was produced included 18 risk categories, each with a tick-rating of high to low. Aside from common categories, such as complaint history, secondary employment, duty type, tenure, poor performance and sick leave, and tool included other variables, for example:

- 'recruitment and tenure', which was 'used to identify officers requesting posting to [the local area command]'. Officers who had requested the command as their first choice were deemed to pose a high risk with regard to this category as the command's characteristics posed its own misconduct risks ;
- 'corruption or misconduct by officer or associate', which related to the officer's association with criminals or 'suspended officers'; and
- 'organisational issues', which concerned the background of the officer and their links to the local community.

In conducting the assessment, the two reviewing officers accessed the following sources of information:

- the subject officer's personnel file;
- COPS for adverse matters including criminal and traffic convictions;
- residential details;
- information from the NSW Police College regarding recruitment and posting details;
- complaints history from CIS and c@ts.i; and
- the human resources system for tenure and leave records.

Two-hundred and twenty-one officers from the command were assessed. The command informed the Commission the command-wide assessment identified 13 high risk officers, including some with driving and criminal offences that were previously unknown to the NSW Police Force. Three officers were even found to have changed their names to join the police force. The command has not used the risk assessment tool since. Where it has identified officers as being high risk, assessments have been conducted informally by the Complaint Management Team.

The command indicated that it had only used this assessment process for the subject officer and that it had been used twice. On the second occasion, when the officer's risk rating was downgraded, the assessment was not supported by any evidence of the kind that had been used in the first assessment.

Informal assessments

Four commands that participated in the project indicated that they had not used formal assessment tools or processes to identify any of their high risk officers**.** Instead, the commands indicated that their Complaint Management Teams (CMTs) had identified these officers on an ad hoc basis. Five other local area commands, which had used formal tools or processes, also indicated that these tools or processes were not always or even typically used. In such circumstances, participating commands indicated that assessments were instead based on the following sorts of information:

- 'local knowledge';
- 'complaint matters';
- 'subjective assessments';
- 'the views of supervisors';
- 'information from internal informants';
- 'informal discussion by members of the CMT'; and
- 'individual judgement'.

Some commands felt that assessments with regard to the risks posed by individual officers were either unnecessary or ill-suited to command needs. A small rural command, for example, stated that the risk assessments tools were not necessary for identifying high risk officers in a small town. The command had sourced risk assessment tools from other commands but indicated that it had not used these as they 'were arbitrary', 'did not provide room for local knowledge', or 'take into account country-specific problems'. However, it was the view of the command that these failings were acute for a rural local area commands such as itself where most if not all officers lived within the geographical limits of the command.

Another rural command also stated that it did not need a tool to identify high risk officers for similarly undefined reasons. In a written response to the Commission, however, the command added that:

> Due to the difficulties associated with accurately identifying and rating specific criteria aimed at nominating high risk officers [when using a formal tool] … the Complaint Management Team has relied upon an informal process taking into account many risk factors including, the number of complaints, type of complaints, identification of possible trends, high risk personality traits of the involved officer including excessive alcohol consumption, excessive gambling, risk associated with duty type or associates, conflicts of interest and domestic violence history.
>
> …

> The informal and flexible nature of the process permits all relevant factors to be taken into account without having to commit to an overly laborious or bureaucratic process.

Commands that did not use tools to identify high risk officers frequently spoke of the importance of 'local knowledge'. One command, for example, cited the case of a high risk officer with a large number of complaints who was known locally as the command's most proactive officer. On the basis of local knowledge, the command formed the opinion that that the complaints the officer attracted had all come from within the command's 'criminal element'. Similar conclusions were drawn at other commands concerning high risk officers with similar complaint histories.

At one command, however, an example was provided of a high risk officer who did not have a significant complaint history. The command indicated that the officer was nonetheless judged to be a high risk on the basis of local knowledge regarding members of her family and conflicts of interest.

External assessments

Three commands that participated in the project identified high risk officers on the basis of external assessments. These assessments were conducted by the NSW Ombudsman, which had flagged and informed commands about certain officers being high risk on the basis of complaints. The assessments had also included Officer Complaint Analyses (OCAs), which are undertaken by the Professional Standards Command. As described on the NSW Police Force intranet:

> The purpose of the OCA is to aid commanders when developing timely intervention strategies with a view to minimising the risk of officers receiving further complaints. The intention of the assessment is as a proactive tool in identifying trends for early intervention. It is not designed to be punitive, an industrial tool, a merit analysis nor a probity check (which only considers 'Adverse findings'). OCAs provide an objective analysis of complaint data.
>
> OCAs are prepared on officers and assessed through the following process:
>
> - assessment of complaint history (note: 'No adverse findings' are included)
> - identification and analysis of patterns or trends
> - comparison to empirical research
> - risk assessment
> - consideration of Employee Management Decision Making Framework
> - recommendations for intervention strategies.
>
> Materials examined include all hard copy CIS [Complaints Information System] files, which are compared to CIS narratives, c@ts.i data and scanned documents are also examined. CIS file system anomalies (if detected) are rectified based on hard copy information.

> An OCA can be requested on a NSW police officer who is considered at risk of attracting complaints by the commander or professional standards manager by completing the Strategic Research Team Request Form.[122]

The process which led to one local area command using the OCA process is noteworthy. The Commission was advised by the command that it undertakes a monthly analysis of complaints received for all its officers at each of its seven sectors. From this it was clear that there was a problem at a particular sector, involving three officers. The command indicated that it then requested that an OCA be conducted by PSC; the results appear to have then been used by the command's Complaint Management Team to classify these officers as being 'high risk'.

Who identified the officers?

Responsibilities relating to the identification of high risk officers varied from one command to the next. Positions or teams which appeared to have responsibility for identifying these officers included:

- Complaint Management Teams;
- Duty Officers;
- Executive Officers;
- Commanders; and
- other assessment teams, which were assembled at some commands for the purpose of carrying out high risk officer assessments.

Three observations, however, may be noted:

- Complaint Management Teams were usually responsible for identifying high risk officers where a formal risk assessment tool or process was not used.
- At commands where a formal risk assessment tool was used, the identification process was performed either by a Duty Officer or a group assembled for the purpose of carrying out the assessment. This group comprised between two and four persons, and usually included the Executive Officer and other senior officers of the command.
- At any one time, responsibilities relating to the identification of high risk officers might fall to different persons. In one example, a command indicated that its current high risk officers had been identified:
    - informally by the command's CMT on the basis of an investigator's recommendation;
    - formally by a group of four-persons at the command who undertook a documented risk assessment; and
    - on basis of advice from the NSW Ombudsman that officers at the command were high risk because of their complaint histories.

[122] NSW Police Force, 'Officer Complaint Analysis', NSW Police Force intranet, accessed 4 March 2008

What triggered the identification process?

The 20 commands that participated in the project were asked to indicate what, if anything, triggered the process, whether formal or not, that led officers to being identified as high risk. The Commission was provided with a diverse range of responses. For example:

- 'frequency of complaints' or 'other information being considered by the CMT';
- 'a complaint';
- in the context of 'complaints management' or at the 'conclusion of a complaint investigation';
- an event such as 'criminal event' or a 'medical event like attempted suicide';
- 'off-duty incidents' such as incidents involving alcohol;
- 'pending legal action' against an officer;
- 'concerns about officers brought to the attention of the CMT by supervisors or senior managers';
- 'local knowledge';
- 'tip offs';
- 'staff gossip';
- 'down to individual judgement';
- 'innuendo';
- recurring 'sick leave';
- transferring in or out of a command;
- information in Duty Officer 'hand over forms';
- 'intelligence reports';
- 'secondary employment';
- substantial personal ties to the local community;
- information from external oversight agencies including the Commission and Office of the NSW Ombudsman; and
- nomination for reviewable management action.

In some cases commands indicated that there were no triggers per se. This was common where commands utilised annual or rolling command-wide risk assessments. In other cases, commands simply indicated that a 'need' was 'felt' for an officer to be risk assessed.

SUMMARY DISCUSSION

As reported in this chapter, the NSW Police Force does not have a corporately endorsed tool or process for commands to identify high risk officers. Based on information that appears on the NSW Police Force intranet, however, it appears that commands are nonetheless expected to use a tool or process to identify these officers.

The local area commands that participated in this project used many methods to identify their high risk officers. These included:

- documented risk assessments;
- informal assessments by CMTs using 'local knowledge'; and
- assessments conducted by oversight agencies and the Professional Standards Command.

Most risk assessment tools used by commands worked on point systems. Typically, the level of risks that an officer presented in these systems depended on how they scored against a set of variables. The variables were of many types; however, they usually included complaints, duty type, secondary employment and sick leave.

In many cases, the risk assessment tools left little room for commands to exercise their own judgement. This was the case, for example, where complaint ratings were based on simple quantitative data such as complaints received. It was also the case, for example, in assessments that assigned ratings for negative responses such as not having a registered informant or not engaging in secondary employment.

While tools had been used by some commands to identify high risk officers, only five of the 20 commands that participated in the project used these tools routinely. In the remaining cases, commands indicated that they had carried out informal assessments to identify these officers. This usually involved an undocumented assessment by the command's CMT based on 'local knowledge'.

Finally, regarding methods of identification, some commands drew on the expertise of the NSW Ombudsman's Office and the Professional Standards Command. This was seen at three commands.

Overall, commands demonstrated a lack of consistency in how they identified high risk officers. This was the case not only between the commands. It was also the case within individual commands, which indicated that they had used different methods to identify high risk officers in any one period.

These inconsistencies were matched by the diversity of positions within commands that were responsible for identifying these officers.

Similarly, there was great deal of variety in the circumstances which lead commands to identify high risk officers. While some commands identified specific events or instances such as a complaint, others identified vague triggers such as 'innuendo'. Commands which conducted command-wide risk assessments on an annual or rolling basis, however, did not have any specific triggers for identifying high risk officers.

Several implications may be drawn from the information in this chapter:

- The lack of a corporate tool and centrally managed process for identifying high risk officers poses significant risks. It results in inconsistencies in how commands identify these officers. It leads to the situation where commands employ their own methods to identify these officers in ways that are not shared or understood by other commands. It can lead, for example, to the situation that an officer will be assessed as being high risk at one command on the basis of one assessment but not at another. It can also lead to the situation that commands will include inappropriate variables in the risk assessments they devise.
- The use of 'local knowledge' by commands, when not supported by other more reliable assessment criteria, results in subjective decision making. It can lead to the situation that the assessment process is coloured by bias or favour or that an officer will or will not be identified as being high risk on the impulse of a commander. For example, 'local knowledge' may lessen the likelihood of an officer being identified as high risk for conduct issues if on the basis of that knowledge the officer is simply judged to be a high performer. The reliance on local knowledge can also lead to the situation that commands will not feel compelled to base their assessments on objective criteria. This can lead to the situation where an officer with a pattern of complaints is not identified as being high risk because the command does not feel the need to look at the officer's complaint history when making an assessment.
- Risk assessments based on simple point systems can lead to the situation that officers will incorrectly be identified as posing a high risk simply on the basis that they scored the required number of points. Such a system does not take into account mitigating circumstances. They can also be arbitrary as demonstrated by one tool used by a participating command. On the basis of its tool, an officer would be high risk (with a score of 10 points) if: he or she was a detective (3 points) who had been at a command for more than five years (2 points); had a history of secondary employment (2 points) and issues with excessive sick leave (2 points); and had no registered informants (1 point). A similar result can occur if tools such as these include variables that are irrelevant to identifying officers with conduct risks, but against which officers are nonetheless scored (such as sick leave).
- The use of command-wide risk assessments, which are conducted on either a rolling or annual basis, could dilute attention to high risk officers and lead to a perfunctory process. Such assessments are onerous and may form part of the reason why many commands which stated that they had conducted these assessments could not demonstrate that the assessments had occurred as stated. Annual assessments also risk the situation that officers will not be assessed and identified as being high risk for at least 12 months.

7. MANAGING HIGH RISK OFFICERS: CORPORATE GUIDANCE

OVERVIEW

NSW Police Force commands have responsibility for managing misconduct risks including the misconduct risks posed by individual officers. This chapter describes the types of corporate guidance that commands receive on how such officers are to be managed.

TYPES OF INFORMATION COLLECTED

As previously indicated in this report, the NSW Police Force does not have a corporate tool for identifying or managing high risk officers. To obtain a better understanding of the types of corporate guidance commands receive on how to manage these officers, the Commission sought advice from the Commissioner of Police with regard to the following question:

> Are the management options available to commands in dealing with officer designated as high risk documented or explained within the policies and procedures of the NSW Police Force? If documented, can the Commission obtain a copy? If not, please provide an overview of all the management options that are currently available to commanders.

The Commission also reviewed the *Police Act 1990* (NSW) and *Police Regulations 2001* (NSW), and searched for relevant materials on the NSW Police intranet to further inform itself of the management options that might be available to commanders when dealing with officers. The following list represents the key sources of information, which the Commission obtained from the NSW Police Force intranet and reviewed to inform itself of these options. The listed items relate broadly to the management of officers generally and not just the management of high risk officers.

- Information on 'Management Actions' and associated headings on the NSW Police Fore intranet;
- Decision Making Framework;
- Information sheets produced by the Professional Standards Command on management action processes;
- Conduct Management Plan Guidelines for Police Officers;
- Guidelines for Police Remedial Performance Programs;
- Complaint Management Manual; and
- Managing Officers at Risk of Self Harm.[123]

[123] These sources of information were available on the NSW Police Force intranet as at April 2008.

KEY RESEARCH FINDINGS

CORPORATE ADVICE

What management options are available to commanders when dealing with officers designated as high risk are neither documented nor explained within the policies and procedures of the NSW Police Force. In May 2007, the Commissioner of Police advised the Commission that:

> the management options available to commanders for any 'high risk officer' are no different to those available for the management of the conduct of all officers. Depending on the circumstances, this will include the provisions of Part 9 of the Police Act 1990 (where misconduct or unsatisfactory performance are an issue) and any other relevant policy of the NSW Police Force.[124]

In earlier advice provided to the Commission in 2004, the NSW Police Force advised that there were problems regarding the management of officers deemed high risk. It advised the Commission that:

> there is often no management action that can be reasonably taken beyond keeping a watching brief.[125]

In 2004, the NSW Police Force further suggested that action could not be taken against officers in the context of complaints management unless there was a sustained finding. Were such action to occur, it was suggested that officers would have 'various appeal rights available' to challenge such action.

CORPORATE GUIDANCE IN NSW POLICE FORCE DOCUMENTS

The following provides an overview of the types of corporate guidance provided to commands in legislation and relevant NSW Police Force documents concerning the management of police officers. The overview is provided to canvass the range of management options that may be available to commanders for dealing with high risk officers. The main topics to be examined include:

- a definition of management action;
- management action under Part 9 of the Police Act 1990 (NSW);
- management options under other legislative provisions;
- remedial performance programs;
- conduct management plans;
- management options in other NSW Police Force policy documents; and
- determining the appropriate management response.

[124] Advice from the NSW Police Force, Commissioner of Police, May 2007.
[125] Advice from the NSW Police Force, Professional Standards Command, April 2004.

What is management action?

According to information appearing under the heading 'Management Action' on the NSW Police Force intranet, management action is a broad term which comprises all managerial responses that are available to the NSW Police Force. This includes both punitive and non-punitive action:

> Management action is a broad term used to describe the wide range of supervisory or managerial responses available to NSW Police to appropriately manage issues arising in the workplace. Management action can involve an incident simply being discussed or recorded in a notebook, or in serious circumstances it can extend to formal outcomes through which an employee can lose salary, rank/grade or their job.
>
> The most common misconception about the term 'management action' is that it refers exclusively to punitive measures. It does not. Management action also refers to:
>
> - informal discussions between supervisors and their staff;
> - requests for training;
> - the provision of advice;
> - guidance or resources; and
> - action taken to address systems issues that might have lead to employees doing the wrong thing through no fault of their own.
>
> Accordingly, any breach of the standards established in the Code of Conduct & Ethics can lead to management action. However, that action will be appropriate and proportionate with the nature of the breach and the specific circumstances surrounding each individual matter.
>
> On a day-to-day basis, it is the local supervisor, manager and/or commander that is responsible for managing the conduct of their employees. In cases of serious misconduct, a commander or manager will have a say in determining the appropriate action to be taken. NSW Police aims to deliver consistent processes and outcomes through management action by providing education, advice and support to supervisors, managers and commanders.[126]

While this information makes clear that 'management action' is a broad term that describes a wide range of supervisory or managerial responses, it emphasises that any management action that is taken against an officer requires the existence of a specific breach, in this context of the standards established by the Code of Conduct and Ethics.

Management action under part 9 of the Police Act 1990 (NSW)

The main legislative basis for taking action against police officers is contained in Part 9 of the *Police Act 1990*, which is concerned with the management of conduct within the NSW Police Force. Management actions under this part of the Act are provided in sections 173 and 181D.

[126] NSW Police Force intranet, 'Management Action', viewed 21 April 2008.

Action under section 173 of the Police Act

Section 173 of the *Police Act 1990* authorises the Commissioner of Police to take reviewable and non-reviewable action against police officers with respect to misconduct or unsatisfactory performance. Subsection 173(12) provides that these functions may be:

> delegated to a member of the NSW Police Force who is senior to the police officer in respect of whom those functions are being exercised.[127]

Under section 173, reviewable action means action that is reviewable, upon application, by the NSW Industrial Relations Commission. The types of action that fall under the heading include:

> 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,
>
> any other action (other than dismissal or the imposition of a fine) that the Commissioner considers appropriate.[128]

The term 'any other action' includes but is not limited to the following types of action, which are listed on the NSW Police Force intranet:

> A forced transfer to a location outside an officer's command (temporary transfers for a prescribed period are not reviewable but should strive to be reasonable by providing for additional travelling time or any other unusual circumstance)
>
> Permanent removal from duty that attracts a specialist allowance (Officers who are temporarily removed should continue to receive their allowance)
>
> The forced payment of compensation for NSW Police equipment lost or damaged in circumstances where an officer has been negligent or has engaged in a malicious act.[129]

Non-reviewable action under section 173 means action that is not reviewable by the NSW Industrial Relations Commission. Such action is defined as follows in Schedule 1 of the Police Act:

> coaching;
>
> mentoring;
>
> training and development;
>
> increased professional, administrative or educational supervision;

[127] Section 173(12), *Police Act 1990* (NSW)
[128] Section 173(2), *Police Act 1990* (NSW)
[129] NSW Police Force, 'Management Action', NSW Police Force intranet, accessed 21 April 2008).

> counselling;
>
> reprimand;
>
> warning;
>
> retraining;
>
> personal development;
>
> performance enhancement agreements;
>
> non-disciplinary transfer;
>
> change of shift (but only if the change results in no financial loss and is imposed for a limited period and is subject to review);
>
> restricted duties; [and]
>
> recording of adverse findings.[130]

When can action under section 173 be taken?

Section 173 indicates that the taking of action under the section is predicated on the fact of misconduct or unsatisfactory performance. The section states that the:

> Commissioner may take action with respect to police officer's misconduct or unsatisfactory performance.[131]

Sections 173(2)-(6) provide some guidance on when reviewable action may be taken. Section 173(2) begins:

> The Commissioner may order that the following [reviewable] action be taken with respect to a police officer who engages in misconduct or unsatisfactory performance.[132]

Section 173(3) provides that the Commissioner may order reviewable action against an officer who having participated in a remedial performance program continues to exhibit unsatisfactory performance:

> The Commissioner may also order that action referred to in subsection (2) [i.e., reviewable action] be taken with respect to a police officer whom the Commissioner has required to participate in a remedial performance program prescribed by the regulations and whose performance as a police officer after having participated in that program is, in the Commissioner's opinion, still unsatisfactory.[133]

[130] Schedule 1 – Non reviewable action, *Police Act 1990* (NSW)
[131] Section 173, *Police Act 1990* (NSW)
[132] Section 173(2), *Police Act 1990* (NSW)
[133] Section 173(3), *Police Act 1990* (NSW)

Section 173(4) states that reviewable action may be taken whether or not the misconduct or unsatisfactory performance has been the subject of a complaint, prosecution or conviction:

> The Commissioner may make an order under subsection (2) or (3) whether or not the misconduct or unsatisfactory performance has been the subject of a complaint under Part 8A and whether or not the police officer has been prosecuted or convicted for an offence in relation to the misconduct or unsatisfactory performance.[134]

Sections 173(5) and 173(6) provide that orders for reviewable action must identify the misconduct or unsatisfactory performance (including all relevant facts and circumstances) on the basis of which the Commissioner intends to make the proposed order.

Section 173 provides less guidance on the circumstances or facts that must be present to authorise non-reviewable action. While misconduct or unsatisfactory performance appears to be a condition precedent, orders for non-reviewable action do not need to identify the misconduct or unsatisfactory performance on which such action is based. Section 173(8) simply states that a non-reviewable order take effect 'when the order is made'.[135]

Further information on non-reviewable action appears on the NSW Police Force intranet, which states as follows:

> Non-reviewable action is defined by the list of actions in Schedule 1 of the Police Act. These actions are fundamental management practices and do not require a complaint in order to be implemented by a commander or manager (NSW Police Force, 'Management Action', NSW Police Force intranet, accessed 21 April 2008).

Section 173 was part of a raft of amendments to the Police Act which followed the Royal Commission into the NSW Police Service. It was inserted by the *Police Service Amendment (Complaints and Management Reform) Bill*, which was assented to in 1998. On its seconding reading, the then Attorney General of the NSW Parliament stated that the Bill was meant to implement the recommendations of the Royal Commission regarding how complaints were handled by police. The following excerpts shed further light on what the regime of reviewable and non reviewable actions appears to have been intended to achieve:

> This bill gives the commissioner and his front line managers the tools they need to, among other things, properly manage and correct non-dismissible instances of misconduct or poor performance by officers. The amendments to part 9 of the *Police Service Act* will provide a framework within which Police Service commanders can manage and improve the conduct and performance of their officers.
>
> …
>
> In both its first interim report and its final report, the royal commission made some fundamental criticisms of the existing complaints and discipline system. It said that the system was: complex, inconsistent and inflexible;

[134] Section 173(4), *Police Act 1990* (NSW)
[135] Section 173(8), *Police Act 1990* (NSW)

counter-productive because of its adversarial nature and its concentration on punitive, rather than remedial action; directed towards command and control, rather than management of its members; characterised by substantial delay; prone to leaks, collaboration and ineffective investigations; affected by bias, typified by an almost instinctive reaction to defend any charge, no matter how indefensible, and to appeal any decision made; conducive to fear and want of openness in dealings between members and the organisation; and productive of anxiety and uncertainty during the long waiting period, sometimes leading to genuine stress-related illness.

A primary concern of the royal commission was that the complaints system was divorced from the supervision responsibility of managers, and from a managerial commitment to improve the performance of staff about whom complaints are made. This structure acted to remove the emphasis on proper management practices and on the accountability of supervisors within the service. The royal commission was firmly of the view that the Police Service should move from a formal adversarial model to a more managerial or remedial model. Such a model would place responsibility on commanders at local area level to deal with complaints and detect and deal with other cases of misconduct or unsatisfactory performance. This bill implements the legislative changes required to enable this to occur

…

The bill establishes a framework which places primary responsibility on frontline managers for the conduct and performance of their staff. Managers will determine the appropriate response to each case of misconduct or poor performance, whether it comes to their attention through the complaints system or through day-to-day management.

…

These legislative changes, and the implementation of employee management throughout the Police Service, will not only correct misconduct or poor performance but, perhaps more importantly, foster a culture of continual improvement. Emphasis will be placed on using appropriate modern management tools to improve performance and correct instances of minor misconduct. These tools include coaching, mentoring, training and development, counselling, increased professional, administrative or educational supervision, and performance enhancement agreements. Other approaches will also be available for use where necessary. These can include issuing a reprimand, imposing restricted duties, the recording of adverse findings and a change of shift for a limited period.

In accordance with royal commission recommendation 72, sanctions of reduction in rank or grade, reduction in seniority and deferment of an increment will be available for the more serious cases where some form of personal penalty is required to act as a deterrent. In accordance with royal commission recommendation 74, a right of review to the Industrial Relations Commission is available for those sanctions as their imposition may have a financial impact on the officer concerned.

…

The royal commission also highlighted a pertinent comment from the judgment in *Hardcastle v Commissioner of Police* where the full Federal

> Court said that the purpose of a disciplinary system within a professional organisation is to protect the public, to maintain proper standards of conduct and to protect the reputation of the organisation. It is not to punish. The passage of this bill will introduce the structural framework for a modern system of management within the Police Service and it will enable the fundamental cultural change within the organisation which was envisaged by the royal commission.[136]

Whatever action is taken under section 173 is fettered by considerations of fairness. This is clear from the relevant case law, which indicates that action under section 173 must not be harsh in its consequences for the personal and economic situation of the officer; or disproportionate to the gravity of the misconduct.[137]

Who can take action under section 173?

Authority to take action under 173(12) of the Police Act can be delegated by the Commissioner:

> to a member of the NSW Police Force who is senior to the police officer in respect of whom those functions are being exercised.

While authority to take such action is typically delegated to commanders, NSW Police Force policy states that:

> A process of mandatory notification to the NSW Police Internal Review Panel (Chaired by Assistant Commissioner, Professional Standards) must be adhered to by commanders and managers prior to taking this type of action (NSW Police Force, 'Management Action', NSW Police Force intranet, accessed 21 April 2008).

An information sheet, which outlines the process for commanders once the Police Internal Review Panel has recommended reviewable action pursuant to section 173, also directs commanders as follows.

> You are required to notify the panel if you do not intend to implement their recommendations by forwarding your written submission to the Director, Employee Management within 14 days of the Panel's original recommendation. You will be contacted by the Process Unit to arrange a further Panel date to discuss your submission. The panel will consider all matters that you have considered to be relevant in deviating from the original recommendations. If a divergence of opinion remains between you and the Panel, the matter will be referred to your Region Commander or Specialist Commander (Assistant Commissioner) as appropriate, to assist in determining the appropriate action. **You must not take any management action until the matter is resolved either at the Panel level or with your Assistant Commissioner.**
>
> **…**
>
> If the response from the subject officer alters your proposed management action, you are required to notify the Panel. This should be done by

[136] *Police Service Amendment (Complaints and Management Reform) Bill*, Second Reading, *Hansard*, 11 November 1998.
[137] *Laird v Commissioner of Police* [2001] NSWIRComm 254 at 46-47; *Mahoney and Commissioner of Police* [2003] NSWIRComm 67 at 123.

> forwarding a written submission to the Director, Employee Management. You will be contacted by the Process Unit to arrange a further panel date to discuss your submission. The Panel will consider all matters you considered relevant in warranting the alteration of your proposed management action. If a divergence of opinion remains between you and the Panel, the matter will be referred to your Region Commander or Specialist Commander (Assistant Commissioner) as appropriate, to assist in determining the appropriate action. **You must not take any management action until the matter is resolved either at the Panel level or with the relevant Assistant Commissioner.**

Action under section 181D of the Police Act

Section 181D of the Police Act provides that the Commissioner of Police is authorised to:

> remove a police officer from the NSW Police Force 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.[138]

Section 181D is mostly silent on the specific circumstances or facts that must be present to authorise action under the section. Similar to reviewable action under section 173, however, orders for action under section 181D:

> 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.[139]

Further guidance appears as follows on the NSW Police Force intranet:

> Whilst a commander nominates an officer to be removed from the NSW Police Force, the decision is solely the Commissioner's. The Commissioner will look at the full circumstances of a matter in the context of the history of the particular officer involved. Each case is considered individually and on its merits.[140]

Where the Commissioner elects not to remove an officer under section 181D of the Police Act, information on the NSW Police Force intranet states that the Commissioner may nonetheless issue the officer with a Commissioner's Warning Notice:

> A Commissioner's Warning Notice is usually served on an officer where the Commissioner elects not to exercise his power to remove an officer pursuant to section 181D. These notices include: the grounds considered for removal, a clear indication to the officer of the standards required for future conduct and reasons for the decision. A Commissioner's Warning Notice may be accompanied by a Notice pursuant to section 173(5) (or a 'Show Cause' Notice for reviewable action) in addition to the Commissioner's written warning.[141]

[138] Section 181D, *Police Act 1990* (NSW)
[139] Section 181D(3)(a), *Police Act 1990* (NSW)
[140] NSW Police Force, '181D', NSW Police Force intranet, viewed 21 April 2009
[141] NSW Police Force, '181D', NSW Police Force intranet, viewed 21 April 2008

Management options under other legislative provisions

A number of other legislative provisions define the types of management action that can be taken against police officers. These include:

- Section 80(3) of the *Police Act*, which authorises the dismissal of a probationary police officer from the NSW Police Force 'at any time and without giving any reason'.[142]
- Section 171(2) of the *Police Act*, which provides a legislative basis for taking interim management action 'even if action on the complaint has yet to commence or is in progress'.[143]
- Clause 22 of the *Police Regulations*, which provides that a police officer may be suspended, with or without pay, where 'the Commissioner has reasonable cause to believe that the conduct of a police officer' justifies 'the taking of section 80 dismissal action or the making of a section 181D order with respect to the officer, or the institution of criminal proceedings against the officer'.[144] The NSW Police Complaint Management Manual defines such action as being a 'risk management tool' and 'not a penalty'.[145]
- Clause 26 of the Police Regulations, which provides a legislative basis for managing the performance of police officers, where such performance is consistently unsatisfactory.[146]

Remedial performance programs

Clause 26 of the *Police Regulations* provides a legislative basis for what is known within the NSW Police Force as remedial performance programs. The programs are addressed to poor performance as benchmarked against an officer's Job Stream Responsibilities (JSR) ('the responsibilities and duties that attach to the police officer's rank and position within the NSW Police Force'[147]).

As outlined in *the Guidelines for Police Remedial Performance Programs*:

> An officer can only be required to enter into a remedial performance program where a supervisor can show documented evidence of consistent underperformance, where the issues have been raised previously with the officer in a timely manner.[148]

The *Guidelines* stipulate that:

> An officer is only to be placed on a remedial performance program if their supervisor can establish that their performance has been 'consistently unsatisfactory, having regard to their job-stream responsibilities' (Clause 26 (1)(a) of the *Police Regulation*), their Agreed Key Responsibilities (AKR) and the relevant competencies/capabilities for their current role.

[142] Section 80(3), *Police Act 1990* (NSW)
[143] Section 171(2), *Police Act 1990* (NSW)
[144] Clause 22, *Police Regulations 2000* (NSW)
[145] NSW Police Force 2007, *Complaint Management Manual*
[146] Clause 26, *Police Regulations 2000* (NSW)
[147] NSW Police Force 2008, *Guidelines for Police Remedial Performance Programs*, p. 15.
[148] NSW Police Force 2008, *Guidelines for Police Remedial Performance Programs*, p. 5.

> The legislation does not specify how many instances of poor performance would constitute 'consistently unsatisfactory performance', so the onus rests with the supervisor to make that assessment. The NSW Police Force's recognised Career Management System is part of that initial process.[149]

The program itself is focused on improving an officer's performance through staged counselling. The first stage begins with informal local workplace counselling sessions, the purpose of which are to apprise a police officer of their job stream responsibilities and work performance expectations, the standards that are expected, and ways to improve their performance.

Where an officer's performance does not improve at the end of these informal counselling sessions, the officer is required to attend a formal counselling session, the purpose of which is to ensure that the officer is again made aware of:

> those areas in which he or she is failing to fulfil his or her job-stream responsibilities, and
>
> the standards to which his or her performance must be improved, and
>
> the period of time within which he or she must have sustained an improved performance in those areas, and
>
> the fact that his or her performance will be closely monitored during that period.[150]

As described in the *Guidelines*:

> This stage of a remedial performance program is a formalised statement of matters. It is a document where strategies and performance outcomes are detailed and signed off by those involved in the process such as the supervisor, the officer, and the officer's Commander. As part of this stage, the supervisor is required to meet regularly with the officer to conduct formal counselling sessions, which involves (amongst other things) providing feedback to the officer regarding their progress.[151]

If the officer fails to satisfy the requirements of the second stage of counselling, the program may be extended or in accordance with section 173(3) of the *Police Act,* reviewable action may be taken.[152]

Conduct Management Plans

NSW Police Force policy provides management options that are not supported in legislation. The most important of these are known as Conduct Management Plans (CMPs), which may be used by managers to 'respond to a single significant issue, such as complaint investigation, or a pattern of behaviour observed over a period of time

[149] NSW Police Force 2008, *Guidelines for Police Remedial Performance Programs*, p. 5.
[150] NSW Police Force 2008, *Guidelines for Police Remedial Performance Programs*, p. 15.
[151] NSW Police Force 2008, *Guidelines for Police Remedial Performance Programs*, p. 7.
[152] Section 173(3), *Police Act 1990* (NSW)

through daily management'.[153] The plans are specifically intended to address conduct issues.

The *Conduct Management Plan Guidelines for Police Officers* provides further information on the plans, including information about their purpose:

> CMPs are not based within legislation but their application in the workplace is supported and based within NSW Police Force policy and principles of industrial fairness.
>
> …
>
> CMP's are a framework to support the implementation of management action in the workplace. More specifically, a CMP is a formal document with specific strategies aimed at addressing conduct issues for a nominated police officer (the subject officer). The objective is to assist the subject officer in modifying their behaviour to an appropriate standard through intrusive supervision, reporting and feedback.
>
> …
>
> A CMP can be used to manage ongoing day to day minor conduct issues or as part of formal management action resulting from complaint investigations.
>
> …
>
> CMP's can be used to respond to a single significant issue, such as a complaint investigation, or a pattern of behaviour observed over a period of time through daily management.[154]

As provided by the *Guidelines*, minor conduct issues include but are not limited to the following types of behaviour:

> lateness
>
> rudeness and unprofessional behaviour
>
> disobeying directions from senior police
>
> laziness
>
> failure to abide by instructions or guidelines (which the officer has previously demonstrated a knowledge and understanding of)
>
> inappropriate attitude.[155]

The Guidelines do not appear to mention serious conduct issues.

[153] NSW Police Force 2007, *Conduct Management Plan Guidelines for Police Officers*, October, pp. 6.
[154] NSW Police Force 2007, *Conduct Management Plan Guidelines for Police Officers*, October, pp. 1-6.
[155] NSW Police Force 2007, *Conduct Management Plan Guidelines for Police Officers*, October, p. 4.

Management options outlined in other NSW Police Force policy documents

Corporate advice on how to manage officers in relation to conduct issues appears in a variety of documents, some of which specifically focus on identifying and managing particular types of risk, which may include conduct risks. This report does not permit a thorough review of all such documentation. One example is the *Standard Operating Procedures (SOPS) for Managing Officers at risk of self harm*.[156] Produced by the NSW Police Force Safety command in July 2007, the document provides guidance on how to manage officers at risk of self harm or harm to others. The document lists the steps that must be taken to manage such officers. For example:

- ensuring that an officer's firearm is secured;
- requiring that the officer is assessed by the PMO and Police Chief Psychologist;
- maintaining welfare contact with the officer and their family; and
- assessing the officer's fitness to return to work following treatment.

Determining the appropriate management response

There are at least two types of corporate guidance that may be used by commands when deciding on an appropriate form of management action:

- the Decision Making Framework; and
- the distinction in some NSW Police Force documents between managing conduct and performance.

The Decision Making Framework

The NSW Police Force has in place a decision making framework to assist persons involved in the management of complaints and misconduct to determine an appropriate course of management action under Part 9 of the *Police Act*. The framework requires a two-pronged assessment process, looking at the seriousness of a matter and the appropriateness of any action.

As described in the *Complaint Management Manual*:

> The decision making framework (DMF) has been developed to help those involved in the management of complaints and conduct to determine the appropriate management action. It does this by providing a checklist that draws attention to a range of objective considerations that determine the seriousness of the conduct/performance as well as subjective considerations relevant to the individual officer.
>
> In relation to the complaint/conduct, issues covered include organisational and community expectations, implications, impact and injury. The questions about the officer cover the officer's attitude, level of cooperation, patterns of behaviour and circumstances.

[156] NSW Police Force 2007, *Standard Operating Procedures (SOPS) for Managing officers at risk of self harm*, July.

> Once you have determined the seriousness of the matter and the issues relevant to the particular officer, you can consider the appropriate action. The DMF checklist should be attached to the relevant documentation to show the process you used to make your decision.[157]

The two sets of issues to consider when determining seriousness and appropriate management of officers are as follows:

> **Issues to consider when determining seriousness:**
>
> What are the expectations of Community/Service?
>
> What are the implications of incident on workplace/Service?
>
> What is the possibility of litigation arising from the incident? (e.g., ADB, civil proceedings)
>
> Was there any injury (including psychological)/damage to persons/property?
>
> What is the impact of the location/type of duty on this matter? (e.g., confidentiality/sensitivity of area of work)
>
> Does the experience/seniority of officer impact on the matter? (i.e., expectation of highest standard of behaviour from more experienced/senior officer)
>
> Are there any criminality issues in regard to the matter?
>
> Was there any influence over other police?
>
> **Issues to consider when determining appropriate management of officer:**
>
> Was there any contrition/acknowledgement of wrongdoing/mistake by the officer?
>
> Did the officer co-operate/assist during the investigation?
>
> Is this a once-off incident or a pattern of behaviour?
>
> Was there a lack of knowledge of appropriate standards?
>
> Was there a conscious disregard for appropriate standards?
>
> Have the personal circumstances of the officer impacted on the matter?
>
> What is the officer's history? (e.g., HR, CIS, EEO, LMID, c@ts.i)
>
> Are there any mitigating circumstances?

[157] NSW Police Force 2005, *Complaints Management Manual – Actions and Outcomes*, November, p. 5.

> Are there any workplace or environment issues that contributed to the conduct of the officer? (e.g., supervisory issues, systems/procedures, cultural/social).[158]

Four specific types of management action are provided for within the Decision Making Framework:

> **No Action**
>
> Matter is so out of character for the officer and so trivial there is no need to take any management action.
>
> **Local Management Action or s 173(1) Non-reviewable Action (if complaint)**
>
> Coaching or mentoring or trainings AND/OR
>
> Increased supervision or counselling or reprimand AND/OR
>
> Warning or non-disciplinary transfer or restricted duties or change of shift or recording of adverse finings AND/OR
>
> Remedial Performance Program (only if performance related)
>
> **S 173(2) Reviewable Action**
>
> Reduction in rank OR
>
> Reduction in grade OR
>
> Deferral of Increment AND
>
> Other appropriate non-reviewable action
>
> **S 181D Nomination**
>
> (Suspension with or without pay may be appropriate in some cases) AND
>
> Other appropriate non-reviewable action.[159]

The distinction between managing conduct and performance

A distinction is made within some NSW Police Force documents between managing performance and managing conduct. The *Guidelines for Police Remedial Performance Programs*, for instance, notes that:

> Incidents of misconduct should be addressed and managed through appropriate 'non-reviewable' or 'reviewable' management action as detailed in Section 173 of the Police Act 200, some of which may be implemented through a Conduct Management Plan, depending of the seriousness of the misconduct.

[158] NSW Police Force 2005, *Decision Making Framework*.
[159] NSW Police Force, *Decision Making Framework*

…

> The remedial performance program process is designed to be a development tool and not a punitive or disciplinary measure for an officer who may have temporarily fallen below the required standards.[160]

Likewise, the *Conduct Management Plan Guidelines for Police Officers* draws a clear distinction between performance and conduct and the different types of management action appropriate to each. The *Guidelines* also provide guidance on ways to differentiate between the two types of behaviour, stating as follows:

> **The difference between conduct and performance**
>
> A detailed definition of police conduct is contained in part 8A, section 121 of the *Police Act* 1990:
>
> > *Conduct of a police officer means any action or inaction (or alleged action or inaction) of a police officer:*
> >
> > *(a) whether or not it also involves non-police participants, and*
> >
> > *(b) whether or not it occurs while the police officer is officially on duty, and*
> >
> > *(c) whether or not it occurs outside the State or outside Australia.*
>
> In broader terms, misconduct for a police officer can be defined as:
>
> - conscious disregard for known standards or directions
> - knowing how to do something, but choosing not to.
>
> Misconduct can also be demonstrated by poor attitude.
>
> Poor performance for a police officer can be defined as involving the act or process of not performing or carrying out duties/roles to the required standard because of a lack of skills or knowledge.
>
> It is important to differentiate between conduct and performance issues for police as the manner in which they can be addressed is different. As a general rule, performance issues are addressed through a variety of training methods (refer to clause 26 of the New South Wales Police Regulation 2000 for guidance) while conduct issues involve the use of strategies to try to modify an officer's attitude or behaviour.[161]

[160] NSW Police Force 2008, *Guidelines for Police Remedial Performance Programs*, p. 2.
[161] NSW Police Force 2007, *Conduct Management Plan Guidelines for Police Officers*, October, p. 3.

SUMMARY DISCUSSION

As indicated earlier in this report, the NSW Police Force does not have in place a dedicated policy addressing the management of high risk officers. Instead, on its advice to the Commission, the management of these officers is covered by polices and legislation which already applies to all NSW Police Force officers. The most important of these include:

- the provisions of Part 9 of the *Police Act 1990* (including reviewable and non-reviewable action under section 173 and dismissal under section 181D);
- remedial performance plans;
- conduct management plans; and
- a range of non-punitive measures, such as the provision of advice, which commands may take to manage issues arising in the workplace.

Formally, the circumstances where any of these options can be exercised require that a breach has occurred. For example:

- section 173 of the *Police Act* appears to require a finding in respect of an officer's misconduct or unsatisfactory performance;
- under NSW Police Force policy, a remedial performance plan can only be used where a 'supervisor can show documented evidence of consistent underperformance';
- conduct management plans may also only be used to 'respond to a single significant event, such as a complaint, or a pattern of behaviour observed over a period of time'; and
- lastly, other non-punitive management responses such as the provision of advice is said to be available only where there is 'a breach of the standards established in the Code of Conduct and Ethics'.

The Commission could find no explicit guidance on the types of action, if any, that commands could take in the absence of specific breaches or proof of misconduct or unsatisfactory performance. By such guidance, the Commission means guidance of a more general or diffused nature. Some examples, which are explored more fully in the next chapter, may include strategies such as monitoring or duty rotation.

The Commission found some guidance on how commands could decide on the types of action to take, including guidance on the difference between managing conduct and performance issues. However, this guidance is limited as it neglects to provide guidance on the nexus between the two.

The following implications can be drawn from the information presented in this chapter:

- It would appear that the managerial interventions that are currently available to commanders to deal with officers, including high risk officers, are largely reactive. By this term the Commission means that they appear to require and follow specific breaches of either policy or

law. The Commission accepts that there is a place for such strategies, as for instance in a relation to an officer who is the subject of a sustained complaint. But it also notes that the guidance does not address the situation of how to manage officers who have not breached a discrete policy or law per se, but who remain high risk. For example, the guidance does not address how commands may manage an officer who may be high risk on account of attracting an abnormal number of conduct related complaints in a particular policing role.

- Waiting for breaches to occur before taking action is inconsistent with the principles of risk management, which seeks to identify likely or probable areas or circumstances in which harm may occur. While it is important to respond to actual occurrences of misconduct, it is equally important to identify and manage risks associated with an individual before events occur as a strategy to achieve wider organisational goals such as corruption resistance. Such a strategy is important when an officer, because of their history, has demonstrated that they are at serious risk of engaging in misconduct.
- The types of guidance that commands are provided in NSW Police Force documents may contribute to a misapprehension that commands can only manage their officers for specific breaches of policy or law. The guidance may prevent commands from managing risks to the organisation that individual officers pose, for example, the risk of conflict with the community that an officer with many complaints poses. It may also contribute to the belief that all management actions need to be grounded in findings of fact, such as sustained compliant outcomes; or that officers will be able to appeal all decisions concerning their day-to-day management if these actions are not grounded in breaches of policy or law.
- The Commission notes the regime of conduct management plans and the potential for such plans to be used to effectively manage officers outside the context of complaints management, where the plans are used to respond to a pattern of observable behaviour.

8. MANAGING HIGH RISK OFFICERS: LOCAL PRACTICE

OVERVIEW

This chapter describes how the local area commands that participated in this project managed the risk that high risk officers were thought to pose. The chapter employs case studies to illustrate the strengths and weakness of some approaches taken by the commands and some of the challenges they face in deciding what actions to take. It is intended that the information presented will be used by the NSW Police Force to guide improvements on current management practices across the organisation and inform any new guidelines on the management of officers, including high risk officers.

LITERATURE REVIEW

It is often remarked in the literature on policing and misconduct that it is the responsibility of police agencies to deal with problem or high risk officers. Not doing so is sometimes characterised as being a management failure. As noted earlier, the Christopher Commission characterised the failure of the Los Angeles Police Department (LAPD) to deal with officers who repeatedly use force as a 'management issue':

> The Commission has found … that there is a significant number of officers who repetitively misuse force and persistently ignore the written policies and guidelines of the Department regarding force.
>
> While there are broader issues of LAPD 'culture' and community relations that bear on the problem of excessive force in way that we discuss in subsequent chapters, we concentrate here on the failure to control these problem officers. This is a management issue that we see as the heart of the problem of excessive force.
>
> …
>
> The problem of excessive force in the LAPD is fundamentally a problem of supervision, management, and leadership. What leaps out from the Department's own statistics – and is confirmed by LAPD officers at the command level and in the rank-and-file – is that a 'problem group' of officers use force, and are the subject of complaints alleging excessive or improper force, far more frequently than most other officers. Yet, the evidence obtained by the Commission shows that this group has received inadequate supervisory and management attention. [162]

The St Clair Commission, which was set up to investigate police brutality in the City of Boston, also concluded that:

> The failure to monitor and evaluate the performance of police officers – particularly those with established patterns of alleged misconduct – is a major deficiency in the management of the department and an unnecessarily dangerous situation for the citizens of the City of Boston. No

[162] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, pp. 31-32.

> police department and no community should tolerate a situation where officers with long records of alleged misconduct, including some with histories of alleged physical abuse of citizens, remain on the street largely unidentified and unsupervised.[163]

In a 1998 report, Human Rights Watch also commented that problem officers across 14 large US cities persisted in police departments because of poor accountability systems:

> Officers with long records of abuse, policies that are overly vague, training that is substandard, and screening that is inadequate all create opportunities for abuse. Perhaps most important, and consistently lacking, is a system of oversight in which supervisors hold their charges accountable for mistreatment and are themselves reviewed and evaluated, in part, by how they deal with subordinate officers who commit human rights violations. Those who claim that each high-profile case of abuse by a 'rogue' officer is an aberration are missing the point: problem officers frequently persist because the accountability systems are so seriously flawed.[164]

While there is a broad recognition in the literature of the need for police agencies to identify and manage problem or high risk officers, the Commission found little in the way of concrete guidance in terms of practical management responses. For the most part, what the Commission found were management labels such as 'remedial intervention', 'education', 'training', 'counselling' or 'monitoring'. When used in the literature, such labels did not describe detailed strategies for managing officers or provide clear information how any of the strategies have their desired effect.

While the literature on problem officers does not provide a menu of management strategies, there are some recurrent themes. One is to hold commanders and supervisors accountable for the behaviour of problem officers. The Christopher Commission, for instance, stated that it was necessary to hold supervisors accountable for officers who repeatedly use excessive force:

> Command officers have not been held accountable for excessive or unnecessary force by officers whom they supervise. This must change. Accountability means that command officers will be evaluated on the basis of how officers under their supervision adhere to the Department's policies regarding use of force. Accountability must be stressed throughout the system. When an incident of excessive force occurs, supervisors up the chain of command must be accountable, regardless of whether they actually participated in the wrongful conduct.[165]

The Royal Commission into the NSW Police Service reached similar conclusions in its final report when commenting on the role of local commanders:

> Local Commanders should be responsible for the behaviour of subordinates and, as an adjunct to that responsibility, should have the capacity to deal with their misbehaviour or shortcomings.
>
> …

[163] St. Clair Commission report 1992, p. 114. In Human Rights Watch 1998, *Shielded from justice: Police brutality and accountability in the United States*.
[164] Human Rights Watch 1998, *Shielded from justice: Police brutality and accountability in the United States*.
[165] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, p. 62.

> [T]he success with which local commanders perform this supervisory and managerial role should be a critical factor in the assessment of their capability to retain command, or to advance to more senior positions within the service. In this regard, the discovery and reporting of corrupt conduct should be seen as a positive factor, rather than as a potential black mark, unless they have been neglectful in allowing it to continue or expand, when with the exercise of reasonable diligence they should have intervened earlier. [166]

Another theme focuses on the use of transfers or assignments as a strategy that should not be used to manage problem officers. Again, this was commented upon by the Christopher Commissioner as well as the Royal Commission into the NSW Police Service. The latter commented that it was 'inappropriate' to solve:

> difficulties with individual staff … by encouraging or forcing their transfer.[167]

The Christopher Commission stated that transfers or administrative assignments were also not likely to address problems if they were not coupled with other interventions:

> As several incidents examined by the Commission made clear, transfer of an officer to another geographical area is not likely to address a problem of excessive force without other remedial measures such as increased supervising, training and counseling.[168]

> Administrative assignments should not be used simply to transfer a problem officer from one division to another. Rather, division commanding officers should enroll such an officer in a formal or informal training or counseling program. If that program is unsuccessful, consideration should be given to an assignment that will not place the officer in the position of repeating his or her inappropriate conduct. Finally, if an administrative transfer is necessary, an explicit statement as to any appropriate assignment limitations should be included with the transfer. Such officers should not be transferred to the jail division. [169]

The Christopher Commission provided some other concrete ideas of how to manage problem officers. These ideas included:

- using not sustained complaints in promotion decisions, as well as in pay grade advancements;[170]
- modifying assignment procedures to prevent officers from working in one division for extended periods; [171]

[166] J J R T Wood 1997b, *Royal Commission into the New South Wales Police Service Final Report, Vol. 2: Reform*, May, p. 334.
[167] J J R T Wood 1997b, *Royal Commission into the New South Wales Police Service Final Report, Vol. 2: Reform*, May, p. 338.
[168] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, p. xviii.
[169] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, p. 148.
[170] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, p. xviii.
[171] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, p. xviii.

- 'where training and counseling are not effective', using assignments to move an officer to an area ' within the division that would not expose the officer to the situations giving rise to the inappropriate behaviour';[172] and
- pairing problem officers who may be using force improperly with officers 'with excellent communication skills' to 'lessen the need for use of force, as opposed to a partner involved in prior incidents of force with that problem officer'. [173]

TYPES OF INFORMATION COLLECTED

To provide concrete solutions to the problem of managing high risk officers within the NSW Police Force, the Commission asked participating commands two sets of questions:

- general questions concerning the management of high risk officers; and
- specific questions concerning the management of officers that had been identified as high risk by the commands themselves.

KEY RESEACH FINDINGS

LOCAL AREA COMMANDS

The local area commands that participated in this project were asked to describe their strategies for managing high risk officers. In furnishing details of these, the commands described:

- the strategies that might be taken; and
- the strategies that had been taken with regard to officers the commands identified as being high risk.

Some commands supplemented this information with documents, such as corruption resistance plans, which describe the strategies they claimed to use.

In bringing this information together, the Commission has attempted to identify examples of good and bad practice concerning how commands manage high risk officers. As part of this process, the Commission has also sought to determine if there were any managerial consequences of labelling an officer as high risk, and whether the consequences were appropriate in relation to the risks that were identified.

The sections that appear below are not an exhaustive description of the management of high risk officers at all participating commands. They provide an overview of some of the key themes arising from the Commission's research.

[172] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, p. 142.
[173] Independent Commission on the Los Angeles Police Department 1991, *Report of the Independent Commission on the Los Angeles Police Department*, pp. 142-143.

What risks were they managing?

As seen in Chapter 3, the term high risk officer is applied by local area commands to identify a range of risks that officers are thought to pose. To recap, some of the more prominent risk types included:

- risk of misconduct;
- risk of poor performance;
- risk relating to officer welfare such as risk of committing suicide;
- risks relating to domestic or family issues;
- risk of high performance arising from a proactive style of policing; and
- risk of attracting complaints.

While these risks should be kept in mind when considering the management approaches appearing below, the discussion in this chapter is focused on providing information relevant to managing high risk officers who pose a risk of engaging in misconduct.

Overview of management strategies

A diverse range of strategies for managing high risk officers were reported to the Commission by the commands participating in this project. They ranged from taking no action at three commands to imposing a strict regime of demonstrated supervision. In between the two, the commands indicated that high risk officers could be or had been subject to the following types of actions:

- a 'watching brief', 'monitoring' or 'intrusive supervision';
- placing the officer on a high risk officer 'Action Plan';
- lodging a complaint and taking the recommended action at the conclusion of the complaint investigation;
- taking reviewable action under Pt 9 of the Police Act including sections 173 and 181D pursuant to a complaint;
- taking non-reviewable action under section 173 of the Police Act;
- placing the officer on a conduct management plan or a remedial performance plan;
- transferring the officer to another command or placing the officer in other police stations within the command;
- suspension;
- changing an officer's duties or placing the officer on restricted station duties;
- imposing rostering conditions;
- placing the officer on a high risk officer list;

- counselling;
- putting restrictions on source handling;
- breaking-up long term partnerships;
- referring the officer to the Professional Standards Command for attention or integrity testing;
- remedial training;
- informing the officer of their high risk officer status; and
- referral to the Police Medical Officer.

The approaches were not mutually exclusive.

Taking little or no action

The three commands which took little or no action in respect of high risk officers provided different reasons for doing so.

Two commands characterised their processes to identify high risk officers as 'management tools'. According to these processes, the identification of a high risk officer was, in effect, an end in itself. One of the commands stated that no action followed from an officer's identification. The other stated that Duty Officers were simply notified of an officer's status.

The third command addressed why it neglected to take action in a specific case. The command told the Commission that the officer had not been subject to management action, although consideration had been given to reassigning the officer to station duties. It explained that the 'anecdotal evidence' on which they had been identified had not been thought of as being probative enough to take any action. The command indicated that the officer had since transferred to another local area command. In terms of managing the officer risk, it described this outcome as a 'win' for the command.

Waiting for a complaint

Most commands appeared to have managed, or express the view that high risk officers would be managed, through the complaints process. Where this had been the case, it appeared that commands waited for, or felt the need to wait for, a complaint, usually with a sustained outcome, before taking management action against the officers. In such contexts, the commands appeared to do one of two things.

First, some commands managed (and occasionally even identified) officers as high risk in relation to discrete complaints. For example:

- An officer at one command was placed on the command's high risk officer list on two occasions, as part of their management, for complaints relating to unauthorised computer access and making false statements.
- An officer at another command was identified and managed as a high risk officer following a sustained outcome in a complaint involving an assault on a juvenile offender. The officer was nominated for removal

from the police force under section 181D of the Police Act, and transferred to a neighbouring local area command where he was placed on restricted station duties.

Second, some commands took into account an officer's high risk officer status when deciding what actions to take against the officer at the end of a complaint investigation. For example:

- An officer at one command was issued a Warning Notice and placed on a Conduct Management Plan following a sustained outcome in relation to a local management issue of poor brief handling. The command explained that while the immediate issue had not been significant, it had taken these actions upon considering the officer's complaint history and the range of performance and conduct issues which had previously led to him being identified as high risk.
- An officer at another command had his promotion held over and was subject to integrity testing following a complaint alleging involvement in the local drug community. The command advised the Commission that the decision to take these actions was made after considering the officer's overall complaint history including high risk status.

Why wait for a complaint?

Common themes were expressed by commands concerning why they waited for or felt the need to wait for sustained complaints before taking action against high risk officers. Many were under the impression that a finding with respect to misconduct was a condition precedent to taking any action against officers. As seen earlier, one command stated that 'anecdotal evidence' of risk was not enough to enliven management action.

Four other commands spoke of the need for management action to be 'justified' by a sustained complaint**.** These types of concerns were clearly expressed by one command, which indicated that management actions were not activated outside the context of sustained complaints in consideration of the 'rights' of police officers in the workplace and the need for management action such as restricted duties to be 'justified'. The command was of the view that the taking of management action was 'like going to court'; and if actions were not justified, officers might seek redress through the NSW Police Association or the Industrial Relations Commission.

Another command stated that it felt compelled to seek the views of the Internal Review Panel before taking action against an officer who had not attracted complaints with sustained findings.

Managing officers outside the context of specific complaints

Not all commands waited for a complaint to take action against officers they had identified as being high risk. Five commands reported they took a proactive approach to managing these officers based on their histories. For example:

- At one local area command, an officer with a history of off-duty conduct issues and a propensity to attract complaints from members of the public

was subject to two forms of action. The officer was moved from one station to another to ensure that he had little contact with members of the public. As explained by the command, the officer was also subject to counselling, meaning that he was informed of his high risk officer status and his propensity to attract off-duty complaints. The command stated that the officer had also been advised that 'it might not be a good idea to socialise in the town'.

- At another local area command, an officer with a large number of complaints who was judged as being high risk for his proactive style of policing was advised by his command to take a leadership role in his unit. This was meant to lessen the likelihood of the officer attracting further complaints in arresting situations.
- An officer at one local area command who was identified as being high risk because of his complaint history was reported to have been 'subject to intrusive supervision, regular audits of TINs, vehicle diary, notebook, COPS entries and taskings to ensure compliance with directions from supervisors for six months'.
- At another local area command, an officer who was rated as high risk for attracting complaints and ignoring standard operating procedures regarding 'source' (or informant) management was placed on a structured management plan and subject to a regime of monitoring. The management plan was external to any actions to which the officer might become subject because of complaints. It comprised the following documented strategies:

> All efforts to be made that [the officer] is not the senior person rostered on a shift
>
> All efforts will be made to ensure [the officer] is not the senior person rostered 'On Call'
>
> Immediate supervisors (substantive) of [the officer] to be informed the officer is a HRO for the purpose of supervision and monitoring of the officer
>
> Intrusive supervision will be used to monitor [the officer] as he carries out his daily duties – contact by phone when he is outside the workplace, details of work intended to be performed outside the workplace
>
> COPS audit to be conducted monthly
>
> checks on duty book entries, cross checked with duty books of colleagues and car diaries
>
> Weekly checking of duty books and notebook
>
> Weekly debriefing with Detective Sgt regarding any contact with [Source]
>
> Action Log to be maintained on LAC shared folder for Snr Management Team. All checks conducted by a member of Snr Management Team to be recorded on this log

> Checks made by immediate supervisors to be recorded in their duty books and fortnightly summary to be provided to Crime Manager for inclusion on Action Log
>
> Not to be used as a handler or Co-Handler for Source Management
>
> Risk assessment to be conducted on a monthly basis
>
> Action Log to be reviewed at CMT and SMT meetings.

Some specific management actions in practice

The following section discusses some of the management actions that commands took with respect to high risk officers and the risks they posed in more detail. It describes the content of these actions in practice and the strategies that local area commands took to manage high risk officers. Case studies accompany each to illustrate the approaches and promote discussion about their relative strengths and weaknesses.

Monitoring or intrusive supervision

Most of the 20 local area commands that participated in the project stated that high risk officers were subject to some form of 'monitoring' or 'intrusive supervision'. In many cases the claims were bare as for instance keeping a 'watching brief' and not demonstrated by any documented process or content. Where they were demonstrated, they included the following kinds of content:

> duty officers and the HRO's [high risk officer's] immediate supervisor maintaining an active (intentional) oversight of the officer during their shift. This monitoring often entails frequent reporting conditions so that management can be satisfied that the officer is behaving in accord with NSW Police expectations and is receiving appropriate support;
>
> regular COPS audits;
>
> a member of the management team will be responsible for completing quarterly monitoring reports;
>
> monitoring an officer's complaints and ensuring that they are progressed quickly;
>
> personally responsible to the Crime Manager who is in constant contact with the officer. Officer is required to always have his mobile phone with him to facilitate this contact;
>
> daily checks of duty book, notebook;
>
> regular audits of TINs [Traffic Infringement Notices], vehicle diary, notebook, COPS entries and tasking to ensure compliance with directions from supervisors for 6 months;
>
> Each officer was placed on restricted station duties. They were rostered to work at the front counter which meant they were placed under the direct

> and immediate supervision of a senior officer [as observed, located only meters away].

Case Study 8.1 describes an example of one command's approach to 'monitoring' and 'intrusive supervision'. It is provided as an example of what monitoring and intrusive supervision can mean in practice.

Case Study 8.1: What monitoring and intrusive supervision can mean

An officer at a local area command was classed as high risk for three reasons: an increase in conduct related complaints, issues with source management, and risks of high performance arising out of a proactive style of policing. The officer was subject to a package of management actions, which were formalised in an 'Action Plan' listing 13 different management strategies. The Action Plan is unique to the command and is described as a tool for the 'supervision of high risk officers', which runs alongside or in addition to other management actions to which these officers may become subject (for example, actions which are complaint outcomes). In the case of the officer, the plan listed, among other strategies, weekly checks of the officer's notebook, and monthly COPS audits. Also included among the strategies was the setting up and maintenance of what the command described as an 'action log'. The log is stored on the command's computer network and is accessible by members of the senior management team. The command explained that the log is used to record any actions that are taken in respect of the day-to-day management of the officer, including checks which form part of the action plan. A summary of checks undertaken by the officer's immediate supervisor is also provided to the command's crime manager for inclusion on the log. The command stated that the log is presented to the Senior Management Team once a fortnight. Examples of the types of entries appearing on the log over a three month period include:

> Implementation of Management Plan for [the officer] regarding their association with [person of interest]
>
> Overt check of duty book and notebook
>
> Officer formally counselled regarding outstanding duty book entries. Reminded of need to maintain accurate records of duties
>
> Attend [execution of] search warrant [by officer]. Nil issues
>
> Notification to Inspectors regarding rostering. [Officer] not to be senior person on call
>
> Supervision conducted whilst both in the office and in the field. Tasking of planned work and phone calls in the field
>
> Checks with EDO [Education Development Officer] that [officer] has completed Code of Conduct and Ethics MCPE [Mandatory Continuing Police Education]
>
> IPC [Internal Police Complainant] has complained to Detective Sgt that [officer] drived [*sic*] dangerously whilst conveying three officers into the city causing an Asian male to take evasive action in his vehicle. A report has been requested from the IPC regarding this matter to be submitted to the Executive Officer.

In addition to the action log, which the command maintained for each of its high risk officers, the command also had in place what it described as a Local Management Database. This database is also used by senior officers to record day-to-day actions,

which may be taken against any officer at the command. The command explained that the database was essentially a place to record minor issues and was useful for identifying 'frequent flyers'. The command stated that database was reviewed once a fortnight by the command's Complaint Management Team. While information on the database could lead to formal action, such as a complaint under the Police Act, the command emphasised that the system was outside the complaints system. It also indicated that a similar system was being set up for use by team leaders. Examples of the types of entries appearing on the database over a three month period include:

- an entry that a officer was 'unshaven and wearing an earring' and that he was 'reminded of the appropriate standards with regard to dress and grooming and told to remove the earring and shave'
- an entry that an officer had taken two weeks annual leave 'with a number of resubmits, actions, cases and outstanding charges that should have been actioned prior to going on leave'. The officer was sent an email by their team leader, provided a seven point plan for future work, and advised that future 'non compliance will result in further management action'
- an entry that a constable was observed speeding at 'approximately 140 kph in a 80kph zone' The constable was informed that 'a record would be made of his manner of driving and that if he came under notice again the matter would be formally reported where a determination about the suitability for him to maintain his driving classification would be assessed'.

Changing Duties

Some commands reported they dealt with their high risk officers by changing their duties. Ten commands indicated they took actions along these lines. In some instances officers were confined to station duties; in others, officers were practically promoted.

In one set of examples, high risk officers at commands were subject to specific restrictions on duty. For example:

- At some commands high risk officers were placed on restricted station duties. This usually happened when the officers were under a complaint investigation. In one case, however, the Commission was advised that this was the default management action for any officer who achieved a high risk rating.
- High risk officers were sometimes prevented from performing certain types of duties. At one local area command, for example, a high risk officer was excluded from relieving in the position of Sergeant and from being utilised as a Field Training Officer for a period of 12 months**.** At another local area command, another officer was also excluded from criminal investigation duties for a similar period of time.

In a second set of examples, high risk officers at some commands were rostered to undertake particular types of duties. For example:

- At one local area command a high risk officer with use of force complaints was restricted to station duties and assigned to work with the

EDO. This ensured that the officer did not have any contact with members of the public.

- A high risk officer at another local area command with customer service issues was placed in the command's crime management unit. This action meant that the officer was placed under the direct supervision of the command's Crime Manager.
- An officer at yet another local area command who was identified as high risk for attracting complaints from the public and displaying a proactive style of policing was removed from plan clothes general duties and put with the detectives. This was done to reduce the likelihood of attracting further complaints from members of the public and to ensure greater supervision, as much because of the officer's ability. The officer's risk rating was later downgraded and the officer was then placed in the command's proactive crime team. The officer was returned to the detectives when their risk rating was reassessed as high.

Two case studies follow describing how changes to duty were meant to lessen the risk posed by high risk offices at two commands.

Case Study 8.2: Changing duties

A high risk officer at a local area command with long-standing conduct issues and concerns about possible use of office to obtain sexual favours was taken off the road, restricted to station duties and put on custody duties. The command advised that the risk of the officer coming into contact with female prisoners was factored into this decision and it was concluded that the presence of cameras in the custody area was sufficient to mitigate the risk he presented to women. The command appears to have been aware that the placement was not ideal but rather only a short term solution while complaints against the officer were investigated.

Case Study 8.3: Changing duties

An officer at a local area command was rated as high risk because of a pattern of complaints relating to unreasonable use of force. According to the command, the officer was managed by being taken off operational duties and placed on charge room duties. What occurred next revealed that this action did little to lessen the risks he posed to the general public. Whilst on duty, the command indicated that the officer was alleged to have disclosed information to a person in custody about the medical history of their partner. It is alleged that the officer told the person in custody that his girlfriend had undergone gender reassignment, a fact about which he was unaware. It is alleged that the disclosure led the man to assault his girlfriend upon his release on bail. The officer and his partner were subsequently charged and prosecuted under the Privacy and Personal Information Act. The case has been reported in the media.

The preceding examples and case studies may be contrasted with the example in case study 8.4. This was a case where a local area command did not consider changing the duties of a high risk officer even though the nature of these duties meant that the officer was the frequent subject of complaints and therefore high risk as far as the command was concerned.

Case Study 8.4: Where a command did not change a high risk officer's duties

An officer at a local area command was identified as high risk because of a propensity to attract complaints and his style of policing. The command expressed the view that the officer was high risk only because he 'led the charge' as an arresting officer causing him to attract complaints from the command's 'criminal element'. At the time, the officer had attracted over 60 complaints.

The officer was the leader of the command's proactive crime group and was held in high esteem by the command. He was variously described as a 'high performer', 'a quintessential street cop', and 'second to none' in the position he occupied. The command was rated high in the State with respect to drug arrests and expressed the view that this was due to the work of the group led by the officer.

The officer had been subject to various management actions over the years. Among these, he had been placed on a Conduct Management Plan, subject to checks and advised to take more of a leadership role within the proactive crime team he led. The command advised that this last action was to ensure that the officer was not the arresting officer and that it had the desired effect of reducing the officer's complaints. However, this did not eventuate as the officer appears to have continued to be the subject of complaints.

As it was not subject to rotation, the position that the officer occupied was unlike other senior positions at the command. The officer had occupied his position at the command for a number of years and the command had not considered changing his duties. This was because it felt that the officer was irreplaceable. This view was held despite the fact that the officer attracted complaints in his position, which was at least one reason for his high risk status.

Transfers and assignments

At least eight local area commands that participated in the project indicated that transfers or assignments to other locations were means to deal with high risk officers.

At some commands, transfers or assignments were used purposefully to manage the risk posed by high risk officers. For example:

- Two high risk officers at one local area command, who had attracted complaints whilst working at an outlying station, were separated and brought to the command's main police station for closer supervision.
- A similar practice was followed at another local command where an officer, who had attracted complaints whilst working at one of the command's remote police stations, was brought to the command's primary station to work with the detectives under the supervision of the Crime Manager, where he has little contact with the public.
- A high risk officer at one local area command was seconded for a short time to a neighbouring command in view of a domestic violence matter in which he was involved**.**
- A high risk officer with conflict of interest issues at another local area command was temporarily transferred from one police station in the command to another. The command stated that it referred a matter involving the officer to the Internal Review Panel and was seeking to impose a disciplinary transfer to a larger command to ensure greater

> supervision and place her outside of situations involving conflicts of interest.

At other commands, transfers were used passively, effectively to pass the risk posed by high risk officers to other commands. In practice, this meant approving the transfer application of high risk officers. For example:

- An officer at one local area command was identified as high risk for conduct and performance issues relating to off-duty behaviour and failed prosecutions. The command authorised the officer's temporary transfer application to another command. The command expressed relief that the officer resigned before he was scheduled to return. The command stated that it was 'lucky' that the officer transferred out of the command and then resigned. Had the officer remained, it stated that action could not have been taken on the basis of the evidence it had.
- Another local area command permitted three of its high risk officers to transfer from the command. On this basis, the command advised the Commission that the officers were 'no longer a problem'. Similar views were expressed at another command, which expressed relief that two of its own high risk officer had transferred to other commands.

Where high risk officers were transferred, the Commission was advised by only one command that that it had notified the receiving command of the officer's risk status. In that case, the Commission was told that the receiving commander knew the officer 'very well' and consented to the transfer despite his history.

Only one local area command appears to have placed restrictions on the transfer of high risk officers. This command expressed the view that it would not 'off load' its high risk officer's to other commands. The Commission was advised by the command that one of its high risk officers who had transferred to another command was not high risk at the time of transfer. The officer had been on a Conduct Management Plan for performance and conduct complaints and was not permitted to transfer unless and until he completed all the requirements of the plan, which he did prior to transferring. The command also stated that the officer would have undergone an informal evaluation at the time, based on performance, sick leave, and the views of the officer's immediate supervisors.

Informing officers

A strategy that was used at two commands to manage high risk officers included informing officers of their high risk status. In both cases this strategy was regard as a way for officers to self correct their behaviour. As explained by the commands:

> Normally officers are informed of their high risk or medium risk status. It gives them an opportunity to correct their own behaviour.

> Once identified as a high risk officer a member of the management team will sit down with the officer and inform them of their risk rating and their propensity to attract certain types of complaints. [In documents provided by the comment it appears that the officer is also informed this in writing.] This is done so that officers take responsibility for their actions and so that they can't then turn around and say they haven't been informed.

Conduct Management Plans

Conduct Management Plans were referred to by thirteen commands as a way of dealing with the risk posed by high risk officers. Looking at a sample of ten plans, the following may be observed:

- the duration of the plans was between 3 and 12 months;
- the plans were not always tailored to address the risk posed by high risk officers. In most cases, they were tailored simply in response to specific complaint issues or a bundle of complaint issues rather than the underlying risk that the officer was thought to pose;
- the plans typically included the appointment of a mentor, who was responsible for providing feedback and reviewing the officer's performance;
- there were cases where high risk officers had been put on a number of conduct management plans over their careers, with apparently little effect on changing their behaviours;
- there was no evidence of follow up after the plans concluded; and
- there were cases where Conduct Management Plans were live documents which were amended during their lives to reflect new complaints or issues affecting the officer.

The following three case studies describe how the plans were used and meant to manage the risk posed by high risk officers.

Case Study 8.5: Were the CMP strategies appropriate?

A local area command indicated that one of its high risk officers posed a risk going to misconduct. It advised the Commission that the officer had been identified during an annual assessment which the command conducted on all staff. The officer was identified as being high risk, in principle, because of his compliant history. However, the risk as such was undefined by the command.

Looking at the officer's complaint history, and other information provided by the command, it appears that the officer was at risk of misuse of office. The officer had domestic issues, was known to visit sex workers, and had an adverse finding in relation to an unauthorised COPS access. The circumstances of the access appear to have been that that the officer had accessed the details of a woman in the hope of forming a sexual relationship with her. Following this matter, the officer was placed on a Conduct Management Plan for a period of 12 months. The plan included four management strategies

- removal of leading senior constable rating;
- assigned a mentor to provide quarterly feedback;
- not to perform duty as an FTO [Field Training Officer] or supervisor; and
- complaint and conduct monitoring.

It is questionable whether any of these strategies addressed the type of risk that the officer presented. Indeed, the plan is striking by its failure to include such obvious actions such as COPS audits among its strategies.

Case Study 8.6: Were the CMP strategies appropriate?

An officer at a local area command was identified as being high risk for proven conduct issues relating to, amongst other things, unreasonable use of force, assault, unnecessary and improper use of arrest, and untruthfulness. As part of the officer's management, the officer was placed on a Conduct Management Plan. The Plan was implemented in response to four matters relating to:

- unauthorised detention, unnecessary or improper use of arrest;
- offensive and unprofessional behaviour;
- harassment and intimidation; and
- inappropriate and unreasonable conduct.

None of the strategies listed in the Plan appears to have substantially addressed the misconduct risks posed by the officer. Implemented over 6 months, the strategies were directed only to 'training and development in the areas of communication, customer service, brief preparation, service and presentation.' They were listed as follows:

- constable will attend an Assertive Communication Skills Workshop;
- assigned a mentor to provide fortnightly feedback;
- training and coaching in brief preparation and presentation;
- attend basic leadership skills workshop;
- continue with assisting Weapons and Defensive Tactics Training; and
- new complaints to be monitored over the period of the Conduct Management Plan.

Bearing the officer's risks in mind and the strategies listed in his Conduct Management Plan, it is not surprising that an investigating officer had the following to say when reporting on the outcome of a complaint relating to unreasonable use of force.

> Notwithstanding constable [officer's name] is presently the subject of a CMP, he continues to attract complaints which result in adverse findings. Clearly, the workplace strategies currently in place are not effective.

Case Study 8.7: Were the CMP strategies appropriate?

An officer at a local area command was rated as high risk for conduct and performance issues. The most serious of these related to, amongst other things, conflicts of interest. The command explained that the officer was known to have improper associations with persons of interest in the command including prostitutes. Indeed, the officer's former partner was also a known prostitute and the officer was seen to escort her to and from a brothel in the command. The officer was judged to be at risk for other reasons too, including the fact that he lived and socialised in the command, often with persons of interest to police.

As part of his management, the officer was placed on a Conduct Management Plan, which appeared to have addressed the specific risks posed by the officer. Implemented over six months, the object of the plan was:

> to provide training with time management and the professionalism required of a police officer with their court attendance, court presentation, brief preparation and requirements to meet appropriate deadlines for service of briefs of evidence. The constable will also have direction and guidance on the identification, reporting and appropriate resolution of conflicts of interest in line with NSW Police Policy and guidelines.

The Plan listed the following strategies:

- attend an externally run time management course;
- assigned a mentor to provide fortnightly feedback and ongoing support;
- coaching and training in all facets of brief preparation;
- provided a copy of the NSW Police policy and guidelines in relation to Conflicts of Interest;
- prepare a 30 minute power point presentation for the information of the EDO in the guidelines of how to manage conflicts of interest;
- prepare a discussion paper outlining examples of associations that may be assessed as a conflict of interest in terms of the NSW Police Statement of Professional Conduct, Statement of Values, Code of Conduct and Ethics and guidelines for Conflicts of Interest;
- officer and mentor to undertake a comprehensive assessment of the risks associated with living and working in the command;
- officer and mentor to work together over the term of the Conduct Management Plan to look at alternatives of living and working outside the command; and
- mentor to provide information, guidance and support to officer's family.

Some other management actions

There were a variety of management actions taken by commands apart from those that have been described, some but not all of which were at times special to individual commands. Some of the more interesting types of action included:

- referral of high risk officers to the Professional Standards Command for integrity testing;

- training;
- demotion following sustained complaint outcomes;
- issuing Warning Notices, usually as part of a hierarchy of management actions;
- targeted drug and alcohol testing; and
- staged management.

The use of Warning Notices and the meaning of staged management are explained in the following case studies.

Case Study 8.8: Warning Notices in the hierarchy of management actions

Where a high risk officer attracted a sustained finding with respect to a minor complaint matter, some commands discussed the usefulness of issuing Warning Notices as part of a hierarchy of management actions. This facility is available under section 173 of the Police Act and typically is expressed in the following terms:

> Pursuant to section 173(1) and Schedule 1, Police Act 1990, I hereby order that non-reviewable action be taken in consequence of your conduct.
>
> This action is taken in consequence of investigations … concerning allegations in relation to your unsatisfactory conduct, as detailed below.
>
> …
>
> I have decided that it is appropriate to deal with your misconduct by way of issuing a Warning Notice.
>
> …
>
> You should clearly understand that any further instances of this nature may result in further management action, which may entail consideration of reviewable action under section 173(2), Police Act 1990, or removal under section 181D, Police Act 1990.

In discussing the usefulness of issuing Warning Notices, the commands which used the facility identified three distinct benefits:

> A Warning Notice is not very significant in itself, but it goes on an officer's record and sets up future management action.
>
> [A Warning Notice] serves the purpose of establishing a paper trail in any industrial relations action.
>
> [Warning Notices are] effective because they sometimes lead officers to correct their own behaviour.

Case Study 8.9: Staged management - How to return a high risk officer to full operational duties

A few commands which participated in the project and had placed their high risk officers on restricted station duties emphasised, in the words of one command, that they either wanted these officers 'back to work or out of the [NSW Police] Force'. This case study describes one command's approach to the problem.

One local area command, which dealt with its high risk officers by confining them to the station, stated that it sought to return its high risk officers to full operational duties though a process of staged management. The command provided the example of a high risk officer who had been confined to station duties as a result of an off-duty incident at a nightclub. The officer had been working as a driver on night patrol prior to this incident. The command stated that the officer was placed on station duties to ensure greater supervision following the incident, before slowly being returned to full night duties in a staged process. This process involved allowing the officer to work as a patrol officer during the day shift and then as the second driver on night shift. In returning the officer to full duties, the command advised that the officer was rostered to work with the same supervisor during the process of their return to full duties.

When are they no longer at risk?

The local area commands that participated in the project were all asked to describe the circumstances or process of lifting or declassifying an officer's high risk status. The Commission was interested to know the point, if any, at which these officers were no longer thought of as being high risk by their commands The responses ranged from commands stating that there was 'no formal process' to others which stated that an officer would lose their high risk status only after a 'lengthy period of good behaviour'. Some commands stated that the processes they employed were static and that once a high risk officer was identified there was no mechanism for the process to be reversed; this was common where commands employed Excel risk matrices to conduct annual command-wide assessments. Other commands simply spoke of high risk officers as 'dropping off the radar'. The descriptions provided by some commands follow, indicating the diversity of approaches to declassifying high risk officers.

> Those placed on the High Risk Officers List due to welfare concerns are generally declassified when the command is satisfied that there are no longer any welfare concerns. If those officers have been subject to restrictions they are generally not declassified until clearance has been received from the Police Medical Officer for them to return to full duties and the command is satisfied that there are no longer any welfare concerns.

> Officers placed on the High Risk Officers List due to complaint issues are generally declassified once all complaint action has been finalised and there has been a specified period (determined on a case by case basis) free of further issues as well as the command being satisfied that there are no welfare issues remaining.

> No tool as such. Review complaint statistics at CMT each month. Based on ongoing management of these people, any additional matters that have arisen and feedback from duty officers, CMT makes subjective judgement. Either remove from list or continue on list.

> If behaviour improves, this will be reflected at the next risk assessment with regards to complaints.
>
> All officers with the local area command are subject of assessment on an annual basis and those identified as high risk officers are managed via monitoring and quarterly reviews. If an officer is reassessed as low or medium risk in the annual assessment process (e.g., the ratings have reduced in areas assessed to a level where the overall rating has reduced to a level below high) they are informed in writing by the local area commander that they are no longer high risk.
>
> No process to declassify high risk officers. The risk assessment tool is static.
>
> Declassification occurs during the annual high risk officer review and incorporates consideration of [complaint frequency, seriousness of complaint allegations, likelihood of further complaints, pending legal action or 181D action, and performance issues]
>
> Generally, an officer would be declassified as a high risk officer at the conclusion of any management action. For example, an officer identified as high risk through a complaint might be placed on a CMP for an adverse finding and would be declassified at the satisfactory conclusion of the plan.
>
> Depending on the outcome of their treatment plan. Before an officer is declassified, the CMT will consult with the officer's supervisor for information on the officer's progress.
>
> The CMT generally picks an arbitrary number and then decides who from the current list of high risk officers is still a high risk officer. The CMT simply works to a number.

SUMMARY DISCUSSION

Most of the commands that participated in the project (17 of 20) indicated that the identification of high risk officers had some consequences for the management of these officers. Three commands, however, indicated that little or no action was taken in respect to these officers.

While some form of action was taken in respect of high risk officers, most commands waited for and felt the need to wait for a sustained complaint before taking such action. A common theme expressed by the commands for this was that officers could not be legally managed outside the occurrence of specific breaches or in respect of unproven issues.

Where commands waited for complaints to take action they appeared to do one of two things. In some of cases, they identified and managed officers as high risk in respect of single issue complaints. In other cases they imposed management actions that took into account an officer's existent high risk status.

In contrast to these commands, a small number of commands indicated that they managed officers proactively. These commands managed officers on the basis of their histories and not only in relation to specific and proven incidents. Some examples included providing advice to officers, conducting audits, and monitoring. In one

example, discussed in Case Study 8.1, it also involved placing an officer on a structured management plan.

Six strategies, which were discussed in detail in this chapter, provide further examples of how high risk officers were managed in practice. The strategies relate to:

- 'monitoring' or 'intrusive supervision';
- changing duties;
- using transfers or assigning officers to other locations;
- placing officers on conduct management plans;
- using Warning Notices in a hierarchy of management actions; and
- structuring management so as to return high risk officers to full operational duties.

None of these strategies were uniform across commands. In some cases they were also lacking in substance. Monitoring, for example, was only demonstrated by some commands; and in most cases appeared to stand for little. The use of transfers and assignment was also varied, with some commands using transfers to passively pass their high risk officers to other commands. Only one command placed restrictions on the ability of high risk officers to transfer to other commands; whilst all but one appeared to inform commands that officers who were planning to transfer to the command were high risk. Conduct management plans were also unreliable in some cases for addressing the risks that high risk officers posed, that is, they were not tailored to dealing with the risk posed by officers.

Finally, commands indicated that there were no standard processes for declassifying high risk officers. While some indicated that officers would lose their rating only after lengthy period of good behaviour, others indicated that the identification process was static. In that case, the command advised there was no mechanism for a high risk officer to be declassified once they were flagged. At least one command also indicated that officers would be declassified at the end of any management action that was imposed on them following a complaint. Another stated that the process used to declassify a high risk officer was arbitrary: the command simply worked to a number, that is, it picked a number and culled its high risk officer list to that number.

The following implications may be drawn from the information presented in this chapter:

- Neglecting to manage officers once they have been identified as high risk threatens to render the process of identifying these officers tokenistic. While their identification represents an important part of a command's overall strategy for preventing police misconduct, it is critical that appropriate strategies are also taken to manage the risk they pose. Neglecting to do so threatens to make the process of identifying the officers and the risks they pose meaningless.
- While sustained complaints, or other proven incidents, mark critical occasions for commands to manage the risk posed by officers, including high risk officers, it is important for commands to also adopt proactive management responses. Waiting for these occasions can mean that commands can miss earlier opportunities to intervene and manage the

risk that the officers pose. It is also contrary to a basic principle of risk management; namely, to proactively anticipate risks and prepare strategies to reduce their effects. However, where commands do wait for sustained complaints or proven incidents, it is important they take action that is commensurate not only with the complaint but with an officer's history. This is consistent with existent NSW Police Force policy regarding complaints management.

- The perception among commands that they can only manage high risk officers in respect of sustained complaints or for specific breaches of policy is anachronistic. It does not accord with the proactive focus of contemporary management techniques that have taken root in other parts of the NSW Police Force; or the direction that the NSW Police Force was intended to take after the Royal Commission. The perception also does not accord with the current system itself, which is intended to be managerial rather than legalistic.
- There were a number of effective measures taken by some commands to manage the risk posed by their high risk officers. To be effective, however, it is critical that strategies to treat the risks they pose are tailored. This is clear from the examples of conduct management plans – with some addressing the risks posed by officers, and others missing their mark.
- As a strategy to manage high risk officers, 'monitoring' or 'intrusive supervision' must stand for more than just labels. If used to manage high risk officers, commands must be able to demonstrate how the officers are being monitored or supervised. This is particularly important as police exercise high levels of discretion and work in environments with low management visibility.
- While the management of high risk officers should be a key initiative of commands, the management of these officers should not detract attention from the overarching responsibility to manage all police officers and the misconduct risks they present, which arises as a consequence of the policing function.

9. THE WAY FORWARD

OVERVIEW

This chapter provides recommendations to the NSW Police Force on how it can standardise and help improve the way commands identify and manage high risk officers. The recommendations respond to the Commission's assessment of the major themes addressed in this report; as well as to the outcomes of the consultation process that took place between the Commission and the NSW Police Force. Both the Commission's assessment and the outcomes of the consultation with the NSW Police Force are described in this chapter.

ASSESSMENT OF MAJOR THEMES

CORPORATE GUIDANCE

The Commission is of the view that the absence of a policy on high risk officers accounts for the inconsistencies as well as the idiosyncrasies in how commands think about, identify and manage these officers. The absence of a policy is problematic given that there is a corporate acknowledgement, which is matched by an expectation, that the identification and management of high risk officers is a common management activity at the command level. Commands need to have a clear idea of what is required of them to identify and manage high risk officers as well as of what the activity is meant to achieve.

A policy on high risk officers is also needed to consolidate existing references to 'at risk' and 'high risk officers' that appear in some of the corporate guidance already provided to commands.

The Commission observes that existing guidelines on the requirement that commands assess officers on the basis of their complaint histories may form a foundation for any future policy on high risk officers.

THE DOCUMENTED APPROACH OF LOCAL AREA COMMANDS

Locally developed documents on the identification and management of high risk officers, while useful in the absence of a corporate policy, should be discontinued in their current form. The Commission is of the view that command-specific policy and procedural documents are nonetheless necessary as one size does not fit all; the administrative capacities of commands, for example, may vary depending on their size and location and impact on how they may implement the policy. Local policy documents can take these resource differences into account. But, in the future, these documents need to be informed by and complement a corporate policy on the topic.

Local command documents should not only restate the corporate policy and use the terminology it sets, but provide details of how the command intends to administer and implement the policy. For example, the documents should specify the process by which high risk officers may be monitored and reviewed.

Guidance should be provided to commands on how they should develop local documents that complement the corporate policy.

AT RISK OF WHAT?

The term high risk officer needs to be defined at a corporate level and included in a policy on the topic if it is continued to be used. To link the identification and management of high risk officers more closely to misconduct prevention, the Commission is of the view that the term needs to be defined as a term which connotes conduct risks only. In other words, the term should not be used in relation to officers posing other risks. The Commission considers that this restores what appears to have been the original meaning of the term.

Having said that, the Commission appreciates that there will be cases where conduct and performance issues will blur or where officers will present with more than one behavioural risk. Nonetheless, the Commission is of the view that it is critical to distinguish between these risks where possible in recognition that each type of risk calls for different corrective strategies.

A corollary of the need to distinguish between risk types is the need to specify the precise nature of the risk posed by officers. In the case of high risk officers where the term is applied in relation to conduct risk only, this means that commands should state the precise conduct risk that the term denotes in each case. For example, an officer might pose a conduct risk because of a history of harassing persons in custody. In such a case, commands must specify that the officer is high risk for harassing persons in custody. In another case, an officer might pose a conduct risk because of a history of attracting complaints in a particular policing role. In such a case, commands must specify that the officer is high risk for attracting complaints in that role.

The Commission acknowledges that such an officer may also, by example, pose other behavioural risks such as a risk of poor performance. To best treat the full range of risks that such an officer poses the Commission considers that commands need to maintain the identity of each of those risks. This is consistent with the basic tenet of risk management, which requires that risks be clearly identified before they can be treated.

IDENTIFYING HIGH RISK OFFICERS

The absence of a corporate tool in the NSW Police Force for identifying high risk officers results in inconsistencies in how commands identify these officers. It leads to the situation where an officer is identified as high risk by one command on the basis of one set of criteria but not at another. The absence of a corporate tool can also lead to inappropriate issues – such as sick leave – being used as a basis for assessing officers as high risk.

The Commission considers that a risk assessment tool or process for use by commands to specifically identify high risk officers needs to be developed. This tool or process should seek to identify officers with demonstrated conduct risks. To that end it should include variables or other criteria that identify proven conduct risks and not other risks such as poor performance. The Commission considers that the NSWPF should develop such a tool separately from an early intervention system.

However, in providing a tool, the NSW Police Force also needs to provide guidance on the differences as well as relationship between conduct and performance issues. For example, it needs to provide commands with a tool on how to determine instances where performance issues impact on an officer's conduct; or when a problem, such as failure to follow directions, can be characterised as being either a conduct or a performance issue.

The identification of high risk officers should not be based on undocumented local knowledge. The use of local knowledge can result in a prejudiced decision making process. It risks the situation that the assessment of an officer as high risk may be coloured by bias or favour. The Commission is of the view that, while local knowledge may provide commands with a valuable source of information that may not be captured by reliance on other data such as complaints, its use needs to be documented. This will ensure that assessments based on local knowledge are made more transparent.

Complaints represent one of the most important pieces of information that commands have for identifying officers with demonstrated conduct risks. However, in making use of this data, commands should avoid taking a quantitative approach. This can result in the situation that officers with many years experience are identified as being high risk simply because of the number of complaints they have attracted. To make use of complaint data, there needs to be a qualitative approach that looks at, amongst other things: the type of complaints that an officer has attracted; the frequency of attracting those complaints; complaint outcomes; the officer's duty when attracting complaints; and recent complaints judged against the officer's overall complaint history. There is also value in benchmarking the complaint histories of prospective high risk officers against the histories of other officers with comparable duties.

Other strategies which may assist in the identification of high risk officers include:

- the establishment of a use of force register; and
- the dissemination of data comparing complaints and arrest rates for officers by rank and duty type.

The use of risk assessments should be targeted. The use of command-wide risk assessments, which are conducted on either a rolling or annual basis, should be discouraged as they can dilute attention to high risk officers and lead to a perfunctory process. Such assessments are also onerous and may form part of the reason why many commands which stated that they had conducted these assessments could not demonstrate that the assessments had occurred as stated. Annual assessments also risk the situation that officers will not be assessed and identified as being high risk for at least 12 months. A practical alternative is to undertake assessments in response to new complaints or other significant events or the receipt of information concerning an officer. This will ensure that the risk assessment process is integrated with wider management processes such as complaint management.

Responsibilities relating to the identification of high risk officers need to be clarified. Ideally, the responsibilities should not fall to one person but to an established body such as a command's Complaint or Senior Management Teams. This will help to ensure that the assessment process is conducted fairly and objectively. It will also help to filter local knowledge where this is used in the assessment process.

MANAGING HIGH RISK OFFICERS

The Commission is of the view that there is a need for the NSW Police Force to provide clearer guidance to commands on how they can manage high risk officers. This guidance should identify not only the types of actions that can be taken in the event of a breach of policy or law, but the types of actions that may be taken in the absence of these. Waiting for breaches to occur is inconsistent with the principles of risk management, which seeks to identify likely or probable areas or circumstances in which harm may occur and put in place mitigation strategies.

In the absence of specific breaches of policy or law, the Commission is not advocating punitive outcomes. The Commission recognises that any action taken against high risk officers must be fair and equitable; that such action must not be harsh in its consequences for the personal and economic situation of officers or be disproportionate to the gravity of the risk poised by an officer.

The Commission also recognises that not all high risk officers will respond to management interventions designed to improve their behaviour or mitigate the risks they pose. It is inevitable that there will be instances where high risk officers will be resistant to management or that the strategies to manage them, however appropriate, will fail.

The Commission considers that guidelines should be issued to commands on how high risk officers may be managed. These guidelines should provide commands with the tools they need to subject high risk officers to a program of structured management that seeks to downgrade their risk rating or return them to normal duties, for example, if restrictions are placed on them as part of their management. The guideline should provide commands with the information they need to mange high risk officers with clear objectives, documented strategies, mechanisms for reporting, and processes of review.

The commands that participated in this project provided a number of positive examples of how they managed high risk officers. Some are listed below and should be considered in the preparation of the guidelines that are issued to commands on how they can manage these officers:

- The use of Warning Notices can form a part of a hierarchy of management actions, which can set up future actions and serve the important function of establishing a documented history.
- An electronic reporting system, of the type used by one command, can provide commands with an effective means to monitor high risk offices. The system could be used by senior officers at a command to log actions taken with respect to a high risk officer on a daily basis. This log could then be provided to the command's Complaint Management Team. The use of such a system can demonstrate that a command is monitoring its high risk officers.
- Changing an officer's duties can remove an officer from a policing role where he or she attracts a disproportionate number of complaints as compared to other officers in similar roles.
- In extreme cases, restrictions on duty could be placed on high risk officers. However, such restrictions should not be thought of as being ends in themselves. High risk officers placed on restricted duties should

be managed through a structured program that seeks to return them to full duties.

- Conduct Management Plans are useful tools for addressing risks posed by high risk officers. However, to be effective, they should be tailored to manage the underlying risk posed by these officers. Actions plans of the type used by one command may also be used as an adjunct to these plans.

Apart from the positive examples, there were a number of management practices which should be specifically discouraged. The use of transfers, for example, could be problematic if they are used simply to off-load the risk posed by a high risk officer to other commands. This is acute if commands place no restrictions on the transfer of high risk officers or fail to inform receiving commands of an officer's status. It can result in the situation where an officer, who is high risk and subject to management at one command, can transfer out of the command and avoid being managed as a high risk officer. The assignment of high risk officers to other locations within a command may represent a more positive strategy to manage the risk they pose if, for example, it is intended to place an officer under closer supervision or remove an officer from an environment where he or she attracts a disproportionate number of complaints.

The absence of mechanisms to declassify high risk officers was also problematic at some commands. The Commission is of the view that high risk officers should not be downgraded on the basis of undefined benchmarks such as 'a lengthy period of good behaviour' or ad hoc judgements such as an officer 'dropping off the radar'.

CONSULTATION WITH THE NSW POLICE FORCE

OVERVIEW OF THE CONSULTATION PROCESS

The Commission consulted with the NSW Police Force on the results and recommendations of Project Odin. The consultation was both lengthy and detailed.

The Commission finalised a draft of the Project Odin report in September 2008 which it provided to the NSW Police Force for review. As a guide, the Commission indicated that it was interested in obtaining from the NSW Police Force feedback on:

- the accuracy of the material presented on NSW Police Force polices and procedures; and
- the recommendations which could be strengthened or in other ways improved.

The NSW Police Force provided an interim reply in November 2008, following which it conducted a closed workshop to discuss the project. This workshop was attended by 45 superintendents and most of the officers who took part in the project. Senior managers within the Professional Standards Command (PSC) also conducted a review of the draft report in the same period. A report detailing the outcomes of both these processes was provided to the Commission in January 2009.

The NSW Police Force held a second workshop in early February 2009. This workshop was attended by 46 senior ranking officers. The workshop was also attended by

members of the Commission. A final outcome report on this workshop was provided to the Commission in March 2009, bringing the consultation process to a close.

ISSUES RAISED BY THE NSW POLICE FORCE

During the consultation process described above the NSW Police Force expressed broad support for the report's findings and recommendations. Indeed, in respect of the report's accuracy, the NSWPF participants to the process raised few detailed concerns and did not substantially challenge the material presented on police polices and procedures. The Commission has since addressed some points on accuracy.

Review of Content

The review of the project report's content that was undertaken by the PSC was broadly complimentary. In respect of the result chapters (3 to 8), the following was indicated.

- On chapter 3 (Corporate Guidance), the PSC said that the documents summarised were 'a priority for definition clarification and standardisation'.[174] The diverse responses in the chapter were said to clearly demonstrate 'the need for a corporate policy underpinned by on-the-ground training and sustained support.'[175]
- On chapter 4 (Local Area Command Documentation), the PSC stated that the information on local documents supported a need to streamline terminology in policy and procedures. The confusion around corruption resistance plans and the need for clarification and standardisation was also acknowledged.[176] As with the previous chapter, the diverse response was again said to demonstrate 'the need for a corporate policy underpinned by on-the-ground training and sustained support.[177]
- On chapter 5 (At Risk of What?), the PSC indicated the information provided an 'excellent basis for developing a definition of high risk officers'. It also noted the 'disparity inherent in the status quo' and 'concurred' with the implications outlined at the end of the chapter. [178] However, as explained below, concerns were raised over the use of the term high risk officer.
- On chapter 6 (Identifying High Risk Officers), PSC acknowledged that the information in this chapter provided 'the foundation for developing a corporate risk tool for identifying high risk officers'. It also indicated that the chapter provided 'a solid overview of the strengths, weakness and potential of the various systems currently in use across the NSWPF'.[179] As elaborated below, concerns were however raised about the

[174] NSW Police Force, 'Project Odin: Professional Standards Command – Outcomes of the Workshop & Senior Management Consultation', 19 January 2009, p. 10.
[175] NSW Police Force, 'Project Odin: Professional Standards Command – Outcomes of the Workshop & Senior Management Consultation', 19 January 2009, p. 10.
[176] NSW Police Force, 'Project Odin: Professional Standards Command – Outcomes of the Workshop & Senior Management Consultation', 19 January 2009, p. 11.
[177] NSW Police Force, 'Project Odin: Professional Standards Command – Outcomes of the Workshop & Senior Management Consultation', 19 January 2009, p. 11.
[178] NSW Police Force, 'Project Odin: Professional Standards Command – Outcomes of the Workshop & Senior Management Consultation', 19 January 2009, p. 11.
[179] NSW Police Force, 'Project Odin: Professional Standards Command – Outcomes of the Workshop & Senior Management Consultation', 19 January 2009, p. 11.

delineation between an EIS and a policy for officers posing demonstrated serious conduct risks.

- On chapter 7 (Managing High Risk Officers: Corporate Guidance), the PSC stated that the chapter provided a 'comprehensive overview of management actions and the range of interrelated polices'. It also noted that 'the number and diversity' of actions 'indicate[d] the need for a review with the aim of standardisation and streamlining, as well as legislative alignment'. [180] The PSC also acknowledged 'the need for a comprehensive policy on the management of high risk officers'. [181]
- On chapter 8 (Managing High Risk Officer: Local Practice), the PSC indicated that the information in the chapter provided 'a strong base for identifying the issues and risks arising from the process of managing (or not managing) a high risk officer'. In particular, it took note of the practice of waiting for a sustained complaint before subjecting high risk officers to management and 'the risks arising from this practice'. [182] It further noted that 'inadequate and inconsistent management' was of concern 'in terms of procedural fairness'.

Review of Recommendations

The issues raised by the NSW Police Force during the consultation phase substantially related to the first iteration of recommendations for change arising from the project. Broadly, however, there was general support for the recommendations and consensus among police representatives in the process about the need for a corporate policy on high risk officers. In particular there was consensus among police that consistency was required in respect of high risk officers and that such consistency would best be achieved by having corporate direction on the topic, broadly in the form of a policy and/or guidelines.

From the Commission's perspective, the main issues raised by the representatives of the NSW Police Force can be as summarised as follows.

- While there is a need for a corporate policy or framework on high risk officers, such a policy must balance the need for a central policy and local command discretion and emphasise 'guidance rather than prescription'.
- The use of the term high risk officer represents a risk of 'labelling and stigmatisation'. Its similarity to the term 'high risk offender' may also cause potential confusion.
- The definition of a high risk officer needs to be broadly focused and not only be confined to the risk of misconduct.
- Many NSW Police Force representatives articulated a need for a broad approach to the management of police officers. This approach was not defined but was described in general terms as 'seamless' or 'holistic management'.

[180] NSW Police Force, 'Project Odin: Professional Standards Command – Outcomes of the Workshop & Senior Management Consultation', 19 January 2009, p. 12.
[181] NSW Police Force, 'Project Odin: Professional Standards Command – Outcomes of the Workshop & Senior Management Consultation', 19 January 2009, p. 12.
[182] NSW Police Force, 'Project Odin: Professional Standards Command – Outcomes of the Workshop & Senior Management Consultation', 19 January 2009, p. 12.

- Some police representatives expressed related concerns about the delineation of a policy on high risk officers and an early intervention system (EIS) given that the two products respond to the same continuum of behaviours, although at different points of a scale. It was said that the proposed creation of separate systems or polices was 'forced' and would add to the number of policy 'silos' that are already in existence.
- Finally, some representatives raised concerns about administrative burden and cost in relation to implementing any new recommendations.

The Commission acknowledges that the forgoing were not the only issues raised during the consultative phase. However, in the Commission's view, they were the ones that required a considered response.

RESPONSE TO ISSUES RAISED BY THE NSW POLICE FORCE

The Commission is of the view that the input of the NSW Police Force is valuable and that consideration of such input by the Commission promotes fairness. The Commission is of the view that such consideration also serves to strengthen the report.

Guidance rather than prescription

The Commission acknowledges the need to have a balance between prescription and guidance and considers that such balance is reflected in its recommendations. To the extent that the recommendations of the Commission erode discretion and impose prescription, the Commission contends that they only do so to a reasonable degree. Those aspects of the recommendations that can be characterised as prescriptive serve important functions, namely:

- to impose a standard definition of the term high risk officer;
- to enforce the use of a standard identification tool; and
- to put an end to maverick ideas within the NSW Police Force about high risk officers.

The Commission's recommendations provide for commands to maintain discretion when dealing with high risk officers. This is clear in respect of the management options that they may use in deciding how to treat the risks posed by officers. The recommendations are only that commands be provided guidance with respect to the management options they may take.

Risk of labelling and stigmatisation

The Commission acknowledges the dangers of labelling and stigmatisation that potentially flow from the use of terms such as high risk officer; and the potential confusion that may arise from the use of the particular term owing to its similarity to the term 'high risk offender'.

The Commission is seized of the dangers in using the term and recognises that an alternative appellation may be used in its place. However, the Commission considers that this is a matter for the NSW Police Force.

Whatever term is used, however, Commission would encourage the NSW Police Force to confine the use of that term to officers who pose demonstrated serious conduct risks.

Definition of a high or at risk officer

The Commission does not agree with the position of some representatives of the NSW Police Force that the term 'high risk officer', or a replacement term, should be broadly defined and that the definition should extend beyond the risk of misconduct. To the extent that a new policy is developed by the NSW Police Force, which focuses on officers with demonstrated serious conduct risks, the use of any term to describe such officers must by definition accord with that focus.

In the context of such a policy, the Commission considers that a broad definition will also not progress a solution to the problems identified in the project report, particularly the very problems associated with using the term high risk officer to stand for a too broad a range of risks. As noted in this report, one of the main problems is that such usage confuses the different objectives behind identifying officers posing these different types of risks.

The Commission would add that polices addressing behavioural risks other than misconduct are not within the scope of the current exercise; and that they may also lie outside the Commission's charter.

Seamless or holistic management

The NSW Police Force articulated a need for 'seamless' or 'holistic management'. During the consultation phase, this idea remained underdeveloped and a working description could not be put on these words.

However, it was put to the Commission that the need for such management flowed from the fact that police officers can pose more than one variety of behavioural risk, such as a risk of engaging in misconduct or poor work performance. Indeed, it was the experience of some police commanders that the same officer passes across their desk at different times presenting with a range of different problems and not simply the risk of engaging in misconduct.

The Commission does not deny this reality, which it notes is also reflected in the case studies presented in the report. The Commission also appreciates the difficulty of managing officers who may have a wide range of behavioural problems.

A proposition that appears to have been put forward by some representatives of the NSW Police Force was that this reality negated the need for a targeted policy addressing the identification and management of officers who pose demonstrated serious conduct risks. The Commission disagrees and notes at least two reasons why the NSW Police Force requires such a policy.

- Firstly, for the Commission, all behavioural risks are not equal. From its statutory perspective, the Commission considers the risk of serious misconduct as being greater rather than equal to other risks such as poor performance. The Commission also notes that this is consistent with the statutory values of the NSW Police Force, amongst which integrity is placed above all else.[183]
- Secondly, the Commission considers that while it may be attractive to embrace the notion of a holistic approach to management, such an approach can easily lack rigour. The Commission contends that an analytical approach is required in which the problems posed by an officer are broken down into constituent parts or risk types. The Commission considers that such an approach will allow a command to effectively tailor a set of interventions which target the specific risks that the officer poses. The Commission regards this as being consistent with the basic principles of risk management, which requires that risks be identified as a first step to their treatment.

Responding to the reality of managing police officers with multiple risks is a challenge. The Commission seeks to respond to that challenge through the recommendation, explained below, that the NSW Police Force develops an intervention framework. The Commission considers that this framework is at least a partial answer to the need that was articulated by the NSW Police Force for 'seamless' or 'holistic management'. The Commission notes that the recommendation draws on input that was provided by senior PSC managers.

As envisaged by the Commission, the intervention framework would bring together and organise a suite of interventions, which are available within the NSW Police Force to deal with different behavioural risks targeting individuals. At a minimum, these would include the proposed high risk officer policy, the forthcoming EIS and complaints management, as well as welfare related polices such as Managing Officers at Risk of Self Harm.

Commanders would use the framework as a reference guide, much in the same way as they use the Decision Making Framework, to tailor a set of interventions that might be required to treat the different behavioural risks posed by an officer. The choice of interventions would be determined analytically by breaking down the range of behavioural risks that the officer might pose.

In deciding which interventions to select, commanders would be required to ask themselves to determine, based on the evidence before them, what type or types of risk the officer posed. If the answer to the question(s) was a risk of conduct (such as those that might apply if the officer was at risk for using unreasonable force), then the relevant conduct related policy would apply to treat those risks. If the officer was also judged to pose welfare or performance risks, the interventions designed for that officer would also have to draw on the policies and systems relevant to those risks. The framework would need to be flexible to allow commands to take account of exigencies and to set priorities with regard to the identified risks and interventions.

The Commission considers that an intervention framework, of the type described, could be expanded over time to include new policies and systems as they develop.

[183] section 7, *Police Act 1990* (NSW)

Relationship between EIS and a high risk officer policy

The Commission agrees with the views expressed during the consultation process that an early intervention system (EIS) and a policy on high risk officers respond to the same continuum of behaviours, although at different points on a scale. However, it does not regard this as being sufficient reason for one to be subsumed by the other. The Commission notes that other systems also exist which respond to different behaviours along the same continuum of behaviours. Such polices and systems include the complaints system as well as the judicial system. The Commission notes it would not be sufficient to subsume all relevant systems which target individual officers into one all encompassing system.

To the extent that a high risk officer policy focuses on officers with demonstrated serious conduct risks, the Commission considers that such a policy should be kept separate from an EIS for the following reasons.

- An EIS, such as the NSW Police Force is currently developing in partnership with the Commission and other stakeholders, is focused on identifying early behaviours and intervening at the early stage to prevent future misconduct. By early behaviours the Commission means potential indicators of risk in the future rather than objective identifiers of present risk.
- Along the same lines, the Commission notes that the logic behind an EIS is that of the 'slippery slope of corruption'[184] in which small acts, such as of omission, lead to bigger acts of corruption. A high risk officer policy such as the Commission envisages is focused on a different class of officer: namely, those past the early stage who have proven that they are at risk of engaging in serious misconduct. The risk of misconduct posed by such officers may be characterised as being imminent.
- The underlying object of each system is also different. An EIS is remedial rather than disciplinary in its intent.[185] The types of interventions under an EIS are focused on correcting problematic behaviours through such strategies as training and counselling.[186] A high risk officer policy, such as the Commission envisages, may be more intrusive in its intent given that it is focused on a different type of officer. Where it is applied in tandem with complaints management, its object may also be punitive.
- The Commission has concerns that the push to treat the EIS and the proposed high risk officer policy as one will undermine officer support for the EIS. A central plank of an EIS is that it is seen by officers as being remedial. This would be significantly diminished if the system was used to deal with high risk officers with demonstrated histories of misconduct.

[184] T Newburn 1999, *Understanding and preventing police corruption: lesions from the literature*, UK Home Officer, Police Research Series Paper 110, p. 33. CF. K Gilmartin & M Harris 1998, 'Law enforcement ethics: The continuum of compromise', *Police Chief*

[185] S Walker, G P Alpert & D J Kenney 2001, 'Early Warning Systems: Responding to the problem police officer', *National Institute of Justice Journal*, July, p. 1; S Walker 2003, *Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide*, US Department of Justice, Office of Community Oriented Policing Services, p. 4.

[186] S Walker 2003, *Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide*, US Department of Justice, Office of Community Oriented Policing Services, p. 4; L Siegel & J Senna 2004, *Introduction to Criminal Justice*, Thomson Wadsworth, p. 227; F Hughs & L B Andre 2007, 'Problem officer variables and early warning systems', *Police Chief*, October, p.1; M Berkow 1996, 'Weeding Out Problem Officers', *Police Chief*, April.

- The Commission considers that a high risk officer policy focusing on officers with demonstrated serious misconduct risks maintains agency focus and ensures that the NSW Police Force assigns priority to the identification and management of such officers. Such focus might be sacrificed if the policy was subsumed by an EIS, which itself focuses on a broader class of problem police employees.
- Finally, the Commission notes that the NSW Police Force Commissioner's Executive Team (CET) acknowledged the separation of an EIS in November 2007 when it endorsed the development and implementation of an EIS.

In maintaining its position that a high risk officer policy should remain separate from an EIS, the Commission concedes that many officers who currently attract the high risk officer label would not fall under the new policy. The Commission considers that many of these officers would fall under different policies and systems; and that such policies and system would, in many cases, include an EIS.

As envisaged by the Commission, a new policy on high risk officers would also only apply to a small percentage of officers who have hitherto been identified by their commands as being high risk; such officers would by definition pose a demonstrated risk of serious misconduct.

The issue of administrative burden and cost

The Commission recognises that the NSW Police Force may have concerns about the issue of administrative burden and cost in respect of developing a policy on high risk officers. Based on what is proposed, however, there appears to be minimal overhead or requirement for additional resources. Should the concerns of the NSW Police Force continue, it should engage in a costing exercise.

The Commission also considers that the allocation of responsibilities under the new policy could readily be subsumed by existing positions and/or organisational units within the NSW Police Force.

RECOMMENDATIONS

DEVELOPING A HIGH RISK OFFICER POLICY

1. It is recommended that the NSW Police Force develops a policy which clarifies the corporate position on the practice of identifying and labelling 'high risk officers'. The policy should be in the form of a high-level overall plan embracing the general goals and acceptable procedures relating to the practice and include:
    - a definition of the term high risk officer or, if that term is disused, an alternative term;
    - a statement of what the NSW Police Force hopes to achieve corporately by identifying and managing these officers;
    - a statement that the policy is intended to establish a consistent and agency-wide approach;
    - a direction that the identification of an officer as high risk is based on the results of a tool or process;
    - a statement that commands will be responsible for identifying and managing these officers as well as for administrating the policy at the local level; and
    - a statement that commands will be required to comply with the policy and be audited on compliance as part of existing command audit processes.

2. It is recommended that the policy is concerned only with the identification and management of conduct issues and is focused on officers with current and established conduct risks as opposed to future or emerging risks or any other risk that falls outside the definition of conduct.

DEVELOPING AN INTERVENTION FRAMEWORK

3. It is recommended that a high risk officer policy be accompanied by the development of an intervention framework. This framework should bring together a suite of relevant policies and systems and show commands how to build up and prioritise a set of interventions, drawing on the suite of policies and systems, to target the range of behavioural risks that an officer may pose. The framework should at a minimum bring together the proposed high risk officer policy, the forthcoming early intervention system, and complaints management.

DEVELOPING AN IDENTIFICATION TOOL

4. It is recommended that the NSW Police Force establishes and implements a corporate risk assessment tool or process for use by commands to identify high risk officers as an organisational priority. The assessment tool or process should:
    - be documented;
    - not rely solely on local knowledge and where such knowledge is used ensure that this is documented;
    - include criteria of demonstrated conduct issues such as complaints and make qualitative as opposed to quantitative use of complaints data;
    - allow commands to take into account other issues;
    - benchmark an officer's complaint history against officers with similar histories and experience;
    - take into account an officer's use of force rate, which will require the establishment of a use of force register;
    - include a mechanism to declassify high risk officers; and
    - not be based on a point system or be conducted during an annual command-wide assessment of officers.

DEVELOPING GUIDELINES

5. It is recommended that the NSW Police Force develops and promulgates a set of guidelines to accompany the high risk officer policy and identification tool or process. These guidelines should:
    - build on the policy and provide advice as to how the goals articulated in the policy may be achieved locally;
    - provide advice as to how the risk assessment tool or process may be used by commands;
    - include an overview of the management options that are available to commands;
    - recommend strategies for managing high risk officers, incorporating some of the strategies used by some participating commands to manage high risk officers as showcased in the project report.

ALLOCATING RESPONSIBILITY

6. It is recommended that the NSW Police Force allocates overall responsibility to a NSW Police Force command for:
    - maintaining the corporate policy;
    - providing training to officers across the NSW Police Force in how to use the policy, risk assessment tool or process, and intervention framework; and
    - providing day-to-day guidance to commands on the use of these.

GLOSSARY

Category 1 & 2 Complaints — Previous classification of referable complaints as defined by section 67 (Repealed) of the *Police Integrity Commission Act 1996*. These categories no longer exist. Category 1 complaints were deemed to be the most serious and included matter such as pervert the course of justice, assaults which cause serious injury which could lead to a charge of maliciously wounding or inflicting grievous bodily harm, and any offence punishable on conviction by a maximum sentence of 5 years or more.

c@ts.i — The name of the NSW Police Force's computerised complaint management system. Required under Part 8A of the Police Act.

Complaints Information System (CIS) — The previous complaint management system, which replaced the Internal Affairs Branch System (IAB)

Command Management Framework — The name of a self-assessment audit tool that NSW Police Force commands use to monitor policy and legislative compliance.

Complaint Management Team — A team within a command that is responsible for the management of complaints made against police that are referred to it. Principal members include the commander, crime manager and executive officer.

Corruption — See, 'Police misconduct'

Local Area Command (LAC) — Since 1997, one of 80 core policing units that make up the NSW Police Force. Each LAC is headed by a commander at the rank of superintendent whose primary responsibility is to ensure the LAC's 'timely and effective operational response to the constituency. The management of these jurisdictions is largely autonomous and the organisation views them as the service delivery points for policing across the State.'[187]

Local Management Issue (LMI) — A minor complaint that can be dealt with by informal resolution.

Police misconduct — Defined under section 5 of the *Police Integrity Commission Act* 1996(NSW) as misconduct (by way of action or inaction or alleged action or inaction) of a police officer. Examples of Police misconduct can involve (but are not limited to) any of the following:

> (a) police corruption,
> (b) the commission of a criminal offence by a police officer,
> (b1) misconduct in respect of which the Commissioner of Police may take action under Part 9 of the *Police Act 1990* ,
> (c) corrupt conduct within the meaning of the *Independent*

[187] J Penning 1999, 'Crime in rural NSW: A Police perspective', Paper presented at the conference Crime in Rural Australia convened jointly by the Australian Institute of Criminology and the Rural Development Centre, University of New England, 1 March 1999, p. 12.

	Commission Against Corruption Act 1988 involving a police officer, (d) any other matters about which a complaint can be made under the *Police Act 1990*.
Professional Standards Command (PSC)	The NSW Police Force command having responsibility for the agency-wide promotion of professional standards. Principally responsible for investigating serious police misconduct; assisting NSW Police Force commands meet their responsibility to manage complaints and employee management issues; and developing and promoting professional standards products and services.
Region	One of six commands that oversee the operations of local area commands in NSW.
Senior Management Team	A management team within a command comprising the commander, duty officers, crime manager, and local area manager.

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APPENDIX 1 - ROLE AND FUNCTIONS OF THE POLICE INTEGRITY COMMISSION

OVERVIEW

The Police Integrity Commission was established under the *Police Integrity Commission Act 1996* (NSW) ('the Act') on the recommendation of the Royal Commission into the New South Wales Police Service. The Commission commenced operations on 1 December 1996. This appendix provides an overview of the objects of the Act, some key definitions under the Act, and a description of the functions of the Commission as provided by the Act. The descriptions are current as at 10 July 2008.

THE PRINCIPAL OBJECTS OF THE ACT

The principal objects of the Act under section 3 are:

> (a) to establish an independent, accountable body whose principal function is to detect, investigate and prevent police corruption and other serious police misconduct, and
>
> (b) to provide special mechanisms for the detection, investigation and prevention of serious police misconduct and other police misconduct, and
>
> (c) to protect the public interest by preventing and dealing with police misconduct, and
>
> (d) to provide for the auditing and monitoring of particular aspects of the operations and procedures of the NSW Police Force.

KEY DEFINITIONS

Police misconduct is defined under section 5 of the Act as follows:

> (1) For the purposes of this Act, 'police misconduct' means misconduct (by way of action or inaction or alleged action or inaction) of a police officer:
>
> > (a) whether or not it also involves non-police participants, and
> >
> > (b) whether or not it occurs while the police officer is officially on duty, and
> >
> > (c) whether or not it occurred before the commencement of this subsection, and
> >
> > (d) whether or not it occurred outside the State or outside Australia.
>
> (2) Police misconduct can involve (but is not limited to) any of the following:

> (a) police corruption,
>
> (b) the commission of a criminal offence by a police officer,
>
> (b1) misconduct in respect of which the Commissioner of Police may take action under Part 9 of the *Police Act 1990*,
>
> (c) corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* involving a police officer,
>
> (d) any other matters about which a complaint can be made under the *Police Act 1990.*

The terms serious and other police misconduct are not terms of art. As stated in section 5(4) of the Act:

> (4) Serious and other misconduct References in provisions of this Act to 'serious' police misconduct and 'other' police misconduct are intended for general guidance and are not intended to indicate a precise distinction between the two concepts.

PRINCIPAL FUNCTIONS OF THE COMMISSION

The Commission has many functions. Its principal functions are defined in Part 3, division 1, section 13 of the Act as relating to the prevention, investigation and detection of police misconduct:

> The principal functions of the Commission are as follows:
>
> (a) to prevent police misconduct,
>
> (b) to detect or investigate, or manage or oversee other agencies in the detection or investigation of, police misconduct,
>
> (c) (Repealed)
>
> (d) to receive and assess all matters not completed by the Police Royal Commission, to treat any investigations or assessments of the Police Royal Commission as its own, to initiate or continue the investigation of any such matters where appropriate, and otherwise to deal with those matters under this Act, and to deal with records of the Police Royal Commission as provided by this Act.

OTHER FUNCTIONS OF THE COMMISSION

The Commissions other functions are defined in other sections of Part 3, Division 1 of the Act, including sections 13A through to 15 of the Act. These sections define the Commissions other and special functions:

- Section 13A provides that the Commission has other functions regarding administrative officers in the NSW Police Force. These functions are defined as follows:

(1) Other functions of the Commission include the following:

(a) to prevent corrupt conduct of administrative officers,

(b) to detect or investigate, or oversee other agencies in the detection or investigation of, corrupt conduct of administrative officers.

- Section 13B provides that the Commission has other functions in relation to officers of the NSW Crime Commission. These functions are defined as follows:

(1) Other functions of the PIC include the following:

(a) to prevent misconduct of Crime Commission officers,

(b) to detect or investigate, or oversee other agencies in the detection or investigation of, misconduct of Crime Commission officers.

- Section 14 provides that the Commission has other functions regarding police activities and education programs. These functions are defined as follows:

Other functions of the Commission include the following:

(a) to undertake inquiries into or audits of any aspect of police activities for the purpose of ascertaining whether there is police misconduct or any circumstances that may be conducive to police misconduct,

(b) in particular, to monitor the quality of the management of investigations conducted within the NSW Police Force and to undertake audits of those investigations,

(c) to make recommendations concerning police corruption education programs, police corruption prevention programs, and similar programs, conducted within the NSW Police Force or by the Ombudsman or the Independent Commission Against Corruption for the NSW Police Force,

(d) to advise police and other authorities on ways in which police misconduct may be eliminated.

(e), (f) (Repealed)

- Section 14A provides that the Commission is required to engage one or more auditors to conduct an audit the reform process. The requirement is defined as follows:

> (1) The Commission is required to engage one or more suitably qualified and experienced persons (referred to in this section as 'auditors') to conduct an ongoing audit of the kind referred to in Recommendation 174 of the Final Report of the Police Royal Commission and described in Appendix 31 to that Report.
>
> (2) The audit is to be conducted over a period of at least three years, and must be completed before the expiration of the period of four years, commencing with the date of commencement of this section, but is to have regard to matters arising before as well as after that date.
>
> (3) The Commission is responsible for the selection and engagement of the auditors, the approval of the audit specifications and terms of reference, and the oversight and administration of the audit process.
>
> (4) The auditors are to furnish progress reports to the Commission as to the conduct of the audit, and are to furnish a final report to the Commission as soon as possible after the completion of the audit.
>
> (5) The Commission is to furnish a copy of each such report to the Minister and the Commissioner of Police, together with such comments and recommendations as it thinks fit.
>
> (6) Nothing in this section affects any other function of the Commission with respect to the monitoring and auditing of the operations and procedures of the NSW Police Force.

- Section 15 of the Act provides a list of other functions regarding evidence and information collected. These other factions are defined as follows:

> (1) Other functions of the Commission include the following:
>
> (a) to assemble evidence that may be admissible in the prosecution of a person for a criminal offence against the law of the State and to furnish any such evidence to the Director of Public Prosecutions,
>
> (b) to assemble evidence that may be used in:
>
> (i) the investigation of a police complaint or administrative officer complaint, or
>
> (ii) deciding whether to take action under section 173 or 181D of the *Police Act 1990*,
>
> and to furnish any such evidence to the Minister, the Commissioner of Police or other appropriate authority in the State,
>
> (c) to assemble evidence that may be admissible in the prosecution of a person (other than a police officer) for a disciplinary offence under the law of the State and to

> furnish any such evidence to the appropriate authority in the State,
>
> (d) to furnish evidence obtained in the course of its investigations (being evidence that may be admissible in the prosecution of a person for a criminal offence against or a disciplinary offence under the law of the Commonwealth or another State or Territory) to the Attorney General or to the appropriate authority in the jurisdiction concerned.

REPEALED FUNCTIONS

Three functions of the Commission have been repealed since the Commission was set up. These functions were defined in sections 13(1)(c) and 14(e) and (f).

Section 13(1)(c) provided that one of the Commission's principal functions was:

> to detect or investigate, or oversee other agencies in the detection or investigation of, other police misconduct, as it thinks fit.

This function is now included within the ambit of section 13(1)(b).

Sections 14(e) and (f) defined the Commission's 'other functions' in relation to the former Protective Security Group. These functions were:

> (e) to monitor and report on the conduct and effectiveness of the annual audits of the Protective Security Group of the Police Service under Part 3 of the *Police Service Act 1990*,
>
> (f) to assess and report on the recommendations as to the future of the Protective Security Group of the Police Service contained in the report of the special review of the Group under Part 3 of the *Police Service Act 1990*, and to monitor and report on the conduct and effectiveness of that review.

The principal functions of the Commission have also been changed so that these functions are now focused on 'police misconduct' generally. In times past, the functions of the Commission were specifically focused on 'serious police misconduct'. Serious police misconduct was previously defined under section 5 as:

> (a) the conduct of a police officer that is the subject of a Category 1 complaint, or
>
> (b) the conduct of a police officer that would give rise to a Category 1 complaint if it were the subject of a complaint under the *Police Service Act 1990.*

A Category 1 complaint was defined by section 67 (Repealed) as a police complaint:

> (a) that is of a class or kind that the PIC Commissioner and the Ombudsman have agreed should be referred to the Commission, or

(b) that the PIC Commissioner has requested should be referred to the Commission, or

(c) that is of a class or kind prescribed by the regulations.

APPENDIX 2: CORPORATE DOCUMENTS

OVERVIEW

This appendix provides the relevant detail of NSW Police Force corporate documents discussed in Chapter 3, including:

- The CMT Hints and Guidelines pages on the NSW Police Force intranet;
- Command Management Framework;
- Compliance Manual;
- Duty Officer Deployment Model and Performance Agreements;
- Police Handbook; and
- Complaint Management Manual.

CMT HINTS AND GUIDELINES

The CMT Hints and Guidelines pages on the NSW Police Force intranet provide a reference point of practical suggestions for complaint handlers at the command level. The pages comprise an Introduction and sections on:

- Complaint administration;
- Assessment of complaints;
- Resolving the complaint;
- Management of actions and outcomes; and
- Closure of complaints.

The Introduction provides a summary of the origin and purpose of these pages:

> The CMT hints and guidelines have been developed following consultation by the PSC with CMTs, PSMs, and the NSW Ombudsman. The hints and guidelines do not tell you everything about complaint management. These pages include discussion practices which may be used by your CMT to improve both the efficiency and effectiveness of complaint management.
>
> These hints and guidelines should be read in conjunction with the Complaint Management Manual, Complaint Practice Notes and the CMT Standard Operating Procedures.

> This material will be continually updated as examples of best practice are identified by CMSU and EM consultants and as a result of feedback from NSW Police commands and the oversight agencies.[188]

Among other pieces of advice, the CMT Hints and Guidelines pages provide specific information on the identification of high risk officers, stating that:

> The identification, risk assessment and management of High Risk Officers (HROs) should be an integral part of the CMT process. In identifying HROs and to eliminate future allegations of bias CMTs should adopt a formal risk assessment process.
>
> To lessen the likelihood of HROs attracting further complaints, CMTs may choose to inform officers of their High Risk status and initiate behavioural change.
>
> In addition to HROs, it is important for CMTs to monitor officers who may not reach the HRO threshold but whose complaint history shows an emerging pattern of behaviour that could present a risk to the organisation or themselves. [189]

COMMAND MANAGEMENT FRAMEWORK

The NSW Police Force describes the Command Management Framework (CMF) as a 'risk based, self-assessment process, focussing on the audit function'.[190] As a monitoring tool, it identifies 55 generic risk areas known as 'portfolios'. These portfolios are individually headed, and relate to topics such as:

- 'Arms and Appointments';
- 'Education and Training';
- 'Source Management';
- 'Corruption Resistance';
- 'Brief Management';
- 'Drug Exhibits; and
- 'Search Warrants'.

The portfolios are grouped into three superordinate categories headed 'People', 'Crime' and 'Systems'.

The CMF itself comes in the form of an Excel template with individual worksheets on each of the 55 portfolios. Each CMF worksheet has a common format made up of two tables. The first table is comprised of four columns, headed:

- 'Action: What Action is Required'
- 'Implementation: Local Procedures'

[188] NSW Police Force intranet, 'CMT Hints and Guidelines – Introduction', downloaded 1 April 2008.
[189] NSW Police Force intranet, 'CMT Hints and Guidelines – Introduction', downloaded 1 April 2008.
[190] NSW Police Force intranet, *Command Management Framework*, downloaded 1 April 2008.

- 'Results: Comment on Local Performance'
- 'Recommendations: Comments & How can you improve (if required)'.

The templates for each portfolio contain standard entries under the first two headings. The first set of entries, under 'Action: What Action is required', lists relevant NSW Police Force policies and guidelines relating to the portfolio. The second set of entries, under 'Implementation: Local Procedures', provides a list of strategies on how the policies and guidelines may be implemented.

The template for the CMF's corruption resistance portfolio includes standard entries, indicating that a command's Corruption Resistance Plan is to be reviewed at least annually by the Command Management Team. In implementing this policy requirement, the CMF portfolio template states that:

> Command Management Team schedules reviews of the Corruption Resistance Plan
>
> Command Management Team reviews; [*sic*]
>
> CMT minutes
>
> CMF returns
>
> Staff Ethical Culture Surveys
>
> 'at risk' officers
>
> trends in complaints/LMIs etc
>
> to ensure risks within plan are appropriate.[191]

COMPLIANCE MANUAL

The Compliance Manual aligns with the Command Management Framework. The Commissioner of Police's original 'Foreword' dated March 2005 describes the Compliance Manual's origin and purpose:

> The Compliance Manual has been developed by the Audit Group to assist police personnel, with checking, and providing quality control and quality assurance of systems within their commands utilising the Command Management Framework. This manual will assist all staff perform these functions in an effective, uniform and consistent manner.
>
> …
>
> The Manual is to be utilised in conjunction with the Command Management Framework.
>
> …

[191] NSW Police Force intranet, *Command Management Framework*, 'Corruption Resistance', downloaded 1 April 2008.

> I have an expectation for all Commanders and their Command Management Teams to thoroughly lead the inspection process within their respective commands and sections. With the production of this manual it is timely to reiterate the 'inspection' instructions to Commanders in the Police Handbook, namely to –
>
> > 'Conduct your own regular test sampling to oversight the sampling conducted by team leaders, supervisors, duty officers and managers. Compile a list of high risk areas in your command to help you in this task'.[192]

In its current guise, the Compliance Manual is in the form of an electronic intranet resource, which is comprised of links to PDF documents. Each of these documents relate to a specific Command Management Framework (CMF) portfolio.

Each of PDF document in the Compliance Manual has a basic format. They each include information under four subheadings:

- 'Risk/s';
- 'Source Documents';
- 'Reference Material'; and
- 'Inspection Procedure/Review Process'.

Some documents include an additional subheading: 'Risk Factors'. The meaning of each of the subheadings is explained in a 'Glossary of Terms' appearing in a one-page document, which is also linked to the Compliance Manual, entitled 'Instructions for this Manual'. As defined, the meanings attached to each of these terms are as follows:

> **Risk/s.** The probability that an event or action may adversely affect the organisation.
>
> **Source Documents.** Any book, register, document or form, paper or electronic, either corporately or locally developed completed in the course of an officer's duties (sworn or unsworn).
>
> **Reference Material**. Documents and other material, which may include policy or procedural guidelines, which assist in further explaining the portfolio or risk area. These will generally be hyperlinked.
>
> **Inspection Procedures**. The suggested procedure to identify errors, omissions and failure to comply with policy and accepted procedures.
>
> **Risk Factors.** A further explanation of events or actions, which pertain to the portfolio or risk area.[193]

The compliance manual document relevant to the Complaints CMF portfolio lists documents that may be used by commands to self-audit the effectiveness of their

[192] NSW Police 2005, *Compliance Manual*, p. 2.
[193] NSW Police Force intranet, *Compliance Manual*, 'Instructions for this Manual', downloaded 1 April 2008.

complaints handling system. Included is the list of 'source documents' that mentions high risk officer lists and risk assessments.[194]

DUTY OFFICER DEPLOYMENT MODEL AND PERFORMANCE AGREEMENTS

The Duty Officer Deployment Model (DODM) was rolled out to local area commands between June 2006 and March 2007 after a 14-month trial, with the stated intent of engaging 'duty officers as members of local area command management teams'.[195]

The main feature of the DODM is the creation of a 'Senior Management Team' comprising: the local area commander; crime manager; local area manager; and duty officers who have rotational ownership of five management portfolios, headed: 'Operations (Crime & Safety)', 'Human Resources (People)', 'Customer Service (Community & Partners)', 'Systems and Processes (systems)', and 'Professional Standards (Community/Partners & People)'.[196]

Each management portfolio has a list of 'core responsibilities' for which the portfolio holder is responsible. One way that this is reflected is by the incorporation of these responsibilities into annual performance agreements. As indicated on the NSW Police Force intranet:

> The Duty Officer Deployment Model [DODM] contains performance agreements specifically relating to each portfolio, and at the same time includes corporate responsibilities imposed on a Duty Officer within the Duty Officer Statement.[197]

The Professional Standards portfolio holder is responsible for maintaining ethical standards with a focus on: 'complaints management', 'corruption prevention', and professional standards 'training and development'. 'Expectations' and 'Actions' for each focus area are listed in a related performance agreement document for the portfolio holder.[198] The 'Expectations' and 'Actions relating to 'complaints management',

[194] NSW Police Force intranet, *Compliance Manual*, 'Complaints', downloaded 18 July 2008.
[195] NSW Police Force intranet, 'Duty Officer Deployment Project – Conceptual Summary', downloaded 1 April 2008
[196] NSW Police Force, *Duty Officer Deployment Project*, 'Duty Officer Model Summary', NSW Police Force intranet, downloaded 1 April 2008. Under the model, ownership and distribution of portfolios varies between metropolitan and country local area commands, depending of the actual number of duty officers deployed. The model provides four basic variations. The basic model applies to metropolitan commands with five duty officers, in which case portfolios are evenly distributed. Three variations apply to country local area commands depending on whether they have three, four or five duty officers. The same set of expectations and actions are reproduced in performance agreements for duty officers holding the Professional Standard portfolio in both metropolitan and country local area commands with four or five duty officers. In country local area commands with only three duty officers, however, professional standards responsibilities and corresponding actions and expectations are included within the Human Resource portfolio (NSW Police Force, Performance Agreement for Duty Officer—Professional Standards, Metropolitan LAC with 5 Duty officers, p. 4; NSW Police Force, Performance Agreement for Duty Officer—Professional Standards, Country LAC with 5 Duty officers, p. 4; NSW Police Force, Performance Agreement for Duty Officer—Professional Standards, Country LAC with 4 Duty officers, p. 4; NSW Police Force, Performance Agreement for Duty Officer—Human Resources, Country LAC with 3 Duty officers, p. 6, downloaded from NSW Police Force intranet 1 April 2008.
[197] NSW Police Force intranet, 'Duty Officer Deployment Model Project – Managing Performance', downloaded 1 April 2008.
[198] The same set of expectations and actions are reproduced in performance agreements for duty officers holding the Professional Standard portfolio in both metropolitan and country local area commands with four or five duty officers. In country local area commands with only three duty officers, however, professional standards responsibilities and corresponding actions and expectations are included within the Human Resource portfolio (NSW Police Force, Performance Agreement for Duty Officer—Professional Standards, Metropolitan LAC with 5 Duty officers, p. 4; NSW Police Force, Performance Agreement for Duty Officer—Professional Standards, Country LAC with 5 Duty officers, p. 4; NSW Police Force, Performance Agreement for Duty Officer—Professional Standards, Country LAC with 4 Duty officers, p. 4; NSW Police Force, Performance Agreement for Duty Officer—Human Resources, Country LAC with 3 Duty officers, p. 6, downloaded from NSW Police Force intranet 1 April 2008.

'corruption prevention' and 'training and development' are listed in Table A2.1. In references to corruption prevention, the expectation and action mention 'evidence of the review of high risk officers'.

Table A2.1: 'Expectations and Actions' relating to 'complaints management', 'corruption prevention' and 'training and development' under the Duty Officer Deployment Model

Responsibility	Expectations and Actions
Complaints management	• Membership of Complaints Management Team (agreed frequency); • 100% application of risk assessments to new complaints (records retained); • Monitoring and verbal reporting to Senior Mgt [*sic*] Team on complaint trends within LAC & surrounding LACs; • 100% quality assurance of complaint assessments, investigations and management actions; • Oversight of the management of Cat 1 investigations; • Number of local grievances handled/informal resolution; • Evidence of ongoing risk assessments of command overall; • Documented improvements in processes after complaint investigation or risk assessment; • Coordinate on behalf of the commander targeted drug and/or alcohol testing.
Corruption prevention	• Ensure Corruption Resistance Plan is revised biannually, and linked to Command Management Framework; • Ensure performance measures are included in the Corruption [Resistance] Plan;[199] • Written report to Senior Mgt Team on performance measures from Corruption [Resistance] Plan quarterly;[200] • Documented evidence of the review of high risk officers; • Evidence of regular COPS access audits and appropriate action taken; • Coordination of computer access audits ensuring 100% of command completed annually; • 100% audit of staff entering and leaving command.
Training and development	• Agreed % of senior officers with complaints management training & access to c@ts.i; • Attendance at workshops/training days to ensure awareness of current legislation and procedures; • Training and development of staff in customer service; • Training and development addressing corruption reporting mechanisms; • Regular promotion of the Code of Conduct and Ethics.

A document headed 'Duty Officer Statement' provides further information on the role of duty officers – irrespective of their portfolio responsibilities. With regard to complaint management, the document states that:

> Complaint Management involves monitoring complaint trends, pro-active response to these trends, early intervention of 'at risk' officers, coaching and mentoring investigations, and participation/coordination of Complaint Management Teams.[201]

[199] The reference in the document is to 'Corruption Prevention Plan'. A representative of the NSW Police Force, Project Management Unit, advised the Commission on 13 March 2008 that the reference was not to a different document but to the same document as the 'Corruption Resistance Plan'.
[200] The reference in the document is to 'Corruption Prevention Plan'. A representative of the NSW Police Force, Project Management Unit, advised the Commission on 13 March 2008 that the reference was not to a different document but to the same document as the 'Corruption Resistance Plan'.
[201] NSW Police Force intranet, 'Duty Officer Statement', downloaded 1 April 2008.

COMPLAINT MANAGEMENT TEAM POLICY

The Complaint Management Team (CMT) Policy was prepared by the Special Crime and Internal Affairs Unit (SCIA) in June 2003 and sets out the roles and responsibilities of CMTs.[202] As stated in its opening text, the object of the policy is to 'promote uniformity in the implementation of CMTs and the adoption of core standards across the state'.[203]

The Complaint Management Team (CMT) Policy states that CMTs are responsible for:

> assessing complaints and determining the level of investigation
>
> monitoring and reviewing complaints through to completion
>
> assigning appropriate actions in resolving complaints.[204]

The document also lists the benefits of having CMTs and their main functions. Included among the latter, the policy states that in addition to assessing, investigating and taking actions:

> Complaint Management Teams should also identify opportunities to correct immediate problems and provide constructive ideas for:
>
> > improving service delivery
> >
> > changing policies and procedures
> >
> > identifying training requirements
> >
> > identifying system shortcomings
> >
> > modifying individual behaviours
> >
> > identifying officers at risk of attracting complaints.[205]

The benefits of having CMTs as listed in the document include, amongst other things, providing:

> an oversight of the broader management of complaints and an analysis of trends in complaints and local management issues
>
> opportunities for early management intervention
>
> …
>
> promotes uniformity in the development and implementation of planning and the adoption of core standards.[206]

[202] The document was last reviewed in June 2005.
[203] NSW Police Service 2003, *Complaint Management Team Policy*, June, p. 1.
[204] NSW Police Service 2003, *Complaint Management Team Policy*, June, p. 4.
[205] NSW Police Service 2003, *Complaint Management Team Policy*, June, p. 7.

COMPLAINT MANAGEMENT MANUAL

The Complaint Management Manual is a multi-volume document, which provides comprehensive guidance to commands on all facets of complaints management. It is comprised of an Introduction and seven 'Modules', which are dated between 2005 and 2007. The Modules are headed:

- Receipting;
- Registration;
- Assessment;
- Investigation;
- Outcomes and Actions;
- Closure; and
- Finalisation.

The Introduction states that the:

> manual is a comprehensive resource on all aspects of complaint management. Its aim is to make sure that all complaints are managed to the high standard expected by the NSW Police Force and the oversight bodies. The manual explains what a complaint is under Part 8A of the Police Act 1990, how to handle complaints appropriately and how to investigate and resolve them in an accurate, timely and professional manner. It also identifies the pivotal role of Complaint Management Team (CMT) members in all stages of complaint management.[207]

In its essential points, the Compliant Management Manual restates the information that appears in the Complaint Management Team Policy about the role and benefits of having CMTs. In addition, it provides the following types of information:

- In the Module headed 'Assessment', the Manual makes the point that complaints might serve as springboards for taking organisational action:

  > Once it has been confirmed that the complaint is a complaint under Part 8A, the next stage of the assessment process is to determine the risks involved and decide whether and what level of investigation is needed. This step is critical, as not all complaints will warrant an investigation or action. For example, if a complaint is declined for investigation under section 141(1) no investigative action will be required however it may be resolved by way of immediate organisational action such as reinforcement of a policy or procedure.[208]

- The assessment processes mentioned in the preceding quotation is facilitated by a risk assessment tool. This tool was developed by the Commissioner's Inspectorate of the NSW Police Force and provides a

[206] NSW Police Service 2003, *Complaint Management Team Policy*, June, p. 4.
[207] NSW Police Force 2005-2007, *Complaint Management Manual*, 'Introduction', p. 1.
[208] NSW Police Force 2005-2007, *Complaint Management Manual*, 'Assessment', p. 10.

list of things CMTs need to consider in making their assessment, including:

> the issues involved in the complaint
>
> the complainant's history – COPS, CAD etc
>
> the complaint history of the officers involved
>
> records of positive acknowledgement history, SAP, secondary employment, sick leave, local management issues etc. [209]

- The module headed 'Assessment' also provides the following information under the heading 'Subject officer's complaint history':

> The CMT should identify any previous complaints that may be relevant or related to the current matter and provide this information to the investigator in the context to which it belongs. The CMT and the investigator must use their discretion and judgment in assessing the relevance of the officer's complaint history at each stage of the complaint management process. A complaint history may be of significance to the contemporary complaint even where past allegations were not substantiated. It may reflect a pattern of behaviour or 'steps in the sand' towards more serious behaviour.
>
> …
>
> At the assessment stage, an officer's complaint history may affect the categorisation of the complaint. For example, if the complaint involves allegations of harassment and discrimination relating to sex, race, marital status, age, disability, homosexuality, transgender or carer responsibilities, the officer's complaint history is critical to deciding whether the complaint fits the criteria under s122 (2) or as a notifiable complaint when there is evidence of a previous similar incident. The officer's complaint history is also relevant when selecting the level of investigation required addressing the issues of the complaint.
>
> …
>
> At the investigation phase, the officer's complaint history may help you establish avenues of inquiry … Reviewing an officer's complaint history supplements the information already available to CMTs and may assist with decisions about the degree of investigation required.
>
> Finally, at the action/outcome stage the officer's complaint history is a relevant consideration for the CMT in determining the appropriate management outcome. An officer who has previously been dealt with managerially in relation to similar matters will

[209] NSW Police Force 2005-2007, *Complaint Management Manual*, 'Assessment', p. 10.

> attract more significant management action than someone with no previous record of complaints on the same issue.[210]

- In the Module headed 'Actions and Outcomes', the Manual provides information on the types of actions that may be taken in response to a complaint. The Manual makes it clear that such action may focus on the officer or on organisational policies and procedures:

> After assessment or investigation, the Complaints Management Team (CMT) must initiate the appropriate actions in response to a complaint. On c@ts.i this process is conducted within the 'Actions/Outcomes' step.
>
> The actions may focus on either the officer, the customer, or on organisational policies and procedures. They might vary from no action to criminal charges to modifying policies. The focus should not always be on the subject officer as their actions may have been due to an honest mistake, poor judgement or inexperience.
>
> The purpose of the action process is to record the actions taken to resolve each of the issues in a complaint. It may take place after assessment, if no investigation or informal resolution is required, or after the conduct of an investigation.
>
> When deciding on appropriate actions, you need to consider:
>
> > customer requirements
> >
> > the appropriate and timely management of the situation
> >
> > effective management intervention
> >
> > addressing systemic issues
> >
> > the officer's performance history, complaint profile, risk factors and past responses to management intervention
> >
> > any mitigating circumstances.[211]

- The Module headed 'Actions and Outcomes' lists and explains three types of actions that may be taken in relation to the:

> officer – to modify the behaviour that gave rise to the issue in the complaint or improve their performance [including action under Part 9 of the Police Act]
>
> customer - to satisfy the customer or complainant
>
> organisation - to address organisational, procedural or systematic failure. You might for example modify a roster, alter a policy or procedure or update a computer system. These actions could relate to both corporate and local policies and procedures.

[210] NSW Police Force 2005-2007, *Complaint Management Manual*, 'Assessment', pp. 17-19.
[211] NSW Police Force 2005-2007, *Complaint Management Manual*, 'Actions and Outcomes', p. 2.

…

> [Organisational] actions may relate to addressing organisational, procedural or systemic deficiencies. For example, an investigation may identify that policies or procedures need to be rewritten, modified or updated.
>
> Alternative actions could be to reinforce or remind staff of a policy or procedure through local training, mandatory lectures or emails.[212]

POLICE HANDBOOK

The Police Handbook is a consolidated policy and operational procedures document, which brings together corporate policy advice on 150 different topics. These are organised alphabetically and each usually includes the date at which the advice was last updated. The Handbook provides advice on topics ranging from 'Aboriginal issues' to 'Young Offenders'. The types of advice provided typically relate to legislative or policy compliance. The section on computers contains the following references to high risk officers:

> **Computer access audits**
>
> Random COPS/RTA access audits are to be conducted for all police and administration officers with access to 'on line' computer systems.
>
> **Commander**
>
> Nominate a coordinator (usually your executive officer) and a supervisor/s (usually duty officers/team leaders or equivalent) to run computer access audits in your command. Nominate an officer to audit the coordinator. Ensure you and/or your management team identify any high risk officers.
>
> Have your education officer raise the issue of unlawful computer access regularly during education days, including positive comment about no unlawful accesses being identified where appropriate.
>
> When an unexplained access is brought to your notice decide whether it warrants criminal investigation or managerial action and proceed accordingly. In making your decision take into account such matters as the nature of the access, any explanation offered (particularly about the intent of the access), whether information was disseminated from the access, any untruthfulness and the results of previous access audits. Remember, any matter classed as a complaint against a police officer is to be recorded on the NSW Police Force complaints system and not simply on a local database or employee management system.[213]

[212] NSW Police Force 2005-2007, *Complaint Management Manual*, 'Actions and Outcomes', pp. 2, 10.
[213] NSW Police Force intranet, Police Handbook, 'Computers', downloaded 1 April 2008.