

SPECIAL REPORT TO PARLIAMENT

PROJECT ORACLE

A REVIEW OF ASSAULT COMPLAINTS INVOLVING OFFICERS OF THE NEW SOUTH WALES POLICE SERVICE

August 2000

SPECIAL REPORT TO PARLIAMENT PROJECT ORACLE
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The Hon Meredith Burgmann MLC
President
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Parliament House
SYDNEY NSW 2000

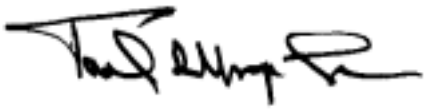
The Hon John Murray MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Madam President and Mr Speaker

In accordance with section 98 of the *Police Integrity Commission Act 1996*, the Commission hereby furnishes to you a special report on a matter relating to the functions of the Commission, being a review conducted by the Commission of assault complaints involving officers of the New South Wales Police Service. Codenamed Project Oracle, this review was carried out in accordance with sections 14(a) and 14(d) of the Act.

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

Yours faithfully



Judge P D Urquhart QC
Commissioner

August 2000

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EXECUTIVE SUMMARY

BACKGROUND

In 1998, the Police Integrity Commission (the Commission) commenced a comprehensive research project examining assault complaints against NSW police officers. The Commission considered that a close examination of the assault complaint statistics was warranted in view of the seemingly large number of complaints of this type that had come to its attention.

The decision to initiate Project Oracle was borne out by subsequent research results. The Commission's research found that during the period 1 July 1993 to 30 June 1997, the four categories of police assault formed a significant proportion of complaints against members of the NSW Police Service.

Project Oracle included a statistical study of 2,559 assault complaints, together with a review of literature concerning assault and excessive use of force by police officers. The research considered complaints of assault made by members of the public concerning NSW police officers rather than considering only substantiated incidents of police assault.

As noted above, the Commission first examined Police Service data relating to the period 1 July 1993 to 30 June 1997. The data relating to 1998 and 1999 was then examined in order to ascertain whether the trends initially detected had continued.

PURPOSE OF REPORT

Under sub-section 13(1)(a) of the *Police Integrity Commission Act 1996* (the Act), one of the principal functions of the Commission is to prevent serious police misconduct and other police misconduct. Consistent with sub-section 13(1)(a) of the Act, this Report has been prepared in order to, amongst other things:

- alert the Police Service to issues arising out of the Commission's research that it considers warrant the Service's attention;

- equip the Police Service with information that may assist in the development of policies and procedures to reduce the incidence of police assault; and

- provide information that may assist in targeting training at those categories of officers most likely to be the subject of an assault complaint.

KEY FINDINGS

The main findings arising from this study are set out below. Further details relating to the study and its methodology are discussed in the body of the Report.

ASSAULT ALLEGATIONS AGAINST OFF-DUTY OFFICERS

The Commission's research revealed that:

- a significant proportion of assault allegations, 29.9 per cent, were directed against officers who were *off-duty* at the time the alleged assault took place;

- in 22.3 per cent of allegations directed against *off-duty* officers, alcohol was recorded as a causal factor (although the data does not disclose whether, in relation to each matter, it was the officer or complainant who was alleged to be alcohol-affected). In relation to officers who were *on-duty*, the proportion of allegations where alcohol was recorded as a causal factor was 17.3 per cent;

- in just over a quarter of assault allegations directed against *off-duty* officers, police premises were recorded as the location where the alleged assault occurred;

- in 10.8 per cent of *off-duty* assault allegations, registered hotels or clubs were recorded as the location where the alleged assault occurred; and

- domestic causes were recorded in relation to 10.6 per cent of *off-duty* assault allegations.

The level of assault allegations directed against *off-duty* officers is a matter of considerable concern to the Commission. In particular, the Commission notes the significant proportion of allegations against *off-duty* officers on police premises, the level of *off-duty* alcohol-related allegations and the proportion of allegations involving *off-duty* officers in licensed premises.

This matter is discussed in some detail within the body of this Report.

THE OFFICERS INVOLVED

The Commission's research in relation to the 'involved officers' - that is, those officers who are the subject of an allegation of assault - revealed that:

- most assault allegations, 86.3 per cent, concerned male police officers;

- 24.4 per cent of assault allegations concerned officers under 25 years of age; and

- the largest proportion, at 43.3 per cent, concerned officers in their first six years of service.

OFFICERS ATTRACTING MULTIPLE COMPLAINTS OF ASSAULT

Approximately 10 per cent of the 2,976 officers who were the subject of complaints of assault considered in this statistical study received multiple assault complaints. These 303 officers were involved in three or more complaints.

Further, of a core group of 88 officers with multiple assault allegations with at least one alleged to have occurred in a registered hotel or club, it was found that nearly 50 per cent of the total allegations against these officers were recorded as occurring while the officer was *off-duty*.

The Commission considers a proactive approach to officers with multiple assault complaints is required to identify those predisposed to excessive use of force. This process should also take into account allegations arising while officers are *off-duty.*

LOCAL AREA COMMANDS ATTRACTING A HIGH NUMBER OF ALLEGATIONS

The Commission's research showed that a higher number of assault allegations occurred in a number of Local Area Commands (LACs), in particular Kings Cross, Mt Druitt, Redfern, Bankstown and City Central.

INTERNAL INVESTIGATION ISSUES

The Commission's research revealed that some LACs, particularly Albury, Orana and Mt Druitt, conducted a high proportion of enquiries and investigations into assault allegations within their own commands. In this scenario, the involved officer and the investigating officer came from the same LAC.

With each allegation of assault, as with any other police complaint, a finding is recorded in the Police Service's Complaints Information System regarding the outcome of the investigation or enquiry. The allegation might be found to be sustained, not sustained or may be allocated another category of finding altogether.

The Commission's research showed that the findings for assault allegations investigated within Albury, Mt Druitt and Orana LACs differed from the

general trend of findings for assault allegations across the Police Service. There were lower sustained rates for Albury and Mt Druitt of 2.1 per cent and 0 per cent respectively for enquiries or investigations carried out within these commands. The sustained rate for all assault allegations in this study (not just within-command investigations) was 4.8 per cent. Orana recorded a far higher 'discontinued' rate for within-command investigations than the average 'discontinued' rate.

CHARACTERISTICS OF PERSONS ALLEGING ASSAULT AGAINST POLICE OFFICERS

In relation to those alleging assault by police it was found that:

- the age of those most frequently reporting assault, at 23.1 per cent, was 16 to 20 years;

- juveniles, being those aged under 15 years, comprised 7.5 per cent of persons alleging police assault; and

- Aboriginals and Torres Strait Islanders comprised 11.8 per cent of those alleging having been assaulted while they constituted only 1.68 per cent of the population of NSW.

The significant proportion of juveniles and youths reporting incidents of conflict with police is concerning, given that those aged 18 years or under are described as 'vulnerable' persons by the NSW Police Service's *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*.

The high representation of Aboriginals and Torres Strait Islanders is likewise a matter of concern, suggesting some conflict in relations between police and Aboriginals and Torres Strait Islanders. The Commission notes that Aboriginals and Torres Strait Islanders are also listed as vulnerable persons under the NSW Police Service's *Code of Practice for CRIME*.

The video taping of police interviews with juveniles and police interviews with Aboriginals and Torres Strait Islanders and, where detention is necessary, ensuring suitable accommodation is provided in areas of the police station under video surveillance, would assist in managing these areas of risk. The availability of video taped evidence provides a possible deterrent for police inclined to abuse their power and may also deter vexatious complaints.

OTHER MATTERS

In relation to other matters, the Commission found that:

- the number of assault allegations recorded each year rose from 1993 to 1995. From 1995 to 1999 there was an annual decrease in the number of assault allegations recorded with 707 allegations recorded for 1999. This was slightly less than the figure of 758 allegations of assault recorded for 1993;

- from 1993 until 1999 there was a gradual increase in the proportion of sexual assault allegations, a gradual increase in the proportion of allegations occurring in registered hotels and clubs and likewise a proportionate increase in incidents citing a domestic cause. In other respects the indicators are that the trends evident in the 1993-1997 data appeared relatively stable into 1998 and 1999; and

- the practice of attempting to conciliate an allegation of assault was recorded on 5.1 per cent of assault allegations between 1993 and 1997. This occurred despite an agreement between the Ombudsman and the NSW Police Service which then prohibited the conciliation of assault matters.

KEY RECOMMENDATIONS

Recommendations are provided in detail in the body of this Report. The following is a summary of the Commission's principal recommendations:

- if the practice of conciliating or informally resolving serious assault matters is to continue, the Police Service should implement a system which excludes more serious assault complaints from these processes. This system should exclude matters involving grievous bodily harm and matters involving significant forms of actual bodily harm (p. 61);

- the Police Service should assess the most recent 12 months of assault-related allegations involving *off-duty* officers, separately examining incidents:

  - occurring in registered hotels and clubs;

  - recording an alcohol-related cause;

  - with a domestic cause; and

  - involving *off-duty* officers attending police premises.

This should be undertaken to establish whether or not these complaints are initiated when police intervene in incidents whilst intoxicated. If so, steps should be taken to ensure the risk is properly managed and reduced (p. 87);

- the Police Service should ensure clear instructions are provided to police with regard to *off-duty* policing responsibilities and alcohol consumption (p. 86);

- Local Area Commanders should be responsible for reviewing the information available to them in order to assess and manage the level of risk of assault within their commands (p. 87);

- the Special Crime and Internal Affairs Command should identify, on an on-going basis, officers with multiple assault allegations and ascertain whether those complaints have occurred *on-duty* or *off-duty.* That project should use the Police Service's threat assessment model referred to in Appendix E. In conducting that project, particular attention should be given to each of the following:

  - ◊ incidents occurring in registered hotels and clubs;

  - ◊ incidents with an alcohol-related cause;

  - ◊ incidents with a domestic cause; and

  - ◊ incidents involving *off-duty* officers attending police premises.

  The identification of 'at risk' officers should be undertaken with a view to early counselling, management intervention and appropriate supervision and investigation of officers with high rates of allegations (p. 101);

- the NSW Police Service should conduct an audit of training and education programs regarding police use of force. Amongst other areas outlined in this Report, that audit should focus on:

  - ◊ whether there is sufficient instruction given to officers concerning alternatives to use of force and techniques such as de-escalating conflict and conflict resolution;

  - ◊ which officers and what type of behaviour are likely to attract allegations of police assault;

  - ◊ how officers should handle physical contact with vulnerable persons;

- ◊ under what circumstances police officers should become involved in incidents whilst *off-duty*; and

- ◊ whether there is adequate remedial training available for those officers attracting multiple assault complaints (pp. 96-97, 105 & 108);

- officers of the Special Crime and Internal Affairs Command should formally assess the benefit to be gained by implementing a 'use of force register' to assist in recording, identifying and managing officers in relation to use of force incidents, including those incidents in which *off-duty* officers are required to use force (p. 100);

- once identified by the Special Crime and Internal Affairs Command, Local Area Commanders should be responsible for managing and supervising officers 'at risk.' They should ensure remedial training is provided to officers with an extensive complaint history in relation to use of force (pp. 96-97 & 101); and

- enquiries and investigations into Category 1 assault complaints should be conducted outside the LAC of the involved officer. These Category 1 matters are those involving grievous bodily harm. In addition, Local Area Commanders should consider, on a case-by-case basis, whether other serious assault matters involving significant forms of actual bodily harm, should be investigated outside the involved officer's LAC. Officers of the Special Crime and Internal Affairs Command should review these assault investigations and enquiries (p. 123).

1. INTRODUCTION

1.1 BACKGROUND

Among the principal functions of the Police Integrity Commission (the Commission) is the function to prevent serious misconduct. Other functions of the Commission include at section 14(a) to undertake inquiries into or audits of any aspect of police activites to ascertain if there is police misconduct or circumstances conducive to police misconduct. At section 14(d) a further function is to advise police and other authorities on ways in which police misconduct may be eliminated.

In 1998, the Commission commenced a comprehensive project examining complaints of assault made by members of the public against NSW police officers. The Commission initiated this project because of its concern at the large number of assault complaints that were coming to its attention.[1] The matter was declared a project and a study commenced code-named Project Oracle.

The subsequent research has proved the Commission's concern to be well founded. The Police Service classifies all allegations against police into approximately 150 minor categories.[2] When the four categories relating to assault were aggregated, assault was the most common allegation made regarding police in NSW during the period under review. 10.4 per cent of all allegations against police during the period 1 July 1993 to 30 June 1997 pertained to an assault category.[3]

In embarking on this project, the Commission was mindful also of the findings of the Royal Commission into the NSW Police Service in relation to police assault. The Royal Commission identified a number of incidents in which individuals had become the subject of unlawful assault and serious abuses of police powers. The Final Report of the Royal Commission commented on the ill-discipline, aggression and lack of compliance with the law that this demonstrated and the lack of will to address these failures[4]

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1 The Commission received 31 referred Category 1 complaints alleging grievous bodily harm etc. from February to June 1998. The total number of referred Category 1 complaints being 330. Police Integrity Commission *Annual Report 1997-1998*, pp. 29-30.

2 NSW Police Service, State Minor Category Report marked 'compiled by Strategic Assessments and Security Centre Internal Affairs', 26 August 1999.

3 Letter from NSW Police Service, Internal Affairs Command Police Integrity Commission Liaison Unit, advising proportion of assault related complaints, 23 June 1999.

4 Royal Commission into the NSW Police Service, *Final Report Volume 1:Corruption*, May 1997, p. 104.

shown by inadequate internal police investigations:[5]

> officer after officer admitted to having been involved in the assault of civilians, to have seen such conduct on the part of others, and to have been party to their cover-up. The number of complaints received by the Royal Commission, and routinely by the Service, of this kind, and the patterns established in respect of some officers tend to lend credence to the view that:
>
> - many police have been prepared to behave with unnecessary aggression when faced with people they see as unruly or breaking the law, and
>
> - the internal investigation of these complaints has been superficial, biased against the complainant and unsatisfactory.

Assault was recognised as a form of 'noble cause corruption', or 'process corruption' which was often justified by police on the assumption that an individual was guilty of an offence. It was also recognised that some forms of assault may be used to exercise control over particular sections of the community. The Royal Commission commented that acts of assault were often directed at those who were least likely to be able to complain.[6]

1.2 PURPOSE OF REPORT

The purpose of this Report is:

- to examine the extent to which assault may present as a form of police misconduct and to ascertain whether reform is required in this area;

- to inform the Commission and its stakeholders, of the nature and extent of complaints from members of the public in relation to assault by NSW police officers;

- to inform the Commission and its stakeholders of the context in which complaints of police assault are likely to arise;

- to describe the demographic characteristics of those officers likely to attract complaints of assault and those attracting multiple or serial complaints;

- to form an assessment of the circumstances under which NSW officers are more at risk of facing allegations of assault; and

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5 Royal Commission into the NSW Police Service, *Final Report Volume 1:Corruption*, May 1997, p. 108.

6 Royal Commission into the NSW Police Service, *Final Report Volume 1:Corruption*, May 1997, p. 26.

- to consider appropriate strategies for reducing the number of complaints of police assault.

1.3 RELEVANCE TO STATUTORY FUNCTIONS AND CORPORATE GOALS

The main purpose of this Report is to provide assessments and recommendations that can be used by the Police Service to assist in preventing assault complaints from occurring, and reducing the incidents of this form of misconduct. As mentioned earlier, the purposes of this Report are consistent with section 13 of the Act to prevent serious police misconduct and other police misconduct. It is also consistent with section 14(a) of the Act in that one purpose is to ascertain if there is police misconduct or circumstances conducive to police misconduct. In addition it is consistent with section 14(d) in that it advises police on ways in which police misconduct can be eliminated.

In completing this study the Commission is also contributing towards the fulfilment of its first corporate objective in the Corporate Plan 'To develop an understanding of the nature, causes and extent of serious police misconduct'. The performance indicators for this objective are:

- the extent to which issues and trends in serious police misconduct are identified and reported; and

- the extent to which strategic advice and recommendations relating to NSW Police Service policies, procedures, management practices and training methodologies are developed and adopted.

Insofar as this study has a preventative focus, it also, in part, contributes to the second corporate objective which is 'To develop and apply innovative and effective strategies and methodologies for the prevention, detection and investigation of serious police misconduct'.

This Report is made pursuant to section 98 of the Act which provides that:

> The Commission may, at any time, make a special report to the Presiding Officer of each House of Parliament on any administrative or general policy matter relating to the functions of the Commission.

2. RESEARCH METHODOLOGY AND LIMITATIONS

2.1 METHODOLOGY

The research conducted for this Report examined patterns of complaints appearing in those complaints received from members of the public concerning assault by officers of the NSW Police Service. Research methods employed by organisations and academics when considering the subject of police assault have included, yet not been limited to, analysis of complaints data, case studies, observational studies, survey methods and literature reviews. Complaints data was selected by the Commission as the main source of data for this study for the following reasons:

- the information had already been collected and stored by the NSW Police Service;
- the amount of information was significant in size and extent;
- the data was in a format conducive to quantitative analysis;
- the data was accessible to the Commission; and
- the data was potentially comparative providing the methodology was replicated in this or other policing jurisdictions.

The statistical data was complemented by the inclusion of a literature review. This considered major trends and findings with regard to research into police assault undertaken in other policing jurisdictions in Australia and overseas. Incorporating this literature ensures that trends occurring with regard to police assault in NSW are considered in the context of trends in other police agencies.

This study is not a comparative study. The extent to which complaints data can be compared between jurisdictions is limited due to considerations such as differences in:

- the reporting procedures adopted by different police agencies,
- the definitions employed;
- the categorisation of complaints; and
- the recording of data.

Further, consideration is required as to whether records count allegations or complaints.

At the time of determining an appropriate approach to this study, the Commission was a relatively new organisation and did not have an extensive store of complaints data. Therefore the NSW Police Service's Complaints Information System (CIS) presented a reasonable source of quantifiable information for this study.

There are a number of views concerning whether the use of complaints submitted by members of the public is a legitimate approach to monitoring and assessing use of excessive force by police.

One view is that a significant proportion of complaints are made by members of the public for frivolous reasons. Proponents of this view argue that low substantiation rates provide evidence that many complaints are vexatious.[7] Those advocating this view would tend to believe that complaints overestimate actual incidents of assault.

Another view is that complaints tend to underestimate instances of excessive force.[8] Advocates of this view tend to believe that many of those assaulted by police will either be unwilling or unable to file a complaint.[9] One source asserts that only one-third of those who believe they have been mistreated by police will actually file a complaint.[10]

In using complaints data as the basis for this research, the Commission does not seek to advocate either view. Complaints in this study are not analysed as individual cases but are considered as an aggregate from which patterns may be ascertained. The patterns appearing in this data will be examined to devise ways for reducing the overall number of incidents of police assault.

This view recognises that police complaints:[11]

- are a normal result of a democratic system;

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7 Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, 1995, p. 79.

8 Best, cited in Goldsmith A.J. Ed., *Complaints Against the Police: the Trend to External Review*, Clarendon Press: Oxford, 1991, p. 21.

9 Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, 1995, p. 72.

10 Pate, A.M. & Fridell, L.A., *Police use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, p. 35.

11 Goldsmith, A.J. ed., *Complaints Against the Police: The Trend to External Review.* Clarendon Press: Oxford, 1991, pp. 14-19.

- are a useful tool for revealing areas of recurrent problems of a systemic kind;

- require analysis of the organisational dimensions and reform implications of police conduct; and

- provide useful information which, when analysed, can lead to changes in policy, tactics, training and supervision.

The Commission requested that the NSW Police Service supply data from their CIS on all complaints of assault made against police officers and received by the NSW Police Service between 1 July 1993 and 30 June 1997. The Commission also analysed assaults data relating to 1998 and 1999 in order to ascertain whether the trends apparent in the earlier data had continued. The results of this analysis are also contained in this Report.

The data supplied by the Police Service to the Commission for 1993–1997 contained 2,559 complaints of police assault identifiable by the allocation of a unique CIS number.[12]

The information for each complaint included:

- incident circumstances, including time and place;

- characteristics of involved police;

- characteristics of aggrieved persons and complainants; and

- characteristics of witnesses and investigators.

Where particular complaints did not contain information concerning all the above fields, missing data was recorded in tables or graphs in this Report as 'unknown' or 'unrecorded' data.

A research assistant sorted and arranged the CIS data into separate master tables according to subject matter, identifying and maintaining the continuity of each CIS number. Audits were then conducted on a proportion of the data in each table in order to verify the integrity of each CIS record. A number of records were then subjected to a random audit, which involved checking the contents of the records against the CIS data on the original CIS database.

[12] The file contained 2,568 complaints, however a number of these were duplicates. Once the duplicate complaints had been extracted 2,559 separate complaints remained.

The statistical information derived from these master tables is presented in the form of tables and graphs in this Report. The Commission wishes to acknowledge the co-operation of the NSW Police Service in supplying the Commission with data for this study. We also thank them for the additional information they furnished which assisted the Commission in interpreting the data.

Assault complaints analysed by the Commission in this study generally contained multiple allegations of assault. This was particularly the case when a complaint named more than one officer as involved in a particular matter.

This presented an issue for the Commission in determining which finding should be reported for a particular complaint. For example, one complaint of assault (physical injury) may have been found to be 'sustained' for one officer and 'not sustained' for another. A single finding cannot accurately represent the results of this complaint. In addition, one complaint may find one allegation 'sustained' and one 'not sustained' for the same officer.

Other studies of police assaults have resolved this dilemma by assigning one result to a complaint. Rather than adopting that approach, this study examined the disposition of a complaint according to each allegation listed on the CIS. The Commission adopted this approach in the belief that it would yield a more accurate portrayal of what had occurred with the results or findings of complaints of police assault in NSW.

As a result of this approach, unless otherwise specified, this study relates to 4,675 separate allegations contained in the 2,559 individual assault complaints. This provides an average of nearly two allegations for each complaint.[13] There was, however, a wide variation in this figure. Some cases included 10 or more separate allegations, whilst others involved only one.

2.2 LIMITATIONS OF METHODOLOGY

In 1998, when embarking on this study, the Commission wished to undertake a comprehensive study and analyse the population of assault data received by the Police Service over a considerable period of time. Therefore, the decision was made to obtain data for a four year interval ending at the conclusion of the previous financial year. There were a number of problems encountered with the fields of information included in the first few receipts

[13] An average of 1.82689 allegations for each assault complaint.

of data. As a result of these, the Commission's analysis was delayed until after the end of 1998 when a complete set of data was available. Following analysis of this data, the assaults data relating to 1998 and 1999 were also assessed. The overall trends in this data were analysed by calendar year.

The Report on this data has been written during a period in which there have been changes based on new legislation governing the way the Police Service manages complaints. This does not detract from the validity and reliability of the study as an analysis of a four year population of complaints of police assault as recorded by the NSW Police Service.

In employing the methodology described earlier, the Commission has also inherited any limitations in the definition of 'assault' employed by the NSW Police Service which includes the categories of assault (physical injury), assault (no injury), indecent assault and sexual assault.

Where errors have occurred when the Police Service entered data onto the CIS, these inaccuracies are unfortunately replicated in the data in this study. Further, any misrepresentations in the categorisation of assault complaints by the Service will also be reproduced in this study.

Only allegations categorised as an assault allegation were considered in this study. Those allegations concerning other types of misconduct which may have been made in the same complaint have been excluded.

Further, where an incident involved an assault but for some reason was not categorised as such by a member of the Police Service, that incident will also be omitted from the study. The Police Service categories of 'Improper Use of Batons (not Assault)' and 'Improper Use of Handcuffs' which may be viewed by some as an assault are not viewed as such on the Complaints Information System and were therefore not captured in this study. The figures presented in this Report are therefore limited by the information submitted and stored on the Complaints Information System.

The data in this study cannot contain the level of detailed contextual information required to give a complete picture of complaints of assault by police in NSW. It must be acknowledged in using complaints data that some assaults may have occurred and gone unreported while others which were of a vexatious nature may have been included in this data. Therefore this Report cannot claim to be a complete, nor indeed an accurate, representation of all instances of assault involving NSW police officers during the review period.

3. LITERATURE REVIEW

3.1 INTRODUCTION

This chapter reviews literature selected to inform the reader concerning a number of aspects of the subject of police assault. Rather than critiquing the literature, this review highlights prominent themes and includes a description of patterns evident in studies conducted in Australia and overseas.

The Commission offers no opinion or assessment in relation to the literature. By introducing the reader to the concepts explored in previous research, it is anticipated that the information presented here will assist in understanding and interpreting the subsequent statistical analysis. It is also anticipated that it will provide some understanding of the findings of reports and studies concerning assault and excessive use of force conducted overseas and in Australia.

3.2 SYNOPSIS

Research emanating from the United States of America (USA) heavily influences inquiry into the subject of police assault. Excessive use of force by police has received increasing attention in the USA following riots in Los Angeles in the wake of the video taped police beating of Rodney King, the establishment of the Independent Commission on the Los Angeles Police Department in 1991, and charges involving excessive force and police corruption in New York city following the 1994 Mollen Commission.[14]

American commissions addressing use of force issues have given impetus to increasing research into the area from a range of disciplines:[15]

> The ever increasing body of research in America receives contributions from academics across a range of disciplines including criminology, social psychology, law, public administration, police managers and representatives from civilian oversight agencies.

A selected range of contributions from these disciplines in both the USA and other countries is presented in this literature review.

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[14] Scrivner, E.M., *Controlling Police Use of Excessive Force: The Role of the Police Psychologist*, NIJ Research in Brief, October 1994, http://www.ncjrsorg/txtfiles/ppsyc.txt.

[15] Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*, Human Rights Watch: New York, June 1998, p. 45.

Many police departments in the USA have reporting requirements in place when an officer uses deadly force and most also require a report following the use of force involving batons and chemical agents.[16] This provides an ongoing opportunity for data collection and has seen the development of the National Data Collection of Police Use of Force project.[17] It was anticipated that that project would facilitate and stimulate continued research into police use of force in the USA.

Consideration of American literature requires an awareness concerning the differences in structure between American and Australian law enforcement environments.

Policing in the USA is characterised by municipal, county and state governments and has been described as the most decentralised system of policing in the world.[18] One estimate placed the number of police jurisdictions in the USA at almost 16,000.[19] These jurisdictions contain many different structures, policies and procedures. In comparison, Australia is characterised by larger State-wide and federal policing jurisdictions which are considerably less in number.

The dominance of American research affects the language used. There is frequent use of the terms 'use of excessive force' or 'excessive use of force'. The first term describes an act of police brutality while the second refers to the frequent use of force.[20]

Rather than becoming involved in a debate over terminology and related definitions, this chapter has simply adopted the practice of replicating the dominant terms used in the literature reviewed. It therefore tends to employ the term 'excessive force' when reviewing literature from the USA and 'assault' when referring to locally produced material.

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16 McEwen, T. *National Data Collection on Police Use of Force*, US Department of Justice, Officer of Justice Programs, Bureau of Justice Statistics, Jointly published with the National Institute of Justice, Institute for Law and Justice, Alexandria, Virginia, 1996, http://www.ojp.usdoj.gov/bjs/pub/ascii/ndcopuof.txt.

17 McEwen, T., *National Data Collection on Police Use of Force*, US Department of Justice, Officer of Justice Programs, Bureau of Justice Statistics, Jointly published with the National Institute of Justice, Institute for Law and Justice, Alexandria, Virginia, 1996, http://www.ojp.usdoj.gov/bjs/pub/ascii/ndcopuof.txt.

18 Pate, A.M. and Fridell, L.A., *Police Use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, p. 6.

19 Pate, A.M. and Fridell L.A., *Police Use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA,1993, p. 6.

20 Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 65.

3.3 POWER AND REGULATION

Police are assigned significant power to use force in order to achieve their lawful objectives. This power is often characterised as a defining feature of their role in society.[21] The extent of this power is described in the following terms by Klockars:[22]

> the police need not invoke "the law" to use force, though they may decide to use force to invoke "the law"; they need not obtain the consent of a complainant nor the person on whom it is used to use it; there are few, if any, occasions on which anyone has a legal right to resist police use of force, even if police use it improperly; and it is rare that police use of force is actually ever reviewed or evaluated by anyone.
>
> The enormous range of the legitimate authority of the police to use force is, of course, at the heart of the problem of defining and controlling its excessive use.

Kleinig has concerns regarding the ceding of this power, which he maintains requires careful regulation, and monitoring by police managers.[23] Publishing in Australia, Dr Janet Chan who has studied police culture cites Bittner as maintaining that the use of force by police lacks regulation and guidance:[24]

> This lack of regulation and guidance means that the concept 'lawful use of force' by the police is 'practically meaningless'.

The prevailing view of these authors is that a lack of regulation and guidance on the use of force by police is evidence that the issue of the lawful use of force by police has not been adequately addressed.

3.4 DISCRETION

The use of force, as with much police work, requires the exercise of discretion.[25] A number of authors consider how police use discretion to be significant in policing. Goldstein maintains that the very quality of the police service depends on how discretion is exercised. That author is of the view that incorporating discretion into operational policing provides a way for the organisation to exercise control over discretion.[26]

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21 Pate, A.M. and Fridell, L.A., *Police Use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, p.8.

22 Klockars, C.B., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 12.

23 Kleinig, J., *The Ethics of Policing*, Cambridge University Press: Melbourne, 1996, p. 98.

24 Chan, J.B.L., *Changing Police Culture: Policing in a Multicultural Society*. Cambridge University Press: Melbourne, 1997, p. 78.

25 Goldstein, H., *Policing in a Free Society*. University of Wisconsin Law School: Madison, 1990, p. 98.

26 Goldstein, H., *Policing in a Free Society*. University of Wisconsin Law School: Madison, 1990, p. 93.

Jerome H. Skolnick and James J. Fyfe describe the problem in the following terms:[27]

> It is hard to think of any hierarchical organisation in which the lowest-level employees routinely exercise such great discretion with such little opportunity for objective review.

Skolnick and Fyfe reject the idea of increasing rules and regulations as a solution and instead see police culture as the principal mechanism of exercising control over police discretion.[28]

The discretionary element in street-level policing often requires officers to judge, in physically risky and stressful situations, how much force is 'necessary or reasonable' in a given set of circumstances.

This leads Pate and Fridell to characterise use of force as a topic fraught with ambiguity.[29] These authors maintain that it is impossible to articulate the specific, appropriate force responses required of an officer in every conceivable situation. Therefore the typical departmental policy directs officers: [30]

> to use amount and type of force that is reasonable and necessary under the circumstances.

However this leaves officers to locate the narrow line that 'wobbles between proper practice and excessive violence'.[31]

Skolnick and Fyfe appear to concur with this proposition. They maintain that most officers operate under State criminal laws which operationalise the distinction to the effect that officers should use no more force than is necessary or reasonable or that force should only be used as a last resort. These authors maintain: [32]

> such provisions are too vague to serve as meaningful guidelines for cops in street situations.

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27 Skolnick, J.H. and Fyfe, J.J., *Above the Law: Police and the Excessive Use of Force.* The Free Press: New York, 1993, p. 120.

28 Skolnick, J.H. and Fyfe, J.J., *Above the Law: Police and the Excessive Use of Force.* The Free Press: New York, 1993, pp. 36, 121.

29 Pate, A.M. and Fridell, L.A., *Police Use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, p. 21.

30 Pate, A.M. and Fridell, L.A., *Police Use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, p. 21.

31 Manning, in Pate, A.M. and Fridell, L.A., *Police Use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, p. 21.

32 Skolnick, J.H. and Fyfe, J.J., *Above the Law: Police and the Excessive Use of Force.* The Free Press: New York, 1993, p. 38.

3.5 BARRIERS TO ACCOUNTABILITY

Authors have described customs which present barriers to accountability and exacerbate the problem of excessive use of force by police. One such barrier is that of silence, which authors such as Chan contend to be integral to the occupational culture of policing in Australia and overseas.[33] A comparative study by Human Rights Watch into police brutality in 14 American police departments reported that police were frequently protected by the silence of their fellow officers.[34] The Independent Commission into the Los Angeles Police Department also found that this unwritten code of silence meant that officers generally refused to provide adverse information on their fellow officers.[35] The Independent Commission found that witnesses, other than police colleagues, were often not present during incidents which resulted in complaints of assault.[36] If the code of silence was being applied as a matter of custom following incidents in which police used excessive force, it would present police with a significant barrier to accountability. This would also prevent the substantiation of incidents which were not witnessed by members of the public.

The Mollen Commission in New York found the wall of silence to be pervasive and stronger when it came to issues of police brutality.[37] That Commission reported on a view amongst police officers in New York that unnecessary force was a means to an end. This view was seen to strengthen the code of silence. The comment was made that: [38]

> Officers are unwilling to go out on a limb and report behaviour that they believe, while unlawful, is fundamentally correct.

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33 Chan, J.B.L., *Changing Police Culture: Policing in a Multicultural Society*. Cambridge University Press: Melbourne, 1997, p.79. Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States*, Human Rights Watch: New York, June 1998, p.26. Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department,* 9 July 1991, p. xx.

34 Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States*, Human Rights Watch: New York, June 1998, p. 26.

35 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department,* 9 July 1991, p. xx.

36 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*, 9 July 1991, pp. 162, 163 & 168.

37 *Commission Report: The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*, (M. Mollen, Commissioner), New York, 1994, p. 49.

38 *Commission Report: The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*, (M. Mollen, Commissioner), New York, 1994, p. 49.

The Mollen Commission suggested that the view that an officer should protect those officers who use excessive force was not confined to corrupt police. That Commission indicated the practice was quite widespread:[39]

> The vast majority of honest officers still protect the minority of corrupt officers through a code of silence few dare to break.

Further:[40]

> Officers were even more reluctant to report or discuss brutality than corruption perhaps because they view it as a reality of policing.

Janet Chan notes that the problem of ensuring accountability is compounded in an occupation where much policing activity takes place out of the sight of a supervisor.[41] She further notes that there are some reports that this leads to an emphasis on results such as arrests and speculation that a relationship may exist between over-emphasising results and acceptance of means and processes as merely incidental.[42] Chan cites Morton's notion that this lack of supervision, coupled with the power and discretion available to police, has been said to create many opportunities for irregular practice and corruption.[43]

A number of authors warn that police may also take more active measures to construct barriers to accountability. Adams adds that members of the public who file complaints against police are often charged with resisting arrest.[44] Studies reported on by Adams in the USA, and Brereton and Burgess in Australia, indicate that police may invoke resisting arrest charges when the officer is concerned that questions may arise regarding the degree of force they have employed during an incident.[45]

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39 *Commission Report: The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*, (M. Mollen, Commissioner), New York, 1994, p. 45.

40 *Commission Report: The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*, (M. Mollen, Commissioner), New York, 1994, p. 49.

41 Chan, J.B.L., *Changing Police Culture: Policing in a Multicultural Society*. Cambridge University Press: Melbourne, 1997, p. 91.

42 Chan, J.B.L., *Changing Police Culture: Policing in a Multicultural Society.* Cambridge University Press: Melbourne, 1997, p. 79.

43 Chan, J.B.L., *Changing Police Culture: Policing in a Multicultural Society.* Cambridge University Press: Melbourne, 1997, p. 91.

44 Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 80.

45 Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 80. Brereton, D and Burgess M., 'Complaints of Assault Against Police: Why are they so hard to substantiate and what should be done about it?', Presented at the ANZ Society of Criminology, 12th Annual Conference, Griffith University Brisbane, 8-11 July 1997, p. 10.

Human Rights Watch concurs:[46]

> The officer may attempt to explain his actions by charging the individual with what police abuse experts refer to as 'the trilogy': disorderly conduct, resisting arrest, and assaulting an officer.

Hans Toch (1995) suggests that imposing a resisting arrest charge serves the following three purposes:[47]

- it makes the officer's use of force appear legitimate;
- it converts the status of a potential complainant to that of a suspect, thus compromising their credibility should a complaint arise; and
- it adds to the officer's record of quantifiable productivity.

Toch (1995), and Croft and Austin cited in Toch (1995), contend that the repeated filing of resist arrest charges is a reasonably reliable indicator of excessive force by individual officers.[48] Research in Australia by Brereton and Burgess has lent some weight to the view that employing these charges decreases the likelihood that a complaint of assault will be found substantiated.[49]

Human Rights Watch, in their comparative study of 14 American police departments suggested that some police agencies failed to deal effectively with abuse of force by officers.[50] They also found a lack of meaningful information regarding trends in excessive use of force. Where data existed they reported there was no evidence that police administrators or prosecutors used the information to deter excessive use of force.[51]

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46 Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States*, Human Rights Watch: New York, June 1998, p. 51.

47 Toch, H., 'The Violence-Prone Officer', in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, pp. 106-107.

48 Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 80. Toch, H., 'The Violence-Prone Officer' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, pp. 106-7.

49 Brereton, D. and Burgess, M., 'Complaints of Assault Against Police: Why are they so hard to substantiate and what should be done about it?', Presented at the ANZ Society of Criminology, 12th Annual Conference, Griffith University Brisbane, 8-11 July 1997, p. 10.

50 Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*, Human Rights Watch: New York, June 1998, p. 26.

51 Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*, Human Rights Watch: New York, June 1998, p. 26.

Human Rights Watch summarised the position as one in which there appeared to be an:[52]

> official unwillingness to deal seriously with officers who commit abuses until high-profile cases expose long-standing negligence or tolerance of brutality.

3.6 REPORTING OF ASSAULT COMPLAINTS

A number of sources suggest an under reporting of complaints of assault. Goldsmith, while not confining his comments to assaults, maintains that the evidence points to under-reporting of complaints against police. He cites a comparison made with information gathered concerning consumer grievances and quotes the following:[53]

> Given the legal and quasi-legal 'resources' available to police officers to deter would-be complainants from filing complaints (threats and use of 'verballing', 'fit-ups', etc.), it seems likely that underreporting of police-related grievances is significantly greater than in the case of consumer grievances.

3.7 PROMINENT FACTORS

Further to the themes outlined in this chapter, studies in Australia and overseas have highlighted a number of factors which often appear in conjunction with a complaint of assault or excessive use of force. The categories of factors common to complaints of police assault are, for the purposes of this literature review, grouped as follows:

- environmental factors;
- police officer characteristics;
- characteristics of the complainant;
- witnesses to assault complaints; and
- sustained rates and internal investigations.

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52 Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*, Human Rights Watch: New York, June 1998, p. 26.

53 Best, cited in Goldsmith A.J. Ed., *Complaints Against the Police: the Trend to External Review*, Clarendon Press: Oxford, 1991, p. 21.

Following the above information there is a review of information concerning police assault in terms of:

- the effectiveness and integrity of internal investigations, management and other systems;

- strategies for addressing investigative, management and other shortcomings; and

- the problem of the serial offender.

ENVIRONMENTAL FACTORS

The following factors have frequently appeared in the environment in which a complaint and/or incident of police assault arose. These factors should not be considered to be conclusive, deterministic or consistent across all cases:

- temporal patterns. Actual incidents of assault were found to be more likely to occur between the hours of twilight and early morning, on weekends and in summer months.[54]

- particular geographic locations. Many incidents of excessive force have occurred in patrol cars or in police lock ups.[55] An analysis of complaints of police assault undertaken by the Queensland Criminal Justice Commission (CJC) found that 35 per cent of *on-duty* incidents occurred in 'police space' which included interview rooms, cells and watch houses, vehicles, vehicle compounds or other police spaces.[56]

- the presence of alcohol associated with either an individual and/or an officer.[57] The CJC's analysis of complaints of police assault found that 33 per cent of *off-duty* incidents occurred 'in or around licensed premises'.[58] One American study observed that officers were more

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54 Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 69.

55 Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 69.

56 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police*, March 1997, p. 36.

57 Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 69.

58 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police*, March 1997, p. 36.

likely to use force, and especially improper force against suspects who were inebriated or antagonistic.[59]

- that fellow officers were frequently present.[60] Observational studies conducted in America noted that incidents of assault were more likely to occur in situations in which there were a large number of officers at the scene. There were two interpretations of this association offered in the literature. One was that the presence of other officers provided physical and psychological reinforcement, while the second was that incidents where improper force may be used were those in which other officers were called to attend.[61]

Adams suggested that those working in high crime locations were required to use force more often due to the greater frequency with which they were called out.[62] It was perceived that they would therefore generate a higher number of assault complaints than average. This infers a relationship between excessive force complaints and rates of crime.

On the other hand, Lester reported the view that the nature of the immediate environment in which an officer worked will shape an officer's attitude towards use of force with the result that police working in high crime areas and expecting to face danger and physical harm might be more likely to use excessive force.[63]

The Independent Commission into the Los Angeles Police Department did not support either case instead commenting that it was equally true that many 'productive' officers did not generate high numbers of complaints.[64]

Lester also reported on more general considerations. Excessive use of force has been observed to occur in the wake of high-speed car chases. One explanation offered for this behaviour was that physiological or emotional

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59 Worden, R.E., 'The 'Causes' of Police Brutality: Theory and Evidence on Police Use of Force', in Geller, W.A. and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, 1995, p. 59.

60 Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 69. Worden, R.E., 'The "Causes" of Police Brutality: Theory and Evidence on Police Use of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 52.

61 Worden, R.E., 'The 'Causes' of Police Brutality: Theory and Evidence on Police Use of Force', in Geller, W.A. and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, 1995, p. 52.

62 Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 69.

63 Lester, D., 'Officer Attitudes Towards Police Use of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 182.

64 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department.* 9 July, 1991, p. 38.

stress acts as a trigger for excessive use of force.[65] There were also situations described in which police have reported they felt justified in the use of excessive force especially against suspects they perceive to be morally reprehensible persons such as child molesters.[66]

The CJC's analysis of assault complaints suggested that police assault is not a problem which relates only to incidents occurring when police were in uniform or *on-duty*. The CJC reported that 19 per cent of complaints in their study occurred during *off-duty* hours.[67]

POLICY ENVIRONMENT

A number of sources have also reported on a relationship between excessive use of force and the development within a police agency of a culture of aggressive detection and 'hardnosed', proactive policing.[68] Skolnick and Fyfe were of the view that a proactive, hardnosed vision of police work can be a prelude to the development of an aggressive police culture.[69]

These authors believe the development of a 'siege mentality' is epitomised by a culture of aggressive detection and rapid response which rewards officers for the number of calls handled and arrests made. Skolnick and Fyfe warn that high arrest rates may be one result, but at the risk of a policing style akin to that displayed by the Los Angeles Police Department (LAPD) where this vision and these values became entrenched.[70]

Worden portrays police culture as the principal mechanism of organisational control over the substantive exercise of police discretion and also refers to the LAPD as an example of an organisation in which an 'assertive style of law enforcement' became the reason for 'aggressive confrontations with the public'.[71]

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65 Lester, D., 'Officer Attitudes Towards Police Use of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, pp. 182-3.

66 Lester, D., 'Officer Attitudes Towards Police Use of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 183.

67 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police,* March 1997, p. 10.

68 Skolnick, J.H. & Fyfe J.J., *Above the Law: Police and the Excessive Use of Force.* The Free Press: New York, 1993, p.12,13. Worden, R.E., 'The 'Causes' of Police Brutality: Theory and Evidence on Police Use of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, pp. 36, 37.

69 Skolnick, J.H. & Fyfe J.J., *Above the Law: Police and the Excessive Use of Force.* The Free Press: New York, 1993, p. 106.

70 Skolnick, J.H. & Fyfe, J.J., *Above the Law: Police and the Excessive Use of Force.* The Free Press: New York, 1993, p. 106.

71 Worden, R.E., 'The 'Causes' of Police Brutality: Theory and Evidence on Police Use of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, pp. 36, 37.

The Independent Commission on the Los Angeles Police Department traced this style of policing to a 'professional' organisational culture cultivated by police management through a structured approach to training and incentives where officers were rewarded for hardnosed enforcement that was likely to (occasionally) produce arrests and (often) bring police into conflict with citizens.[72]

Aggressive policing was further reinforced by a failure to discourage the improper use of force through:[73]

- a complaint intake process which discouraged citizens from filing complaints;

- a failure to properly resource investigations and properly investigate complaints leading to low substantiation rates; and

- the failure to impose appropriate sanctions on officers with substantiated complaints against them. This was seen to negate both the deterrent effect of discipline and the message that such behaviour was inappropriate.

The Independent Commission reported on a relationship between the incentive structure within the LAPD and officer behaviour. That Commission also linked the formal administrative structure with the informal organisational culture. Implications for administrative practice involved a reduction in incentives for hardnosed enforcement and an increase in sanctions for the improper use of force.[74]

Human Rights Watch suggested that administration can influence excessive use of force through policy related factors. Anecdotal information indicated that the policy of 'reduced tolerance' policing in New York City had lead to an increase in complaints of over 37 per cent with a continuing high level of complaints.[75]

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72 Worden, R.E., 'The 'Causes' of Police Brutality: Theory and Evidence on Police Use of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, pp. 36, 37.

73 Worden, R.E., 'The 'Causes' of Police Brutality: Theory and Evidence on Police Use of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 37.

74 Worden, R.E., 'The 'Causes' of Police Brutality: Theory and Evidence on Police Use of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 37.

75 Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*, Human Rights Watch: New York, June 1998, p. 39.

POLICE OFFICER CHARACTERISTICS

The view expressed by a number of sources reviewed for this Report was that police assault was not solely considered a matter of individual officer deviance, but also required an institutional or organisational response.[76]

While there were a number of characteristics frequently present in police officers identified in complaints concerning an assault by a police officer, these were too generalised to be considered for use as a predictive tool.

Reporting in 1991, the Independent Commission on the Los Angeles Police Department, found a strong concentration of allegations against a problem group of officers.[77] That Commission maintained that those with repeated complaints of excessive use of force against them should have the attention of the Police Department.[78]

An officer's age was considered a factor having some relevance to their propensity to use force. Research conducted by Croft in 1985 compared officers who used force frequently with officers who did not. This study controlled for factors such as duty type and arrest exposure.[79] The findings suggested that officers who used force more frequently were significantly younger, had fewer years of service and had been younger when appointed to the department.[80]

An officer's rank was also considered influential in their propensity to be involved in incidents of conflict. One study conducted by the CJC in Queensland found that those at constable rank were involved in 52 per cent of complaints of assault yet made up only 37 per cent of the Queensland Police Service.[81] The CJC report offered two explanations for the nexus between rank and assault:[82]

- that lower ranking officers tend to be younger and less experienced than more senior ranking officers; and

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76 Bayley, B., 'Police Brutality Abroad' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 275. Chan, J.B.L., *Changing Police Culture: Policing in a Multicultural Society*. Cambridge University Press: Melbourne 1997, p. 91. Goldsmith, A.J., Ed., *Complaints Against the Police: the Trend to External Review*. Clarendon Press: Oxford, 1991, p. 14.

77 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*. 9 July 1991, p. iii.

78 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*. 9 July 1991, pp. 36-41.

79 Pate, A.M. and Fridell, L.A., *Police Use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, p. 28.

80 Pate, A.M. and Fridell, L.A., *Police Use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, p. 28.

81 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police,* March 1997, p. 22.

82 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police,* March 1997, p. 22.

- that lower ranking officers are more likely to be involved in general duties street level policing, where conflictual incidents are more likely to occur.

Gender differences were also observed in use of force studies. The Independent Commission on the Los Angeles Police Department found that female officers were involved in the excessive use of force at rates substantially below those of males. A further observation by that Commission was that female officers were not reluctant to use force, but were less likely to use excessive force.[83]

The 1991 CJC study in Queensland found an over-representation of male officers in complaints of police assault with 95 per cent of officers involved in complaints being male. This was not considered to be due to a higher level of male officers employed in the Service. The incidents occurred during a period in which female officers made up between 9 and 12 per cent of the Queensland Police Service.[84]

Toch explains that the relationship between gender and use of force is a weak one because females use violence to a lesser extent than males due to their relative physical size and strength and their reliance on conflict reduction techniques.[85] Toch also acknowledges that there will be differences within groups where some females become involved in violence in order to gain the esteem of male colleagues.[86] He refers to work by Hunt and suggests that some female police may feel a need to earn respect by exploiting opportunities to display their physical abilities in order to overcome sexual bias and obtain full acceptance.[87]

One South Australian study has lent some support to the view that an officer's use of force will be associated with how they approach their interaction with citizens in a general way. The report arising from that observational research commented that female officers preferred to use information exchange, support behaviours and rejecting comments, while male officers tended to use control or threats.[88]

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83 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*. 9 July 1991, pp. 83, 84.

84 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police,* March 1997, p. 21.

85 Toch, H., (1995), 'The 'Violence-Prone' Officer in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, p. 109.

86 Toch, H., (1995), 'The 'Violence-Prone' Officer in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, p. 109.

87 Toch, H., (1995), 'The 'Violence-Prone' Officer in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, p. 104.

88 Wilson, C. and Braithwaite, H., 'Police officer Behaviour During Interactions with Citizens: What distinguishes the 'skilled' from the 'average' officer?', *Risk Management-Study 3*, National Police Research Unit, South Australia, 1996.

Controlling statements were more often associated with verbal and physical abuse from the citizen, while the verbal exchange used by female officers was more often associated with an ongoing verbal exchange. The use of physical acts was seen to reduce the amount of information exchange while those using threats tended to find themselves in situations of escalating conflict.[89]

Some have also observed that officers involved in assault complaints tend to have relatively high rates of arrest.[90] This association has been drawn in anecdotal and observational studies.[91]

The considerable lack of specific information concerning officer characteristics does not support the development of a predictive tool for locating those officers likely to use excessive force. Further, locating repeat offenders, although a useful exercise in terms of highlighting those 'at risk' of offending, leaves questions regarding causation unanswered. The position summarised by Toch, is that some officers may not be violence prone however their behaviour may be reinforced by the organisation for which they work.[92]

CHARACTERISTICS OF THE COMPLAINANT

Many studies undertaken in the USA report that officers are more likely to use force and especially improper force against non-white suspects.[93]

Human Rights Watch studied police brutality and accountability across 14 large cities in the USA from late 1995 until early 1998.[94] The report on that study maintained that race has a central role in police brutality with minorities alleging abuse by police more frequently than white residents and far out of proportion to their representation in the 14 cities participating

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89 Wilson, C. and Braithwaite, H., 'Police officer Behaviour During Interactions with Citizens: What distinguishes the 'skilled' from the 'average' officer?', *Risk Management-Study 3*, National Police Research Unit, South Australia, 1996.

90 Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, p. 80.

91 Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, p. 80.

92 Toch, H., 'The 'Violence-Prone' Officer' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, p. 101.

93 Worden, R.E., 'The 'Causes' of Police Brutality: Theory and Evidence on Police Use of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, p. 59.

94 Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States*, Human Rights Watch: New York, June 1998, p. 25.

in the study. The conclusion drawn by Human Rights Watch was that minorities appeared to be subjected to discriminatory treatment and physical abuse.[95]

The Independent Commission into the Los Angeles Police Department maintained that the problem of excessive force was aggravated by racism and ethnic bias. That report outlined the following survey findings:[96]

> …an LAPD survey of 960 officers found that approximately one-quarter (24.5%) of 650 officers responding agreed that 'racial bias (prejudice) on the part of officers toward minority citizens currently exists and contributes to a negative interaction between police and the community.' (55.4% disagreed: 20.1% had no opinion.) More than one-quarter of the poll's respondents (27.6%) agreed that "an officer's prejudice towards the suspect's race may lead to the use of excessive force." (15% expressed no opinion; 57.3% disagreed.)

Janet Chan has suggested that the occupational culture of policing is one which condones various forms of stereotyping, harassment or even violence against those who are seen to be rough or disreputable.[97]

Goldsmith has also observed that the use of stereotyping to carry out police duties leads to a focus on groups within the community which are the subject of negative stereotypes. He commented that this often directs police to initiate contact with the citizen and stated that:[98]

> Unfortunately, stereotypes inevitably result in a significant number of 'false positive' interactions, that is, police-initiated contacts with citizens in which the police officer's reason for initiating the contact proves groundless.

If Goldsmith's view is correct, it can be seen that such behaviour may impact significantly on the number of incidents resulting in conflict and ultimately the frequency of complaints following these contacts.

The CJC's analysis of complaints of police assault lends some support to this theory. The CJC reported that 11 per cent of assault incidents identified the person who was the subject of the assault as an Aboriginal or Torres

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95 Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States*, Human Rights Watch: New York, June 1998, p. 25.

96 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*, 9 July 1991, p. 69.

97 Chan, J.B.L., *Changing Police Culture: Policing in a Multicultural Society*. Cambridge University Press: Melbourne, 1997, p. 44.

98 Goldsmith, A.J. Ed., *Complaints Against the Police: the Trend to External Review*. Clarendon Press: Oxford, 1991, p. 17.

Strait Islander, yet these people comprised only 2.4 per cent of the Queensland population at this time.[99]

Janet Chan has suggested that Aborigines and other minority groups may not understand or trust the complaints system and may fear reprisal in a system where police are responsible for investigating themselves.[100] She also maintains that the formal complaint procedures may be intimidating, as well as prohibitive, for those without literacy or English skills.[101]

The CJC's study of complaints of police assault also reported that 7 per cent of complainants had either a physical or cognitive disability at the time of the alleged assault.[102] The report arising from that study pointed to the failure of the mental health system to identify and assist mentally ill people with the result that much 'official' intervention fell, by default, to the police,[103] who were said to be ill-equipped and substantially under-trained to deal with episodes of mental illness.[104]

WITNESSES TO ASSAULT COMPLAINTS

The presence of a 'third party witness' has been reported by Kerstetter to be a critical factor in determining the outcome of an investigation arising from an assault complaint.[105] Brereton and Burgess have reported that independent witness evidence is available only infrequently in assault matters.[106] These authors further suggest that the credibility of such witnesses may be adversely affected by the use of alcohol, drugs or the existence of a criminal history.[107]

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99 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police*, March 1997, p. 28.

100 Chan, J.B.L., *Changing Police Culture: Policing in a Multicultural Society.* Cambridge University Press: Melbourne, 1997, pp. 42 & 89.

101 Chan, J.B.L., *Changing Police Culture: Policing in a Multicultural Society.* Cambridge University Press: Melbourne, 1997, pp. 42 & 89.

102 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police*, March 1997, p. 28.

103 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police*, March 1997, p. 28.

104 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police*, March 1997, p. 28.

105 Kerstetter, W.A., 'A 'Procedural Justice' Perspective on Police and Citizen Satisfaction with Investigations of Police Use of Force: Finding a Common Ground of Fairness' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, pp. 223-4.

106 Brereton, D. and Burgess M., 'Complaints of Assault Against Police: Why are they so hard to substantiate and what should be done about it?', Presented at the ANZ Society of Criminology, 12th Annual Conference, Griffith University Brisbane, 8-11 July 1997, p. 11.

107 Brereton, D. and Burgess, M., 'Complaints of Assault Against Police: Why are they so hard to substantiate and what should be done about it?', Presented at the ANZ Society of Criminology, 12th Annual Conference, Griffith University Brisbane, 8-11 July 1997, p. 12.

The Independent Commission into the Los Angeles Police Department has expressed the view that even where a third party witness is available, their evidence may be discounted for frivolous reasons. The report arising from that Commission cited an incident in which a complaint was classified 'not sustained' because the witness, by virtue of having reported the incident, was deemed 'interested'. At the same time, police officers at the scene of an incident were often treated as independent witnesses for the purpose of classifying the complaints as unfounded.[108]

The CJC found that statements or evidence from one or more witnesses to assault matters were obtained in 58 per cent of *on-duty* incidents and 63 per cent of *off-duty* incidents.[109]

3.8 SUSTAINED RATES AND INTERNAL INVESTIGATIONS

Comparisons of sustained rates made in 1993 by Pate and Fridell in the USA and by Brereton and Burgess in 1997 in Queensland show that complaints of assault are generally less likely to be sustained than other forms of misconduct or corruption.[110]

A 1991 survey of all types of police complaints in Washington State found that 25 per cent of complaints received by the 165 agencies responding to the survey were sustained. The sustained rate for excessive use of force complaints reported in the same survey was only 11.6 per cent.[111]

A low substantiation rate was also one of the main themes of the report arising from the Independent Commission on the LAPD:[112]

> Of the 2,152 citizen allegations of excessive force from 1986 through 1990, only 42 were sustained.[113]

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108 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*, 9 July 1991, pp. 162-3.

109 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police*, March 1997, p. 13.

110 Pate, A.M. & Fridell, L.A., *Police use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, p.42,43 and Brereton, D. and Burgess, M., *Complaints of Assault Against Police: Why are they so hard to substantiate and what should be done about it?*. Presented at the ANZ Society of Criminology, 12th Annual Conference, Griffith University Brisbane, 8 - 11 July 1997, p. 10.

111 Pate, A.M. & Fridell, L.A., *Police use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, pp. 42, 43.

112 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*, 9 July 1991, p. 35.

113 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*, 9 July 1991, p. xix.

The report of that Commission calculated the sustained rate for allegations of excessive use of force during that period to be 2 per cent.[114]

There appears to be a lack of data published in Australia concerning assault complaints and their related sustained rates. A statistical study reported by Brereton and Burgess concerned all allegations of police misconduct investigated by the CJC between 1991 and 1995. That study found an overall substantiation rate of around 30 per cent in relation to all misconduct matters. During the same period, assault allegations investigated by the CJC were substantiated at a rate of only 13 per cent.[115]

The CJC's analysis of assault complaints against Queensland Police reported that only 9 per cent of the complaints examined could be regarded as substantiated in that they resulted in a referral to a misconduct tribunal, a recommendation to the Commissioner regarding charges or a referral to the DPP or other prosecution authority.[116]

The following are some explanations offered by organisations seeking to explore the reasons for low sustained rates resulting from excessive force complaints:

a) The absence of evidence such as a videotape of the incident, or an independent third-party witness, are considered to play a role in the low sustained rates arising from complaints of excessive force.[117]

   The Independent Commission on the Los Angeles Police Department established to investigate excessive use of force in the LAPD in the wake of the videotaped evidence of the beating of Rodney King reported:[118]

> Whether there even would have been a Los Angeles Police Department investigation without the video is doubtful, since the efforts of King's brother, Paul, to file a complaint were frustrated, and the report of the involved officers was falsified.

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114 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*, 9 July 1991, p. 35.

115 Brereton, D., and Burgess M., 'Complaints of Assault Against Police: Why are they so hard to substantiate and what should be done about it?', Presented at the ANZ Society of Criminology, 12th Annual Conference, Griffith University Brisbane, 8-11 July 1997, p. 3.

116 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police,* March 1997, p. 19.

117 Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 79.

118 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*, 9 July 1991 p. ii.

b) The 'code of silence' is thought to contribute to low substantiation of excessive force incidents. The Independent Commission on the Los Angeles Police Department also reported on this:[119]

> Perhaps the greatest single barrier to the effective investigation and adjudication of complaints is the officers' unwritten "code of silence". While loyalty and support are salutary and even necessary qualities, they cannot justify the violation of an officer's public responsibility to ensure compliance with the law, including LAPD regulations. The code of silence influences the behavior of many LAPD officers in a variety of ways, but it consists of one simple rule: an officer does not provide adverse information against a fellow officer.

c) Highly deficient investigations were also cited as contributing to a low substantiation rate in excessive force incidents:

- Pate and Fridell cite a report on the Los Angeles Sheriff's Department which indicated that a number of complaints were never investigated and that investigations for a significant number were closed prior to completion 'at times under highly suspicious circumstances'.[120] Close to 100 of nearly 800 complaint files reviewed showed that:[121]

  > there was no attempt to interview witnesses identified by Los Angeles Sheriff's Department officers or the complainant.

- The Independent Commission into the Los Angeles Police Department reviewed 700 complaints and reported the following problems with investigations:

  – little indication of any effort to identify, locate or interview witnesses;[122]

  – no uniform basis for categorising witnesses even though this had a bearing on whether the complaint was sustained or not;[123] and

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[119] Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*, 9 July 1991, p. 168.

[120] Pate, A.M. & Fridell, L.A., *Police use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, pp. 40-41.

[121] Pate, A.M. & Fridell, L.A., *Police use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, p. 41.

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

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

– even when the complaint was sustained, the punishments were more lenient than they should be.[124] The report quoted evidence given before the Independent Commission:[125]

> they said if you lie, cheat and steal we'll fire you, if you use drugs we'll fire you. But if you use excessive force, we won't.

d) A limited use of sanctions in assault matters has also been reported and has been said to negate any deterrent effect the complaints and discipline system may have had on police abuse of force.[126] Brereton and Burgess also add that the likelihood of an officer being sanctioned as a result of a complaint of police assault is extremely small.[127] One CJC report calculated that only 0.5 per cent of assault allegations reported to the CJC resulted in the imposition of a criminal sanction and only 5 per cent resulted in disciplinary sanctions or resignation.[128]

3.9 EFFECTIVENESS AND INTEGRITY OF INTERNAL INVESTIGATIONS, MANAGEMENT AND OTHER SYSTEMS

A common theme in the literature reviewed for this study concerned the effectiveness and integrity of internal investigations into complaints of police assault.

Goldsmith maintains that two particularly disturbing indicators of malaise in complaints investigation have been the level of misconduct discovered by official commissions of inquiry, rather than through internal disciplinary and complaints mechanisms, and the low substantiation rates for complaints investigated by internal investigation units.[129] Both pose questions concerning the quality of the internal investigation of complaints.[130]

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124 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department,* 9 July 1991, p. xx.

125 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*, 9 July 1991, pp. 165-166.

126 Brereton, D. and Burgess M., 'Complaints of Assault Against Police: Why are they so hard to substantiate and what should be done about it?' Presented at the ANZ Society of Criminology, 12th Annual Conference, Griffith University Brisbane, 8-11 July 1997, p. 12.

127 Brereton, D. and Burgess M., 'Complaints of Assault Against Police: Why are they so hard to substantiate and what should be done about it?' Presented at the ANZ Society of Criminology, 12th Annual Conference, Griffith University Brisbane, 8-11 July 1997, p. 3.

128 Brereton, D. and Burgess M., 'Complaints of Assault Against Police: Why are they so hard to substantiate and what should be done about it?' Presented at the ANZ Society of Criminology, 12th Annual Conference, Griffith University Brisbane, 8-11 July 1997, p. 3.

129 Goldsmith, A.J., Ed., *Complaints Against the Police: The Trend to External Review,* Clarendon Press: Oxford, 1991.

130 Goldsmith, A.J., Ed., *Complaints Against the Police: The Trend to External Review,* Clarendon Press: Oxford, 1991, p. 24.

The inadequacy of police complaint recording practices has been the subject of comment, both in Australia and overseas, with the suggestion that the ability of police to investigate complaints has not inspired great public confidence in internal investigations.[131] The Commission's recent report on an audit of the quality of the NSW Police Service's internal investigations, called Project Dresden, commented on a lack of rigour in the investigations carried out by the Police Service.[132]

The substantiation figures for the London Metropolitan Police revealed that, in 1984, 8 per cent of all complaints were substantiated. At the same time, not one complaint involving harassment, racial discrimination, false evidence or perjury was found substantiated. It was also reported that only 20 of 1,410 complaints of assault or 1.5 per cent, were found substantiated.[133] In relation to these findings the comment made was that:[134]

> Either those who do bother to complain are all liars, or there is something wrong with the system.

An official inquiry by a former Federal Ombudsman into internal investigations by police in Victoria considered the substantiation figures for assault complaints and offered the following comment:[135]

> From a complainant's stand point I have not heard of a lower success rate anywhere [2.3%]. Were the results to be understood publicly, it would add fuel to the argument that it is a waste of time to make a complaint of assault against the police in the absence of substantial, independent, corroborative evidence.

Similar suggestions were made by the Police Complaints Authority in relation to internal investigations in Victoria where, in the 1980s:[136]

> Little effort was made to ask probing questions of police against whom allegations had been made. Their word was accepted at face value. Often there was no record of interview with questions and answers. Police officers were simply allowed to make a statement after having the full details of the complaint against them set out. Sometimes they were shown the statement of another member and simply asked if they had anything

131 Littlejohn, cited in Goldsmith, A.J., Ed., *Complaints Against the Police: The Trend to External Review*, Clarendon Press: Oxford 1991, p. 25.

132 Police Integrity Commission, *Special Report to Parliament Project Dresden: An Audit of the Quality of NSW Police Service Internal Investigations*, April 2000, p. iii.

133 Goldsmith, A.J., Ed. *Complaints Against the Police: The Trend to External Review.* Clarendon Press: Oxford 1991, p. 25.

134 Goldsmith, A.J., Ed. *Complaints Against the Police: The Trend to External Review.* Clarendon Press: Oxford 1991, p. 25.

135 Victoria, cited in Goldsmith, A.J., Ed. *Complaints Against the Police: The Trend to External Review.* Clarendon Press: Oxford 1991, pp. 25-26.

136 Goldsmith, A.J., Ed. *Complaints Against the Police: The Trend to External Review.* Clarendon Press: Oxford 1991, p. 74.

> to add. Frequently, they were given the opportunity of saying nothing if they so desired. This was so even though the investigation was primarily disciplinary-it was only ever likely that the member would be charged in the disciplinary tribunal and not in the criminal courts.

Many of the problems with complaints in Victoria were explained in terms of a grossly deficient investigative technique.[137] Procedures used by internal investigators were seen to allow opportunities for collaboration among suspects.[138] The following particular criticisms and methodological deficiencies were reported:[139]

- the speed of investigations. The slow progress of investigations was seen to make it unlikely that complaints with a justifiable basis would be resolved in favour of the complainant. Time played into the hands of police as memories faded, documents could be changed, stories determined and alibis resolved;

- a lack of systematic decision making pertaining to the order of witnesses/ suspects. At times officers concerned were interviewed in the final stage of an investigation. This was seen to provide opportunity to consult colleagues on the direction of the investigation and the fabrication of a plausible explanation;

- the fact that the Internal Investigation Department lacked a clear charter. This was seen to have an impact in that members were unclear on the fundamental policies guiding their investigations;

- the vast majority of complaints were classified with the unsatisfactory description 'not substantiated' in the absence of independent evidence. This was seen to exacerbate the tendency to see the Internal Investigations as a whitewash; and

- at court improper relationships were found to exist between police prosecutors and internal investigators.

At least one third of the complaints made to the Police Complaints Authority were reported to have been due to 'undue force', that a police member had assaulted a member of the public. Often the complainant was, at the time, affected by drugs or alcohol, or had already been involved in some form of violent altercation. A very high percentage of these complaints were 'not substantiated'.

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137 The PCA had on its agenda for 89-90 a close analysis of investigative practice within the Victoria Police to determine the extent to which internal investigations differed from those of 'ordinary criminals'.

138 See Punch (1985:163) for 'sympathetic' attitudes in the Dutch Police Force to 'suspects' by other police officers.

139 Goldsmith, A.J., Ed. *Complaints Against the Police: The Trend to External Review.* Clarendon Press: Oxford 1991, pp. 74-76.

This was seen to be generally correct because, for whatever reason, there was not sufficient evidence to justify any other finding against the police officer who was the subject of the complaint.[140]

In recent years, the Ethical Standards Department of the Victoria Police Force has run a pilot project aimed at reducing complaints of police assault. This approach will be discussed in more detail in the section relating to strategies for addressing shortcomings.

The Report of the Independent Commission into the Los Angeles Police Department suggested that management and leadership were key issues influencing the excessive use of force of officers within the LAPD. Serious failures were observed amongst high-ranking police:[141]

> [T]he failure to control these [repeatedly abusive] officers is a management issue that is at the heart of the problem." The documents and data that we have analysed have all been available to the department; indeed, most of this information came from that source. The LAPD's failure to analyze and act upon these revealing data evidences a significant breakdown in the management and leadership of the Department.

With regard to specific management and organisational issues, the Independent Commission noted the following:[142]

- **Recruitment**. Psychological testing was seen to be an ineffective predictor of violent tendencies. The Independent Commission recommended that more attention be paid to background investigation of police officers at the time of recruitment. Emotional and psychological problems can occur during an officer's period of service, therefore it was also recommended that officers should be retested periodically during tenure.

- **Training**. The Independent Commission maintained that at each phase of training additional emphasis was required on the use of verbal skills, rather than physical force, to control potentially volatile situations, and focus on the development of human relationship skills.

- **Promotion, assignment and other personnel issues**. The Independent Commission also recommended that a summary of 'not sustained' complaints be considered in promotional decisions, as well as in pay grade advancements and assignment to discretionary and/or desirable

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[140] Goldsmith, A.J., Ed. *Complaints Against the Police: The Trend to External Review.* Clarendon Press: Oxford 1991, p. 95.

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

[142] Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department.* 9 July 1991, pp. xv-xviii.

positions within the LAPD and outside the civil service system. The view was held that while a sustained complaint shouldn't bar an officer from promotion, a summary of all complaints (both sustained and unsustained) should be carefully considered, particularly multiple complaints with similar fact patterns. Complaint histories were also to be considered in the assignment of problem officers who may be using force improperly.

3.10 STRATEGIES FOR ADDRESSING INVESTIGATIVE, MANAGEMENT AND OTHER SHORTCOMINGS

According to Bayley, efforts to reduce police brutality around the world proceed on two fronts:[143]

- an increasing emphasis on disciplinary supervision of police through the creation of special oversight agencies, often external to police agencies; and

- changes in the way police forces manage personnel to discourage brutality.

Bayley does not view these approaches as mutually exclusive.[144]

Although brutality and other misconduct has in the past been blamed on a few 'rotten apples', and viewed as a matter of individual deviance, Bayley sees a trend towards viewing brutality as a matter of institutional facilitation and organisational responsibility. As a result, correcting the problem involves a more creative approach to police management.[145] While offending individuals continue to be weeded out, Bayley emphasises the efforts being made to transform management and institutional culture with the focus shifting from purely correcting individuals to including changes to organisations.

Boyle identifies the following as solutions to issues surrounding police violence:[146]

- **Preselection and selection processes**. Selection processes to include background checking and psychological testing for volatile temper.

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143 Bayley, B., 'Police Brutality Abroad' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum, Washington, 1995, p. 272.

144 Bayley, B., 'Police Brutality Abroad' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum, Washington, 1995, p. 275.

145 Bayley, B., 'Police Brutality Abroad' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum, Washington, 1995, p. 275.

146 Boyle, D.B., 'Police Violence: Addressing The Issue', *FBI Law Enforcement Bulletin.* Vol.62, No.1.June. 1993, pp. 17-21.

- **Use of force policies and procedures**. Administered by a department through clearly defined procedures, policies and rules should encompass conduct and behaviour including use of force. Management support is required to ensure all officers maintain an awareness of policies and procedures.

- **Police academy**. The police academy should mould the practices and beliefs of police recruits regarding the use of force. There should also be training in conflict management and instruction regarding how to de-escalate or defuse tense situations using physical defence tactics. Officers can also be informed on how to avoid physical confrontation entirely and taught to use diplomacy instead of aggression.

- **Field officer training**. Once in the field the realities of the street can challenge academy training. Where field training officers abuse their power, less experienced officers will probably follow. Field training officers should be evaluating and watching for those inclined to use excessive force.

- **In-service training**. In-service courses have a role in reinforcing departmental policies, procedures and directives in the area of excessive force. They should ensure re-education on de-escalating conflict and technical techniques, as policies may change significantly over the years. Teaching officers about human behaviour may lessen claims of police brutality, as those who learn what makes people aggressive are better equipped to defuse potentially volatile situations without creating further conflict.

- **Evaluations**. These should be conducted to highlight inadequacies and address and correct problem areas through training/discipline or even termination.

- **Community relations-educating the public**. The need exists to document use of force incidents. This can avoid misunderstandings by the public and media and maintain public awareness of the number of situations resolved without force and the statistics regarding officers injured. Investigations should be conducted into incidents of police brutality.

- **Discipline procedures**. These should be administered and adhered to.

Fyfe suggests specific policies and procedures in relation to violence-reduction training including:[147]

- effective training in violence prevention and reduction must be realistic;
- violence reduction training must be carefully tailored to the experience and the needs of the officer and the community;
- violence-reduction training must not make matters worse by creating a sense of paranoia among officers;
- violence-reduction training must be continuous ;
- violence-reduction training must address the role of police officers during their non-working hours; and
- there is a need to appraise the effect of violence-reduction training by concentrating on an officer's conduct rather than incident outcomes.

Goldsmith advocates the examination of patterns of complaints in order to identify recurrent problems in police operations that might lead to changes in policy, tactics, training, and supervision.[148] Joint police and civilian researchers may undertake this review role with, as Goldsmith adds:[149]

> their findings going to senior police managers for comments and solution, with civilian authorities stepping in if the police failed to take corrective action.

A project recently run by the Victoria Police Force has employed an approach based on police assault complaints.[150] The Commission understands that the approach adopted by the Victoria Police was designed to reduce the amount of risk to the organisation, and to members who may be exposed to civil and criminal liability, following an incident of police assault. The strategy aimed at reducing complaints of police assault and was designed

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147 Fyfe, J.J., 'Training to Reduce Police-Civilian Violence' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum :Washington, 1995, pp. 167-174.

148 Goldsmith, A.J., Ed., *Complaints Against the Police, The Trend to External Review*. Clarendon Press: Oxford, 1991, p. ix.

149 Goldsmith, A.J., Ed., *Complaints Against the Police, The Trend to External Review*. Clarendon Press: Oxford, 1991, p. x.

150 Police Integrity Commission Internal Memorandum, re: visit to Victoria Police Force Ethical Standards Division, VicPol Complaints Reduction Strategy, 21 June 1999.

by the Ethical Standards Department. It involved the following main features:[151]

- it was the responsibility of a senior member involved in the arrest and/or processing of a suspect or offender to ensure the suspect or offender was spoken to on arrival at police premises regarding any complaint of injury/assault. This discussion was to be conducted by an independent supervisor prior to the offender being processed. Should there be any sign or complaint of injury or assault the supervisor was to be immediately notified;

- similarly, when a suspect or offender was conveyed to police premises, an independent, preferably senior, supervisor or member was to introduce him or herself and ascertain if there were any injuries or concerns regarding treatment by police. A record of this should be made in the Attendance Register including details of any injury or damage to clothing or personal effects and the cause recorded. If there were no such complaints, injuries or damage, this was also to be recorded; and

- the Duty Officer was to be notified immediately if there was any allegation of assault or suspected assault by *on* or *off-duty* officers. The Duty Officer was then to notify the Ethical Standards Department Duty Team Leader who would decide whether personnel would attend immediately to conduct an investigation, or whether services such as the Police Medical Officer, photographer or scenes of crime officers should attend.

Other elements in this approach meant that consideration was given to whether the officer who was the subject of the complaint should continue processing the suspect or offender.

At the same time, the Victoria Police Force are in the process of developing detailed profiles of members 'at risk' as determined by the number of assault complaints, both substantiated and unsubstantiated, against them. The Commanders of those officers with excessive numbers of assault allegations against them were to be advised regarding appropriate managerial or remedial action to be pursued. Victoria Police Force have also adopted a 'use of force register' to record details of when and how an officer is required to use force.

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[151] Police Integrity Commission Internal Memorandum, re: visit to Victoria Police Force Ethical Standards Division, VicPol Complaints Reduction Strategy, 21 June 1999.

Further, US reforms addressing the subject of investigative, management and other shortcomings were also proposed by the Justice Department's Civil Rights Division in a number of cities. These reforms included:[152]

- better use-of-force training and policies;
- stronger reporting mechanisms;
- creating early warning systems to identify current/potential officers at risk; and
- improved disciplinary procedures.

Pate and Fridell in their 1993 publication on police use of force made the following observations:[153]

- **Recruitment and selection.** Intervention at this stage may assist reduce the use of unnecessary or excessive force, however, developing screening devices which present a valid measure of the propensity to use excessive force is problematic. There is scarce, yet pertinent, research identifying characteristics that differentiate officers who do and do not use excessive force.

- **Officer characteristics and use of force.** Research by Croft (1985) compared officers who used force frequently with officers who did not, controlling for the variables of duty assignment and arrest exposure and found that officers who used more force were significantly younger, had fewer years of service and were younger when appointed to the department. Cohen and Chaiken (1972) also found that older officers had fewer complaints filed against them, including complaints of excessive force. Friedrich (1980), however, reported only the slightest indication that more experienced officers used force more reasonably and less excessively than less experienced officers.

- **Employment screening devices.** The Independent Commission on the Los Angeles Police Department and the New York Mollen Commission (1987) both recommended assessing any violence present in the histories of applicants.

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[152] Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States,* Human Rights Watch: New York, June 1998, p. 27.

[153] Pate, A.M. & Fridell, L.A., *Police use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, pp. 27-32.

- **Training.** The Independent Commission examined academy training, field training, and in-service training and determined that:[154]

> in each phase of training additional emphasis is needed on the use of verbal skills rather than physical force to control potentially volatile situations and on the development of human relationship skills to better serve Los Angeles' increasingly diverse population.

- **Monitoring and early warning.** In 1981 the United States Commission on Civil Rights maintained that complaints may be used as an indicator of the potential for violence. In particular, the number and outcome of citizen complaints lodged against an officer, alleging abusive behaviour or unwarranted use of force should be assessed:[155]

> Many such complaints are groundless and many that would be well-founded are never made; nevertheless, the accumulation of a large number of complaints against an officer may reveal something about that officer's style of policing.

Another strategy, this time adopted in Salt Lake City, was that of inspecting officer performance by interviewing suspects, witnesses and victims with whom the officer had interacted in order to obtain feedback. Intervention occurred where negative comments by at least five citizens were received by interviewing officers. It was reported that one year after implementation, complaints had decreased from five per day to five per month.[156]

3.11 THE PROBLEM OF RECIDIVIST OFFENDERS

Human Rights Watch has commented that experts on police abuse and a number of police officials refer to 'problem' officers as those who either have significant records of abuse (sustained), or significant records of complaints from the public (unsustained).[157]

These officers were said to require special monitoring, training and counselling in order to counter the heightened risk that they will become involved in future incidents of misconduct or brutality.

The Independent Commission on the Los Angeles Police Department found that there were a significant number of officers within the LAPD who

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[154] Pate, A.M. & Fridell, L.A., *Police use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, p. 30.

[155] Pate, A.M. & Fridell, L.A., *Police use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, p. 31.

[156] Pate, A.M. & Fridell, L.A., *Police use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, pp. 31-32.

[157] Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*, Human Rights Watch: New York, June 1998, p. 27.

repeatedly used excessive force against the public, and persistently ignored the written guidelines of the Department in relation to force.[158] That Commission documented these findings from several different perspectives. One computerised study found a strong concentration of allegations against a problem group of officers. When the results of the computerised study were compared with a study of use of force reports, a similar concentration was found within a small group of officers.

Toch maintains that the assumption that some officers manifest a propensity to use force may be a misleading one, especially when the label of a group as 'problem officers' permits the others to be considered to be non-problem officers.[159] He further maintains that some repeat offenders may not be violence prone, but their behaviour may be reinforced by the organisation for which they work.

Over recent years, a number of proactive strategies have arisen out of the need to reduce the costs of civil litigation arising from officer misconduct. One of these strategies has been that of risk management.[160] The Los Angeles Sheriff's Department has implemented a Risk Management Bureau which tracks litigation arising from allegations of misconduct, abuse of force and other actionable activity. This includes reviewing Internal Affairs files arising from cases which faced subsequent successful lawsuits. It has been recommended that this information be used on the officer's personnel file and included in training material.[161]

The threat of civil litigation arising from use of force is also recognised in an Early Warning System prepared at the University of Nebraska as a project for the US National Institute of Justice. This system relies on a series of risk indicators which trigger interventions such a counselling, supervised observation, retraining or re-assignment when one of the following risks is identified in an officer's behaviour. This Early Warning System identifies six indicators which trigger an intervention:[162]

1. Citizen Complaints. Three citizen complaints in any 12 month period.

2. Use of Force Incident. Three use of force incidents (requiring reports) in any 12 month period.

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158 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department,* 9 July 1991, p. iii.

159 Toch, H., 'The 'Violence-Prone' Officer' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, pp. 100-101.

160 Knoll, P.J., 'Re-Engineering Internal Affairs', Paper presented to the 8th Annual Internal Investigation Conference, Sydney, 1-3 September 1999, p. 5.

161 Knoll, P.J., 'Re-Engineering Internal Affairs', Paper presented to the 8th Annual Internal Investigation Conference, Sydney, 1-3 September 1999, pp. 5-6.

162 Knoll, P.J., 'Re-Engineering Internal Affairs', Paper presented to the 8th Annual Internal Investigation Conference, Sydney, 1-3 September 1999, pp. 6-7.

3. Reprimands. Two official reprimands in any 12 month period.

4. Civil litigation. Two lawsuits involving use of force (abuse of authority) in any 24 month period.

5. Neglect of Duty. Two disciplinary actions for neglect of duty in any 12 month period.

6. Damage to Service Property. Two incidents resulting in serious damage to service property (e.g. motor vehicle) in any 12 month period.

Early Warning System programs are not seen as a panacea for the problems of police corruption or misconduct, but rather a potentially important management device and a way of identifying officers who will eventually engage in corruption or serious misconduct.[163]

In 1999, at the Corruption Investigations Beyond 2000 Conference, Justice Wood described one of a number of problems regarding process corruption in the Police Service in Australia. He had explained this in the Final Report of the Royal Commission into the NSW Police Service:[164]

> the reactive focus of the complaints system on single instances of misconduct, or their fragmentation within a rigid formula, which did not allow for a classification of complaints in a way reflecting the different levels of seriousness involved, and which tended to conceal the discovery of links and patterns indicative of organised corruption, and overlooks the broader management and intelligence consideration and opportunities for early remedial intervention.

POLICE SOCIALISATION

When considering violence-prone officers, Toch expresses the view that the motives of these officers tend to be compatible with hardnosed ('let's go get 'em') organisational goals.[165] He maintains that while these officers may appear subservient, they will ignore some organisational mandates and not follow due process. In this way, aggressive officers will pursue crime-fighting selectively.[166]

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163 Knoll, P.J., 'Re-Engineering Internal Affairs', Paper presented to the 8th Annual Internal Investigation Conference, Sydney, 1-3 September 1999, p. 8.

164 Wood, Justice, 'Issues Impacting Upon Corruption Investigation in the Australian Environment', Paper presented to the 8th Annual Internal Investigation Conference, Sydney, 1-3 September 1999, p. 17.

165 Toch, H., 'The 'Violence-Prone' Officer' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum :Washington, 1995, p. 103.

166 Toch, H., 'The 'Violence-Prone' Officer' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum :Washington, 1995, p. 103.

Toch views organisational goals as having a role in shaping violence-prone officers. He sees that susceptible recruits are influenced through informal socialisation for example through training with 'war stories' and the consensus that:[167]

> efficient police work would be impossible if an officer were to follow the Rules and Procedures to the letter.

In examining the probabilities of recidivism amongst violence-prone officers, Toch contends that repeated violence after the fourth or fifth violent act is high, and decisions are required regarding risk-management of these officers.[168]

Training approaches can centre on dissecting the components of an incident starting with entry into the situation. This is important because violence-prone officers often get themselves 'out on a limb' from which retreat was effectively foreclosed at the early stage of an incident. These officers may also inadvertently place citizens in a position in which the citizens' options are restricted, making violence a more likely outcome.[169]

TARGETING INTERVENTIONS

As with most problems there are a range of interventions, approaches and strategies aimed at reducing police use of excessive force. There is a preference in some literature for non punitive interventions and the involvement of rank-and-file officers in devising strategies.[170]

Some argue that what is required is an upgrading of the skill used by police when considering three issues. These issues are whether to use force, what type of force to use, and how much force to use. Toch reports that Carl B. Klockars suggests that one fundamental issue is the need to broaden the focus of inquiry and intervention.[171] Currently, police managers and overseers focus primarily on criminal and other officer misbehaviour that merits punitive responses.

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[167] Toch, H., 'The 'Violence-Prone' Officer' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum :Washington, 1995, p. 103.

[168] Toch, H., 'The 'Violence-Prone' Officer' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum :Washington, 1995, p. 110.

[169] Toch, H., 'The 'Violence-Prone' Officer' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum :Washington, 1995, pp. 110-111.

[170] Toch, H., 'The 'Violence-Prone' Officer' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum :Washington, 1995, pp. 110-111.

[171] Toch, H., 'The 'Violence-Prone' Officer' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum :Washington, 1995, pp. 278-279.

Klockars' view is seen as one which maintains that 'excessive force' should include all police use of force capable of being improved on in the future.[172] When it is also understood that what Klockars recommends is punishment only in instances where the officer's conduct is wilful, egregious or repetitive, this suggestion is not as provocative as it may initially sound.[173]

Klockars' approach has been described in the following paragraphs:[174]

> Every one of the approaches that police now have for defining excessive force is one that says, 'If you use more force than this, you're going to be punished for it.' Either you'll be punished criminally, or you'll be punished by being sued along with your agency, or you're going to be punished because it's caused a scandal. Well, as long as you define the problem of excessive force in this punitive way, you're going to be forced to define excessive force at the lowest possible level, because anything that falls beneath it is going to merit punishment.
>
> It seems to me that the proper approach to the idea of excessive force is to ask, what does really skilled policing consist of? What does policing by the most skilled officer imaginable consist of? Let's try to direct police work toward that standard, rather than constantly engaging in cover-your-ass behavior, or all those kinds of defensive responses that police engage in to avoid the lowest standard. The whole problem in police agencies is that their approach toward the use of force is largely punitive, largely focused toward keeping police officers from violating those low standards, rather than encouraging them to work in ways that highly skilled police officers do to minimise the use of force.

When seeking a standard police should aspire to, Klockars' suggests that police departments need to identify officers who are 'highly skilled' in making arrests and dealing with potentially (or actually) violent people with minimal force and maximum safety.[175] These highly skilled officers are described as those with an uncanny ability to deal with very frightening people in ways that de-escalate the potential for bloodshed through their ability to apply restraint and respect in handling an encounter.[176]

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172 Toch, H. & Geller, W.A., 'Improving Our Understanding and Control of Police Abuse of Force: Recommendations for Research and Action' in Geller, W A and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum :Washington, 1995, pp. 279-280.

173 Toch, H. & Geller, W.A., 'Improving Our Understanding and Control of Police Abuse of Force: Recommendations for Research and Action' in Geller, W A and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum :Washington, 1995, pp. 279-280.

174 Rosen, cited in Toch, H., & Geller, W.A., 'Improving Our Understanding and Control of Police Abuse of Force: Recommendations for Research and Action' in Geller, W.A. and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, pp. 280-281.

175 Toch, H., & Geller, W.A., 'Improving Our Understanding and Control of Police Abuse of Force: Recommendations for Research and Action' in Geller, W.A. and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, p. 281.

176 Toch, H., & Geller, W.A., 'Improving Our Understanding and Control of Police Abuse of Force: Recommendations for Research and Action' in Geller, W.A. and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, p. 281.

Klockars proposes that the highly skilled officers become the benchmark against whom others should be appraised, and whose level of expertise should become the object of professional aspiration for other officers.

Geller and Toch portray this approach in a table, reproduced here as table A, which is used to apply a rating to the amount of force used and the response by the officer or the 'quality of the officer's decision'. The table also contains recommendations for instances in which supervisory intervention, retraining and other changes are required.

Table A: Extent of Departmental Attention to Different Types of Use-of-Force Issues[177]

Amount of Force Used	**Quality of Officer's Decision**		
	A Unreasonable	**B Reasonable**	**C Highly Skilled**
1 *No* force (or very minor force) used	Unreasonable restraint	Justifiable restraint	Commendable restraint
2 *Moderate* force used (isolated incident)	Abuse of force	Justifiable use of force	Commendable use of force
3 *Serious* force used (isolated incident)	Abuse of force	Justifiable use of force (guidance to officer)	Commendable use of force
4 *Moderate to Serious* force used *Frequently*	Abuse of force (violence-prone officer &/or Dept. problems)	Justifiable use of force (guidance, retraining, Dept. changes)	Commendable use of force (Dept. strategic &/or tactical changes)

Rather than punishing those who fall short of emulating the desired level of skill, this approach requires intervention applying supervisory concern, and then remedial action, to those who do not improve on a poor performance. It also means increasing the level of training, active supervision and other support systems to officers who demonstrate excessive use of force.[178]

[177] Toch, H., & Geller, W.A., 'Improving Our Understanding and Control of Police Abuse of Force: Recommendations for Research and Action' in Geller, W.A. and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, p. 280.

[178] Toch, H., & Geller, W.A., 'Improving Our Understanding and Control of Police Abuse of Force: Recommendations for Research and Action' in Geller, W.A. and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, p. 281.

What is seen as important is an approach to 'selling' retraining to officers as an employer-provided, skill-building benefit rather than as a minor humiliation meted out when fines, punitive transfers, termination of employment or other discipline is unwarranted.[179] Except for a small number of officers who knowingly and wilfully misuse force, positive incentives rather than punishment are applicable.[180]

Evaluating the results of interventions and experimenting with a range of training measures is also advocated along with this approach.[181]

This raises the problem that clear lines between appropriate force and excessive force are difficult to draw. The scenario then becomes one in which high-performance officers, or those with an exemplary record, can be involved in evaluating the conduct of other officers.[182]

3.12 CONCLUSION

A number of these themes will be examined in the context of complaints of assault made against police officers in NSW. The following considerations are examined in undertaking this study:

- The contextual factors present in an incident leading to an allegation of police assault, which may assist in identifying ways to reduce the number of assault complaints arising. Particularly considered in this study will be any temporal patterns such as times, locations and situations which appear to give rise to assault complaints in NSW.

- The characteristics of officers more likely to become involved in complaints of police assault. Identifying demographic characteristics may lead to training and preventative resources being more accurately directed at those at risk of receiving allegations of police assault. Of interest to the Commission is demographic data such as gender, whether the officer was *on* or *off-duty*, age group, years of service and rank.

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179 Toch, H., & Geller, W.A., 'Improving Our Understanding and Control of Police Abuse of Force: Recommendations for Research and Action' in Geller, W.A. and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, p. 297.

180 Toch, H., & Geller, W.A., 'Improving Our Understanding and Control of Police Abuse of Force: Recommendations for Research and Action' in Geller, W.A. and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, p. 282.

181 Toch, H., & Geller, W.A., 'Improving Our Understanding and Control of Police Abuse of Force: Recommendations for Research and Action' in Geller, W.A. and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, p. 297.

182 Toch, H., & Geller, W.A., 'Improving Our Understanding and Control of Police Abuse of Force: Recommendations for Research and Action' in Geller, W.A. and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, p. 282.

- The characteristics of individuals more likely to find themselves lodging allegations of police assault following an incident involving conflict with a police officer will also be examined. This data will assist the Commission in ascertaining who are more at risk and recommending strategies to reduce this risk. Demographic data such as the complainant's gender, age group, racial appearance and occupation are particular considerations.

- The characteristics of witnesses to events alleging police assault will be explored and also whether complaints with an independent witness present have given rise to different outcomes than those for which there were no witnesses reported as present.

- Finally, the Commission examines questions pertaining to the investigation of assault complaints in NSW. Of particular interest are whether investigations are conducted, who conducts these investigations, where investigators are located and the outcomes of assault complaints.

The results of this NSW study are presented in the following chapter of this Report.

4. ASSAULT COMPLAINTS: A REVIEW AND ANALYSIS OF THE NSW POLICE SERVICE COMPLAINTS INFORMATION SYSTEM STATISTICAL DATA

This chapter provides information and draws assessments in relation to complaints of police assault. Unless otherwise stated, this data is presented according to allegations of assault rather than complaints. An allegation relates to a single incident of alleged assault, of which there may be more than one in a single complaint. Further, this data relates to allegations of assault made against members of the NSW Police Service during the period 1 July 1993 to 30 June 1997. The following chapter includes data relating to 1998 and 1999. The methodology used was discussed in a previous chapter of this Report.

The following areas are considered in this chapter:

- allegations and their findings;
- the context of assault complaints;
- police officers who have been the subject of assault complaints;
- the complainants;
- the witnesses; and
- the investigators and Local Area Command (LAC) investigations.

With regard to each of these areas, the Commission:

- highlights areas of convergence between the academic literature on police assaults, other official reports and the Commission's statistical research in relation to the characteristics of police officers who have been the subject of an assault allegation;
- comments on some issues of significance in relation to the characteristics of police officers who have been the subject of an assault allegation;
- provides the Commission's assessment on the data; and
- provides the Commission's recommendations in relation to those assessments.

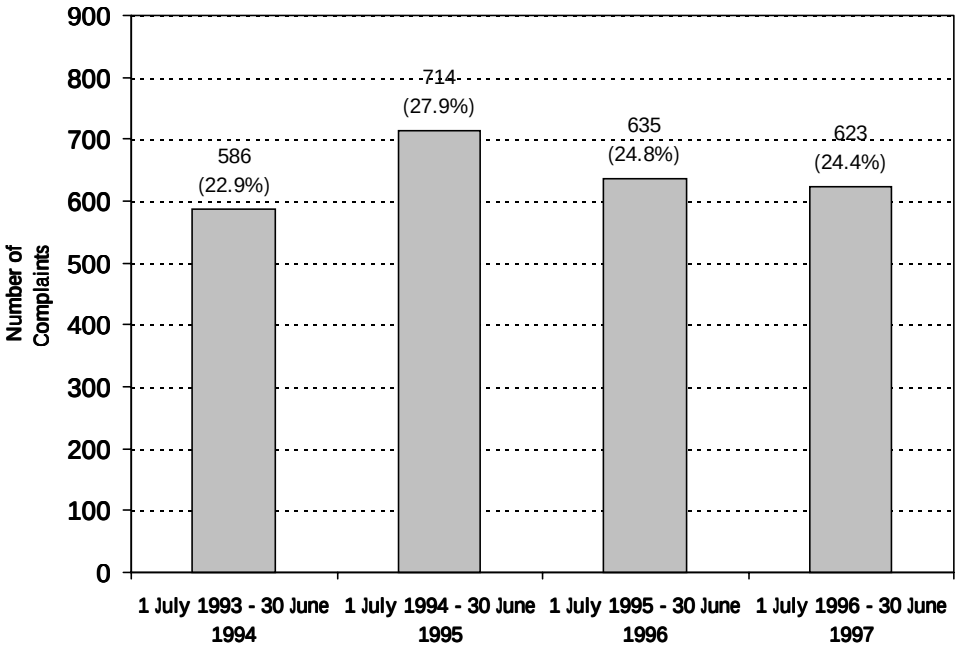
4.1 COMPLAINTS, ALLEGATIONS AND THEIR FINDINGS

This section provides an overview of the structure of assault enquiries and investigations within the NSW Police Service. It presents information regarding the numbers of assault complaints received, the categorisation of allegations and the results of assault allegations.

DISTRIBUTION OF ASSAULT COMPLAINTS

There were 2,559 complaints contained in the data set obtained by the Commission. The average number of assault complaints received each year was 639.5. Figure 1 displays the distribution and frequency of assault complaints according to the financial year in which the complaint was received.

Figure 1: Distribution of Assault Complaints by Date Received



Note: One complaint is excluded from this figure as it did not record a receipt date.

An increase in the number of assault complaints received and reported was evident during the twelve months including the second half of 1994 and the first half of 1995. Following this, a slight decrease occurred over the following 2 years.

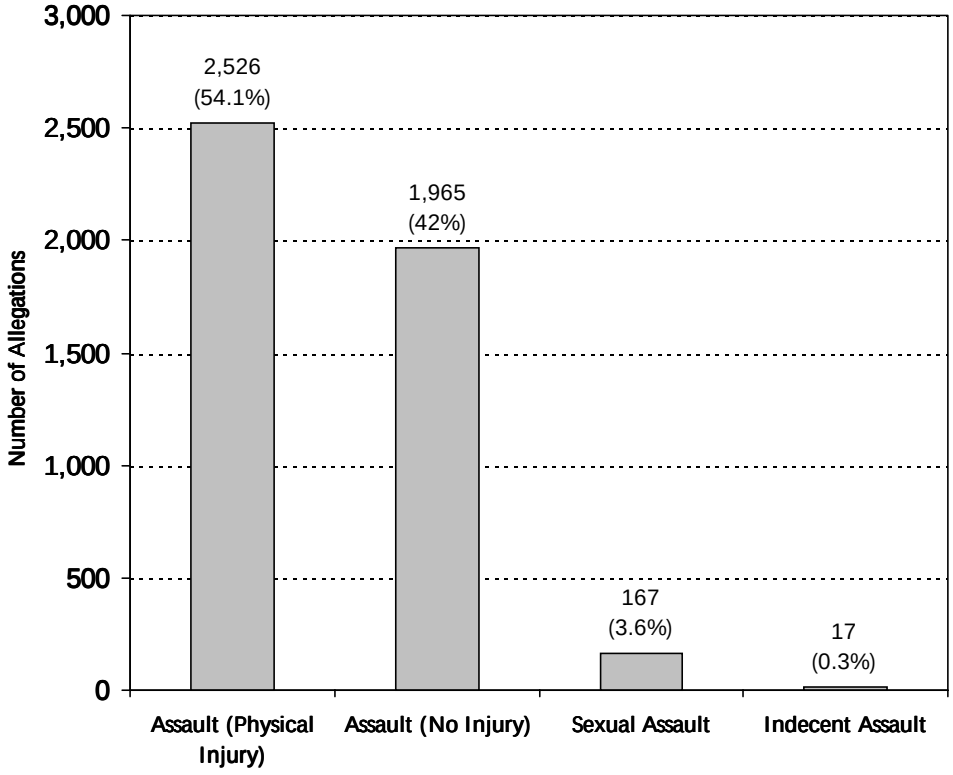
Adams has commented on changes in levels of use of force complaints from one year to the next within cities in the USA.[183] Dr David Brereton, Research Director of the CJC has also observed that complaints data are sensitive to factors such as changes in the reporting behaviour of citizens, recording practices of police and the coding practices of complaints officers.[184]

A potential influence on the reporting behaviour of the public in NSW was the focus of media and public attention on the Royal Commission into the NSW Police Service during this period. The Royal Commission into the NSW Police Service began enquiries and investigations in May 1994 and released its Final Report in May 1997.[185]

ASSAULT ALLEGATIONS BY TYPE

Figure 2 displays the four minor categories under which the Police Service records assault allegations on the Complaints Information System (CIS).

Figure 2: Assault Allegations by Type



[183] Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W A and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, p. 78.

[184] Brereton, D., paper entitled 'The Role of Research in the work of Standing Commissions of Inquiry,' p. 3.

[185] Royal Commission into the New South Wales Police Service, *Final Report Volume I: Corruption*, May 1997, p. 1.

There are, however, numerous minor categories, totalling 149 in all which are listed in Appendix A. In addition to the four minor categories which are used for classifying assault allegations, it can be seen that a number of other minor categories could be applied to an incident of assault. Project Dresden commented on a tendency to diminish the severity of the complaint in allocating and recording the complaint category. That project found that only two of the 24 allegations in a group of complaints examined in the Project Dresden audit, were described in such a way as to indicate that they were Category 1 complaints. The remaining 22 allegations having been entered in such a way as to suggest that they were of lesser consequence.[186] One particularly serious example cited in Project Dresden was an allegation of assault causing grievous bodily harm which was classified on the CIS as 'customer service'.[187]

The following are examples of minor categories from Appendix A which may be incorrectly applied to an incident of assault. This practice would lead to an undercounting of allegations of police assault:

- Improper use of handcuffs;
- Causing injury;
- Other – customer service;
- Improper behaviour not customer service related;
- Other – misuse of powers;
- Other – criminal allegations;
- Improper search;
- Breach of domestic violence order;
- Breach of apprehended violence order; and
- Improper use of batons (not assault).

[186] Police Integrity Commission, *Special Report to Parliament Project Dresden: An Audit of the Quality of NSW Police Service Internal Investigations*, April 2000, p. 38.

[187] Police Integrity Commission, *Special Report to Parliament Project Dresden: An Audit of the Quality of NSW Police Service Internal Investigations*, April 2000, p. 38.

It is important to note that any incidents of assault erroneously recorded in these and other minor categories will not be included in the data captured in this Report. The categories may in this way, obscure excessive use of force by individual officers and therefore lead to managers and commanders receiving an incomplete impression of alleged incidents of assault at an individual and local level. Further, Project Dresden noted that many complaints were also recorded as a single allegation when several allegations should have been recorded.[188]

The statistics in this Report encompass the period 1 July 1993 to 30 June 1997 and include only the four minor category assault types stipulated by the NSW Police Service's CIS. The Police Service advised the Commission that these four assault categories were created in line with the definition of offences contained within the *NSW Crimes Act 1900*.[189] Of these CIS assault allegations:

- the majority, 54.1 per cent, involved assault (physical injury); and
- the next most frequent allegation, 42 per cent, involved assault (no injury).

The remaining allegations concerned sexual or indecent assault and constituted only 3.9 per cent of all assault allegations. The category of indecent assault was created in 1995. Prior to this time, complaints concerning an indecent assault were categorised as a sexual assault.[190]

ENQUIRY OR INVESTIGATION LEVEL

Table 1 sets out the level to which each enquiry or investigation was pursued. Many of these investigation levels, and the terms used to describe them, are no longer employed by the Police Service because of various legislative and other changes.[191] This table presents the data according to complaints rather than allegations.

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188 Police Integrity Commission, *Special Report to Parliament Project Dresden: An Audit of the Quality of NSW Police Service Internal Investigations*, April 2000, p. 38.

189 Letter from NSW Police Service Internal Affairs Command Police Integrity Commission Liaison Unit, enclosing a reply from SASC concerning outcomes of assault complaints, 27 July 1998.

190 Letter from NSW Police Service Internal Affairs Command Police Integrity Commission Liaison Unit, enclosing a reply from SASC concerning outcomes of assault complaints, 27 July 1998.

191 The *Police Service (Complaints and Management Reform) Act 1998* came into operation in March 1999. Amongst other changes, this legislation had an impact on the investigation of Category 1 complaints audited by the Commission.

Table 1: Enquiry or Investigation Level by Complaint

Enquiry /Investigation Level	Number	Per cent
Ombudsman Act investigation	2	0.0
S 165	2	0.0
Departmental/managerial	11	0.5
Oral conciliation	11	0.5
IA preliminary enquiries	12	0.5
IA investigation	24	0.9
Conciliation	45	1.8
Declined but investigated	103	4.1
Oral declined	120	4.7
Declined not investigated	228	8.9
Command level	940	36.7
Preliminary enquiries	1,060	41.4
TOTAL	2,558*	100.0

* 1 complaint recorded the investigation level incorrectly.

The following provides some explanation for each of the terms in Table 1:

- Ombudsman Act investigation. This relates to two provisions under 13AA of the *Ombudsman Act 1974*. These provide the circumstances under which the Ombudsman may conduct preliminary enquiries for the purpose of deciding whether to make particular conduct the subject of an investigation under the *Ombudsman Act 1974*.

- S 165. This relates to the section of the *Police Service Act 1990* which sets out the circumstances under which the Ombudsman may require the Commissioner of Police to provide information for the purpose of conciliation or for determining whether a complaint should be investigated.

- Departmental/managerial. This indicates the complaint was dealt with at a Departmental or Managerial level, rather than by Internal Affairs or at command level. This generally relates to the nature of the complaint with more serious allegations being referred to command level or Internal Affairs.

- Oral conciliation. This indicates the complaint was made orally rather than in writing and was conciliated.

- IA preliminary enquiries. This means that Internal Affairs conducted preliminary enquiries rather than conducting an investigation of the matter.

- IA investigation. This indicates that Internal Affairs conducted an investigation of the matter.

- Conciliation. This indicates that a written complaint was conciliated.

- Declined but investigated. This means that the Ombudsman declined to investigate the matter but the Police Service decided to investigate it anyway.

- Oral declined. This indicates that the complaint was made orally and the Police Service declined to investigate it.

- Declined not investigated. This means that the Ombudsman declined to investigate the matter as did the Police Service.

- Command level. This indicates that the matter was dealt with at command level rather than going to Internal Affairs.

- Preliminary enquiries. Some matters are the subject of preliminary enquiries and are then investigated. Other matters proceed no further than preliminary enquiries. Those which became the subject of preliminary enquiries in Table 3 did not proceed to an investigation.

When the contents of Table 1 were grouped according to whether the matter proceeded to an investigation, or was only pursued as far as preliminary enquiries, the above categories indicated that:

- more than 50 per cent of complaints were not investigated. These complaints were either 'declined not investigated' (8.9%), went to 'IA preliminary enquiries' (0.5%) or were the subject of 'preliminary enquiries' (41.4%).

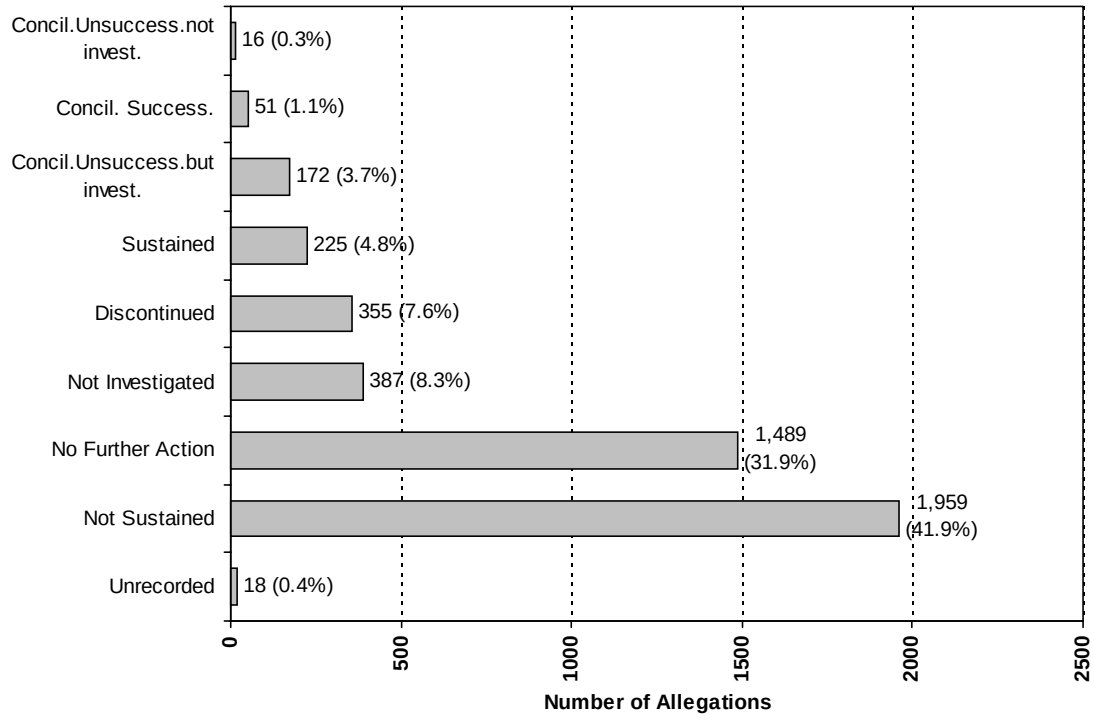
- a significant proportion, 42.2 per cent, proceeded to investigation. These complaints were subject to either 'departmental/managerial' investigation (0.5%), 'command level' investigation (36.7%), 'IA investigation' (0.9%) or 'declined but investigated' (4.1%).

A small proportion were subject to conciliation with some of these also becoming the subject of an investigation.

THE FINDINGS

The findings or results of investigations or enquiries into assault matters were also examined. Figure 3 displays assault allegations by result.

Figure 3: Findings of Allegations*



* Three assault allegations that had been present in the information initially received from the Police Service were not present in a later delivery of data. While not altering the overall trends appearing in the data, this error has resulted in a number of tables displaying the total number of allegations as 4,672 rather than 4,675.

The following provides some explanation of these result categories:

Not Sustained The most frequent finding, at 41.9 per cent, was 'not sustained'. A 'not sustained' result means that an investigation failed to substantiate the allegations contained in a complaint.[192] This may mean that there was no misconduct and may also mean that there was no incident. Alternatively, this finding may mean that the investigation found inadequate evidence to prove those particular allegations.

[192] Letter from NSW Police Service Internal Affairs Command Police Integrity Commission Liaison Unit, enclosing a reply from SASC concerning outcomes of assault complaints, 27 July 1998.

No Further Action Nearly one third, 31.9 per cent, of assault allegations were finalised with the outcome 'no further action'. This suggests that following preliminary enquiries, a decision was made not to pursue an investigation.[193] Both the Police Service and the Ombudsman have the power under the *Police Service Act 1990* to decide that a complaint warrants no further action.

Not Investigated The 'not investigated' finding was applied to 8.3 per cent of allegations. This is a decision which can be made by the Commissioner of Police, providing it is ratified by the Ombudsman under circumstances set out in s 140A of the *Police Service Act 1990.*

Discontinued In 7.6 per cent of cases, allegations of assault were allocated the result 'discontinued'. A discontinued result occurs when the Commissioner applies to the Ombudsman for consent to defer or discontinue an investigation and this is consented to under s 143 of the *Police Service Act 1990.* The Ombudsman can also grant consent to discontinue an investigation if it is believed that it is in the public interest to do so.

Sustained A small proportion, 4.8 per cent, of assault allegations were found to be sustained. This result is produced when a police officer conducting an investigation concludes that there is sufficient evidence substantiating the complaint.

Conciliated An agreement between the Police Service and the Ombudsman, made under Part 8A, Division 3 of the *Police Service Act 1990* determined that certain complaints involving police officers were 'not of a class or kind that can be dealt with by way of conciliation'.[194] The Police Service advised the Commission that this agreement excluded complaints of assault from the conciliation process.

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193 Letter from NSW Police Service Internal Affairs Command Police Integrity Commission Liaison Unit, enclosing a reply from SASC concerning outcomes of assault complaints, 27 July 1998.

194 Letter from NSW Police Service Internal Affairs Command Police Integrity Commission Liaison Unit, enclosing a reply from SASC concerning outcomes of assault complaints, 27 July 1998.

Despite this embargo, the information recorded on the CIS indicated that:

- 3.7 per cent of assault allegations were conciliated unsuccessfully and investigated;
- 0.3 per cent were unsuccessfully conciliated and not investigated; and
- 1.1 per cent of assault matters recorded the result 'Conciliated – Successful'.

The Commission did not obtain data concerning the frequency or the suitability of charges and penalties imposed on NSW police officers following sustained assault complaints. A number of other jurisdictions have, however, examined this aspect of police assaults. The CJC has stated that the likelihood of an officer being sanctioned as a result of a complaint of police assault is extremely small. It has been reported that 0.5 per cent of assault allegations made to the CJC resulted in the imposition of a criminal sanction and only 5 per cent resulted in disciplinary sanctions or resignation.[195] Sanctions were also examined by the Independent Commission on the Los Angeles Police Department. That Commission reported that the punishments imposed on officers for the use of excessive force were more lenient than they should be.[196]

Discussion and Assessment: Allegations and their Findings

There are 149 different minor categories under which police misconduct is classified. A number of these categories provide vague descriptions of behaviour which may or may not be used to classify an assault matter. As acknowledged earlier in this Report, the Commission is of the view that relying on assault matters appearing only in the four minor assault categories provides a somewhat incomplete picture of allegations concerning assault by police in NSW.

Project Dresden highlighted inaccurate recording and describing of allegations including those involving assault.[197] A review of the minor categories is required to eliminate those which are too vague, and to ensure useful information is produced for the use of those managing police officers.

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[195] Brereton, D. and Burgess, M., 'Complaints of Assault Against Police: Why are they so hard to substantiate and what should be done about it?' Presented at the ANZ Society of Criminology, 12th Annual Conference, Griffith University Brisbane, 8 - 11 July 1997, p. 3.

[196] Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department,* 9 July 1991, pp. xx & 165-166.

[197] Police Integrity Commission, *Special Report to Parliament Project Dresden: An Audit of the Quality of NSW Police Service Internal Investigations*, April 2000, p. 38.

This should form part of the project currently occurring to review existing complaints and case management systems called the Police Complaints/ Case Management System.[198]

It is also important that those allocating minor categories to complaints and those reviewing these investigations are aware of the appropriate use of categories. Each allegation and minor category should be checked for consistency with the complaint narrative by the investigator and the investigator's supervisor.

The two result classifications of 'not sustained' and 'no further action' were applied to nearly three quarters, 73.8 per cent, of assault allegations while only 4.8 per cent were found to be 'sustained'.

The Commission is also aware that the situation regarding result category findings has altered. The Police Service has implemented new result categories as described in Appendix B. There are no formal definitions of these categories, however, the Police Service has provided the Commission with what they see as the accepted meaning of each term.[199]

The Commission was also informed that the training of investigators was under review in relation to these categories.[200] This training should clearly inform those involved in investigating complaints what the new terms mean and how to assign these new result categories to an enquiry or investigation.

A study of assault complaints against Queensland police reported that 'Only 9 per cent of the complaints examined could be regarded as substantiated ...'.[201] The Queensland figure was, however, based on complaints rather than allegations. The comparable figure for sustained complaints in NSW was 7.2 per cent. This is still lower than the sustained rate for complaints arising from the Queensland study conducted by the CJC. This can, in part, be explained by the different methodologies employed in these studies. These differences make it difficult to draw direct comparisons between the studies:

- This study uses NSW Police Service complaints data which comprised complaints made directly to the Service rather than complaints made to an external agency. The CJC study examined complaints of assault received and investigated by the CJC.

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198 For further details of this project see Police Integrity Commission, *Annual Report 1997-1998*, p.60 and Police Integrity Commission, *Annual Report 1998-1999*, p. 74.

199 Letter from NSW Police Service, Special Crime and Internal Affairs Command Police Integrity Commission Liaison Unit, concerning definitions of CIS terms, 17 March 2000.

200 Letter concerning changes to Complaints Information System terms from the NSW Police Service, Special Crime and Internal Affairs Command to Police Integrity Commission, 17 March 2000.

201 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police,* March 1997, p. 19.

- This study examines 2,559 complaints by allegation while the CJC study analysed a far smaller number, 271 complaints, and carried out the analysis by complaint.

- This study examines a population of assault complaints received during a four year period. The CJC study took a random sample of complaints. Complaints were then excluded from the CJC sample if 'there was not prima facie evidence that a conflictual incident had occurred'.[202] One effect of this action may have been to exclude from the sample those complaints which were less likely to be found substantiated.

- This NSW study includes all allegations of assault on the CIS, while the CJC study included only complaints in which assault was the major allegation. Therefore files which featured assault as an allegation, but not as the principal allegation, were excluded from the CJC study.

Sustained rates for assault complaints vary across jurisdictions within Australia and overseas. Sustained rates of 10 per cent or below have been reported in the USA. Consistent across many jurisdictions, are reports that, in comparison to other forms of misconduct or corruption, complaints of assault are generally less likely to be found sustained.[203]

The report arising from the Commission investigating the use of excessive force by the LAPD, in the wake of the Rodney King incident reported that of 2,152 allegations dating from between 1986 and 1990, only 42 were found to be sustained by the LAPD.[204] This placed the sustained rate for the LAPD at that time as low as 1.95 per cent.

This Project Oracle study found that a small proportion of assault allegations in NSW were recorded as conciliated. Although further analysis was not conducted to determine what proportion were of a serious nature, Project Dresden found that two Category 1 assault complaints were subject to conciliation.[205] Category 1 complaints involving an allegation of assault, by definition, concern incidents of grievous bodily harm. Further information concerning Category 1 complaints is contained in Appendix C.

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202 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police,* March 1997, p. 5.

203 Pate, A.M. & Fridell, L.A., *Police use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, p.42, 43 and Brereton, D. and Burgess, M., 'Complaints of Assault Against Police: Why are they so hard to substantiate and what should be done about it?' Presented at the ANZ Society of Criminology, 12th Annual Conference, Griffith University Brisbane, 8 - 11 July 1997, p. 10.

204 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department,* 9 July 1991, p. xix.

205 Police Integrity Commission, *Special Report to Parliament Project Dresden: An Audit of the Quality of NSW Police Service Internal Investigations,* April 2000, p. 38.

The Police Integrity Commission considers that if the practice of conciliating or informally resolving serious assault complaints is continuing, it should cease. Category 1 assault complaints are particularly serious matters which allege an officer has caused grievous bodily harm. These complaints should not be conciliated. There are also other serious complaints of assault which may not meet the Category 1 criteria but which should also not be conciliated. These include matters involving physical injury of a serious nature, sexual assault and indecent assault.

A police officer attempting to conciliate an assault matter involving serious allegations of assault, risks giving rise to a view, both within the Police Service and amongst complainants, that assault allegations are not considered serious matters. Further, it is not beyond the realms of possibility that a dishonest officer may seek to avoid the prospect of a sustained finding, and any resulting sanctions, by persuading a complainant who is less than familiar with the complaints process to conciliate an assault matter.

The Commission is also aware that due to changes to the complaints process, an officer may seek an 'Informal Resolution' of a complaint which occurs outside the formal conciliation process.[206]

Recommendations:

- **If the practice of conciliation or informal resolution of serious assault matters is to continue within the Police Service, the Service should adopt procedures which exclude Category 1 assault complaints, involving grievous bodily harm, and serious assault matters involving significant forms of actual bodily harm, from the processes of conciliation and informal resolution.**

- **A review of the minor categories used for classifying allegations on the police complaints system should be undertaken in order to eliminate those which are vague and open to misuse, and to ensure accurate and useful information is produced for the use of those managing police officers. This should form part of the project currently occurring to review existing complaints and case management systems called the Police Complaints/Case Management System.**

(cont. next page)

[206] Letter from NSW Police Service, Special Crime and Internal Affairs Command Police Integrity Commission Liaison Unit, concerning definitions of CIS terms, 17 March 2000.

- **Investigators should be adequately trained and informed with regard to the application of minor categories to allegations and complaints.**

- **In reviewing an internal enquiry or investigation, an investigator's supervisor should conduct a review of minor categories to ensure the matter has been correctly classified and that this is consistent with the evidence of the investigation and complaint narrative.**

4.2 THE CONTEXT OF ASSAULT COMPLAINTS

This section provides information and assessments on the environment and circumstances in which allegations of police assault tend to arise. By considering those factors which persist in incidents alleging police assault, strategies may be identified to help reduce the risk associated with these allegations.

The Commission's premise with regard to this study is that the level of assault allegations against police officers can be legitimately reduced through examination and management of the circumstances in which they occur. One of the objectives of this project, therefore, is to equip the Police Service with information on the circumstances in which assault complaints occur. By 'circumstance', the Commission means '… a condition with respect to time, place, manner, agent, etc which accompanies, determines or modifies a fact or event'.[207]

The contextual information presented here considers the locations, times and other factors associated with complaints of assault.

LOCAL AREA COMMANDS

Table 2 displays the twenty locations giving rise to the largest number of allegations of assault by police. The greatest number of allegations occurred in City Central. Mt Druitt had the second highest number and gave rise to more assault allegations than Redfern or Kings Cross.

[207] *Macquarie Dictionary* definition.

Table 2: Local Area Command of Incident*

Local Area Command	Number
City Central	165
Mt Druitt	155
Kings Cross	133
Redfern	107
Blacktown	103
Surry Hills	97
Liverpool	91
Gosford	81
Bankstown	79
Campbelltown	76
Penrith	70
Moree	67
Fairfield	66
Newcastle	62
Dubbo	61
Parramatta	61
Burwood	60
Cabramatta	58
Albury	53
Sutherland	51
TOTAL	N/A

* This table lists only those Local Area Commands with 50 or more assault allegations received during the period 1 July 1993 - 30 June 1997.

One further consideration in relation to Table 2, is that the structure of the NSW Police Service changed during the period encompassed by the research. In 1994 there were 165 patrols in the NSW Police Service.[208] Local Area Commands were then introduced during 1997[209] in line with Royal Commission recommendations that a revised and flatter structure continue to be introduced throughout the Service.[210]

Further, the officer involved in an assault allegation was not always based within the LAC in which the incident occurred. Table 3, therefore, displays assault allegations in these same locations according to the LAC of the involved officer.

[208] Royal Commission into the New South Wales Police Service, *Final Report Volume II: Reform*, May 1997, and 3.24, p. 237.

[209] *Police Service Weekly*, Vol.9, No.20, 19 May 1997, p. 5.

[210] Royal Commission into the New South Wales Police Service, *Final Report Volume II: Reform*, May 1997, Recommendations 3.23 and 3.24, p. 243.

Table 3: Local Area Command of Involved Officer[211]

Local Area Command (LAC)	No of Assault Allegations	Allegation Rate per Officer (1993-1997)*
Kings Cross	128	0.77
Mt Druitt	124	0.81
Redfern	111	0.92
Bankstown	105	0.5
City Central	102	0.61
Blacktown	97	0.70
Barwon (Moree)	89	1.02
Sutherland	86	0.44
Brisbane Waters (Gosford Patrol)	85	0.52
Penrith	73	0.49
Fairfield	71	0.60
Orana (Dubbo)	70	0.64
Burwood	67	0.44
Liverpool	65	0.43
Albury	59	0.39
Surry Hills	58	0.39
Campbelltown	57	0.31
Newcastle	54	0.35
Parramatta	44	0.24
Cabramatta	41	0.29
TOTAL	N/A	

* Figures concerning number of officers at each LAC are not an accurate guide as it is unclear whether they include officers allocated to task forces operating in the local area and inaccuracies such as these could distort the allegation rate.

The number of allegations and the rank order differs slightly from that in the preceding table. As can be seen in Table 3, Kings Cross has the highest number of assault allegations, followed by Mt Druitt and Redfern. Bankstown now features more prominently followed by City Central.

It is important to note that the LACs displayed in Table 2 and Table 3 are not necessarily poor performers in terms of assault allegations. Although crime rates were not examined in this study, those locations with the highest numbers of assault allegations also appear to be those in which there may tend to be higher rates of crime and therefore more contact between police and members of the public.

[211] The patrol areas noted in brackets relate to the corresponding LACs.

The number of serving officers in each LAC also requires some assessment when considering the level of assault allegations recorded at each location. The number of allegations at the LAC of the involved officer was taken into account along with the number of officers recorded as serving at each LAC as at July 1997.[212] This calculation results in the figures appearing in Table 3 in the column headed 'Allegation Rate per Officer'.

These assault allegation rates varied across the 20 LACs which were included in this group. The range varied from between 0.29 at Cabramatta which had the lowest rate up to 1.02 at Barwon (Moree) which had the highest. Other high assault allegation rates were recorded at Redfern at 0.92, Mt Druitt at 0.81, Kings Cross at 0.77 and Blacktown which had a rate of 0.7 allegations per officer.

It appears from these figures that those LACs with high numbers of allegations also recorded high rates of allegations when considering the number of serving officers. The rate per officer at Barwon appeared to be higher than that recorded in other LACs, however, due to unreliable figures concerning numbers of serving officers no inference can be drawn from this data.

Discussion: Local Area Commands (LACs)

It is not possible to infer more from this data without conducting a detailed comparative analysis which would involve considerations such as regional crime rates and the size and population of the geographic area for which the Command was responsible. Such considerations were not within the parameters set for this study. The figures do, however, indicate that particular LACs are at an increased risk of receiving high numbers of assault allegations. This may or may not relate to factors including crime rates.

It is noted that the report of the Commission of Inquiry into the LAPD acknowledged that officers assigned to high-crime areas will need to use force more often and may generate more complaints than average. That report, however, also acknowledged that many productive officers in high-crime areas did not accumulate high numbers of complaints.[213]

What can be inferred from these figures is that Commanders in charge of high-risk assault areas will need to ensure they are appropriately managing the risk. Risk management is addressed in more detail in other sections of this Report.

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[212] Figures concerning number of officers at each LAC are not an accurate guide as it is unclear whether they include officers allocated to task forces operating in the local area and inaccuracies such as these could distort the figures.

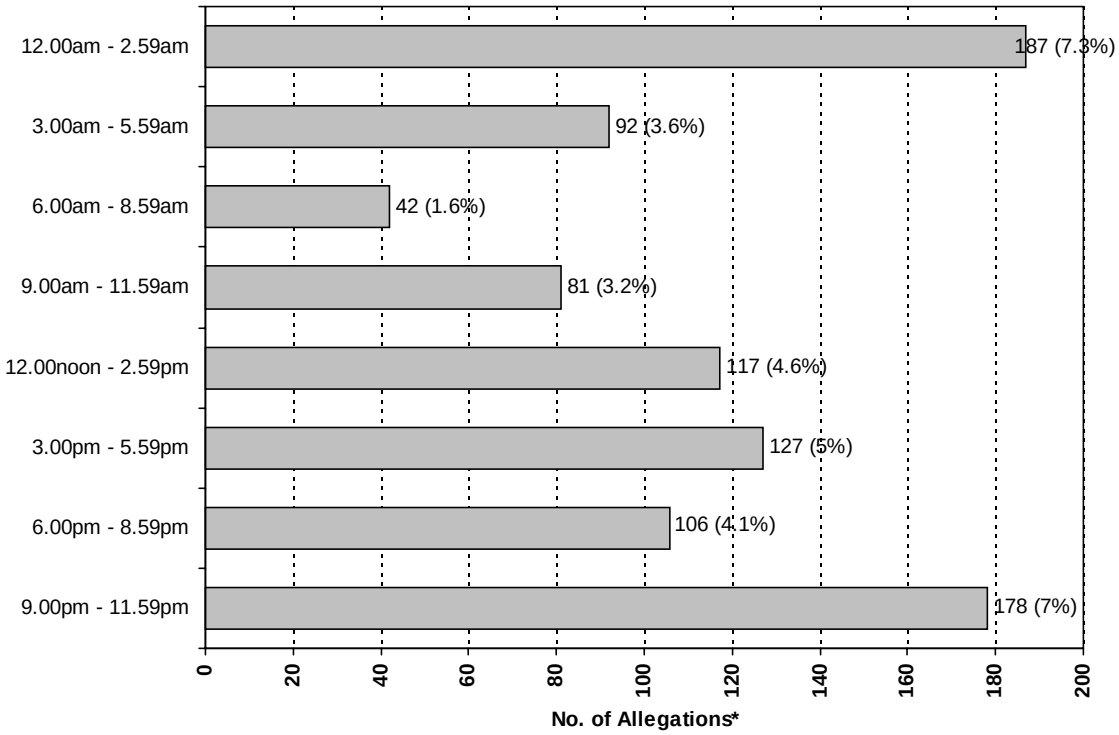
[213] Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department,* 9 July 1991, p. 38.

ASSAULT INCIDENTS - TIME OF INCIDENTS

Figure 4 displays the time of day of incidents alleging police assault. Most incidents, 63.6 per cent, did not have an incident time recorded. The reason for this is not known. There may have been a number of instances in which allegations concerned the behaviour of an officer over a period of days or months and providing a specific incident time in these instances may be difficult. These factors do not adequately account for the high proportion of unknown/unrecorded data.

It is evident from Figure 4 that a higher proportion of assault allegations arose from incidents occurring between 9pm and 3am than at the other times recorded.

Figure 4: Time of Incidents*



* In order to more effectively display differences appearing in the times of day of incidents, the unknown/unrecorded data (63.6%) has been omitted from this table. The percentages displayed therefore do not add up to 100%.

Discussion: Assault Incidents – Time of Day

Despite the fact that no time of incident was recorded for the majority of complaints, the Commission can offer an assessment on this issue based on the 930 incidents for which a time was recorded.

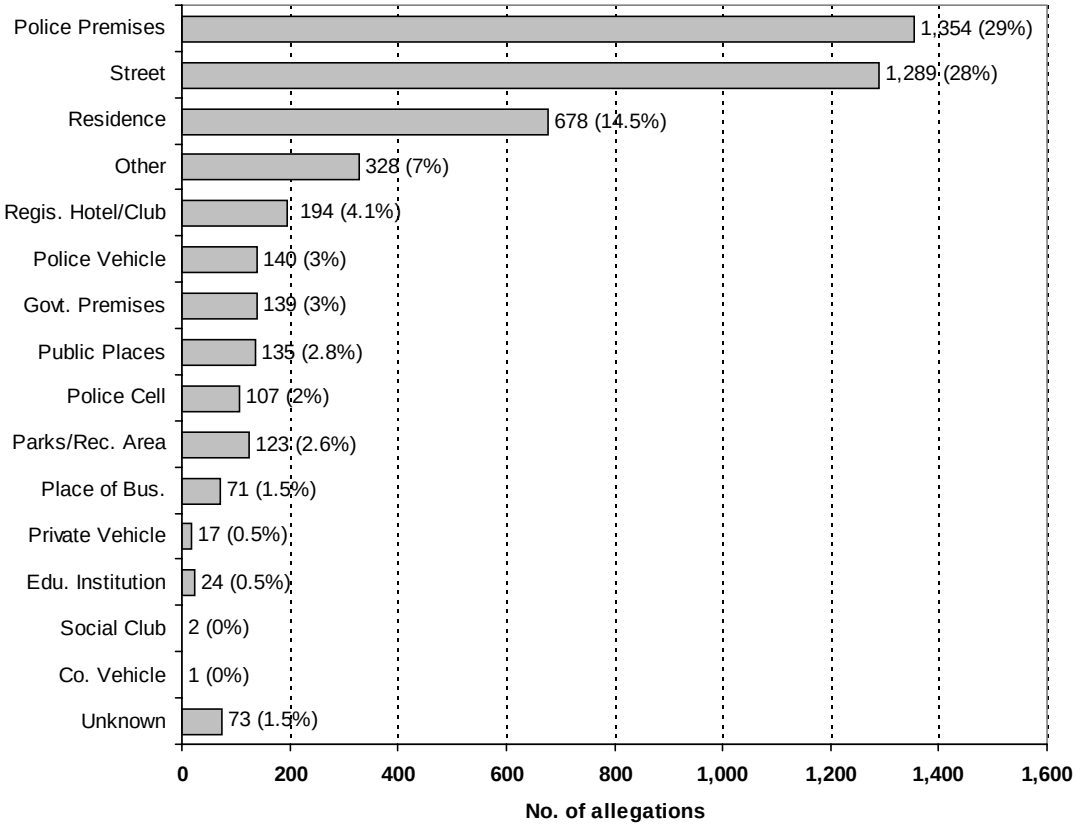
There were some points of convergence between the Commission's research and other research reviewed for this project. A study undertaken by LeBeau,

et al. (1992), found that assaults were more likely to occur between twilight and early morning, whilst the Commission found that 39.2 per cent of those incidents which had a time recorded occurred between 9pm and 3am. It can be inferred from this data that there is an increase in the risk of such allegations against police officers occurring between 9pm and 3am.

LOCATION TYPE OF INCIDENTS

Figure 5 sets out the location types of incidents alleging assault as they are presented on the Complaints Information System.

Figure 5: Location Type of Incidents



The system distinguishes between police premises, police vehicles and police cells and indicates that:

- the greatest proportion of incidents, 29 per cent, were alleged to have occurred on police premises;
- police cells were the location for 2 per cent of incidents; and
- police vehicles were the location for 3 per cent of incidents.

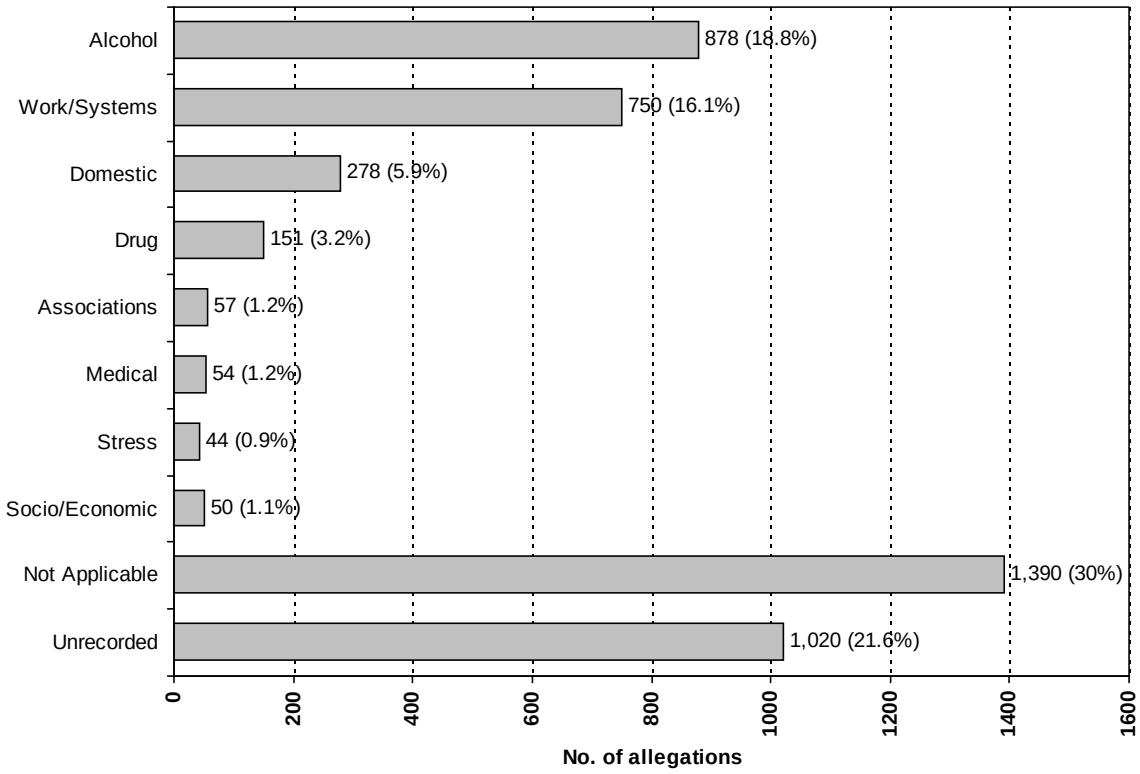
Incidents nominating a police location therefore made up 34 per cent of all allegations of police assault.

The street was also a frequent location for alleged assault incidents at 28 per cent. 'Public places,' 'parks/recreation areas' and the 'street' combine to constitute just over 33 per cent of alleged assault locations while private residences were the location for 14.5 per cent of incidents alleging assault.

CAUSATION FACTORS

Figure 6 displays a category of data called 'causation factor'. This category sets out a number of alternative factors from which an officer conducting an enquiry may select those factors perceived to have precipitated the incident.

Figure 6: Assault Allegations by Causation Factor



The Police Service advised the Commission that causation factors are based on an investigator's interpretation of the situation.[214] Rather than relating to an individual person, the causation factor is intended to relate to the event and is viewed as the cause of the complaint.[215]

[214] Letter from NSW Police Service, Internal Affairs Command Police Integrity Commission Liaison Unit 1999, regarding causation factors, 22 July 1999.

[215] Letter from NSW Police Service, Internal Affairs Command Police Integrity Commission Liaison Unit 1999, regarding causation factors, 22 July 1999.

There was a high proportion, 21.6 per cent, of data with an unstated or unrecorded causation factor. Unlike the other categories of data examined in this study, the causation category offers a 'not applicable' option. Thirty per cent of assault allegations nominated the 'not applicable' causation factor. These 'not applicable' allegations may relate to incidents for which:

- the officer conducting enquiries had inadequate information or understanding regarding what 'causation' means; and/or

- it was deemed the alternative options were less appropriate.

Figure 6 shows that, of the valid, available data, which comprised 48.4 per cent of allegations or 2,262 cases, the most frequently occurring causation factor was alcohol at 18.8 per cent of assault allegations.

A significant proportion at 16.1 percent, were also work/systems related. The NSW Police Service has provided the Commission with the following information in relation to the terms used for causation on the CIS:[216]

> there is no formal documentation or course information material which provides definitions. During training sessions the terms are usually described by way of example. The consensus among regular uses of CIS is that 'Work/Systems Related' is selected when the complaint arises from the complainant's unawareness of police systems, procedures and/or powers, and/or unawareness of Command directions given to an officer(s).

Further, the Police Service has advised the Commission:[217]

> It appears that this category is sometimes misapplied, and is occasionally used as a miscellaneous category.

The causation factor of 'associations' comprising 1.2 per cent refers to the complaint being caused by criminal or improper associations.

The high instance of incomplete CIS entries and associated inaccuracy of the CIS data was also noted in Project Dresden.[218]

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216 Letter from NSW Police Service, Special Crime & Internal Affairs Command Police Integrity Commission Liaison Unit, 2000, regarding definitions of terms used on CIS, 15 June 2000.

217 Letter from NSW Police Service, Special Crime & Internal Affairs Command Police Integrity Commission Liaison Unit, 2000, regarding definitions of terms used on CIS, 15 June 2000.

218 Police Integrity Commission, *Special Report to Parliament Project Dresden: An Audit of the Quality of NSW Police Service Internal Investigations*, April 2000, pp. 37-38.

Discussion and Assessment: Causation Factors

It appears from the significant 'unknown' and 'not applicable' data in this category, 51.6 per cent, that those conducting investigations have some difficulty with the available options and/or the application of this category to their enquiries and investigations.

This category of data has the potential to provide valuable information to police management in their endeavours to:

- understand causation and improve police performance;
- assess individual police who may require extra support, training or remedial action;
- assess widespread causes of complaints against police;
- assess which officers may require investigation;
- better manage the risk of assault complaints against police; and/or
- decrease or prevent the level of complaints against individual officers.

It is difficult to make these assessments using vague or unclear data. The Commission acknowledges that there may be difficulties in ascertaining the cause of a complaint. Nevertheless, the terminology used for the categories 'work/systems related' and 'associations' appear to be less than helpful for investigators looking to accurately describe the cause of a complaint made about a police officer. The lack of formal definitions available in relation to these categories and the misapplication of these factors is a further indication of the need for improved documentation of category definitions and the need for a review of categories.

The ambiguity also renders the information less than adequate for Local Area Commanders or Internal Affairs Officers looking to accurately reflect the circumstances surrounding an officer's complaints history.

It is further noted that the causation factor does not indicate whether this factor relates to the involved officer, the complainant, both or neither.

Recommendations:

- **The Commission recommends that the categories allocated to causation should be reviewed in order to:**
  - **determine a more specific and utilitarian range of options from which an investigator or enquirer may select;**
  - **ensure there is adequate documentation providing definitions for categories and that appropriate training is provided to those applying these categories; and**
  - **ensure the police complaints system causation factor indicates whether the selected factor/s relate to the involved police officer, the complainant or both parties.**

DUTY STATUS OF INVOLVED OFFICERS

Table 4 relates to the duty status of the officer involved in allegations of assault during the period under review and indicates whether an officer was *on-duty* or *off-duty* at the time of the incident.

Table 4: Duty Status of Involved Officers

Duty Status	Number	Per cent
On-duty	3,278	70.1
Off-duty	1,397	29.9
TOTAL	4,675	100.0

This table reveals that in:

- most allegations, 70.1 per cent, the officer was *on-duty* at the time of the incident; and
- a lesser but still significant proportion, 29.9 per cent, the officer involved was *off-duty*.

The CJC, in a report on police assaults, found that 80 per cent of 271 complaints related to *on-duty* police officers while 19 per cent related to police officers who were *off-duty*.[219] Overseas research reviewed for this Report did not offer much comment concerning the duty status of officers involved in police assault. Fyfe recognized that violence reduction training must address the role of police during their non-working hours.[220] The Mollen Commission, when reporting on robberies committed by officers of the New York Police Department, also passed a comment concerning *off-duty* police behaviour:[221]

> For some corrupt officers, criminal activities did not end with their tour of duty. For these cops, knowing the drug business in their precincts lured them back on off-duty hours to stage armed robberies of drug spots.

Further comment is made on the subject of duty status in an assessments section later in this chapter.

CAUSATION BY DUTY STATUS

Table 5 displays the causation factors together with the duty status of the involved officer. A high proportion of allegations either did not nominate a causation factor or selected the causation factor 'not applicable'.

Table 5: Causation Factor by Duty Status

Causation Factor	Off-Duty		On-Duty		Total
	No.	%	No.	%	No.
Alcohol related	310	22.3	568	17.3	878
Work/Systems related	148	10.6	602	18.4	750
Domestic related	148	10.6	130	3.9	278
Drug related	38	2.7	113	3.5	151
Associations	23	1.6	34	1.0	57
Medical related	15	1.1	39	1.2	54
Stress related	13	0.9	31	0.9	44
Socio/economic problems	16	1.1	34	1.0	50
Not applicable	396	28.1	997	30.5	1,390
Unstated/unrecorded	290	21.0	730	22.3	1,020
TOTAL	1,397	100.0	3,278	100.0	4,675

[219] Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police,* March 1997, p. 10.

[220] Fyfe, J.J., 'Training to Reduce Police-Civilian Violence' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum :Washington, 1995, pp. 167-174.

[221] *Commission Report: The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*, (M. Mollen, Commissioner), New York, 1994, p. 30.

The points to note from the above table are that:

- alcohol was considered a causation factor in 17.3 per cent of allegations against officers who were *on-duty* at the time of the incident;

- 22.3 per cent, of assault allegations involving *off-duty* officers were alcohol-related; and

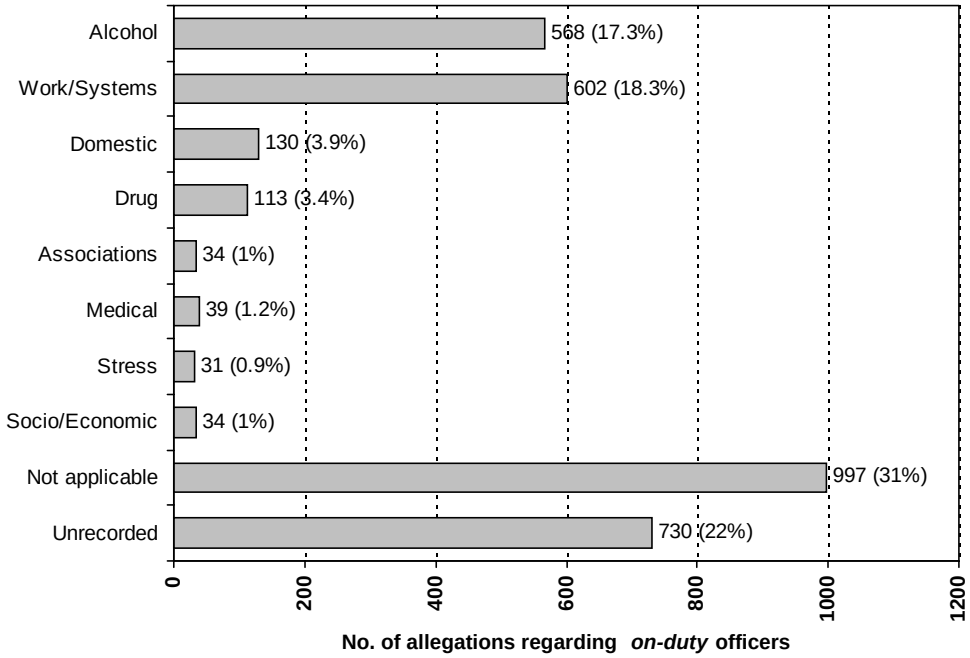
- domestic related assault allegations were considered to be operating in 10.6 per cent of *off-duty* assault incidents but applied to only 3.9 per cent of *on-duty* incidents.

It appears from this data that there are a number of significant differences involved in the causes and circumstances surrounding *on-duty* and *off-duty* incidents. These will now be examined in further detail.

On-Duty Incidents by Causation

Figure 7 displays those assault allegations arising whilst the officer was *on-duty* by causation factor.

Figure 7: Causation Factors When the Officer was On-Duty



The important points to note from this figure are that:

- Alcohol was considered a causation factor in 17.3 per cent of assault allegations occurring when the officers was *on-duty*. It is probably accurate to speculate that a large proportion of these incidents occurred

when the involved officer was called on to address situations in which they were asked to remove or restrain an alcohol-affected person. In such situations a degree of force may be required.

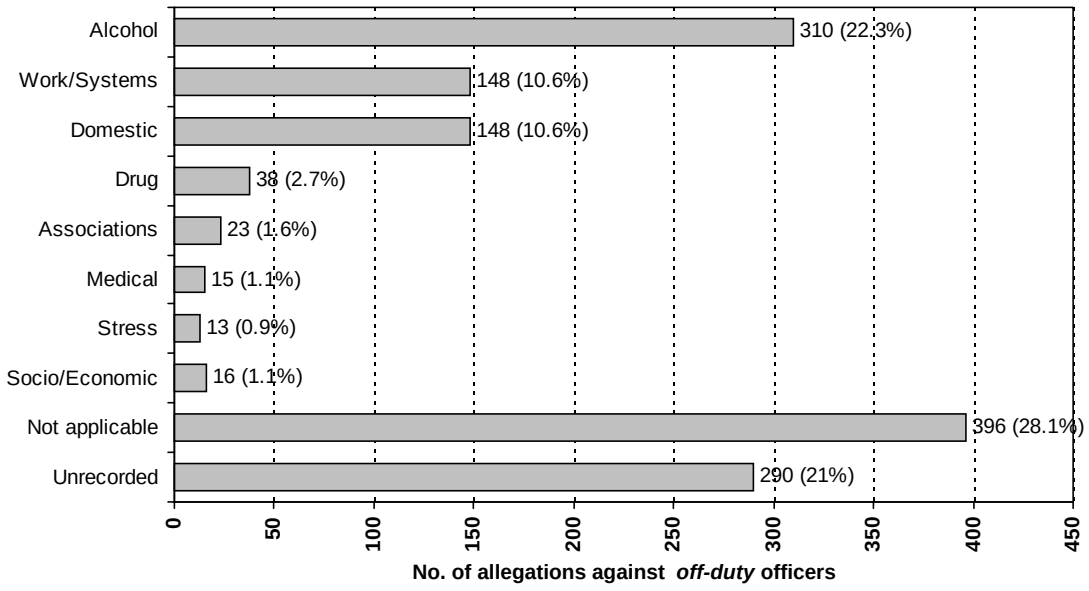
- The causation factor known as work/system factors was allocated a relatively high proportion, 18.3 per cent, of assault allegations occurring while the officer was *on-duty.* The broad interpretation and the misuse of this category of data by the Police Service does not provide for useful discussion or analysis in relation to this category.

- Domestic related assault allegations applied to only 3.9 per cent of incidents occurring while the officer was *on-duty*. Further examination of this data revealed that more of these allegations were made by males, 44 cases, than females, 12 cases.

Off-Duty Incidents by Causation

Figure 8 displays those assault allegations arising whilst the officer was *off-duty* by causation factor.

Figure 8: Causation Factors when the Officer was Off-Duty



Important points to note from this figure are as follows.

Alcohol Causation

More than 20 per cent, 22.3 per cent, of assault allegations involving *off-duty* officers were alcohol-related. These incidents will comprise a range of possible scenarios including those in which:

- an *off-duty* police officer sees the need to become involved with attempting to restrain an alcohol affected person resulting in an assault allegation; and/or

- an *off-duty* police officer affected by alcohol becomes involved in an incident resulting in an assault allegation; and/or

- some combination of these two scenarios takes place.

This issue is further discussed in the assessment section of this chapter. It can be inferred from the findings of this study that most of these *off-duty* alcohol-related incidents did not occur while the officer was undertaking scheduled duties.

Work/Systems Causation

A significant proportion of incidents, 10.6 per cent, occurring while the officer was *off-duty* were seen to be associated with a 'work/systems' causation while nearly twice that proportion, 20 per cent, of *on-duty* incidents related to that cause. The vague interpretation of this factor and its misapplication barred any useful analysis in relation to work/systems. It was however noted that the work/systems category applied to a significant proportion of *off-duty* officer allegations.

Domestic Causation

Domestic related assault allegations were considered to be operating in 10.6 per cent of *off-duty* assault incidents. It appears that an *off-duty* police officer was much more at risk of receiving an assault allegation of a domestic nature than a police officer who was *on-duty* (3.9%). The data did not indicate whether the incident related to the officer's own domestic circumstances or other circumstances.

Further examination of allegations with a domestic causation relating to assault by an *off-duty* officer, revealed that complainants in these allegations were more often females than males. Females comprised nearly 50 per cent (31 cases) of aggrieved persons in assault allegations concerning an *off-duty* officer. Males comprised 36.5 per cent or 23 cases. The remaining allegations did not record the gender of the aggrieved person.

The CJC found that most disturbances occurring *off-duty* in 'private space' were domestic related and that 78 per cent of these involved female complainants.[222] They also discovered, that in all but one of these complaints, the complainant had been in a personal relationship with the involved officer. This contrasted with the *on-duty* incidents in 'private space' in which the officer was acquainted with the complainants in only 22 per cent of cases.[223]

It is possible that many of the assault allegations with a domestic related causation factor involving *off-duty* police officers in NSW have a similar profile. The differences in methodology between the Queensland study and this NSW study, and the fact that qualitative analysis was not undertaken on NSW data due to the number of allegations involved, means a direct comparison cannot be made and inferences cannot be drawn.

LOCATION AND DUTY STATUS

Analysis of information pertaining to the location of the incident and the duty status of the involved officer also revealed that there were a number of important differences between those incidents occurring whilst the officer was *on-duty* and those occurring whilst the officer was *off-duty*.

Table 6 sets out the location of the incident in which the assault was alleged to have occurred and also displays this information according to whether the officer was *on-duty* or *off-duty* at the time.

Table 6: Location Type of Incident and Duty Status

Location Type	Off-Duty		On-Duty		Total
	No.	%	No.	%	
Company vehicle	1	0.1	0	0.0	1
Educational institution	6	0.4	18	0.5	24
Government premises	34	2.4	105	3.2	139
Other	145	10.4	183	5.6	328
Parks/recreation areas	31	2.2	92	2.8	123
Place of business	32	2.3	39	1.2	71
Police cell	28	2.0	79	2.4	107
Police premises	285	20.4	1,069	32.6	1,354
Private vehicle	12	0.9	5	0.2	17
Police vehicle	47	3.4	93	2.8	140

(cont. next page)

[222] Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police*, March 1997, p. 49.

[223] Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland* Police, March 1997, p. 49.

Location Type	Off-Duty		On-Duty		Total
	No.	%	No.	%	
Public places (ie amenities)	45	3.2	90	2.8	135
Registered hotel/club	151	10.8	43	1.3	194
Residence	228	16.3	450	13.7	678
Social club	1	0.1	1	0.0	2
Street	311	22.3	978	29.9	1,289
Unknown/unrecorded	40	2.8	33	1.0	73
TOTAL	1,397	100.0	3,278	100.0	4,675

It is apparent from Table 6, that the risk that an assault allegation will occur varies depending on the location and whether the officer involved is *on-duty* or *off-duty* at the time of the incident. Table 6 reveals that there were more allegations relating to assaults by police who were *on-duty* at police locations (identified as police premises, police vehicle and police cell) than those arising while the officer was *off-duty:*

- over one third, 37.8 per cent, of assault allegations involving an *on-duty* officer cited police locations in the form of police premises, police vehicle or police cell. This was not particularly surprising given that police interact with citizens on police premises following an arrest, and for the purposes of questioning suspects and, at times, witnesses; and

- just over a quarter, 25.8 per cent, of assault allegations cited police space as the location of an assault allegation involving an *off-duty* officer. Although it may be surprising that an *off-duty* police officer would be accused of assault whilst on police premises, there are a number of possible explanations. These allegations may have occurred after *off-duty* officers arrested members of the public and brought them onto police property. A further alternative is that officers may be visiting the workplace while *off-duty* for other reasons. Once on police property an incident then results in an assault allegation.

The comparison in Table 6 reveals that there were far more *off-duty* than *on-duty* officers alleged to have committed an assault in a registered hotel or club:

- only 1.3 per cent of allegations against police officers who were *on-duty* at the time of the incident were alleged to have occurred in a registered hotel or club; and

- 10.8 per cent of assault allegations against police officers who were *off-duty* at the time of the incident, were alleged to have occurred at a registered hotel or club.

LOCATION BY RESULTS

Table 7 displays the findings of allegations of police assault in four different location types.

Table 7: Location by Results

	Police Locations*		Place of Business		Public Places		Registered Hotel	
Result	No.	%	No.	%	No.	%	No.	%
Conciliation (any)	75	4.7	2	2.8	12	8.9	14	7.2
Discontinued	138	8.7	4	5.6	12	8.9	13	6.7
No further action	487	30.5	27	38.0	53	39.3	25	12.9
Not investigated	106	6.6	4	5.6	9	6.7	13	6.7
Not sustained	728	45.5	27	38.0	45	33.3	92	47.4
Sustained	61	3.8	7	10.0	4	2.9	37	19.1
Unknown/ unrecorded	4	0.2	0	0	0	0.0	0	0.00
TOTAL	1599	100.0	71	100.0	135	100.0	194	100.0

* Police locations include the CIS locations 'police premises,' 'police cell' and 'police vehicle'.

It can be seen that the sustained rate for those allegations concerning assault on police premises was 3.8 per cent. Those incidents citing a registered hotel or club as the location had a far higher sustained rate, at 19.1 per cent. This sustained rate is three times higher than almost every other location type and approximately twice that of the location with the next highest sustained rate, which was 'place of business' at 10 per cent.

Discussion: Location and Sustained Rate

It can be seen from the findings in regard to location and sustained rate that officers involved in incidents occurring at a registered hotel or club were more frequently found to be at fault than officers involved in incidents at other locations. This points to the fact that officers at these locations are at an increased risk of engaging in excessive use of force.

ARREST AND RESULTS

Just over half of the complaints of police assault in this study, 52.5 per cent, related to incidents in which police made an arrest. Table 8 displays the outcomes of assault complaints regarding incidents involving an arrest.

Table 8: Findings of Assault Complaints Involving an Arrest

	Complaints regarding Incidents Involving Arrest	
Result Type	No.	Per cent
Conciliation successful	41	1.6
Concil. unsuccessful but investigated	129	4.9
Concil. unsuccessful not investigated	13	0.5
Discontinued	227	8.7
No further action	837	31.9
Not investigated	239	9.1
Not sustained	936	35.7
Sustained	185	7.1
Unknown/unrecorded	14	0.5
TOTAL	2,621	100.0

Discussion: Arrest and Results

A number of studies have found that members of the public who file complaints against police are often charged with resisting arrest.[224] Further, a number of studies indicate that police may invoke resisting arrest charges when concerned that questions may be raised regarding the degree of force they have employed during an incident.[225]

It should also be recognised that there are cases in which a member of the public has resisted arrest. One consequence of such action may be to make arrest without the use of force a difficult task for police.

While it is not possible to draw strong conclusions from these studies, what can be inferred, is that the Police Service found that officers involved in those assault allegations in which an arrest occurred were found to be at fault relatively more frequently than officers involved in all assault allegations in this study.

[224] Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 80.

[225] Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 80. Brereton, D. and Burgess M., 'Complaints of Assault Against Police: Why are they so hard to substantiate and what should be done about it?', Presented at the ANZ Society of Criminology, 12th Annual Conference, Griffith University Brisbane, 8-11 July 1997, p. 10.

MULTIPLE ASSAULT ALLEGATIONS BY DUTY STATUS

The Commission obtained complaints data, which included all assault complaints against officers occurring between 1993 and 1998.[226] From this information, the Commission extracted a group of officers who had received more than one assault allegation, and noted those with at least one of these allegations occurring at a registered hotel or club. There were 88 officers in this group.

Table 9 provides for the comparison of the duty status of all officers receiving assault allegations between 1993 and 1998 with the duty status of those with repeat assault allegations and one of these occurring in a registered hotel or club during this period.

Table 9: Comparison of Duty Status of All Officers Receiving Assault Allegations with Duty Status of those with Multiple Assault Allegations

	All Assault Allegations		Allegations Against Officers with Multiple Assault Allegations*	
Duty Status	No.	%	No.	%
On-Duty	3,278	70.1	118	50.4
Off-Duty	1,397	29.9	116	49.6
TOTAL	4,674	100.0	234	100.0

* At least one of these occurred on a licensed premise.

This table reveals that while *off-duty* officers accounted for nearly one third of *all* assault allegations they comprised nearly 50 per cent of allegations occurring amongst officers with multiple assault allegations and one of these occurring in a registered hotel or club.

Discussion: Off-Duty Behaviour and Multiple Assault Allegations

It is possible to extrapolate from this analysis that there are a number of officers displaying a pattern of *off-duty* behaviour, some of which occurs in registered hotels or clubs, which is contributing to a disproportionate number of assault allegations. This issue will be revisited in the following chapter

[226] Complaints data obtained by the Commission both for this project and report and for the Police Integrity Commission's *Special Report to Parliament Project Dresden: An Audit of the Quality of NSW Police Service Internal Investigations,* April 2000.

of this Report in relation to the police officers involved in complaints of assault.

Although direct comparison cannot be made, it is noted that the CJC found that 54 per cent of assault complaints involving *off-duty* police officers in and around licensed premises had used either alcohol or drugs around the time of the incident.[227] They also found that a relatively high proportion of officers involved in *off-duty* incidents had previously been subject to a complaint of assault with:

- 22 per cent of officers involved in *off-duty* incidents having previous assault complaints against them; whereas

- 11 per cent of officers involved in *on-duty* incidents had previous assault complaints against them.

ALCOHOL-RELATED ALLEGATIONS BY RESULT AND DUTY STATUS

Table 10 sets out the results arising from all assault allegations with an alcohol-related causation factor according to the duty status of the involved officer.

Table 10: Results of Assault Allegations with Alcohol Causation by Duty status

	On-Duty		Off-Duty		Total
Result Type	No.	%	No.	%	No.
Not sustained	282	49.6	119	38.4	401
No further action	184	32.7	98	31.6	282
Sustained	8	1.3	38	12.3	46
Discontinued	49	8.6	29	9.4	78
Not investigated	39	6.8	14	4.5	53
Conciliation – successful	3	0.5	7	2.2	10
Concil. unsuccessful but invest.	2	0.4	3	1.0	5
Concil. unsuccessful not invest.	0	0.0	2	0.6	2
Unknown/unrecorded	1	0.1	0	0.0	1
TOTAL	568	100.0	310	100.0	878

[227] Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police,* March 1997, p. 50.

These *on-duty* and *off-duty* incidents appear to give rise to different findings. This is particularly the case for sustained and not sustained rates. It can be seen from Table 10 that:

- alcohol-related incidents occurring whilst the officers were *on-duty* were marked by a low 'sustained' rate of 1.3 per cent. This is different to the overall 'sustained' rate of 4.8 per cent for assault allegations.

- alcohol-related incidents occurring whilst the officers were *off-duty* had a 'sustained' rate of 12.3 per cent. This is more than twice the 4.8 per cent for all assault allegations. The higher 'sustained' rate for *off-duty* alcohol-related allegations suggests that the Police Service frequently assessed it to be the involved officer who was at fault; and

- the 'not sustained' rate for *on-duty* alcohol-related allegations at 49.6 per cent was higher than that for all assault allegations which was 41.9 per cent.

Discussion and Assessment: Duty Status, Causal Factors and Location of Involved Officer

The extent to which the Commission can offer definitive assessments in relation to the statistics on the duty status of officers who were the subject of complaints is limited. It is noted that the information collected by the Commission in relation to NSW police officers was purely statistical in nature, and provides an incomplete picture of assault complaints and the action taken by the Police Service in response. In view of the enormity of the task, no qualitative review was conducted of the complaint narratives or of internal investigations conducted by the Police Service.

In addition, assault complaints may be incurred against *off-duty* police officers, who have taken appropriate action to protect members of the community. Again, this level of detail is not contained within the statistics drawn from the CIS.

The circumstances in which some incidents have occurred, however, is a matter of concern. Three areas from the above statistics warrant discussion and assessment.

The first consideration is that a significant proportion of assault complaints, 29.9 per cent, indicated that the involved officers were *off-duty* at the time of the incident. One explanation for some, possibly the majority, of complaints against *off-duty* officers is that officers are becoming involved in situations giving rise to conflict while attempting to conduct a policing task or activity.

In addition to their obligations while performing their rostered duties, clauses 12 (1) and (2) and 13 and 14 (1)(a) of the *Police Service Regulation 1990* impose an expectation that police will become involved in issues which require that they discharge their duties whilst *off-duty*.[228] Further details concerning the relevant clauses can be found in Appendix D.

Further, academic commentators have suggested that police officers may carry some of their work behaviours into social settings whilst *off-duty*:[229]

> Complaints about police conduct do not usually arise because police are apprehending burglars in the middle of the night. Trouble arises out of social interactions, especially when cops encounter people who may not be engaging in criminal activity, but whose conduct suggests they might be, or might be the sort of people who would if they could.

The suggestion is that an *off-duty* police officer will still be vigilant for signs that a person may possess stereotypical criminal or 'troublemaker' characteristics which justify intervention.[230] If this were the case, it would be expected that complaints would arise while officers are *off-duty* and that many of these would occur in social settings. The Commission offers no comment on the merits of this view; it may or may not be relevant to the NSW Police Service situation.

Another possible contributing factor is that officers who are *off-duty* and who become involved in a situation that gives rise to a complaint of assault will not, as a general rule, be accompanied by work colleagues or be in possession of police equipment. Police equipment such as a radio to call for backup and handcuffs can assist in providing a safer environment for an officer to carry out policing tasks. The absence of handcuffs and the support of a colleague may restrict the extent of the *off-duty* officer's range of responses. When acting by him/herself to discharge his/her duties as a police officer, an officer may be less able to prevent a conflict situation from escalating and restrain a violent person without harming them.

The Commission considers it a matter of concern that a substantial proportion of complaints of assault are occurring outside an officer's working hours. While it is accepted that police officers frequently work with limited supervision, *off-duty* officers are completely outside of the normal accountability regimes that pertain during an officer's shift. This includes the scrutiny of other officers, such as managers, peers and junior staff.

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228 Police Service Regulation 1990, s. 14(1)(a), s. 12(1) & 12(2) and s. 13.

229 Skolnick, J.H. and Fyfe, J.J., *Above the Law: Police and the Excessive Use of Force.* The Free Press: New York, 1993, p. 97.

230 Skolnick, J.H. and Fyfe, J.J., *Above the Law: Police and the Excessive Use of Force.* The Free Press: New York, 1993, pp. 97-102.

In relation to assault allegations against officers with a domestic causation factor, the Commission considers the gender distribution of those alleging assault by *off-duty* offers in NSW to be a matter which warrants monitoring and attention.

The second consideration requiring comment are the assault allegations against *off-duty* officers occurring on police premises, which comprised just over a quarter of *off-duty* assault allegations. These allegations raise a number of questions concerning why *off-duty* officers are in attendance at police premises. It appears that officers may be visiting the workplace while *off-duty*, either with or without members of the public. Once on police property an incident then results in an allegation of assault.

This study was unable to determine the circumstances surrounding these allegations. The fact that these allegations comprise a significant proportion of assault allegations is an indication that the circumstances in which these allegations occur requires further examination. A clear statement may then be required from the Police Service in regard to police attending the workplace whilst *off-duty*. It was not established whether the police concerned were under the influence of alcohol or drugs while in attendance. The Commission is therefore not able to comment on this. It is noted, however, that there is a statement in regards to police attending the workplace in the *Police Service Code of Conduct and Ethics* stating 'If you are *off-duty* and impaired [by alcohol or drugs], you are not allowed to visit the workplace'.[231]

The third consideration warranting comment is the significant role that registered hotels and clubs and alcohol appear to have in allegations of police assault. This was especially the case whilst officers were *off-duty*. The figures provided information that 10.8 per cent of allegations of assault against *off-duty* police officers occurred in registered hotels or clubs.

In addition, alcohol was an associated factor in 22.3 per cent of incidents occurring while the involved officer was *off-duty*. In relation to this, it is noted that CIS factors relate to particular incidents rather than persons therefore it is not possible to determine whether the complainant, the involved officer, or both parties, were affected by alcohol at the time. The presence of alcohol as an associated factor in 22.3 per cent of alleged police assaults committed by *off-duty* officers in NSW does appear high.

Observational studies conducted in the USA have noted that officers are more likely to use force, and especially improper force against suspects

[231] NSW Police Service, *Code of Conduct and Ethics*, 1999, p. 8.

who are inebriated or antagonistic.[232] Many studies have pointed to an association between alcohol and assault as well as other crime problems. Some have gone so far as to say that alcohol directly induces aggression.[233] A recent NSW study identified a strong and significant relationship between alcohol sales by volume and assault, even when controlling for socio-economic and demographic variables.[234] This study found that hotel sales of beer and assault had a particularly strong positive relationship.[235] A further finding in that study was that beer consumed at hotels frequented by young male drinkers had an impact on the rate of crime, particularly assault.[236]

Although comparison is difficult, a similar issue was considered in research undertaken by the CJC. The CJC found that 33 per cent of *off-duty* incidents occurred 'in or around licensed premises'. In NSW, this Commission's study found a far lesser proportion, 10.8 per cent of *off-duty* incidents occurring in a 'registered hotel or club'. The CJC used the very broad location description 'in or around licensed premises' while the CIS location description in NSW is very specific. This provides a possible explanation for these different findings. The different location options used by the two States hinders further attempts at comparison of location data.

The Commission considers:

- the CIS data does not indicate whether alcohol as a cause of an incident was associated with the officer involved or the complainant, however it is likely given the locations identified in the complaints and the *off-duty* status of these officers, that a proportion will have been affected by alcohol and their judgment, to some extent, will have been impaired;

- it is a matter of concern that licensed premises and alcohol as an associated factor feature in a substantial proportion of assault complaints against *off-duty* officers;

- the higher sustained rate for *off-duty* alcohol-related allegations (12.2%) compared to that of *on-duty* alcohol-related allegations (1.2%) suggests that the Police Service more frequently assessed it to be the involved officer who was at fault; and

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232 Worden, R.E., 'The 'Causes' of Police Brutality: Theory and Evidence on Police Use of Force', in Geller, W.A. and Toch, H (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, 1995, p. 59.

233 New South Wales Bureau of Crime Statistics and Research, *The Impact of Alcohol Sales on Violent Crime, Property Destruction and Public Disorder.* October 1996, p. 1.

234 New South Wales Bureau of Crime Statistics and Research, *The Impact of Alcohol Sales on Violent Crime, Property Destruction and Public Disorder.* October 1996, pp. vii & 12.

235 New South Wales Bureau of Crime Statistics and Research, *The Impact of Alcohol Sales on Violent Crime, Property Destruction and Public Disorder.* October 1996, pp. 27 & 31.

236 New South Wales Bureau of Crime Statistics and Research, *The Impact of Alcohol Sales on Violent Crime, Property Destruction and Public Disorder.* October 1996, pp. 27-28.

- the higher sustained rate for allegations concerning incidents at a registered hotel or club (19.1%) compared to the average sustained for assault allegations (4.8 %) suggests officers involved in incidents at these locations are more frequently found to be at fault.

Two further factors underpin the Commission's concern:

- there is a well-established causal relationship between alcohol consumption and violent behaviour for some individuals. The Commission can see no reason for concluding that some police, like other members of the general community, would not be susceptible to committing acts of violence under the influence of alcohol. It is not possible on the available information, to determine the extent to which this has been a causal factor in complaints against *off-duty* police officers; and

- for the officer who has been consuming alcohol and who may have to react quickly to a situation, there is a dilemma posed by apparently conflicting official obligations. The oath or affirmation and relevant clauses of the *Police Service Regulation 1990* as set out in Appendix D, oblige officers to discharge their duties as police officers whilst they are *off-duty* as well as *on-duty*. On the other hand, the *Police Service Drug and Alcohol Policy*, which came into force in September 1997, provided that officers:[237]

  > '… must not perform your job, remain at work or undertake any Police Service related activity if you are impaired by alcohol or other drugs …'.

  It is noted that this policy was implemented following the period encompassed by the statistics appearing in this chapter. This does not, however, eliminate the conflict imposed by these policing obligations.

Recommendations:

- **The Commission recommends that the Police Service should ensure clear instructions are provided to police with regard to *off-duty* policing responsibilities and alcohol consumption.**

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[237] NSW Police Service, *Drug and Alcohol Policy*, September 1997.

- **The Commission further recommends that the Police Service should assess the most recent 12 months of assault related complaints associated with *off-duty* police officers. The following four areas of incident should each be examined:**
  - **those occurring in registered hotels and clubs;**
  - **those with an alcohol-related causation;**
  - **those with a domestic causation; and**
  - **those involving *off-duty* officers attending police premises.**
- **This assessment should be undertaken with a view to establishing whether these complaints are initiated when police intervene in incidents whilst intoxicated, and further consider the associated risks.**
- **The Commission also recommends that Local Area Commanders should be responsible for reviewing the information available to them in order to assess and manage the level of risk of assault within their commands. The aim should be to reduce the risk posed by assault allegations to both officers and members of the public.**

4.3 POLICE OFFICERS INVOLVED IN ASSAULT COMPLAINTS

The following section presents and assesses demographic data concerning those police officers who were the subject of allegations of assault. The value of information regarding the gender, duty status, age, years of service, rank, and duty type of these officers is that it discloses characteristics of officers most at risk of being the subject of an assault allegation.

The Police Service CIS data indicated that 2,976 officers were involved in 4,672[238] allegations of assault contained in 2,559 separate complaints. The data in this chapter, unless otherwise stated, is presented according to allegations of assault. As discussed earlier, an allegation relates to a single incident of alleged assault, of which there may be more than one within a complaint.

As a result of this approach, where an officer was involved in more than one allegation, data concerning that officer reappears. This approach reflects the data as it appears on the CIS. The data in this chapter represents the officers involved in allegations of assault during the period 1 July 1993 to 30 June 1997 and was derived from the CIS data which counts the frequency of allegations.[239]

GENDER OF OFFICERS INVOLVED

Table 11 displays the gender distribution of those officers involved in allegations of assault.

Table 11: Gender of Involved Officer

Gender	Number	Per cent
Male	4,030	86.3
Female	298	6.4
Unrecorded	344	7.3
TOTAL	4,672	100.0

This data reveals that:

- most assault allegations, 86.3 per cent, identified the officer involved as male;
- 6.4 per cent identified a female officer; and
- 7.3 per cent of allegations failed to identify the officer's gender.

238 Three assault allegations, which had been present in the information initially received from the Police Service, were not present in a later delivery of data. This has resulted in a number of tables displaying the total number of allegations as 4,672 rather than 4,675.

239 An alternative approach would have been to represent each officer only once. This may have generated outdated data where complaints against the same officer occurred over a range of years and, due to the structure of the data would have made it more difficult to carry out analysis by results if this were required. The approach adopted in this section has the effect of inflating trends where the same officer is involved has several incidents due to counts based on allegations as they occur rather than officers. An estimated 5 per cent of the data in relation to involved officer is repeated in the data in this section.

Discussion and Assessment: Gender Issues

The distribution of female police officers within the Police Service between July 1993 and June 1997 was between 12.3 per cent and 15.6 per cent.[240] If all the unrecorded gender information related to females, the number of females involved in allegations of assault would be representative of those within the Service. This is unlikely to be the case.

The study results tend to indicate a significant under-representation of female police officers in allegations of police assault. In terms of other research and studies in this area:

- the CJC study reported a wider disparity between male and female officers in complaints of assault with 95 per cent of officers in those matters identified as male.[241] Due to different methodology the CJC had no unrecorded data concerning officer gender;

- female officers were also found to be less likely than their male counterparts, to be involved in the use of excessive force within the LAPD. Although they were not reported to be reluctant to use force, they were considered less likely to be involved in the use of excessive force;[242] and

- a study from National Police Research Unit in South Australia has reported differences in the verbal exchanges used by male police officers and female police officers. That study reported that while the verbal exchanges used by male police employed controlling tactics and threats associated with escalating conflict, female police used a style of verbal exchange which was more often associated with ongoing verbal exchange.[243]

This data relating to the gender of police alleged to have assaulted was not compared with figures regarding the gender distribution of members of the general public alleged to have assaulted. This study and other research findings, however, suggest that the risk of an allegation of assault being made, appears to be greater when the police officer involved in an incident is male rather than female. It is difficult to draw strong conclusions from this data, especially given that 7.3 per cent of the data is inconclusive in relation to gender.

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240 Letter from NSW Police Service Internal Affairs Command Police Integrity Commission Liaison Unit, Complaints Information System, NSW Police figures for financial year 1993/94 and training material distributed to investigators. Covering letter dated 21 May 1999.

241 Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police,* March 1997, p. 21.

242 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department,* 9 July 1991, pp. 83-84.

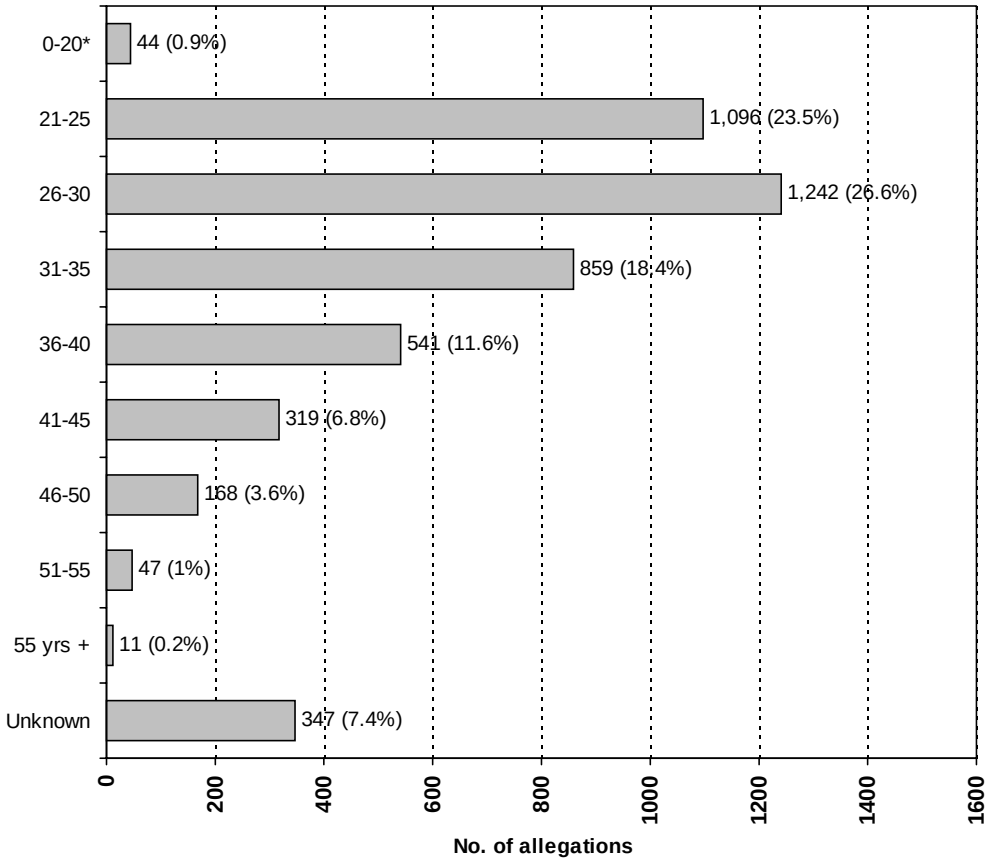
243 Wilson, C. and Braithwaite, H. 'Police officer Behaviour During Interactions with Citizens: What distinguishes the 'skilled' from the 'average' officer?', *Risk Management-Study 3*, National Police Research Unit, South Australia, 1996.

The Commission is aware of the Police Service's endeavours to recruit female police officers in increasing numbers. Given the findings in this and other research, the Commission considers that the Service's approach is consistent with these findings. The importance of increasing endeavours to retain female police officers should also be considered.

AGE GROUPS OF OFFICERS INVOLVED

Figure 9 sets out data concerning the ages of officers involved in complaints of assault according to age groups.

Figure 9: Age Groups of Officers Involved in Allegations of Assault

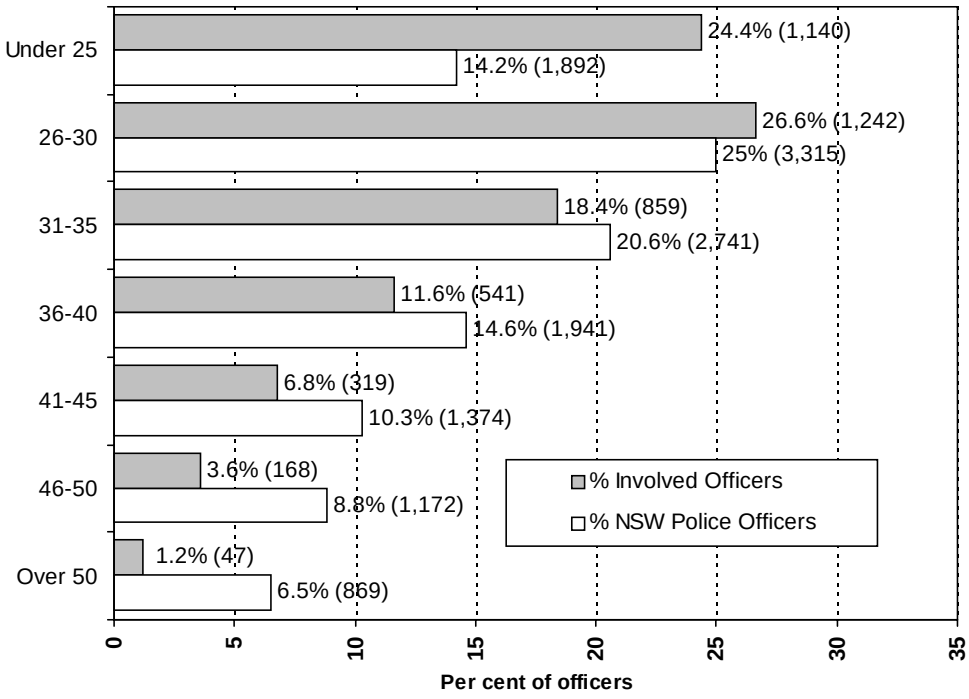


* One officer was recorded as aged 11-15 yrs.

Officers involved in assault allegations were concentrated in younger age groups and peaked in the 26 to 30 year age group. This data should also be considered in relation to the age distribution of officers across the Police Service as a whole.

Figure 10 compares the age groups of officers alleged to have assaulted, with the age groups of officers in the NSW Police Service.

Figure 10: Comparison of Age Groups of Officers Involved in all Allegations of Assault with Age Groups of all NSW Police Officers*



* In order to facilitate comparison involved officers and NSW police officers have been compared using percentages rather than numbers of officers although numbers are displayed in brackets. The 7.4 per cent of 'unknown/unrecorded' data pertaining to the ages of Involved Officers has also been omitted to enable clearer comparison. As stated earlier in this section, information concerning officers has been collated according to allegations – some age groups may have officers with a higher propensity to reoffend and this will be reflected in the data.

Comparing the two data sets reveals areas in which particular groups of officers are over, or under-represented. The top bar of each pair represents the age groups of officers involved in assault allegations, while the other represents the age distribution of officers across the Service.[244] The important points to note from Figure 10 are that:

- police officers under 25 years of age were more significantly over-represented in assault allegations than officers in other age groups. It can be seen that 24.4 per cent of assault matters involved officers in this age group, while these officers comprised only 14.2 per cent of the Service. These officers are also more likely to be involved in general duties;

- officers in the 26 to 30 year age bracket attracted the highest proportion of allegations although they were only slightly over-represented in allegations of assault. These officers comprised 26.6 per cent of alleged assaulters, yet constituted 25 per cent of the Service; and

[244] NSW Police Service, *Annual Report 1996-97*, p. 81.

- officers aged 30 years and over, tended to be increasingly under-represented in assault allegations. These officers also tend to be those who are more likely to hold supervisory, managerial and administrative positions and are therefore less likely to find themselves in situations involving physical conflict.

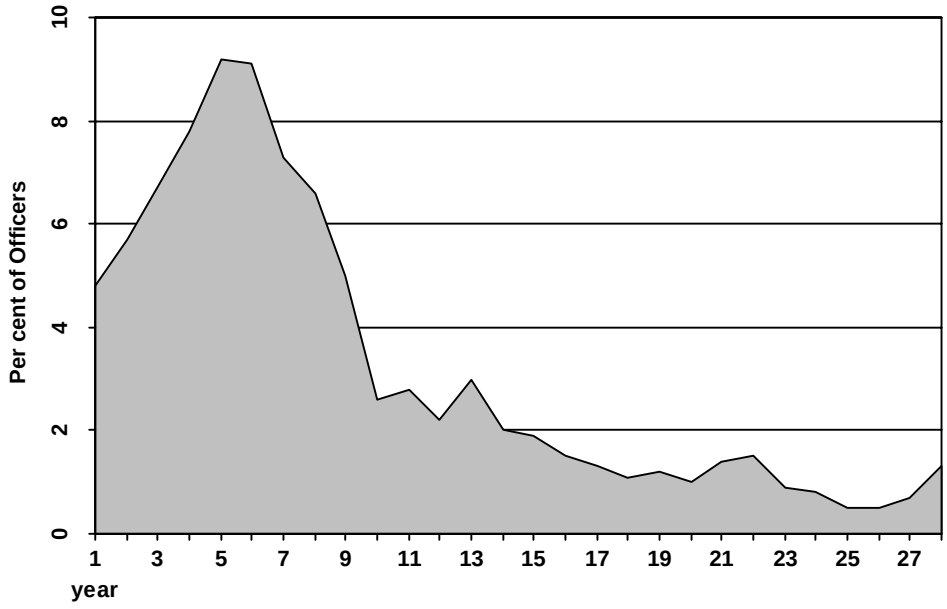
Discussion: Age Groups of Officers Involved

As mentioned earlier, younger officers, under 25 years are more likely to be involved in general duties policing. The statistical analysis in this study did not attempt to measure the relative strength of relationships between the propensity to become involved in assault allegations and other variables such as age or duty type. Age, duty type or both may have an important influence on this propensity.

YEARS OF SERVICE OF OFFICERS INVOLVED

The number of years of service of officers involved in allegations of assault are displayed in Figure 11.

Figure 11: Years of Service of Involved Officers*



* The 9.6 per cent of 'unknown/unrecorded' data, which appeared in the previous table, has been omitted from this figure in order to present a clear graph.

The following three observations can be made on the basis of this data:

- allegations of assault generally concerned officers who were in the early years of their career;

- 4.8 per cent of allegations concerned officers who had between 12 and 24 months of service, with this percentage rising sharply to 9.2 per cent for officers who had completed their fifth year of service;

- after six years of experience in the Service, the percentage of allegations against officers began to decline; and

- overall there was a strong over-representation of assault allegations against officers with up to six years of service, 43.3 per cent.

RANKS OF OFFICERS INVOLVED

Table 12 displays the ranks of officers involved in allegations of assault.

Table 12: Comparison of Ranks of Alleged Assaulters and Serving Officers

Rank	Per cent of Officers Involved in Assault Allegations	Per cent of Total Police Officers in NSW PS[245]
Senior Officer^	0.6	0.0 - 0.1
Senior Sergeant	1.1	3.6 - 3.7
Sergeant	9.4	16.4 - 17.1
Constable First Class/Senior Constable#	51.9	52.8 - 56.4
Constable	25.9	12.4 - 19.6
Probationary Constable	3.0	0.2 - 7.2
Student Police Officer	0.1	N/A
Unknown/unrecorded	7.3	N/A
TOTAL	100.0	N/A

^ Includes officers at the rank of Chief Superintendent, Superintendent, Chief Inspector and Inspector
# Officers who were acting Senior Constables have been included in this category

It can be seen from the above table that officers who were more likely to receive an allegation that they had assaulted a member of the public were:

- at over 50 percent, Senior Constables/Constables First Class;[246] and

[245] Letter from NSW Police Service Internal Affairs Command Police Integrity Commission Liaison Unit 1999, Complaints Information System, NSW Police figures for financial year 1993/94 and training material distributed to investigators. Covering letter dated 21 May 1999. The distribution of officers at each rank fluctuated during the period under examination between the figures presented in this table.

[246] The ranks of Senior Constables and Constables First Class have been combined in this information as the rank of Constable First Class, which received 12.5 % of allegations, was abolished during the period under review.

- at 25.9 per cent, Constables were also frequently involved in assault allegations.

Table 12 also provides for comparing the ranks of officers involved in assault allegations with the rank distribution of officers across the NSW Police Service as a whole. The following is apparent from this table:

- Senior Sergeants and Sergeants together comprised nearly 20 per cent of the total population of NSW police officers but were under-represented in complaints of police assault, with only 10.5 per cent of officers involved in assault matters being Sergeants or Senior Sergeants;

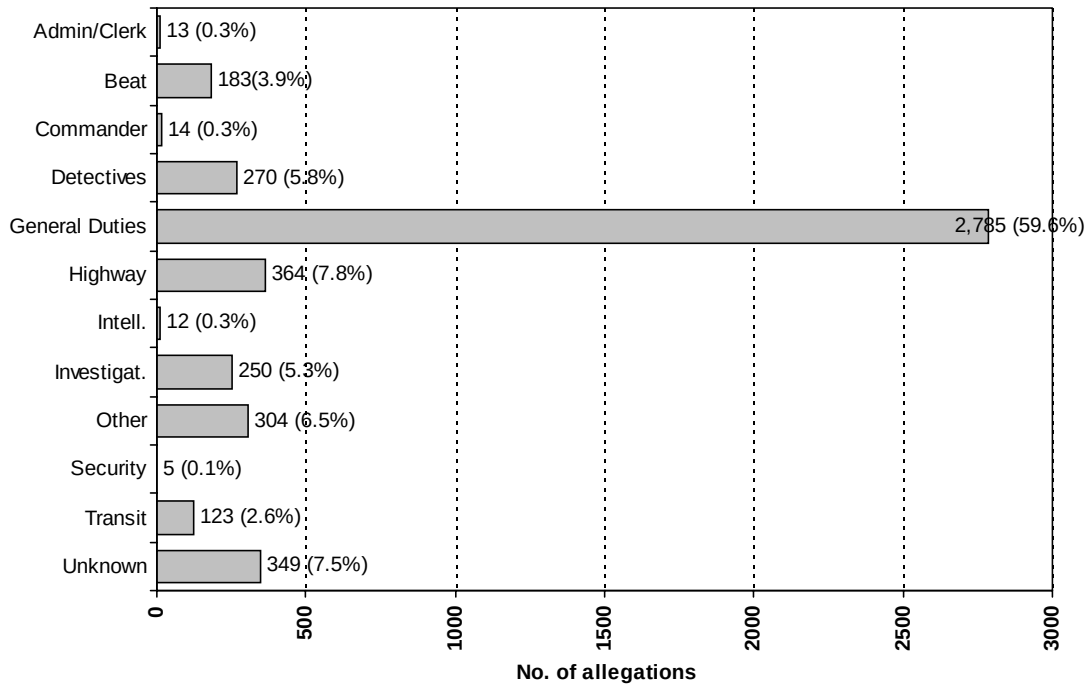
- on the other hand, Constables made up between 12.4 and 19.6 per cent of the Service during this period, but comprised 25.9 per cent of the officers involved in assault allegations. Constables therefore appeared to be strongly over-represented in assault matters; and

- although Senior Constables were involved in more allegations per se, they were not over-represented in these matters in relation to the proportion of Senior Constables in the Service.

DUTY TYPES OF OFFICERS INVOLVED

Figure 12 displays a range of duty types performed by officers involved in allegations of police assault.

Figure 12: Duty Types of Involved Officers



The following observations can be made on the basis of these figures:

- a majority of allegations, 59.6 per cent, concerned general duties police officers; and

- each duty type other than general duties, comprised less than 10 per cent of the population of assault allegations.

The Commission compared these figures with information received from the NSW Police Service concerning the duty types of officers within the Service. Although the staffing data did not provide for a direct comparison with the data in this study, the proportion of general duties officers in allegations of assault reflected the duty assignments across the Service as a whole. It is also important to remember that young officers tend to be those involved in general duties. The strength of the relationship between age and assault allegations and the relationship between duty type and assault allegations were not examined in this study.

Discussion and Assessment: Age, Years of Service and Ranks of Officers Involved in Assault Complaints

Younger officers, in their first 6 years and at Constable rank, require particular attention, training and supervision in order to reduce the level of complaints of assault against this group. A strategy aimed at reducing complaints of police assault and incidents involving conflict should consider rostering less experienced officers *on-duty* along with older, more experienced colleagues. On the job supervision should be available at all times for inexperienced, lower-ranking officers. These practices are particularly important in LACs in high-risk areas, where an officer is at an increased risk of allegations of assault.

LACs in command of high-risk assault areas such as those identified earlier in this Report may be advised to select staff who are less prone to attracting assault complaints. Staffing with more experienced and mature officers as well as recruiting more female officers in these areas may assist in reducing high levels of complaints.

The findings of this study indicate that the age and years of service of an officer influenced the likelihood of involvement in an incident alleging police assault. The risk of a police officer becoming involved in an allegation of assault appears to be higher when the officer involved is aged less than 25 years, in their first 6 years of service and at the rank of Constable. These officers are also likely to be involved in general duties. The Commission considers that the predominance of these officers in complaints of police assault is a matter which requires some attention to rostering and supervision.

A strategy aimed at reducing complaints of police assault and incidents involving conflict is particularly important in LACs in which a high number of complaints of assault are received. These areas are those appearing earlier in this Report, where an officer is considered to be at an increased risk of attracting allegations of assault.

Recommendations:

- **The Commission recommends that the NSW Police Service should undertake an audit of the content of training and education programs currently delivered to police officers regarding use of force in light of the findings of this Report. This should be completed over the six to nine month period following the release of this Report.**

- **This audit should focus on whether police officer training gives sufficient attention to decision-making regarding use of force, use of verbal skills and tactics such as de-escalating conflict and alternatives to the use of force. Particular consideration should be given to whether education and training is adequately directed at those officers facing an increased level of risk associated with their younger age, inexperience and/or rank.**

- **In addition, it should consider whether current training and education gives sufficient attention to preventing the sizeable proportion of assault allegations arising from the *off-duty* behaviour of officers, in particular those with a domestic or alcohol-related causation and those incidents arising in licensed premises. This issue was addressed in an earlier section of this report.**

- **The Commission also recommends that the audit should consider the provision of remedial training designed for officers stationed at LACs identified as having an increased risk of receiving a high number of assault complaints. Suitable remedial training should also be provided to those officers identified**

(cont. next page)

by Local Area Commanders, supervisors and/or the Special Crime and Internal Affairs Command as attracting multiple assault complaints or facing an increased risk of attracting allegations of assault.

OFFICERS WITH MULTIPLE ASSAULT COMPLAINTS

Of the 2,976 officers who became the subject of assault complaints between 1993 and 1997, 71.5 per cent (or 2,128), were named as involved in only one complaint.

Three hundred and three officers or approximately 10 per cent, were alleged to have been involved in three or more complaints. Of these officers, 16 had seven or more assault allegations against them during the study period. The indication from this information is that a small number of officers appeared to be attracting a significant proportion of complaints.

A previous section of this Report examined the duty status of 88 officers with more than one assault allegation against them occurring between 1993 and 1999 with at least one of these taking place at a registered hotel or club. That examination found that nearly 50 per cent of these allegations involved officers who were *off-duty* at the time, while only 29.1 per cent of the total population of alleged assaulters were *off-duty*.

In addition to the evidence that a small number of officers are responsible for a significant proportion of complaints, it appears that there are also a number of officers who display a pattern of *off-duty* behaviour which contributes to a disproportionate number of assault allegations.

Discussion and Assessment: Officers with Multiple Complaints

Local Area Commanders should ensure they are providing adequate management of the risk of misconduct in regard to excessive use of force amongst police officers under their command. CIS information has been available to these managers for some time. This information can be appropriately accessed and used by managers to design and implement measures which will reduce the risk of assault allegations.

LAC managers need to assess the level of complaints of police assault and to be aware of trends in regard to particular officers, particular areas of the police station premises which may give rise to an increased risk, and particular behaviour amongst their officers. Local Area Commanders need to take responsible managerial action to ensure strategies and procedures

are in place and adhered to by those under their command. These procedures should, in part, be focussed on protecting those who come into physical contact with police officers. Other aspects of management to be considered are the role of the custody manager in recording instances in which a suspect or offender reports physical injury. The custody manager should also ensure appropriate procedures are followed, and give consideration to whether the officer facing allegations of assault should have any further role with the complainant.

The findings in this study concerning officers with multiple assault complaints is consistent with a finding in the report of the Independent Commission examining excessive use of force in the LAPD. As explained elsewhere in this Report, that Commission was established in response to the Rodney King beating. The Independent Commission reported that a strong concentration of allegations had been made against a problem group of officers with little evidence of management taking action to curtail the activities of these officers.[247] This appears to be a recurrent theme in many studies of police assault and excessive use of force.[248]

Research by the Police Integrity Commission into NSW Police Service internal investigations of Category 1 complaints known as Project Dresden revealed that there was a low level of pre-investigation research and checking.[249] In only 7 per cent of the investigations reviewed by the Commission was there preliminary research or pre-investigation checking conducted, including the checking of an officer's complaints history.[250] The Commission has not considered individual internal investigations conducted by the Police Service into complaints of police assault. Therefore we cannot assess the level of pre-investigation research conducted in relation to complaints of police assault. It is noted, however, that some of the consequences of not reviewing an officer's complaints history in relation to their use of force when conducting an internal investigation into an assault matter are that:

- a possible pattern of behaviour with regard to the use of force may go undetected;

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

[248] Brereton, D. and Burgess, M., 'Complaints of Assault Against Police: Why are they so hard to substantiate and what should be done about it?' Presented at the ANZ Society of Criminology, 12th Annual Conference, Griffith, 1997.

[249] Police Integrity Commission, *Special Report to Parliament Project Dresden: An Audit of the Quality of NSW Police Service Internal Investigations*, April 2000, pp. 20-22.

[250] Police Integrity Commission, *Special Report to Parliament Project Dresden: An Audit of the Quality of NSW Police Service Internal Investigations*, April 2000, p. ii.

- an officer's suitability for certain types of duties which exposes them to intense or a high number of situations involving potential physical conflict may not be considered; and

- a training need with regard to how an officer handles physical conflict may go undetected.

The Commission considers that a proactive approach to identifying police officers with multiple assault complaints is warranted. Given that assault complaints together constituted a significant proportion of all complaints made against police during this period, separate initiatives ought to be set in train in relation to this issue. The benefits of such an approach would be that it could assist in identifying officers:

- predisposed to the excessive use of force, enabling early management intervention and appropriate supervision of those officers; and

- who should be considered for investigation in relation to their use of force.

The analysis detailed both here and in the previous chapter revealed a relationship between those officers who receive multiple allegations of assault and their duty status at the time. Nearly 50 per cent of officers with multiple allegations were *off-duty* at the time of the incident. This has lent support to the concerns that not only are a small group of officers responsible for a disproportionate number of assault complaints but there are a group with multiple assault complaints whose *off-duty* behaviour warrants attention.

The Commission notes that the Police Service has previously reported that it has developed a methodology for identifying officers at risk of serious misconduct. That model, which is described in Appendix E, was developed by the Internal Affairs Command and takes into consideration:

- duty types;

- associations formed;

- duration and location;

- performance; and

- complaints history.

The Commission also notes that the NSW Police Service at one time had in place a 'Register of Resistance' as part of the 'COPS' computerised event system.[251] The purpose of the register was to: [252]

- collect statistics for a 'Use of Force' database;
- assess the effectiveness of training in relation to use of force; and
- provide an indication to police of prior behavioural patterns of offenders.

The system was designed to operate through the mandatory data entry of information by investigating officers. The information would then be used to generate reports for analysis and action. Entry of information into the register was, however, never made compulsory and the system has failed to achieve its intended purpose.[253]

Systems such as these have been used in policing jurisdictions in the USA and in Australia to assist in recording, identifying, managing and supervising the risk posed by police who engage in excessive use of force.

Recommendations:

- **A review of the use of an effective system similar to the 'use of force register' described earlier should be undertaken to assess its benefits and application to the NSW Police Service. An approach such as this could assist in identifying officers:**
  - **predisposed to the excessive use of force and would enable early management intervention; and**
  - **who should be considered for investigation in relation to their use of force.**

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[251] Letter from NSW Police Service Internal Affairs Command Police Integrity Commission Liaison Unit 2000, concerning a 'Register of Resistance' enclosing a memo describing the Register of Resistance project and COPS Newsletter, 16 March 2000.

[252] Letter from NSW Police Service Internal Affairs Command Police Integrity Commission Liaison Unit 2000, concerning a 'Register of Resistance' enclosing a memo describing the Register of Resistance project and COPS Newsletter, 16 March 2000.

[253] Letter from NSW Police Service Internal Affairs Command Police Integrity Commission Liaison Unit 2000, concerning a 'Register of Resistance' enclosing a memo describing the Register of Resistance project and COPS Newsletter, 16 March 2000.

- **The significant proportion of multiple assault allegations arising from officers who are *off-duty* indicates this approach should consider the behaviour of *off-duty* officers.**

- **The Commission also recommends that, if it has not done so already, the Police Service should engage in a discrete project using its threat assessment model (Appendix E). This project should identify, on an ongoing basis, officers with multiple complaints of assault and ascertain whether those complaints have occurred *on-duty* or *off-duty*. This should be an organisation-wide project which involves liaison between the Internal Affairs and Special Crime Command and Local Area Commanders to ensure Local Area Commanders are equipped and accountable to manage the risk of assault.**

- **In particular that project should consider areas in which officers appear to be at an increased risk of becoming involved in an assault. These include incidents:**

  - **occurring in registered hotels and clubs;**

  - **with an alcohol-related causation;**

  - **with a domestic causation; and**

  - **involving *off-duty* officers attending police premises.**

4.4 THE COMPLAINANTS

Examining information concerning complainants assists to develop an understanding of the characteristics of those persons lodging complaints alleging assault by a member of the NSW Police Service.

The CIS records data concerning both those alleging they were assaulted, and those lodging the complaint. Generally, in 69.6 per cent of cases, the aggrieved person lodged the complaint. In nearly one third of cases, 30.4 per cent, the aggrieved was represented by another person, for example a

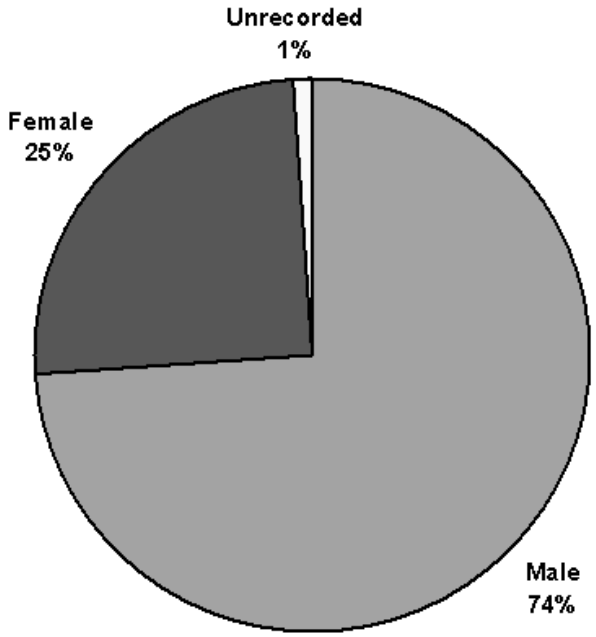
medical practitioner, Member of Parliament, member of the Aboriginal Legal Service, a social worker, or another member of the public.

As the differences between the aggrieved and complainant data were not of particular interest in this study, only the aggrieved CIS information is displayed in this section of the Report. Rather than being referred to as 'aggrieved' persons, those making allegations are referred to as 'complainants' throughout the remainder of this Report.

GENDER OF COMPLAINANTS

Figure 13 sets out the gender of complainants and demonstrates that in a majority of incidents, nearly 75 per cent, the victim of the alleged assault was male.

Figure 13: Gender of Complainants*



* The figures in this chart have been rounded to the nearest whole number.

The proportion of males in Figure 13 appears to be greater than the proportion of males reporting becoming victims of crime as demonstrated in a NSW victims of personal crime survey.[254] That survey pertained to victims of robbery, assault and sexual assault and found that males reported being victims of personal crime in 56.8 per cent of incidents, and females

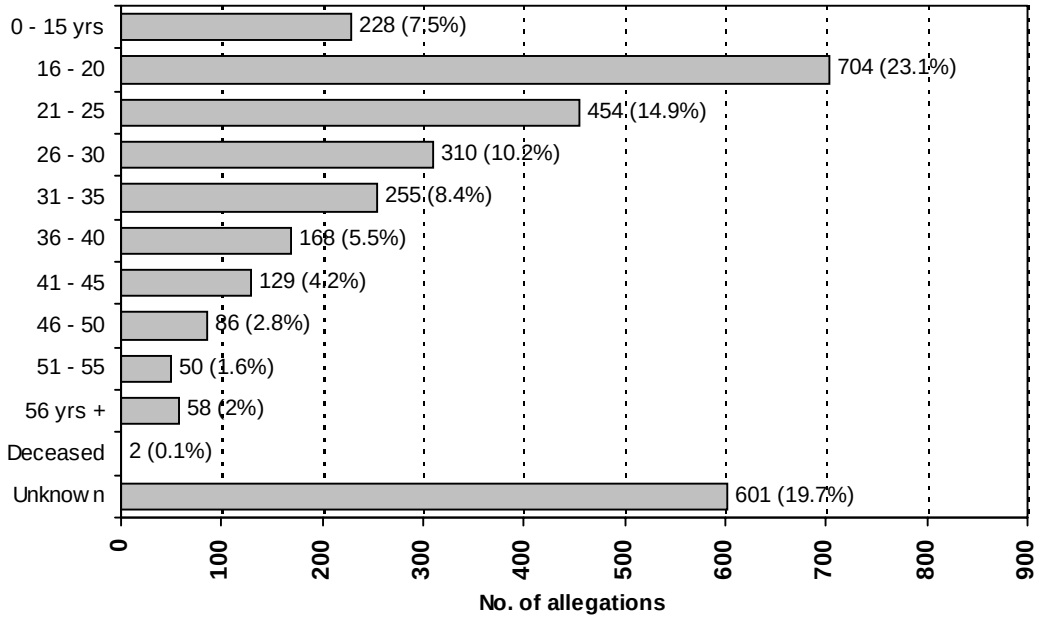
[254] Australia Bureau of Statistics, *Crime and Safety, New South Wales, ABS Catalogue No. 4509.1, A*pril 1997, p. 8.

in 43.2 per cent of incidents.[255] Figure 13 shows that those alleging police assault are more likely to be male.

AGE GROUP OF COMPLAINANTS

Figure 14 displays the age groups of those alleging they were victims of an assault committed by a member of the NSW Police Service.

Figure 14: Age Group of Complainants



It can be seen from the above figure, that in close to one fifth of cases, the complainant's age was not recorded. Other important points to note are the following:

- adding those aged 21-25 years, 16-20 years and 0-15 years reveals that nearly half of those alleging assault, 45.5 per cent, were reported to be aged 25 years or less;

- nearly a quarter of complainants, 23.1 per cent, were aged 16 to 20 years age; and

- 7.5 per cent of those alleging assault were juveniles under 15 years of age.

[255] Australia Bureau of Statistics, *Crime and Safety, New South Wales, ABS Catalogue No. 4509.1,* April 1997, p. 8.

Discussion and Assessment: Age Group of Complainant

The Australian Bureau of Statistics survey of NSW victims of personal crime in 1997 reported a propensity for those aged 16-25 years to become victims of the crimes of robbery, assault and sexual assault.[256]

This Commission's study, while only considering allegations of assault made against police, also indicates a strong over-representation of young people.

The Commission considers the high proportion of youths and juveniles revealed in this study to be a matter of some concern. Close to a quarter of those alleging police assault were less than 20 years of age, and 7.5 per cent were less than 15 years. Those less than 20 years of age therefore constituted 30.6 per cent of those alleging that police in NSW assaulted them during this period. The high proportion of teenagers and juveniles complaining of police assault appear unrepresentative of these age groups in the general population, and indicates a high degree of exposure amongst younger people to incidents involving conflict with police.

An added concern is that those who are 18 years or less are acknowledged to be 'vulnerable' persons under the *NSW Police Code of Practice* with regard to police powers governing custody, rights and investigation.[257] An issue here is whether those aged 18 years or under are also more likely to come into contact with police. Nevertheless, it can be inferred from the strong representation of young people in these findings, that when police come into physical contact with a person less than 20 years of age, there is risk of assault which requires some consideration.

The Commission's view is that the video taping of interviews between police and those less than 18 years of age would assist in managing the level of risk of complaints from these persons. Those less than 18 years of age should also be accommodated in appropriate areas of the police station which are equipped for video surveillance. The relevant tapes should then be used by an investigator for review when a complaint arises. The availability of video taped evidence may assist deter police inclined to abuse their power, and assist deter vexatious complaints.

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256 Australia Bureau of Statistics, *Crime and Safety, New South Wales, ABS Catalogue No. 4509.1,* April 1997, p. 8.

257 NSW Police Service, *Code of Practice for Custody Rights Investigation Management Evidence* (CRIME), February 1998, p. 47.

Recommendation:

- **The training audit referred to earlier in this Report should consider whether education and training is adequately focused at reducing the increased risk associated when officers come into physical contact with juveniles and youths.**

RACIAL APPEARANCE OF COMPLAINANTS

The data in Table 13 displays the racial appearance of those persons alleging they were assaulted by police during the period under review.

Table 13: Racial Appearance of Complainants

Racial Appearance	No. of Complainants	Per cent of Complainants
Caucasian	1,362	44.7
Aboriginal	358	11.8
Mediterranean	81	2.7
Middle Eastern	85	2.8
East Asian	37	1.2
Eastern European	36	1.2
Pacific Islander	37	1.2
Latin American	18	0.6
Northern European	18	0.6
South East Asian	18	0.6
Other ethnic appearance	12	0.4
Indian	7	0.2
Eurasian	4	0.1
Torres Strait Islander	1	0.0
Black African	1	0.0
Unknown/Unreported	970	31.9
TOTAL	3,045	100.0

For nearly one third of complainants, information concerning racial appearance was not recorded.

It can be ascertained from the data assessed concerning the 2,075 persons for whom this information was available that:

- those of Aboriginal and Torres Strait Islander appearance were alleged to be the subject of assault by police in 11.8 per cent of cases; and

- this indicates there is a strong representation of Aboriginals and Torres Strait Islanders alleging police assault. According to information received from the Australian Bureau of Statistics Aboriginals and Torres Strait Islanders comprised only 1.68 per cent of the population of NSW in 1996.[258]

Discussion and Assessment: Racial Appearance of Complainant

These findings are similar to those of studies conducted both within Australia and overseas which consistently report a strong representation of indigenous persons in allegations of police assault.

The CJC reported that 11 per cent of assault incidents identified the subject of the assault as an Aboriginal or Torres Strait Islander, while these persons comprised 2.4 per cent of the Queensland population in 1991.[259] Studies in the USA have also maintained that a person's colour influences an officer's tendency to use improper force.[260]

The NSW data presented in this Commission's study indicated that, in relation to their representation amongst the State's population, the proportion of these people alleging police assault in NSW was greater than in Queensland.

At issue is also whether Aboriginals and Torres Strait Islanders are over-represented amongst assault complaints, relative to the amount of contact which they have with police and the criminal justice system. This issue was not examined in this study.

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[258] Australian Bureau of Statistics, *Census of Population and Housing: Selected Social and Housing Characteristics, 2015.1*, p. 15. The census lists 101,485 persons in NSW self identifying as Aboriginal or Torres Strait Islander persons while the total population of NSW was estimated to be 6,038,696.

[259] Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police*, March 1997, p. 28.

[260] Worden, R.E., 'The 'Causes' of Police Brutality: Theory and Evidence on Police Use of Force', in Geller, W.A. and Toch, H. (Eds), *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, 1995, pp. 46 & 59.

Dr Janet Chan has suggested that Aboriginals and Torres Strait Islanders may face additional barriers to reporting complaints from a system requiring that complaints be in writing. She also suggests that many complaints are self-investigated by police and that these people fear harassment from police following a complaint.[261]

It has been suggested that in other policing jurisdictions, such as the LAPD, a failure to actively enforce policies against racial and ethnic bias contributed to an over-representation of indigenous persons in complaints of assault by police.[262]

Some researchers have suggested that the discretion available to police officers to stop, search or arrest suspects may often be informed by stereotypes of what is 'normal' or 'suspicious'.[263] Janet Chan has commented that the occupational culture of policing condones stereotyping, harassment or even violence against particular groups in society and that the code of secrecy and solidarity ensures deviant practices are covered up or rationalised.[264]

Without comparing the findings in this study with how frequently Aboriginals and Torres Strait Islanders come into contact with police, it is not clear whether Aboriginals and Torres Strait Islanders are over-represented amongst those alleging police assault. The strong representation of Aboriginals and Torres Strait Islanders is, however, a matter of concern and is indicative of some level of conflict in relationships between police and Aboriginals and Torres Strait Islanders. These findings point to a need for risk management in relation to assault.

In view of the above findings, the video taping of interviews between police and Aboriginals and Torres Strait Islanders would assist in managing this risk. In addition, where detention is required, Aboriginals and Torres Strait Islanders should be housed in appropriate areas of the police station equipped for video surveillance. The relevant tapes should then be reviewed by an investigator when a complaint arises thus assisting to deter police inclined to abuse their power, as well as deter vexatious complaints.

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261 Chan, J.B.L., *Changing Police Culture: Policing in a Multicultural Society.* Cambridge University Press: Melbourne, 1997, p. 42.

262 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department,* 9 July 1991, p. 79.

263 Chan, J.B.L., *Changing Police Culture: Policing in a Multicultural Society.* Cambridge University Press: Melbourne, 1997, p. 44.

264 Chan, J.B.L., *Changing Police Culture: Policing in a Multicultural Society.* Cambridge University Press: Melbourne, 1997, p. 44.

Recommendation:

- **The training audit recommended earlier in this Report should consider whether education and training is adequately focused at reducing the increased risk associated when officers come into physical contact with Aboriginals and Torres Strait Islanders.**

OCCUPATION OF COMPLAINANTS

Table 14 displays the occupations recorded on CIS for those alleging police officer assault.

Table 14: Occupation of Complainants

Occupation	No. Complainants	Per cent of Complainants
Administrative/clerical	54	1.7
Agricultural worker	17	0.6
Computer systems	10	0.3
Defence force	8	0.3
Domestic duties	124	4.1
Driver (taxis, bus)	37	1.2
Education	22	0.7
Emergency services	2	0.1
Entertainer	4	0.1
Financial consultant	1	0.0
Hotel/bar staff	20	0.7
Judicial	1	0.0
Managerial	29	1.0
Media	5	0.2
Medical	21	0.7
Other	211	6.9
Pensioner	130	4.3
Police officer	62	2.0
Prisoner	73	2.4
Professional	17	0.6
Professional driver	4	0.1
Sales	37	1.2
Security industry	21	0.7
Self employed	50	1.6
Sex worker	8	0.3
Solicitor	6	0.2

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Occupation	No. Complainants	Per cent of Complainants
Sport/recreation	3	0.1
Student	235	7.7
Trade	155	5.1
Transit officer	1	0.0
Unemployed	718	23.6
Unskilled labourer	112	3.7
Unknown/unreported	847	27.8
TOTAL	3,045	100.0

The occupations for more than one quarter, 27.8 per cent, of complainants was not recorded. Of the 2,198 cases for which data was available, it was revealed that:

- the largest proportion of allegations, at 23.6 per cent, were made by unemployed persons;
- students accounted for 7.7 per cent of allegations;
- 4.3 per cent of complainants were pensioners; and
- 2 per cent were police officers themselves.

The information concerning pensioners did not indicate whether these persons were pensioners due to age, disability or some other reason. When comparing this data to the complainant age group data, it was to established that only 2 per cent of complainants were aged 56 years and over. This indicates that less than half of those whose occupation was recorded as pensioner were pensioners for reasons of age.

Discussion: Occupation of Complainants

Without comparing the findings of this study with the frequency with which unemployed persons, students or pensioners come into contact with police it is not possible to ascertain whether these groups are over-represented in this study.

It is possible that a proportion of the pensioners in the above grouping include those who are pensioners due to a number of reasons including disability. The CJC study into assault by police, although not directly comparable, found that 7 per cent of complainants had either a physical or

cognitive disability at the time of the alleged assault.[265] The report arising from the CJC study pointed to the failure of the mental health system to identify and assist mentally ill people, with the result that much 'official' intervention fell, by default, to the police.[266] The CJC noted in their study of police assault that *The Report of the National Inquiry into the Human Rights of People with Mental Illness (1993)* assessed that police were ill-equipped and substantially under-trained to deal with episodes of mental illness.[267]

A comparison of the NSW data regarding those whose occupations were recorded as pensioners with the age groups of complainants, revealed that 2 per cent of the 4.3 per cent of complainants fell within an age group which increased the likelihood that they were pensioners due to age. The remaining 2.3 per cent were pensioners for reasons other than age. Due to the lack of further information concerning complainants, the Commission is not able to comment further on this.

4.5 THE WITNESSES

The characteristics of witnesses can assist in developing an understanding of the incident, and who may provide information following a complaint from a member of the public about a police assault.

When a complaint is investigated, witnesses may be interviewed and a written statement supplied. Half of all assault complaints were not investigated but proceeded only as far as preliminary enquiries. These incidents are unlikely to require that witnesses supply a statement, however, witness details may however still be recorded on the CIS.

This study found 8,024 witnesses recorded on the CIS to 1,267 separate complaints of police assault. The data population contained 2,559 assault complaints. Therefore witnesses were recorded for 49.5 per cent of complaints of police assault. Reports from other police jurisdictions suggest that police will often not extend an investigation into police assault as far as taking a witness statement or interviewing witnesses.

A report on the Los Angeles Sheriff's Department found that for nearly 100 out of 800 complaints investigated, there was no attempt to interview the witnesses identified by the complainant.[268] Although not directly

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[265] Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police*, March 1997, p. 28.

[266] Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police*, March 1997, p. 28.

[267] Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police*, March 1997, p. 28.

[268] Kolts, cited in Pate, A.M. & Fridell, L.A., *Police use of Force: Official Reports, Citizen Complaints, and Legal Consequences,* Police Foundation USA, 1993, p. 41.

comparable, the CJC study found that statements or evidence from one or more witness were obtained in 58 per cent of *on-duty* incidents and 63 per cent of *off-duty* incidents.[269]

The NSW Police CIS does not indicate whether an interview or statement was requested from a witness, therefore this Commission was not able to report on this aspect of assault investigations.

The information concerning witnesses recorded that a majority, 76 per cent, of witnesses to incidents in which a police assault was alleged to have occurred were male. Of the remainder, 23.8 per cent were female, while in 0.2 per cent of cases the gender of the witness was not recorded.

AGE OF WITNESSES

Table 15 provides the age distribution of witnesses to incidents alleging police assault.

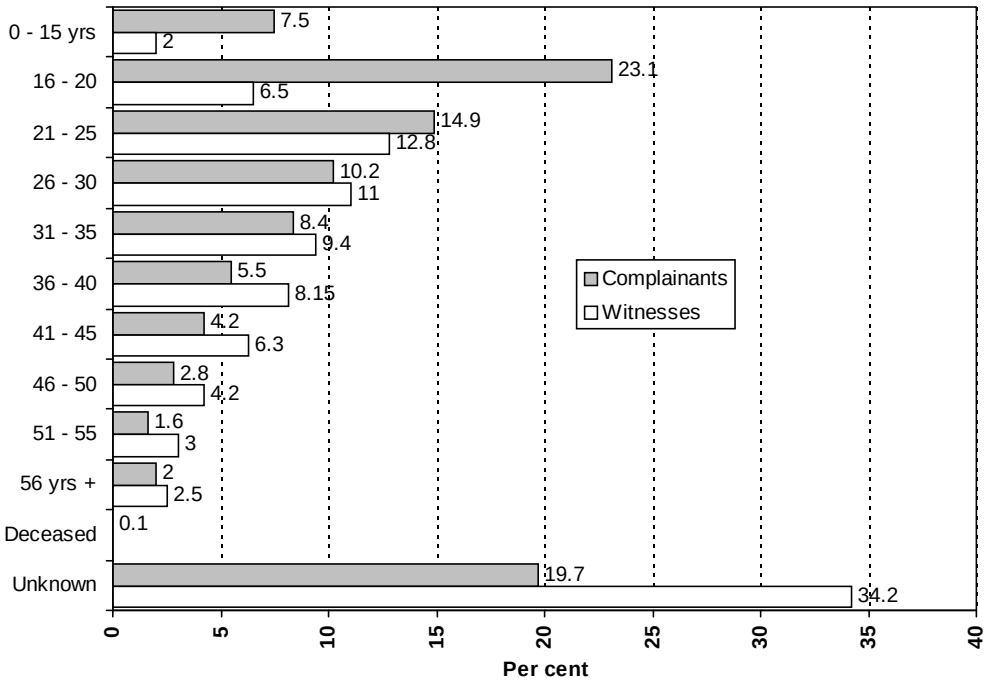
Table 15: Age of Witnesses

Age Group	Number	Per cent
0 - 15 years	159	2.0
16 – 20	520	6.5
21 – 25	1,026	12.8
26 – 30	886	11.0
31 – 35	755	9.4
36 – 40	649	8.1
41 – 45	503	6.3
46 – 50	333	4.2
51 – 55	242	3.0
56 years and over	201	2.5
Unknown/unreported	2,750	34.2
TOTAL	8,024	100.0

Information regarding the age of witnesses to these incidents was absent for over one third of witnesses. A comparison of the age groups of complainants with the age groups of witnesses is provided for in Figure 15.

[269] Criminal Justice Commission, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police*, March 1997, p. 13.

Figure 15: Comparison of Age Groups of Complainants and Witnesses



The above information indicates that witnesses to incidents of alleged police assault were generally older in age than those alleging they were victims in these incidents. Only 8.5 per cent of witnesses were 20 years of age or under whereas over thirty per cent of complainants fell within this age group.

OCCUPATION OF WITNESSES

Table 16 displays the occupations of those witnessing incidents which gave rise to allegations of police assault.

Table 16: Occupation of Witness

Occupation	Number of Witnesses	Per cent of Witnesses
Administrative/clerical	193	2.4
Agricultural worker	24	0.3
Computer systems	17	0.2
Defence force	12	0.1
Domestic duties	225	2.8
Driver (taxis, bus)	52	0.6
Education	54	0.7
Emergency services	80	1.0
Entertainer	6	0.1
Financial consultant	20	0.2
Hotel/bar staff	136	1.7

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Occupation	Number of Witnesses	Per cent of Witnesses
Judicial	16	0.2
Managerial	210	2.6
Media	12	0.1
Medical	375	4.7
Member of Parliament	1	0.0
Minister of religion	9	0.1
Other	492	6.1
Pensioner	150	1.9
Police officer	3,353	41.8
Prisoner	39	0.5
Professional	120	1.5
Professional driver	8	0.1
Sales	117	1.5
Security industry	137	1.7
Self employed	94	1.2
Sex worker	5	0.1
Solicitor	19	0.3
Sport/recreation	10	0.1
Student	299	3.7
Trade	195	2.4
Transit officer	19	0.3
Unemployed	388	4.8
Unskilled labourer	123	1.5
Unknown/unreported	1,014	12.7
TOTAL	8,024	100.0

The occupational data concerning those who witnessed incidents alleging police assault was significantly different to that concerning the complainants.

The largest proportion of witnesses, 41.8 per cent, were police officers themselves. This was not particularly surprising given that most allegations, 70.1 per cent, involved *on-duty* incidents and police officers work alone less frequently than in pairs.

Police officers were, at times, witnesses to an incident for which they were also listed as an involved officer. This occurred in 324 instances. Although a less frequent occurrence, civilians were sometimes a witness and complainant in the same matter. This occurred in 250 instances.

There were also further differences evident between the occupational data concerning witnesses to incidents alleging police assault and complainants. Unemployed persons were witnesses in only 4.8 per cent of cases, however, this group constituted 23.6 per cent of complainants. Similarly, students constituted only 3.7 per cent of witnesses, yet 7.7 per cent of complainants were students.

Discussion: Occupation of Witnesses

Observational studies conducted in the USA have suggested that incidents of assault are more likely to occur in situations in which there are a large number of officers at the scene. The findings of this Commission's study, with approximately 42 per cent of witnesses to incidents being police officers, may, perhaps lend some support to these observational studies. Caution is however advised in drawing conclusions here as there are two interpretations of this association in the literature. One reading is that the presence of other officers provides physical and psychological reinforcement, while the second is that incidents in which improper force is used are those in which other officers are called to attend.[270] The Commission offers no opinion or assessment with regard to these interpretations.

RESULTS OF ALLEGATIONS WITH WITNESSES

The findings of studies from interstate and overseas police jurisdictions report that the difference between sustained and unsustained complaints often hinges on the availability of a non-police third-party witness.[271] The absence of evidence in the form of an independent third-party witness or, in other instances a video tape, are considered to play a role in the low sustained rates arising from complaints of excessive force.[272] The Report of the Independent Commission on the LAPD commented that there was some doubt as to whether there would even have been an investigation of the beating of Rodney King without evidence in the form of the videotape of the incident.[273]

In order to explore the role of third-party witnesses using the NSW CIS data, the results of assault allegations for which there were non-police witnesses, who were also not complainants in the matter, were compared with the overall results of assault allegations. The analysis was limited to the type of information on the CIS. Therefore we could not ascertain whether the witness was strictly 'independent', as there was no information to establish whether they were, in fact, a friend or relative of the complainant. The results of this comparison are displayed in Table 17.

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[270] Worden, R.E., 'The 'Causes' of Police Brutality: Theory and Evidence on Police Use of Force', in Geller, W.A. and Toch, H. Eds, *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, 1995, p. 52.

[271] Adams, K. 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force,* Police Executive Research Forum: Washington, 1995, p. 79 and Brereton, D. and Burgess, M., 'Complaints of Assault Against Police: Why are they so hard to substantiate and what should be done about it?' Presented at the ANZ Society of Criminology, 12th Annual Conference, Griffith University Brisbane, 8 - 11 July 1997, p. 10.

[272] Adams, K., 'Measuring the Prevalence of Police Abuse of Force' in Geller, W.A. and Toch, H. (Eds) *And Justice For All: Understanding and Controlling Police Abuse of Force*, Police Executive Research Forum: Washington, 1995, p. 79.

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

Table 17: Comparison of Results of Assault Allegations with non-police, non-complainant* Witnesses

	Allegations with non-police, non-complainant witnesses		All Assault Allegations	
Result category	No.	%	No.	%
Conciliation– any outcome	13	1.1	239	5.1
Discontinued	74	5.7	355	7.6
No further action	326	25.1	1489	31.9
Not investigated	58	4.5	387	8.3
Not sustained	672	51.8	1959	41.9
Sustained	147	11.3	225	4.8
Unknown	7	0.5	18	0.4
TOTAL	1,297	100.0	4672	100.0

***** Non-police, non-complainant witnesses are those witnesses who were not also involved officers or complainants in the matter

It can be seen from the above table that incidents which were witnessed by a non-police non-complainant witness, had fewer findings of 'no further action' and 'not investigated' than the total population of assault allegations:

- 4.5 per cent of those allegations with non-police, non-complainant witnesses were 'not investigated' while almost twice that number, 8.3 per cent of the total population of allegations were 'not investigated'; and

- The finding of 'no further action' suggests a decision was made not to investigate following preliminary enquiries.[274] A quarter, 25.1 per cent of those allegations with non-police, non-complainant witnesses had the finding 'no further action' while, close to a third or 31.9 per cent of the total population of allegations, had this finding.

The finding that 'no further action' and 'not investigated' were applied less frequently to complaints with a non-police non-complainant witness indicates a propensity for these complaints to proceed on to an investigation rather than conclude at an earlier stage of enquiries.

[274] Letter from NSW Police Service Internal Affairs Command Police Integrity Commission Liaison Unit 1998, enclosing a reply from SASC concerning outcomes of assault complaints, 27 July 1998.

Further, Table 17 indicates that the 'sustained' and 'not sustained' rates for these two groups of allegations differed:

- allegations with non-police, non-complainant witnesses had a sustained rate of 11.3 per cent, which is more than twice the figure in the general population of assault allegations which was 4.8 per cent; and

- 51.8 per cent of allegations with non-police, third party witnesses had the finding 'not sustained', while 41.9 per cent of the total population of assault allegations had this finding.

These higher sustained and not sustained rates indicate that more conclusive results were obtained from complaints with non-police and non-complainant witnesses. This is also an additional indication that there was an increased propensity for these matters to be investigated.

It also appeared to be the case, that the presence of any witness would increase the probability that the allegation would be investigated. The Commission also examined the findings of those allegations for which there were only police witnesses. Slightly less of these were found to be sustained, at 4.3 per cent, than the general population at 4.8 per cent. There was, however, a high proportion of police-witnessed complaints which were found 'not sustained' at 58.3 per cent. These allegations also had only a small proportion 'not investigated' findings at 2.9 per cent.

Discussion: Results of Allegations with Witnesses

The results of those allegations in which there was a witness present, when compared with the results of all assault allegations, indicated that a difference existed in the findings of these allegations. These results did not indicate the presence of a direct relationship between a 'sustained' or 'not sustained' outcome and the presence of a witness. What was evident, however, was that the presence of any witness made it increasingly likely that the complaint would be investigated.

The presence of a non-police, non-complainant witness was associated with a high proportion of 'sustained' and 'not sustained' findings. These allegations were also less frequently concluded at the stage of preliminary enquiries. This was probably an indication that more of these complaints were investigated.

4.6 THE INVESTIGATORS AND LOCAL AREA COMMAND INVESTIGATIONS

Information was also available on the gender and rank of those responsible for conducting enquiries into allegations of police assault. This information, when placed in the context of an enquiry or investigation, also assists in developing an understanding of what occurs regarding allegations of assault following a complaint.

GENDER OF INVESTIGATORS OR INQUIRERS

When either preliminary enquiries or an investigation occurs concerning the circumstances surrounding an assault complaint, one or a number of officers are appointed to the role of 'investigator'. The number of persons assigned depends on how serious the matter is and the number of officers alleged to be involved. The investigator may conduct preliminary enquiries in order to establish whether a full investigation is warranted. Table 18 sets out the gender of those enquiring into allegations of police assault.

Table 18: Gender of Investigators or Inquirers

Gender	Number	Per cent
Female	122	3.3
Male	3,529	96.7
TOTAL	3,651	100.0

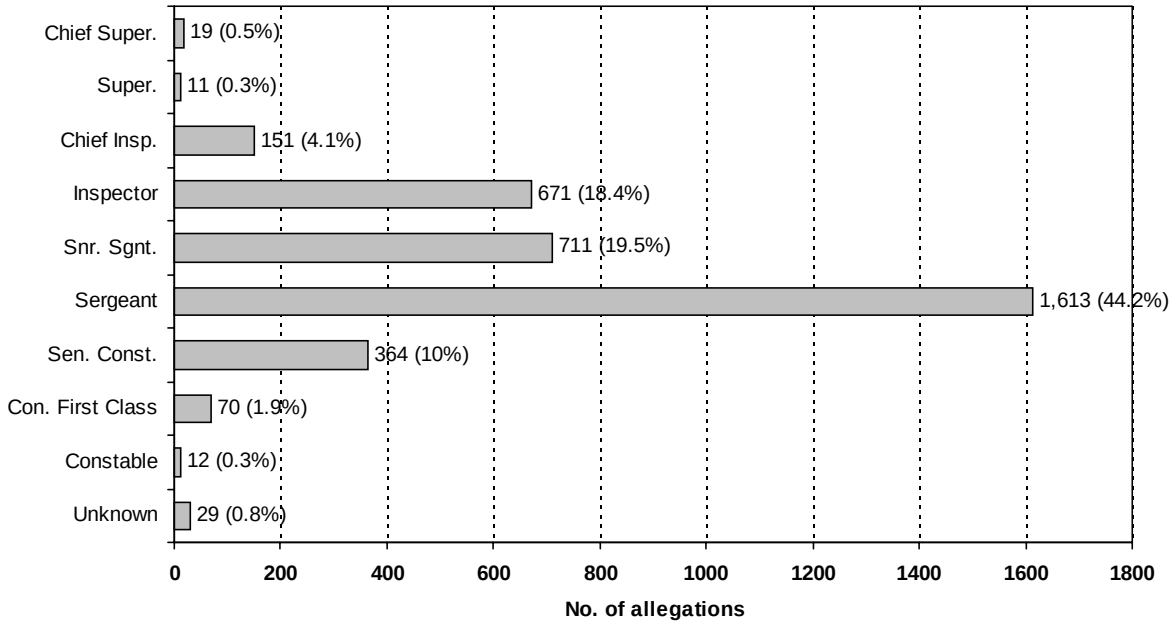
It can be seen from the above data that an overwhelming majority of assault allegations, 96.7 per cent, were processed by male police officers, while 3.3 per cent were investigated by female police officers. As mentioned earlier in this Report, female police officers comprised between 12.3 per cent and 15.6 per cent of officers during this period.[275]

RANK OF INVESTIGATORS

Figure 16 provides a break down of the ranks of those enquiring into allegations of police assault.

[275] Letter from NSW Police Service Internal Affairs Command Police Integrity Commission Liaison Unit 1999, Complaints Information System, NSW Police figures for financial year 1993/94 and training material distributed to investigators. Covering letter dated 21 May 1999.

Figure 16: Rank of Investigators



* This rank was abolished during the period under review.

This figure shows that the largest proportion, 44.2 per cent, of assault allegations were examined by police officers at the rank of Sergeant. The rank of officer next most likely to be appointed was that of Senior Sergeant. Together, Sergeants and Senior Sergeants comprised 63.7 per cent of investigators.

The predominance of Sergeants and Senior Sergeants investigating assault allegations influenced the gender distribution of those conducting these investigations. As few as 1.8 per cent to 3.7 per cent of Sergeants and Senior Sergeants in the NSW Police Service were females between 1993 and 1997 and because investigators of assault allegations tended to be at these ranks, females rarely investigated assault complaints.[276]

A smaller proportion of enquiries were conducted by lower ranking officers with a total of 11.75 per cent at the ranks of either senior constable (10%), constable first class (1.9%) or constable (0.3%).

The highest proportion of assault allegations were made regarding Senior Constables and Constables. Enquiries into an assault allegation were generally carried out by a male police officer who was also more senior than those involved.

[276] Letter from NSW Police Service Internal Affairs Command Police Integrity Commission Liaison Unit 1999, Complaints Information System, NSW Police figures for financial year 1993/94 and training material distributed to investigators. Covering letter dated 21 May 1999.

TIME TAKEN TO COMPLETE INVESTIGATIONS

A 21-day time limit existed for officers completing preliminary enquiries.[277] Under s 148 of the *Police Service Act 1990* investigations had to be completed within 90 days if they were of a 'class or kind' agreed to by the Ombudsman and Commissioner. The 90-day limit also applied to those being dealt with at command level.[278] Investigations conducted under the *Police Service Act 1990* by Internal Affairs officers had a statutory time limitation of 180 days; approximately six months.[279]

Table 19 displays the time taken by the NSW Police Service to complete assault enquiries and investigations.

Table 19: Time Taken to Complete Enquiries and Investigations

Time Period	Number of Assault Investigations	Per cent of Assault Investigations
0	470	10.0
Up to 3 months	3,048	65.2
4 - 6 months	677	14.5
7 – 12 months	279	6.0
13 – 24 months	104	2.2
25 – 36 months	19	0.4
37 – 48 months	7	0.1
Over 48 months	13	0.3
Invalid	58	1.2
TOTAL	4,675	100.0

It is clear from this data that nearly 10 per cent of investigations, or inquiries, were recorded as taking no time at all to complete. This is concerning and may result from factors such as careless data entry, dismissive behaviour on behalf of police investigators or a combination of factors.

Most, 65.2 per cent, were completed within the 90-day period and another 14.5 per cent were completed within 6 months. Also of concern is that 9 per cent lingered outside of this statutory period. There were, however, provisions set aside for an extension of the statutory period under sections 149 and 150 of the *Police Service Act 1990*.

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277 NSW Police Service, *Internal Affairs Training Unit, Preliminary Inquiry and Internal Investigation Study Guide*, May 1996, p. 28.

278 NSW Police Service, *Internal Affairs Training Unit, Preliminary Inquiry and Internal Investigation Study Guide*, May 1996, p. 44.

279 NSW Police Service, *Internal Affairs Training Unit, Preliminary Inquiry and Internal Investigation Study Guide*, May 1996, p. 44.

LOCAL AREA COMMAND INVESTIGATIONS

Of the 42.2 per cent of assault complaints which proceeded to an investigation, just over one third, 36.7 per cent, were investigated at command level. This means the investigation was conducted at a LAC level. A significant proportion of these LAC investigations were found to be conducted within the LAC of the involved officer.

Table 20 displays both the number of within-command assault investigations and the proportion of total assault allegations that were investigated in this manner. There does not appear to be any consistency in how frequently different LACs investigate assault allegations against their own officers. As can be seen from the figures displayed in this table, there were varying proportions of within-command investigations occurring.

Project Oracle did not examine whether it was only the less serious, non-category 1 assault allegations that were being investigated in this manner. The Commission's Project Dresden, however, did review Category 1 investigations and examined whether they were carried out within the LAC of the involved officer.[280] As mentioned earlier in this Report, Category 1 complaints include those relating to grievous bodily harm. Project Dresden determined that, in approximately one third of the complaints investigated, the investigation was carried out by an officer from the same LAC as the officer who was the subject of the complaint.[281]

Table 20: Allegations Investigated within the same LAC* as the Involved Officer

Local Area Command (LAC)[@]	Total No. Assault Allegations	No. of within Command Assault Investigations (by allegation)	Per cent^ of within Command Assault Investigations (by allegation)
City Central	102	43	42.2
Mt Druitt	124	79	63.7
Kings Cross	128	71	55.5
Redfern	111	48	43.2
Blacktown	97	32	33.0
Surry Hills	58	16	27.6
Liverpool	65	24	36.9
Brisbane Waters (Gosford)	85	51	60.0

(cont. next page)

[280] Police Integrity Commission, *Special Report to Parliament Project Dresden: An Audit of the Quality of NSW Police Service Internal Investigations*, April 2000, p. 27.

[281] Police Integrity Commission, *Special Report to Parliament Project Dresden: An Audit of the Quality of NSW Police Service Internal Investigations*, April 2000, p. 27.

Local Area Command (LAC)@	Total No. Assault Allegations	No. of within Command Assault Investigations (by allegation)	Per cent^ of within Command Assault Investigations (by allegation)
Bankstown	105	36	34.3
Campbelltown	57	20	35.1
Penrith	73	35	47.9
Barwon (Moree)	89	55	61.8
Fairfield	71	31	43.7
Newcastle	54	32	59.3
Orana (Dubbo)	70	46	65.7
Parramatta	44	21	47.7
Burwood	67	14	20.9
Cabramatta	41	14	34.1
Albury	59	48	81.4
Sutherland	86	25	29.1

* The LACs were selected from the earlier list of LACs with high numbers of assault complaints occurring during the period under review. LACs with smaller numbers of allegations have been omitted as the data would be less statistically reliable.
@ The bracketed location identifies the approximate location of the LAC as the name of the LAC may be unfamiliar.
^ Expressed as a % of all allegations at that LAC.

The most prominent LAC for conducting within-command investigations of assault allegations was the Albury LAC with 81.4 per cent of allegations being conducted in-house. This was significantly higher than the next highest level of within-command investigations which occurred in Orana LAC at 65.7 per cent and Mt Druitt with 63.7 per cent. There may be geographic considerations in locations such as Albury and Orana when deciding to appoint an investigator from within the same command as the officer who was the subject of the complaint. This explanation appears less valid for Mt Druitt.

Table 21 provides for the comparison of the results of the total number of assault allegations included in this study with the results of investigations conducted within the three LACs of Albury, Orana and Mt Druitt.

Table 21: Comparison of Results of All Assault Allegations with those Enquiries or Investigations Conducted within Three LACs

	All Assault Allegations		Albury Allegations Investigated within Command		Orana (Dubbo) Allegations Investigated within Command		Mt Druitt Allegations Investigated within Command	
Result	No.	%	No.	%	No.	%	No.	%
Conciliation (any)	239	5.1	0.0	0.0	2	4.3	0.0	0.0
Discontinued	355	7.6	4	8.3	11	23.9	0.0	0.0
No further action	1,489	31.9	18	37.5	9	19.6	31	39.2
Not investigated	387	8.3	4	8.3	4	8.7	6	7.6
Not sustained	1,959	41.9	21	43.8	17	37.0	42	53.2
Sustained	225	4.8	1	2.1	3	6.5	0.0	0.0
Unknown	18	0.4	0.0	0.0	0	0.0	0.0	0.0
TOTAL	4,672	100.0	48	100.0	46	100.0	79	100.0

The following should be noted from the above table:

- Albury and Mount Druitt had lower 'sustained' rates, 2.1 and 0 per cent respectively, for assault allegations investigated within the LAC when the total population of assault allegations had a 4.8 per cent sustained rate;

- Mt Druitt had a higher 'not sustained' rate, 53.2 per cent, while the rate for the total population of assault allegations was 41.9 per cent;

- Orana had a high proportion of assault allegations being 'discontinued', 23.9 per cent, when the rate for the total population of assault allegations was only 7.6 per cent, although Orana also had a comparatively high sustained rate; and

- Albury and Mt Druitt had slightly higher proportions of allegations in which there was 'no further action' at 37.5 per cent and 39.2 per cent respectively, when the total population had a rate of 31.9 per cent.

Assessment: Investigators & Investigations within LACs

Research conducted by the Commission in relation to Project Dresden highlighted some areas in which there was potential for conflict of interest concerning the conduct of internal investigations. One area offering the potential for conflict of interest was the fact that a significant proportion

of complaints were investigated by officers from within the same Local Area Command. Project Dresden recommended that conflict of interest in this regard should be countered by making it mandatory for Category 1 complaints to be investigated by officers from another Local Area Command or work unit.[282]

Support for this recommendation was also found in this Report, in particular the results of those allegations being investigated within the LAC. A number of LACs have lower sustained rates than average for those allegations which were being investigated within the LAC. In addition, Mt Druitt LAC had a much higher 'not sustained' rate than the average for allegations overall.

There may be geographic reasons in country locations such as Albury and Orana for having higher proportions of investigations conducted within the command.

A possible explanation considered for these differences in findings was that a significant proportion of within-command investigations were of less serious assault matters. Project Dresden, however, determined that Category 1 matters, which include those alleging grievous bodily harm, were being investigated in this manner. The Commission considers that a high proportion of in-house investigations not only gives rise to the perception of bias but also increases the risk of process corruption occurring.

Recommendations:

- **Investigations into Category 1 assault matters should be conducted by officers from outside the Local Area Command of the involved officer. In addition, Local Area Commanders should consider on a case-by-case basis whether other serious assault matters, such as those involving significant forms of actual bodily harm, should be investigated outside the LAC of the involved officer.**

- **These investigations should then be reviewed by officers of Special Crime and Internal Affairs.**

[282] Police Integrity Commission, *Special Report to Parliament Project Dresden: An Audit of the Quality of NSW Police Service Internal Investigations*, April 2000, p. 30.

5. RECENT TRENDS

5.1 INTRODUCTION

This chapter reviews features emerging in the 1998 and 1999 statistics concerning allegations of assault involving NSW police officers. This analysis has been carried out in order to ascertain whether the trends the Commission observed in data relating to the years 1993 to 1997 have continued.

The complaint statistics analysed included all assault allegations pertaining to the main assault categories recorded by the NSW Police Service annually on the CIS from 1993 until 1999. This complaints data is subject to the same limitations as those previously detailed in the methodology chapter of this Report.

5.2 FREQUENCY OF ASSAULT ALLEGATIONS

The level at which assault allegations were received and recorded by the NSW Police Service rose each year from 758 in 1993 to 1,285 in 1995. Between 1995 and 1999, a slight decrease in the number of assault allegations received was recorded each year, falling to 1,000 in 1998. A more marked decline then occurred in 1999 to 707 assault allegations.

It is not possible to determine what factors have influenced this decline. Some changes have occurred to the management of police and police complaints. In addition, as mentioned earlier in this Report, complaints from members of the public about police are sensitive to changes in the reporting behaviour of citizens, recording practices of police and the coding practices of complaints officers.[283]

The Royal Commission into the NSW Police Service had much potential to influence the public's level of reporting of complaints against police in NSW between 1994 and 1997. The Royal Commission received a high level of media interest during those years. The potential power of the Royal Commission to influence the level of reporting of complaints ceased following the publication of the Final Report in 1997 and an associated decline in media interest.

[283] Brereton, D., paper entitled 'The Role of Research in the work of Standing Commissions of Inquiry,' 1997, p. 3.

5.3 TYPES OF ASSAULT ALLEGATIONS

The allegations examined for 1998 and 1999 once again concerned only the dedicated four assault categories listed in an earlier section of this Report being:

- assault (no injury);
- assault (physical injury);
- indecent assault; and
- sexual assault.

In addition, a new category 'assault – domestic violence' appeared in the CIS during 1999. Only two allegations were recorded in this category type.

A 10 per cent decline in the proportion of 'assault (physical injury)' allegations was recorded for 1999. At the same time, there was an increase in a similar proportion of 'assault (no injury)' allegations.

There was also an increase in the number of sexual assault allegations reported from 1993 through to 1997.[284] In 1999 there were 45 allegations of sexual assault which was similar to the figure reported in 1995. Despite a fluctuation in numbers reported, there was a gradual increase in the proportion of allegations of sexual assault.[285] The proportion of this type of assault allegation increased from 5.9 per cent in 1997 to 6.2 per cent in 1998, followed by 6.4 per cent in 1999.

5.4 RESULTS OF ASSAULT ALLEGATIONS

Changes have occurred to the manner in which the results of assault allegations were recorded on the CIS through the introduction of a new set of result categories. These are described in Appendix B. There are no longer 'sustained' or 'not sustained' options. The Police Service now uses the categories of 'adverse findings' and 'no adverse findings'.

The rate at which allegations record 'adverse findings' or are found to be 'sustained' has remained relatively stable. The average sustained rate during the period 1993 to 1997 was 4.8 per cent. In 1998, the sustained rate was 2.5 per cent. If the sustained rate is added to the 'adverse finding' rate for

[284] The number of sexual assault allegations reported against police officers from 1993 to 1997 was 11, 35, 43, 61 and 66.

[285] The proportion of sexual assault allegations from 1993 to 1997 was 1.5%, 2.9%, 3.3%, 5.0% and 5.9%.

that year, a rate of 3.4 per cent applies to 1998. The combined 'sustained' and 'adverse finding' rate for 1999 was 5.4 per cent.

In 1999, 83.5 per cent of assault allegations, were given the result of 'no adverse finding'. 'Informal resolution' now exists alongside the formal conciliation process, with 3.4 per cent of assault allegations resulting in either a successful or unsuccessful 'informal resolution' in 1999.

5.5 DUTY STATUS OF OFFICERS INVOLVED IN ASSAULT ALLEGATIONS

In 1998 and 1999, there was little change in the proportion of allegations arising from the actions of officers who were recorded as *on-duty* and the proportion recording the officer as *off-duty*.

Close to one third of assault allegations continued to apply to the actions of officers who were *off-duty* at the time. The 1998 and 1999 figures were 31.5 per cent and 32.1 per cent respectively for allegations concerning *off-duty* officers.

5.6 LOCATION TYPES OF INCIDENTS

Two changes have occurred in the locations of incidents alleging assault by NSW police officers.

The first is a decreasing proportion of allegations citing 'police premises' as the location of the assault incident. Police premises constituted nearly one third of allegations in 1994 and had decreased to nearly 20 per cent in 1997 and was at 21.4 per cent in 1999.

A gradual increase had occurred in the level of assault allegations involving police officers at registered hotels and clubs. In 1997, 3.7 per cent were located in registered hotels or clubs.[286] The figure rose to 5.2 per cent in 1998 and had increased to 6.1 per cent in 1999.

5.7 CAUSATION FACTORS

Little change had occurred in the causes of assault allegations involving police in NSW over recent years. Alcohol was still recorded as the cause of around 20 per cent of assault allegations. The causation factor 'medical-related' was at 1.2 per cent between 1993 and 1997. This rose slightly in 1999 when 3.7 per cent of allegations recorded a medical-related cause.

[286] The proportions of assault allegations occurring in Registered hotels/clubs between 1993 and 1997 were 2.6%, 3.8%, 4.8%, 3.9% and 3.7%.

There was also a gradual increase in incidents with a domestic-related causation in the period 1993 to 1999. This was not, however, a consistent annual increase. Domestic causes applied to 5.9 per cent of assault allegations against NSW police officers occurring between 1993 and 1997.[287] The figures for 1998 and 1999 were 4.6 per cent and 8.8 per cent respectively.

DISCUSSION AND ASSESSMENT

The above examination indicates that despite the overall reduction in the number of assault complaints reported on the CIS during 1998 and 1999, there has been little change occurring in proportionate trends.

The overall tendencies emerging in the data between 1993 and 1997 remain apparent throughout 1998 and 1999. In some cases, these trends have strengthened. The more recent data has therefore confirmed, and in some cases increased, the Commission's concerns regarding allegations of police assault. The following trends are particularly apparent:

- the continued conciliation, or 'informal resolution' of assault matters;

- the significant proportion of assault allegations arising from complaints against officers who were *off-duty* at the time of the incident, with just less than one third attributed to *off-duty* officers in 1999;

- an increasing proportion of assault allegations occurring in registered hotels and clubs. Registered hotels and clubs as a location for police assault allegations rose from an average of 4.1 per cent between 1993 – 1997 to 5.2 and 6.1 per cent respectively for 1998 and 1999.

- overall, a gradual increase in assault allegations with a domestic-related causation factor. The average proportion of 5.9 per cent were domestic-related between 1993 and 1997, while 4.6 and 8.8 per cent were the respective proportions for 1998 and 1999.

The assault allegations throughout 1998 and 1999 reflect similar trends to those examined for 1993 and 1997. The data in this set of statistics supports the assessments and recommendations made in relation to police assault complaints in the previous chapter of this Report.

[287] There has been a gradual yet inconsistent increase in domestic related assault allegations with the 1993 – 1997 annual proportions being 5.7%, 4.9 %, 6.8%, 5.2% and 7.5%.

6. SUMMARY OF ASSESSMENTS AND RECOMMENDATIONS

6.1 SUMMARY OF ASSESSMENTS

In relation to the findings in this Report the Commission considers that:

Allegations of Police Assault and the Findings of these Allegations

- The 149 minor categories of police misconduct within the Complaints Information System provides a range of categories, other than the assault categories, under which assault allegations may be classified. The Commission is of the view that relying on only those allegations appearing in the four assault categories may provide an incomplete picture of allegations concerning assault.

- The practice of conciliating assault complaints has contravened the agreement between the Police Service and the Ombudsman. This agreement determined that assault complaints were not to be conciliated. Officers attempting to conciliate an assault complaint risk giving rise to a view, both within the Police Service and amongst complainants, that assault allegations are not considered seriously within the Service. Further, dishonest or corrupt officers who have used excessive force may attempt to have assault complaints against them conciliated in order to avert a sustained finding and disciplinary action.

Causation Factors

- It appears from the significant 'unknown' and 'not applicable' data that those conducting enquiries and investigations into complaints of police assault have some difficulty with the available options and/or the application of this category to enquiries and investigations.

- While the causation factors could provide valuable information to those charged with managing police, a number of the current categories are vague and their application unclear. The definitions for 'work/systems related' and 'associations' are highlighted as examples of this. It is also noted that the causation factors do not indicate whether these relate to the officer, the complainant, both or other external factors.

Duty Status of Officer the Subject of the Complaint

- It is a matter of concern that a substantial proportion, 29.9 per cent, of complaints of assault are occurring outside an officer's working hours. Although the data does not provide a comprehensive explanation for

this trend, it is noted that police officers are required to discharge their duties whilst *off-duty* as well as *on-duty* under the oath or affirmation of office and under particular clauses of the *Police Service Regulation 1990*.

Alcohol and Duty Status

- It is a matter of concern that alcohol is an 'associated factor' in a not insubstantial proportion of assault complaints against *off-duty* officers (approximately 20%). Further, in 10.8 per cent of complaints against *off-duty* officers, the location nominated by the complainant was a registered hotel/club. It is likely that, given that these officers were *off-duty* and located in licensed premises, a proportion will have been affected by alcohol and their judgment, to some extent, impaired. The higher sustained rate for *off-duty* alcohol-related allegations compared to those occurring *on-duty* suggests the Police Service frequently assessed it to be the involved officer who was at fault.

- The oath or affirmation of office imposes obligations on officers while *off-duty.* There are conflicting obligations on an *off-duty* officer who has been consuming alcohol and the oath or affirmation of office.

Gender of Officers Involved

- Despite the fact that there is some data not recording the involved officer's gender, the study results tend to indicate a significant difference in the frequency at which male and female police officers were involved in allegations of police assault.

- Endeavours to recruit female police officers to the Service are consistent with the findings in this and other research. The importance of increasing efforts to retain female police officers should also be considered.

Age, Years of Service and Rank of Officers Involved in Assault Complaints

- The predominance of younger, less experienced and lower ranking police officers in complaints of police assault has implications for both rostering and supervision. If it has not already done so, the Police Service should consider a strategy to reduce complaints of police assault by reviewing the rostering of less experienced officers, ensuring they are rostered *on-duty* along with older, more experienced colleagues. On the job supervision should be available to less experienced, younger and lower-ranking officers. These practices are particularly important in LACs in high-risk areas where an officer is at an increased risk of allegations of assault. Rostering should also be considered in view of the higher risk of assault allegations occurring at night.

Officers with Multiple Complaints

- A proactive approach to identify police officers with multiple assault complaints is warranted. The Commission's research revealed that a small group of officers were responsible for a disproportionate number of assault complaints. The fact that assault complaints together constituted a significant proportion of all complaints against police, as demonstrated in this Report, adds weight to the view that separate initiatives ought to be set in train in relation to this issue.

Age Group of Complainants

- The proportions of juvenile and teenage complainants is a matter of some concern. 7.5 per cent of complainants were aged less than 15 years and close to a quarter were aged less than 20 years. These proportions appear unrepresentative of these groups in the general population. The data also indicates a high degree of exposure amongst younger people to incidents of conflict with police. An added concern is that those who are 18 years or less are acknowledged to be 'vulnerable' persons under the *NSW Police Code of Practice* with regard to police powers governing custody, rights and investigation.[288] The video taping of interviews with juveniles and, where detention is necessary, ensuring juveniles are accommodated in appropriate areas of the police station under video surveillance, would assist in managing this risk. Evidence such as a video tape provides a possible deterrent for police inclined to abuse their power and may also deter vexatious complaints.

Racial Appearance of Complainants

- The strong representation of people of Aboriginal and Torres Strait Islander appearance amongst those alleging police assault is likewise a matter of concern. This high number of incidents is suggestive of conflict in relations between police and Aboriginals and Torres Strait Islanders and an indication of an area requiring risk management. The video taping of interviews with Aboriginals and Torres Strait Islanders and, where custody is required, ensuring appropriate accommodation is available in areas of the police station under video surveillance, is one way of managing this risk. Video taped evidence is a possible deterrent for those inclined to abuse their power as well as a potential deterrent for vexatious complainants.

[288] NSW Police Service, *Code of Practice for Custody Rights Investigation Management Evidence (CRIME)*, February 1998, p. 47.

Investigations and Local Area Commands

- A high proportion of investigations carried out within the command of involved officers not only gives rise to the perception of bias but also increases the risk of process corruption occurring. Project Dresden highlighted some areas of potential conflict of interest concerning the conduct of internal investigations. Project Oracle has found the results of allegations investigated within the LAC of the involved officer differed from the results of all assault investigations included in this study. A number of LACs conducted a high proportion of within-command assault investigations and reported lower than average sustained rates.

6.2 SUMMARY OF RECOMMENDATIONS

In relation to the assessments in this Report the Commission recommends that:

Allegations and their Findings

- If the process of conciliation and informal resolution of serious assault matters is to continue, the Police Service should adopt procedures which exclude Category 1 assault complaints involving grievous bodily harm and other serious assault matters involving significant forms of actual bodily harm from these processes (p. 61).

- A review of the minor categories (Appendix A) used for classifying allegations on the police complaints system should be undertaken in order to eliminate those which are vague and open to misuse, and to ensure accurate and useful information is produced for those managing police officers. This should form part of the project currently occurring to review existing complaints and case management systems called the Police Complaints/Case Management System (p. 61).

- Investigators should be adequately trained and informed with regard to the application of minor categories to allegations and complaints (p. 62).

- In reviewing an internal enquiry or investigation, an investigator's supervisor should conduct a review of minor categories to ensure the matter has been correctly classified and that this is consistent with the evidence of the investigation and complaint narrative (p. 62).

Duty Status, Causation Factors and Location of Incidents

- The categories allocated to causation should be reviewed in order to:
  - ◊ determine a more specific and utilitarian range of options from which an investigator or enquirer may select;
  - ◊ ensure there is adequate documentation providing definitions for these categories and that appropriate training is provided to those applying these categories; and
  - ◊ ensure the police complaints system causation factor indicates whether the selected factor/s relate to the involved police officer, the complainant or both parties (p. 71).
- The Police Service should ensure clear instructions are provided to police with regard to *off-duty* policing responsibilities and alcohol consumption (p. 86).
- The Police Service should assess the most recent 12 months of assault related complaints associated with *off-duty* police officers, separately examining the following four areas:
  - ◊ incidents occurring in registered hotels and clubs;
  - ◊ incidents with an alcohol-related causation;
  - ◊ incidents with a domestic causation; and
  - ◊ incidents involving *off-duty* officers attending police premises.

  This assessment should be undertaken with a view to establishing whether these complaints are initiated when police intervene in incidents whilst intoxicated, and, if so, steps should be taken to ensure the risk is properly managed and reduced (p. 87).
- Local Area Commanders should be appropriately equipped with information in order to be responsible for reviewing, assessing and managing the level of risk of assault within their commands. The aim should be to reduce the risk posed by assault allegations to both officers and members of the public (p. 87).

Age, Years of Service, Rank and Duty Type of Involved Officers

- The Police Service should undertake an audit of the content of training and education programs currently delivered to police officers regarding use of force.

  - Conducted over the following six to nine months, this audit should focus on decision-making regarding use of force, use of verbal skills and tactics such as de-escalating conflict and alternatives to the use of force.

  - This audit should also consider whether education and training is directed at officers facing an increased risk associated with their age, inexperience and/or rank and whether training is focused at reducing the risk when officers come into physical contact with juveniles, youths, and Aboriginals and Torres Strait Islanders and persons affected by alcohol. It should also consider the *off-duty* behaviour of officers, in particular those with a domestic or alcohol-related causation and those incidents arising in licensed premises.

  - The Commission also recommends that this audit should consider the provision of remedial training. Remedial training should be provided to officers stationed at LACs identified as having an increased risk due to a high number of assault complaints.

  - Suitable remedial training should also be provided to those officers identified by Local Area Commanders, supervisors and/or the Internal Affairs Unit, as facing an increased risk of attracting allegations of assault (pp. 96, 97, 105 & 108).

Officers with Multiple Assault Allegations

- The Commission recommends that, if it has not done so already, the Police Service should initiate a discrete project using its threat assessment model (Appendix E). This project should identify, on an ongoing basis, officers with multiple complaints of assault and ascertain whether those complaints have occurred *on-duty* or *off-duty*. This should be an organisation-wide project which involves liaison between the Internal Affairs and Special Crime Command and Local Area Commanders to ensure Local Area Commanders are equipped and accountable to manage the risk of assault. That project should also consider areas in which officers show a high level of risk of assault such as:

  - those incidents occurring in registered hotels and clubs;

  - those incidents with an alcohol-related causation;

- ◊ those incidents with a domestic causation; and

- ◊ incidents involving *off-duty* officers attending police premises (p. 101).

- ♦ The Police Service should also assess the feasibility of implementing a 'use of force register' as part of a system to improve the recording, identifying and managing of officers in relation to use of force. The significant proportion of multiple assault allegations arising from officers who are *off-duty* indicates this approach should consider the behaviour of *off-duty* officers. The benefits of such an approach would be that it could assist in identifying officers:

  - ◊ predisposed to the excessive use of force and would enable early management intervention; and

  - ◊ who should be considered for investigation (pp. 100-101).

Local Area Command Investigations

- ♦ Officers from a Local Area Command, other than that of the involved officer, should conduct investigations into Category 1 assault matters. In addition, Local Area Commanders should consider on a case-by-case basis whether other serious assault matters, such as those involving significant forms of actual bodily harm, should be investigated outside the LAC of the involved officer (p. 123).

- ♦ These investigations should be reviewed by officers of the Special Crime and Internal Affairs Command (p.123).

7. APPENDICES

APPENDIX A - CIS MINOR CATEGORIES

Reproduced from NSW Police Service information, printed 26 August 1999

1. Other – Customer Service
2. Rudeness
3. Fail to Take Necessary/Approp. Action
4. Assault (Physical Injury)
5. Other – Conduct/Departmental Matters
6. Assault (No Injury)
7. Attempted Suic/Inju in Cust.Not Assaults
8. Harassment
9. Fail to Properly Investigate
10. Theft
11. Other – Custody
12. Loss/Damage to Departmental Property
13. Improper Behaviour Not Cust.Serv Related
14. Provide Unauthorised Information
15. Other – Misuse of Powers
16. Misuse of Computer System
17. Conspiracy/Pervert Course of Justice
18. Other – Criminal Allegations
19. Other – Driving Offences
20. Incorrect Procedures
21. Solicit/Accept Bribe
22. Unlawful Arrest
23. Threats
24. Other – Investigations
25. Improper Association
26. Supply Drugs
27. Prisoner's Conditions/Facilities/Rights
28. Misuse of Office
29. Procedures
30. Slow Response
31. Untruthfulness
32. Improper Search
33. Other – Courts
34. Other – Exhibits
35. Fabricate Evidence
36. Fail to Exercise Proper Supervision
37. Discrimination (Racial etc.)
38. Police Pursuits
39. Loss/Damage to Personal Property
40. Escapes/Attempted Escapes
41. Improper Use of Facilities/Equipment
42. Victimisation
43. Improper Use of Police Vehicles
44. Fail to Provide Information to Public

45. Not Recorded
46. Fail to Attend
47. Other – Drug Offences
48. Engage in Unauthorised Secondary Employ.
49. Fail to Take Report of Incident
50. Loss/Theft
51. Other – Processes
52. Willful/False Entry/Statement
53. Under Influence of Liquor Whilst on Duty
54. Sexual Assault
55. Fail to Supply Particulars of Office
56. Search Premises without Warrant
57. Sexual Harassment
58. Other – Interviews
59. Failure to Inform Crime Commission
60. Escape Lawful Custody (Police)
61. Fail to Complete Record/s
62. Wrong Procedure with Warrants
63. Perjury
64. Fail to Supply Brief to DPP
65. Improper Use of Handcuffs
66. Disputed Notice
67. Drive Manner/Sped Dangerous
68. Other – Conspiracy Offences
69. Absent from Duty
70. Cause Damage to Property
71. Causing Injury
72. Firearm Offences
73. Provide False Information to Public
74. Smoke/Use Drugs
75. Stop, Search
76. Return/Disposal
77. Parking Offences
78. Refuse/Disobey Direction
79. Indebtedness
80. Improper/Unlawful Entry
81. Poor Preparation/Presentation
82. Fail to Perform Rostered Duty
83. Obtain Benefit by Deception
84. Cultivate Drugs
85. Drive Under Influence
86. Fail to Supp.Brief to Prosec/Papercommt
87. Other – Fraud Offences
88. Not Follow Procedures eg. Identifications
89. Apprehended Violence Order
90. Possess Drugs
91. Retention
92. Negligent Driving

93. Procedures eg. Fingerprinting
94. Improper Use of Firearms (No Discharge)
95. Deaths/Suicides
96. Domestic Violence Order
97. Uniform
98. Fail to Warn Witnesses
99. Pervert
100. Supply False Facts
101. Fail to Wear Identification Number
102. Bails
103. Fail to Submit Report/s
104. Sick Report Matters
105. Discharge Only
106. Incorrect Release
107. Refuse Legal Assistance
108. Fail to Produce/Provide Warrant/Document
109. Receiving
110. Fail to Supply Copy of Statement/R.O.I.
111. Summons
112. PCA High Range
113. Break Enter and Steal
114. PCA Mid Range
115. Improper Use of Police Dogs
116. Multiple Charges
117. Indecent Assault
118. Murder/Attempted Murder
119. Offences Relating to License
120. False Pretences
121. Goods in Custody
122. Promotion
123. Insufficient Inquiries re: Ownership
124. Exceed Terms of Warrant
125. Illegal Use of Motor Vehicle
126. Obtain Warrant by False Information
127. Offences Relating to Equipment
128. Complaint Re: Media Presence
129. Confessions
130. Fail to Secure Revolver/Appointments
131. Death or Injury to an Animal
132. Refuse Breath Test/Analysis
133. Improper Use of Batons (Not Assault)
134. Touting
135. Breach of Apprehended Violence Order
136. Forgery
137. Breach of Domestic Violence Order
138. Supply False Antecedents
139. Causing Death
140. Culpable Driving

141. Domestic Violence Order Weapon REM
142. PCA Low Range
143. Stalking
144. Utter
145. Manufacture Drugs
146. Embezzlement
147. Fail to Carry Revolver/Appointments
148. Willful and Obscene Exposure
149. Apprehended Violence Order Weapon

APPENDIX B - TERMS AND THEIR MEANINGS

Terms and meanings of CIS category findings as at 17 March 2000

Adverse findings.
This means that in at least one issue the nominated involved officer was at fault. Many of these used to be shown as 'sustained'.

No adverse findings.
In none of the relevant allegations was a nominated involved officer found to be at fault. These were previously recorded as 'not sustained'.

Informal resolution – successful.
A successful attempt was made to resolve the complaint outside the formal conciliation process. No further action is taken although some managerial action may follow with counselling.

Informal resolution – unsuccessful.
An unsuccessful attempt was made to resolve the complaint outside the formal conciliation process. Further investigative action is unlikely although some counselling may occur.

Managerial action.
In at least one of the issues raised the alleged involved officer was found to be at fault but the gravity was considered only sufficient to warrant counselling or perhaps some form of performance management.

Dealt with managerially.
As above.

APPENDIX C - CATEGORY 1 COMPLAINTS

In its February 1996 Interim Report, the Royal Commission recommended that the existing complaints system be replaced by one in which four categories of complaints would be established. For the purposes of this Report, the only category of interest was Category 1 complaints, which the Royal Commission described as follows:[289]

> ***Category 1: Serious Misconduct and Corruption***
>
> - behaviour which constitutes corruption and other serious criminality;
> - matters warranting dismissal from the Police Service;
> - matters in which it is unlikely that there will be public confidence in an internal police investigation.

This recommendation was accepted by the Government, and s 67 of the *Police Integrity Commission Act*, enacted later in 1996 (which also established the Police Integrity Commission), enabled the PIC Commissioner and the Ombudsman to agree on the class or kind of police complaint which should be referred to the Commission as Category 1 complaints.

On 20 December 1996, the Commissioner and the Ombudsman entered into the first agreement. This agreement came into effect on 1 January 1997, when the *Police Integrity Commission Act 1996* came into full operation. In this agreement the following classes of complaint were specified as being Category 1 complaints:

(1) perjury, perverting the course of justice and related offences,

(2) indictable offences with a minimum penalty of three years imprisonment or more, an example being assault occasioning actual bodily harm,

(3) bribery,

(4) improper interference with a police investigation, including an internal investigation,

(5) complaints relating to a failure of an officer to carry out duties in the course of an investigation into another police officer,

(6) improperly gaining access to or releasing official information,

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[289] Royal Commission into the New South Wales Police Service, *Interim Report*, February 1996, p. 111.

(7) involvement in the manufacture, cultivation or supply of drugs,

(8) complaints involving an officer of the rank of superintendent or higher.

On 15 January 1998, this agreement was amended. As from 1 February 1998, Category 1 complaints consist of the following:

(1) A complaint that a police officer has or may have sought or may seek to pervert the course of justice by giving false evidence, by destroying or interfering with evidence, by withholding or refraining from giving evidence, by fabricating evidence or by influencing another so to act.

(2) A complaint that a police officer has or may have committed or may commit

a) an assault which has caused or may cause a serious injury and which could lead to a charge of maliciously wounding or inflicting grievous bodily harm upon a person pursuant to section 35 of the *Crimes Act 1900*; or

b) an offence (including larceny) relating to property where the value exceeds $5000; or

c) any offence (other than assault occasioning actual bodily harm) punishable on conviction on indictment by a maximum sentence of imprisonment or penal servitude for five years or more.

(3) A complaint that a police officer has or may have solicited or accepted, or may solicit or accept, a benefit for himself/herself or for another in return for failing to carry out his/her duties.

(4) A complaint that a police officer has or may have sought or may seek to interfere improperly in the investigation by another police officer of an alleged offence .

(5) A complaint that a police officer investigating an offence alleged to have been committed by another police officer has or may have improperly failed to carry out, or may improperly fail to carry out, his/her duties in the course of that investigation.

(6) A complaint that a police officer has or may have manufactured, or may manufacture, a prohibited drug, cultivated or may cultivate a prohibited plant, or supplied or may supply a prohibited drug or a prohibited plant, unless the amount or number of such drug or plant is less than the indictable quantity therefore as specified in the *Drug Misuse and Trafficking Act 1985*.

It will be seen that the new agreement removed two classes of complaint from the first agreement, improperly gaining access to or releasing official information, and complaints involving very senior officers, nos. 6 and 8. A third class, no. 2, was modified, so that only the more serious assaults, larcenies and other indictable offences were deemed to be Category 1 complaints.[290]

On 8 March 1999 amendments to the *Police Service Act 1990* commenced. These had the effect of replacing the four categories of complaint with a system of two categories. The definition of Category 1 complaints remained unchanged, and any complaint that was not a Category 1 became a Category 2 complaint. Accordingly the Category 1 agreement entered into between the Commissioner and the Ombudsman on 15 January 1998 remained unchanged and is still in force.

[290] Two matters should be noted here: the first is that the Commission may investigate a matter notwithstanding that it is a not a Category 1 complaint within the terms of this agreement – see sections 13, 23, 24 and 68 of the *Police Integrity Commission Act 1996*; the second is that Category 1 complaints are viewed by the Commission primarily as sources of information to assist it in the pursuit of its statutory functions – see the section later in this chapter on 'The Legislative Basis'.

APPENDIX D - SELECTED CLAUSES FROM *POLICE SERVICE REGULATION 1990*

The following provisions of the *Police Service Regulation 1990* impose an expectation that police will become involved in issues which require that they discharge their duties as police officers whilst *off-duty*.

Clause 14(1)(a):

> (1) A police officer who is not on duty (whether rostered off duty, on annual leave, suspended or otherwise absent):
>
> (a) is subject to the provisions of this Regulation, and …

The oath or affirmation sworn under clause 12(1) or 12(2) requires that a police officer 'Prevent to the best of my power all offences against that peace' and to 'discharge all my duties faithfully according to the law'.

Further, clause 13 stipulates that:

> A police officer is required:
>
> (a) to serve wherever the officer is duly directed, and
>
> (b) to perform such police duty as may be duly directed, whether or not during the officer's rostered hours of duty.

APPENDIX E - THREAT ASSESSMENT MODEL[291]

The Internal Affairs command has developed a 'threat assessment model' that seeks to address the risk associated with corruption and misconduct. The model takes a holistic view of the potential risk posed by an officer including among other things:

- duty type;
- associations formed;
- duration and location;
- performance; and
- complaints history.

The model has the support of the Ombudsman and is currently used by the Strategic Assessments and Security Centre in identifying high-risk officers. Dissemination of the model to regions and specialist areas such as Crime Agencies, via a series of workshops, was scheduled to commence in December 1999. In the first instance this model was to be delivered by Internal Affairs consultants.

[291] Police Integrity Commission, *Annual Report 1998-1999*, p. 53.

APPENDIX F - ACKNOWLEDGMENTS

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While advice was received from these sources, this Report is a Commission publication and the Commission accepts responsibility for its contents.

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