



Improving the management of complaints

Assessing police performance
in complaint management

A special report to Parliament under s 31
of the *Ombudsman Act 1974*

August 2002



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August 2002

The Hon Meredith Burgmann MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

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

Dear Madam President and Mr Speaker,

I submit a report pursuant to s 31 of the *Ombudsman Act 1974*. In accordance with the Act, I have provided the Minister for Police with a copy of this report.

I draw your attention to the provisions of s 31AA of the *Ombudsman Act 1974* in relation to the tabling of this report and request that you make it public forthwith.

Yours faithfully,

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Foreword

In March 1999 NSW Police became fully responsible for complaints against police. Criminal or administrative, serious or minor, systemic or one-off, complaints about police conduct were handed back to local commanders.

These changes reflected not only recommendations of the Royal Commission into the NSW Police Service, but also an appreciation of the value of complaints to NSW Police as an organisation. Complaints provide an opportunity to identify poor practice by individual officers, local commands or the whole of NSW Police — and to address those practices through management action. Complaints may identify officers of concern, who require close supervision. Complaints are a further and often final opportunity to right a wrong to an individual, group or community. Managing complaints therefore rightly belongs with NSW Police.

Complaint management, however, is a complex business. Each complaint brings with it challenges in:

- assessing whether the various issues should be investigated, resolved through discussion, handled through a combination of these approaches, or not dealt with at all.
- conducting any investigation in a timely and effective manner.
- using the complaint as a tool in managing police officers and commands.
- deciding on meaningful outcomes.

And the business of complaint management means knowing, from day to day and command to command, how — and how well — complaints are being dealt with.

While NSW Police is responsible for managing complaints, reviewing how those complaints have been managed is the Ombudsman's job. Parliament has recognised that the investigation of alleged criminal or other serious misconduct by police needs rigorous oversight by an independent statutory officer, accountable not to the Commissioner of Police or the Minister for Police, but to the Parliament itself. In addition, the systems for dealing with all police complaints need ongoing, independent scrutiny.

In the first of this series of special reports to Parliament — 'Officers with complaint histories of significance' — I highlighted the need for commanders to know about, and act on, the complaint histories of officers within their commands. This is part of the business of managing complaints. In this report, I examine how NSW Police is performing in the management of complaints.

While the community can have confidence that the management of complaints by NSW Police is getting better, there remains room for improvement. The reason my office can offer this advice is because we have, for some time, measured police complaints performance in key areas — timeliness, conciliation rates, the adequacy of investigations and management outcomes, and complainant satisfaction. For example, I can report that in 1997/1998, only 39 per cent of complaints against police officers were finalised in less than 90 days. In 2000/2001, over 70 per cent of complaints were finalised within this time. Last financial year the proportion dropped to a little over 60 per cent.

Ongoing measurement of police complaint performance provides early warning signs of possible problems. By reporting this information to local commanders and senior police, sometimes with a 'please explain', we increase the likelihood that NSW Police will manage every complaint effectively.

Genuine responsibility for police complaints means that NSW Police must determine its own measures of complaint performance. Senior managers must identify and communicate to commanders what those measures are. Commanders should report on and then be held to account for how they perform against relevant indicators — including strong incentives for good performance. Senior officers of NSW Police should closely examine the reasons why one command performs well and another performs poorly — and manage change toward demonstrated good practice.

My office has recently discussed the development of complaint performance indicators with NSW Police. I have been concerned to ensure that any proposed complaint performance indicators adopted by NSW Police measure outcomes and not processes. I have recently been advised that the proposed performance measures will include timeliness, how satisfied officers and complainants are with complaint outcomes, and the quality of investigations — outcome focused measures which should prove to be effective tools in improving complaint management.

Given that NSW Police is actively developing these performance measures, I am reporting to Parliament my findings on the performance of NSW Police in key areas — timeliness, quality of investigations, and systems issues arising from complaints. This report is provided in part to inform Parliament about progress, good and poor, by NSW Police in complaint management. It also demonstrates a number of alternative processes in measuring complaint performance — through individual matters, audits and whole of system processes. In particular, I am keen to provide relevant and up to date material to the community, so that an informed discussion can occur about performance measures for NSW Police in dealing with complaints about police officers.

The complaints system

The Police Act sets out how complaints against police officers must be handled. It deals with how to make complaints, the responsibilities of local commanders in handling complaints, and the role of the Ombudsman as a check and balance. The Police Act outlaws paybacks against complainants (including whistleblowers) by police officers. It also outlaws deliberately false complaints.

The following explanation sets out key steps and responsibilities for each stage of complaints handling and provides a background to measuring the performance of local commanders in dealing with complaints.

Complaints about police conduct, which must generally be in writing, can be delivered to any police station, the Ombudsman, the Police Integrity Commission or a local court. While most complaints are from private citizens, many hundreds each year are from police officers concerned about the conduct of their colleagues.

All complaints are assessed by police to decide the appropriate response. Increasingly, this is the work of local complaint management teams, which include the local commander and senior command officers.

Some minor matters — about one in four — are dealt with immediately and directly by local commanders. An example would be a claim that an officer spoke rudely when on the beat or did not provide her details when requested. These minor matters are not treated as complaints to be oversights by the Ombudsman, although if the complainant is not satisfied with the police handling, it can be reviewed. The Ombudsman regularly audits how these minor matters are recorded and dealt with. If irregularities are found, they are reported to local and senior police commanders to rectify.

More serious complaints are notified to both the Ombudsman and NSW Police. The most grave of these complaints — those alleging misconduct such as corruption, perjury or drug dealing — are Category 1 complaints and must also be notified to the Police Integrity Commission. The Commission reviews all Category 1 complaints and decides whether it will be involved. In practice, the Commission involves itself in only a small number of complaints. This is because the Commission is required to turn its attention to actively investigating serious misconduct and corruption. Last year, the Commission was notified of 628 Category 1 complaints. Of these, the Commission investigated 10 and audited another 11. The remaining 607 Category 1 complaints were dealt with by NSW Police and the Ombudsman. This means that the Ombudsman is the primary oversight agency for police complaints.

Most Category 1 complaints and the remaining complaints — Category 2 complaints — are generally dealt with by local commanders, complaint management teams and individual officers. Each complaint is independently reviewed by our office. In 2001 there were 4800 Category 1 and 2 complaints.

- About one in five of these complaints is declined — that is to say, no investigation of the complaint or resolution meeting with the complainant occurs. Reasons for this include that the complaint is too old, or has been investigated previously, or will be dealt with in court proceedings. If we disagree with a decision to decline a complaint, we can request that it be investigated by NSW Police.
- About 25 per cent of the complaints are conciliated. Local commanders or senior police officers meet with complainants to discuss their concerns. An explanation of police conduct is given and often an apology is made. For many complainants, knowing that a police officer is aware of their concerns is enough. Sometimes, for serious matters, it is not appropriate to conciliate the complaint because grave misconduct could be swept under the carpet. Decisions to conciliate complaints are reviewed by our office.
- The remaining complaints are investigated.

The 'investigation' of a complaint against a police officer can mean many things. It can mean informal inquiries with police officers or other persons to establish what happened and why. Where the complaint does not make serious allegations, this may be sufficient. Where workplace issues are raised, informal inquiries and action aimed at dealing directly with concerns raised will usually be appropriate.

Some complaints will contain allegations of criminal conduct by police — lying in court, assaulting arrested persons, sexual assault in the workplace. For these matters, a criminal investigation is required, in the same way as police would investigate similar serious criminal allegations made against a member of the public.

At the end of an investigation, the investigator and local commander will decide if the allegations are proved and whether any action should be taken. Action should be taken only after consultation with the complainant, and in many circumstances, the involved officer. While police officers who make honest mistakes should not be punished, commanders may decide to take remedial management action including education, mentoring and formal performance management. For serious misconduct, the outcome might include laying criminal charges against a police officer — last year I reported that criminal charges arising from complaints were laid against 79 officers. Because complaints often raise broader issues affecting commands or the procedures across all of NSW Police, these too will be examined and solutions suggested.

NSW Police is required to forward the outcomes of investigations, including the investigation papers, to the Ombudsman. We must also be told whether the complainant is satisfied with the handling of the complaint. Our review includes making sure that sufficient inquiries have been made, decisions are based on proper evidence, and management responses are appropriate. We can recommend that further inquiries be conducted or different management action be taken. We can also directly investigate matters, including requiring police officers to give evidence. If our recommendations are not accepted by the Commissioner of Police, we can take them to the Minister or Parliament.

The Police Act not only requires the Ombudsman to oversight individual complaints. As the primary oversight agency, we are also required to keep under scrutiny the systems NSW Police has to deal with complaints. In the last two years, we have reported to Parliament on systems in NSW Police to deal with email misconduct, police officers with complaint histories of concern, and faulty police speedometers.

Performance measures

In holding NSW Police to account for its management of complaints, the Ombudsman has three broad programmes that measure performance:

1. For each complaint, investigators and local commanders are measured on how it is managed — timeliness and the nature and sufficiency of inquiries and outcomes. Minor complaints are subjected to streamlined review to ensure appropriate assessment decisions are made and satisfactory records kept. Serious complaints are rigorously reviewed in respect of relevant evidence, findings and management decisions.
2. Trends that arise from these individual complaints are collated and closely analysed. The trends we report are directly related to managing complaints:
 - the timeliness of complaint management.
 - how many complaints are conciliated.
 - how many investigations are deficient.
 - how officers are managed at the completion of the investigation.
 - whether complainants are satisfied with how their complaint was managed.

Measuring this performance is a beginning to identifying reasons behind the trends. Armed with this information, managers can explore, for example, the reasons for fast (or slow) complaint management and identify practices that work best.

3. We audit complaint files. Our audits focus on systems issues that arise either in managing complaints, or from complaints themselves. Audits examine, in a systematic manner, police records and other information to investigate significant policing practices. By reviewing large numbers of related matters, and presenting any findings with recommendations to improve policing practice, the force of our arguments is multiplied by the weight of numbers. Audits also provide an opportunity to identify practices that work — and those that do not — by direct comparison.

Audits offer focused and cost effective oversight tools to deal with single issues across a wide range of commands and complaints. The focus is distinct from overlooking individual complaints — we do not generally return matters for further action, but instead review each matter in comparison with many others to identify strengths and weaknesses and the causes for them. Auditing allows the Ombudsman to be proactive in dealing with emerging policing issues.

In the following sections, I report on audits of timeliness in dealing with complaints, complaint investigations, and brief handling within a local command. Other recent audits by my office have concerned responses by police to domestic violence situations, how officers convicted of off-duty drink-driving offences are managed, and systems for auditing police officers' access to confidential police information. The implementation by NSW Police of recommendations resulting from these audits has significantly improved police practices in key areas.

We do not claim a mortgage on performance measures. For a long time, the Ombudsman has strongly encouraged NSW Police to develop performance measures in complaint management relevant to senior police, commanders, investigators, involved officers and complainants. This is appropriate because NSW Police is responsible for the complaints system. As I noted at the beginning of this report, NSW Police has proposed measuring timeliness, investigation quality, and the satisfaction of complainants and involved police.

It is important to emphasise that while the performance of all commanders should be held up against relevant measures, benchmarks for performance may not be identical in all circumstances. Particular circumstances within a command may make it appropriate that a different (higher or lower) benchmark is used. A command in a remote location may have unique issues, as may a specialised command. These factors should be considered when developing individual benchmarks.

Developing relevant indicators, informing and educating all involved parties, measuring performance, and holding commanders to account, will enable NSW Police to make informed decisions about how well it is managing the complaints system. This will allow areas in need of improvement to be identified and focused solutions developed. Measuring performance should also improve public and police officer confidence with the NSW Police complaints system.

Dealing with complaints in a timely manner

A key expectation of any person making a complaint is that it will be dealt with in a timely manner. A police officer complaining about harassment by a supervisor rightly expects the offending conduct will stop — a review many months later exposes all involved officers, the local command and NSW Police to considerable and escalating risk. A member of the public unhappy that confiscated property has not been returned wants a quick decision made — a determination some time later will be of little assistance if the property is tools of trade. Further, an officer who is complained about will want the matter cleared up quickly. Although some

investigations are complex, particularly where serious criminal conduct is alleged, the key is that they are progressed as quickly as is appropriate. Managers need systems to monitor investigations and rescue matters that have fallen off the rails.

Streamlining the complaints system has been one strategy we have used to improve turnaround times for complaints. In June this year, the Police Integrity Commissioner and Ombudsman agreed to changes to the way complaints are classified so that minor workplace harassment and discrimination complaints can be dealt with quickly and informally, and without the Ombudsman being notified of the complaint. New guidelines for NSW Police, developed in consultation with my office, will assist commanders to manage less serious complaints quickly, while ensuring serious criminal conduct is investigated. Police officers subjected to minor harassment or discrimination will have the choice about how their complaint is dealt with. Central reporting of complaints to the Employee Management Branch provides the opportunity to monitor, across NSW Police, how commanders are managing harassment and discrimination within their commands. I am hopeful that the new procedures will prevent occurrences similar to those demonstrated in case study 1.

Case study 1

A NSW Police employee (D) complained about an anonymous note in her work mail tray. The note stated that a senior constable at D's local command was bragging about having a sexual relationship with her. It provided graphic details about the alleged relationship and stated that most of the command knew about, and other officers were laughing at, the senior constable's claims.

This complaint was made in June 2000. D and the senior constable were not interviewed until March 2001. The investigation was not completed until April 2001. No misconduct was found and the author of the anonymous note was not identified. In the meantime, in December 2000, a further harassment complaint had been made against the senior constable by a number of female police officers — however, the investigating officer was not aware of this complaint. When D was informed of the outcome in May 2001, she unsurprisingly expressed relief that the matter was completed but was disappointed that it had taken so long to finalise.

The complaint called for a quick and comprehensive response including establishing relevant facts quickly and providing a meaningful outcome for the complainant, involved officer and command. Instead, almost twelve months after the complaint, there was no clear resolution of the issues and a further complaint had been made against the senior constable.

Measuring and analysing trends in dealing with complaints also provides valuable information to improve complaint performance. For some years my office has monitored how long it takes local commands, regions and NSW Police as a whole to deal with complaints. Our view is that most complaints should be dealt with quickly — within 90 days. In addition, almost all files, including complex investigations, should be completed within 12 months.

Immediately following the Royal Commission, only 39 per cent of complaints against police officers were finalised in 90 days. In 2000/2001, this figure had improved to over 70 per cent. I reported this achievement to senior police commanders at a number of forums and meetings. The past year has seen this improvement eroded, to a little over 60 per cent: see table 1.

Table 1: Finalisation of complaints within 90 days — all complaints, all regions

1999–2000	2000–2001	2001–2002
64.17%	70.70%	62.81%

Measuring performance is the first step in managing performance. Knowing the reasons why one region deals with files more quickly than another provides opportunities for improving practice across NSW Police. In respect of timeliness, while performance across the board has dropped after several years of improvement, there is a remarkable variance between the best and worst performers: see table 2. My office has proposed a joint project with NSW Police to focus on complaint management in a number of locations and examine what works best. This opportunity of identifying and explaining best practice is key to improving NSW Police complaint management.

Table 2: Finalisation of complaints within 90 days — regions with most and least finalised

Region	1999–2000	2000–2001	2001–2002
Most finalised	75.29%	78.66%	72.35%
Least finalised	54.11%	62.46%	53.50%

In addition to dealing with most files quickly, it is critical that serious or complex investigations are appropriately progressed. In the past year, the proportion of complaints taking more than twelve months to finalise has almost doubled — over six per cent or 230 complaint investigations are more than 12 months old: see table 3. While two regions were able to deal with 49 out of every 50 complaints in less than 12 months, in another region more than one in 10 complaint investigations has taken more than 12 months. By any measure, this blow out in timely management of complaints is unacceptable.

Table 3: Complaints incomplete after one year — all complaints, all regions

	1999/2000	2000/2001	2001/2002
	4.46%	3.35%	6.36%

My office has audited the causes for many of these over-long investigations. For a number, the reason is that investigation officers are on sick leave and their cases are left unallocated. For one command, it is because the officer with a quality assurance role had over 30 matters to review — he did not get to an otherwise completed investigation raising serious police supervision issues for over nine months. Some complaints are shunted from command to command in an attempt to find an appropriate investigator — sometimes this means the complaint files are lost.

A positive outcome of this audit was that NSW Police took firm steps to address many delayed investigations, resulting in them being brought to a conclusion.

These delayed investigations are not simply a matter of statistics. With some delayed complaints there is alleged serious misconduct, requiring a swift and appropriate response, that is not promptly investigated: see case study 2. Police officers who are the subject of false allegations can have promotions put off and opportunities withheld while they await investigation outcomes, to say nothing of the stress caused by unresolved allegations.

Case study 2

In February 1999, a police officer's de facto partner gave a sworn statement that the officer (K) had assaulted her and broken her leg. She also stated that K had smoked marijuana and associated with a convicted drug dealer. No substantial investigation of the complaint occurred until May 2000. At that time K was involved in a critical incident. A man had cut his

neck with a razor blade and was threatening to jump from a fifth floor balcony. Police negotiated with and subdued him. K undertook a mandatory drug test following the incident. His result was the highest reading from a police officer for cannabis recorded by NSW Police since the commencement of targeted and mandatory drug testing. K was suspended from duty. Despite repeated requests from the Ombudsman, the investigator did not attempt to interview K about the alleged assault until July 2001 — 28 months after the alleged victim had provided a statement. K has now resigned from NSW Police and been charged with assault occasioning actual bodily harm.

This complaint was one of seven matters the investigator failed to deal with in a timely manner. His commander wrote to the Ombudsman in March 2002: 'The delays ... have placed the Service in a position of not only embarrassment but also brings discredit upon [the investigator's] ability to manage investigations'. His incomplete investigations are being monitored to ensure they are finalised without delay.

Some delays are inevitable. Others, such as those noted above, are preventable. The starting point for commanders is to know how complaints are being progressed in their command at any point in time and acting quickly to address problems.

The quality of complaint investigations

The Police Act requires not only that complaint investigations are timely, but that they also be effective. As this office has reported on a number of occasions, by and large NSW Police deals effectively with complaints. Sometimes the handling of a complaint investigation is especially commendable: see case study 3.

Case study 3

A toddler in a regional community was killed when she was hit by a car driven by an elderly woman. The following day the woman told police that, while intending to apply her brakes, she had in fact applied the accelerator. The child's grandparents complained about delays in charging the driver, that she was only charged with negligent driving causing death and not murder, and that police did not support the family of the victim. The police investigator made all appropriate enquiries. He spent lengthy periods of time with the grandparents explaining the police investigation and court processes. He found that the officer who attended the accident scene had, when contacted by the family to locate the child's shoes on the evening before her funeral, arranged for them to be flown from Glebe Morgue. The shoes, which he collected on their arrival at the airport at 6:00am, had not been cleaned since the accident and were bloody. The officer cleaned the shoes and then delivered them to the family. While no police investigation or criminal action can be expected to relieve the grief of the family's loss, the police officers involved from the time of the accident until the completion of the police investigation into the complaint, showed both professionalism and compassion to all parties. My office commended the investigator on his management of this matter.

In measuring the quality of police investigations, the Ombudsman employs three tiers of oversight — measuring and analysing trends in complaint investigations; conducting audits of complaint investigations; and closely reviewing the investigation of particular matters.

Trends in complaint investigations

Two important measures in complaint management are whether complaints are conciliated or investigated and whether investigations are satisfactory.

Conciliating complaints in appropriate circumstances can lead to better outcomes. First, complaints are likely to be dealt with more quickly. Second, less resources, including police time, are spent dealing with the complaint. Importantly, complainants are likely to be more satisfied with the outcomes. For many years, we tracked how satisfied complainants were when their complaints were conciliated. Year after year, our surveys

showed that more than 80 per cent of complainants were satisfied with police handling of their complaints, and close to 60 per cent believed NSW Police might improve as a result of the conciliation process.

In 1990-91, only 6 per cent of complaints against police were conciliated. In each of the past three years, about 25 per cent of complaints against police have been conciliated. Most recently, the proportion has reduced slightly: see table 4. There are a number of possible reasons for this, including changes to the Police Act which mean minor customer service complaints — matters that are very often amenable to resolution without investigation — are dealt with immediately by local commanders and do not have to be notified to the Ombudsman.

Table 4: Complaints conciliated — all complaints, all regions

1999/2000	2000/2001	2001/2002
29%	25%	23%

Where complaints are investigated, the Ombudsman reviews the investigation and may request NSW Police to undertake further inquiries or reconsider findings. It is important here to distinguish between returning individual files for further investigation or review, and auditing files.

- A review of an individual file is focused on assessing the adequacy of the NSW Police investigation and findings in that matter. A file will only be returned to NSW Police for further investigation if it is likely this will affect the outcome of the investigation.
- An audit may find a file or files do not meet a particular standard. However, the purpose is not to return unsatisfactory complaint investigations to NSW Police, but to look at particular standards and practices, in a systematic and focused manner, across a large number of similar matters.

Our analysis of trends for individual NSW Police complaint investigations reviewed by the Ombudsman indicates that most are satisfactory. In the past two years, for the most serious complaints — Category 1 complaints — about 12 per cent of the investigations were returned to NSW Police with recommendations for further inquiries or a request that findings be reviewed: see table 5.

Table 5: Investigation of Category 1 complaints returned to NSW Police for further investigation or a review of findings

Regions	2000	2001
All	12%	12%
Region with greatest proportion of investigations returned	25%	17%
Region with least proportion of investigations returned	4%	4%

A number of salient points should be noted in considering these trends:

- it is fair to say that a substantial reason for the satisfactory standard of NSW Police complaint investigations is the independent oversight of each investigation by my office. This undoubtedly improves the quality of investigations.
- because local commanders are accountable, they sign off complaint reports before they are forwarded to my office. This may also include a review by another police investigator prior to the commander certifying the quality and timeliness of the investigation.

- each deficient investigation has been reviewed in detail by Ombudsman officers. Individual matters are then usually rectified by NSW Police or additional information supporting a commander's decision is provided.
- there are significant differences in the performance of different commands. A substantial focus of the joint project with NSW Police on complaint management noted above, is to closely examine and document investigative decision making with a view to better identifying and explaining best practice in complaint investigations.
- for many complaint investigations, an appropriate benchmark for performance is likely to be very high. If serious criminal misconduct is alleged, it would be difficult to justify anything less than the most appropriate investigation.

Measuring performance is only a beginning. The identification of benchmarks to compare commanders' performance against, exploring the reasons for discrepancies between commands, and identifying good and poor practice are essential to improve performance.

Auditing complaint investigations

As part of the Ombudsman's role to keep under scrutiny the NSW Police management of complaints, we regularly undertake audits of particular complaints. In addition, we audit NSW Police records to review how they deal with particular issues which are the subject of complaint.

In the recent past we have, for example, independently audited how satisfied complainants are with the police handling of their complaints, and whether police are appropriately dealing with minor matters which do not have to be notified to the Ombudsman. We are presently in the process of updating these audits.

These measures provide valuable information, across a large number of matters, about how NSW Police is performing its complaint management job. Sometimes, issues raised by the Ombudsman following audits of police practices can result in significant investigations and substantial outcomes: see case study 4.

Case study 4

In November 1999, the Ombudsman audited a local command's complaints systems. Two serious sexual harassment complaints against a police officer, M, which should have been investigated, were identified as being dealt with informally. In one matter, M was alleged to have asked intimate sexual questions of a junior female police officer and to have inappropriately touched and grabbed her. We requested that NSW Police properly investigate the complaints. After some initial inquiries, NSW Police commenced a strike force which conducted a covert and highly effective investigation. M was criminally charged with indecent assault of two female officers and in 2001 pleaded guilty to some offences and was convicted and fined. M resigned from NSW Police at this time, and his resignation was accepted. The police officer who failed to investigate the criminal conduct when it was first reported was removed from management responsibilities. A comprehensive command action plan, including discussions, education, equity in relieving opportunities and a cultural survey, was implemented by the new local commander to address general harassment issues identified by the strike force.

Most recently, experienced senior Ombudsman investigators closely reviewed the handling of 330 serious category 2 complaints. These complaints do not encompass the gravest misconduct such as perjury, perverting the course of justice or drug dealing. They mostly arise from every day interactions between police officers and the community and include allegations of assault, dangerous or culpable driving, drug use, inappropriate access of information, drinking on duty, firearm offences, and unauthorised secondary employment. The review focused on whether the inquiries conducted were sufficient, having regard to all the circumstances of the complaint. It was not the object of the audit to return matters to NSW Police for further

investigation — instead it was an opportunity to systematically review the handling of a substantial number of similar complaints to identify common issues and solutions that could be applied in future investigations.

The majority of these serious category 2 complaints — 275 matters or more than 83 per cent — were investigated in a satisfactory manner. Some of the investigations were conducted to a very high standard.

55 complaints, or about 16 per cent, were dealt with in an unsatisfactory manner, and this may have impacted on the outcomes of the investigations. The problems included failure to pursue lines of inquiry, failure to check the complaint histories of involved officers, not identifying key issues, poor quality interviews, and failing to interview officers and other witnesses.

- An off-duty probationary constable (R) took his police pistol home in breach of regulations. When this was discovered, R was ordered to attend a police station to return the pistol. While at the station, and during what was later described as skylarking, R threatened another staff member by pointing the pistol at him. Although police witnessed the incident, no officer immediately removed the pistol from R; it was not taken from him until some time later. R was dismissed following a NSW Police investigation. No inquiries were made, however, as to why the pistol was not immediately taken from R by the police officers who witnessed the incident.
- X complained that he was subjected to a body search in a public place by police officers, including a request that he extend his underpants. X wanted an explanation as to why he was searched and required to expose himself. Informal inquiries and discussion dealt with the manner of search — no inquiries were made as to why X was searched in the first place.
- Z complained after police entered her yard at night and arrested her son — when she attempted to intervene she was bitten by a police dog. While the police investigation considered whether officers had acted appropriately in dealing with Z, the investigator failed to consider whether the entry onto Z's property or the arrest of her son were lawful and whether police actions were reasonable.

NSW Police has indicated that it will accept our audit as providing a benchmark to measure the improvement in the performance of investigators and commands in dealing with these serious complaints. Our audit demonstrates that these matters may require closer attention. We have recommended that NSW Police communicate to commanders and investigators the nature and extent of inquiries for serious category 2 complaints, and measure the performance of officers against agreed benchmarks.

While the Ombudsman has an established audit cycle, some matters come to light through monitoring ad hoc complaint patterns. For example, where problems arise within a command again and again, looking at all the matters together to identify underlying causes can result in long term improvements to policing practices: see case study 5.

Case study 5

Prosecution of offenders for crimes is central to the administration of criminal justice. Prosecutions which fail before they are even heard by the court can undermine public confidence in the capacity of NSW Police to effectively deal with crime. In late 2000, the Ombudsman commenced a direct investigation into the preparation, handling and monitoring of police prosecutions in a local command. We examined 33 failed prosecutions and their investigation by NSW Police. Prosecutions failed because police investigations were poor, supervisors did not review them, and the brief handling manager undertook haphazard quality checks. In some matters, briefs (that is, the documents to be relied upon by the prosecution) were of a very poor standard. In 13 prosecutions, briefs were served late. In other matters, witnesses (including police officers) did not attend court. The failed cases included an allegation of extreme domestic violence against an eight month pregnant woman, an alleged offence of driving with a high range alcohol reading, and an alleged assault on a 17 year old girl by her father. Many investigations of the failed prosecutions did not review the role of the brief handling manager or were conducted by officers responsible for supervising the preparation of the briefs.

Changes have been made to brief handling as a result of our investigation. The brief handling manager has received additional training and his role in reviewing briefs has been reinforced. A small group of experienced senior investigators is now responsible for investigating complaints against police officers. The early results are impressive — in the six months prior to March 2002, no prosecutions were dismissed through non-service of briefs.

Reviewing individual investigations

Every complaint investigation that NSW Police is required to forward to the Ombudsman is reviewed.

Many investigations, those that are less serious and can be resolved by informal inquiries and dispute resolution, are subject to streamlined review or audit. The focus of Ombudsman officers is to ensure that serious complaints are not swept under the carpet and that relevant, albeit quick and informal, inquiries have been conducted where appropriate. Importantly, these files are harvested for valuable information about complaint management — timeliness, outcomes, whether complainants are satisfied — so that trends can continually be monitored and analysed.

Other matters, including serious Category 2 complaints, are rigorously reviewed, case by case. Ombudsman officers examine the investigation report and associated papers and other material (such as interview tapes, custody room or search warrant video recordings, and other physical evidence). We report back to NSW Police where we identify deficiencies, requesting that they be rectified or drawn to the relevant police officer's attention.

Sometimes, reviewing a serious complaint investigation can uncover unwitting, unlawful police practice. In December 2001, my office wrote to NSW Police raising concerns about police conduct arising from three separate complaint investigations, that appeared to result from the relevant code of practice being inconsistent with legal requirements. Compliance with the code could result in police officers:

- detaining a person after arrest to conduct an investigation for a longer period than allowed by law — not only is this an infringement of the detained person's rights but may result in evidence being obtained unlawfully and not being admitted in subsequent court proceedings.
- conducting a strip search of a child alone, in circumstances where the relevant regulation requires that a support person be present for the child.

NSW Police is acting to amend the relevant code to protect both police officers and other members of the community.

Sometimes a complaint can raise various related issues: the conduct of an individual officer; training needs across a command; and systems failures that require immediate redress. It is easy, when focussing on blatant misconduct, to fail to see the broader issues that permitted the events to occur in the first place: see case study 6.

Case study 6

A 13 year old boy, who was intoxicated, was detained by police in a cell overnight after presenting to complain about an earlier incident with police. The next evening he and his mother were asked to attend the police station. The sergeant, Y, took them into an interview room, and hit the boy across the head on a number of occasions with an open hand — in the course of this assault he also knocked the mother, who was trying to intervene. The boy fell to the ground and suffered a bloodied nose. Y was charged with assault shortly afterwards. The charge was dismissed under the provisions of s 32 of the Mental Health (Criminal Procedure) Act on the basis that Y accept treatment for a post traumatic stress disorder as recommended by his psychiatrists. Y is presently being considered for removal from NSW Police. This complaint raised

other issues: why a 13 year old boy was detained overnight in the dock at all, and why the closed circuit television in the police station, which is there to safeguard both police and arrested or detained persons, was not operating. We raised both issues after our review. The local commander reinforced with all police officers that children are not to be placed in charge rooms or docks other than in accordance with the relevant code of practice. The camera was repaired as a priority.

Sometimes the investigation of a complaint is over the top. Instead of making brief and informal inquiries, a full scale investigation following every lead is conducted, wasting police time and other resources: see case study 7.

Case study 7

A person convicted of fraud alleged that the investigating police officer (S) was paid by the person he had defrauded to ensure S vigorously pursued her inquiries and prosecuted him. The investigation, lasting some 18 months, included interviews with seven persons, examination of court documents, review of telephone records, and auditing S's financial accounts and duty books. The complainant in this matter lacked credit and provided no evidence to support his allegations. Informal, speedy and cost effective inquiries could have disposed of the allegations with equal certainty.

Sometimes a police officer's complaint investigations will be found wanting time after time. This issue will only become apparent through reviewing individual investigations. In the same way that a series of complaints can raise concerns about an officer's conduct, so too a series of deficient investigations can raise concerns about an investigator's competence: see case study 8.

Case study 8

Q, a senior sergeant, worked as a police prosecutor until 1996, when he undertook other duties including complaint investigations. Since that time our office has returned investigations of a least six serious complaints to his commanders, for reasons including extensive delays and significant investigative omissions. At first Q's lack of skills was identified as a reason for problems and he was provided with additional training. We were then advised that Q's heavy workload was to blame. In addition, he was counselled and closely supervised. Q was involved in a protracted investigation of a possible payback complaint, which included an unrelated allegation that some police officers were involved with a notorious criminal identity and in drug manufacturing. Following a review of that and the other matters, my office recommended that all Q's current investigations be reviewed, that his workload generally be reviewed and that any other appropriate management action be taken.

Occasionally, inquiries conducted by NSW Police are so poor that our office will directly investigate the actions of NSW Police investigators. The primary objects of these investigations are to ensure that serious allegations against police officers are properly investigated, and to closely examine the conduct of the original police investigation. Two investigations completed by my office in the past year demonstrate the need for these strong powers of external review:

- A detective inspector (B) had only 72 hours of active service remaining before his retirement. B was directed by the local commander to investigate an allegation that a senior constable had struck a person with his baton. When we received the investigation some time later, and after B's retirement, we were so concerned that we immediately commenced our own inquiries into the alleged assault by the senior constable and into the conduct of the investigation by B and others. NSW Police, after receiving notice of our investigation, recognised the substantial deficiencies in B's investigation and began further inquiries. NSW Police found that B's investigation was shallow and police evidence contradictory. Criminal charges against the involved officer were commenced, but later dismissed — the Office of the Director of Public Prosecutions commenting that the original investigation by B contaminated key evidence.

- After preliminary inquiries following a hit and run accident, concerns were raised that a police officer (H) gave false statements that he was with his son, the driver of the car, at the time of the incident. Our office investigated failures by the investigator to interview key witnesses and put inconsistencies to others. A further review by NSW Police agreed the investigation was unsatisfactory. Subsequent inquiries found that H had misled police about the incident and been untruthful in the subsequent investigation.

Assessing police performance in individual matters, and holding commanders and investigators to account in each matter, provides opportunities to improve practice case by case. A poor investigation may demonstrate the need for additional training. It may suggest an officer is not well suited to complaint investigations. It is a central plank to increasing the expertise of NSW Police in complaint management.

Outcomes

At the end of an investigation, commanders must make decisions about how to manage officers the subject of complaint. Last year I reported that 42 per cent of complaint investigations resulted in adverse findings, that is, complaint investigations found that police conduct was wanting. This year the proportion is a little over 36 per cent. In all these matters, commanders have to determine how to address police officers' conduct and broader issues arising from the complaint investigation.

Honest mistakes should not be punished. However, where knowledge or supervisory failings are uncovered, these should be addressed in a comprehensive and supportive manner.

Equally, where complaints uncover criminal conduct, an appropriate response may include the consideration of criminal charges, and severe management sanctions or removal from NSW Police.

In assessing management actions we recognise that commanders must be given considerable discretion to determine appropriate outcomes — only where the decision is one that no reasonable commander could have reached will we recommend that the matter is reviewed. However, we will note best practice considerations where appropriate.

In assessing outcomes, we use similar methods to those employed in assessing timeliness and the quality of investigations: analysing trends across all complaints, auditing particular types of matters, and raising particular concerns on a case by case basis. Processes employed in considering whether an officer should be removed because they have lost the confidence of the Commissioner of Police provide a good example of our performance measurement approach:

- we collect information from every complaint file to establish which officers are nominated for removal — our trend reports provide information across commands and regions.
- we audit the process used by NSW Police in dealing with nominations for removal.
- where a decision is made to retain a police officer, we examine the reasons and supporting material — if we are concerned that the decision is not reasonable, we will require further information or recommend that the decision be reconsidered if all relevant factors have not been taken into account; see case study 9.

Case study 9

A police officer (U) was successful in her application for a duty officer position — a senior supervisory position within local commands. In appeal proceedings before the Government and Related Employees Appeal Tribunal, U provided a

forged document which suggested she had completed management studies, when she had not completed them. When U was first questioned about the forged document, she was untruthful. Only when presented with incontrovertible evidence of her forgery did U admit to making and tendering the false document. The Commissioner determined that U should not be removed from NSW Police, and instead issued her with a warning notice. Given the seriousness of U's misconduct, we were concerned to fully understand the reasons for the limited action taken. We are awaiting a full response to our concerns.

Our audit process includes ongoing monitoring of decisions of the Industrial Relations Commission, which can reinstate officers where the decision of the Commissioner is harsh, unreasonable or unjust. We also review on a regular basis the progress of all nominations for removal.

We recently tabled a discussion paper at the NSW Police — Ombudsman standing committee outlining our concerns about the present process, including:

- the present mandatory nomination guidelines mean some police officers are nominated for removal when it is clear from the outset that the officers will not be removed.
- decisions not to proceed with some nominations are poorly documented.
- endemic delays in progressing nominations are not being addressed strategically.

Since that time, we have been invited to comment on a new process to advance Commissioner's confidence nominations. Early drafts of the proposal show considerable promise. In addition, we have been told that an increased focus on finalising delayed matters should dramatically reduce the time it takes to make these very important decisions.

A significant limit on our effectiveness in reviewing outcomes in individual matters is whether decisions not to remove police officers can be revisited. Legal advice to NSW Police suggests that, where a decision has already been made to retain a police officer, the Commissioner cannot normally revisit the decision even where the Ombudsman has raised concerns. This advice reinforces the importance of the Commissioner and other police performing their job correctly in the first place.

Again, performance measures in respect of management outcomes should be settled and measured by NSW Police. Measures may include timeliness in determining or implementing management action, the success of those interventions, or officer satisfaction with management outcomes. Realistic benchmarks should be set. Commanders should report against the measures. Good performance should be recognised and less than satisfactory performance should invite an appropriate management response.

In this context, NSW Police has introduced a decision making framework to assist commanders in reaching consistent and relevant management decisions following complaint investigations where a finding is made against a police officer. An audit of decision making by commanders since the implementation of the framework is presently underway — we are providing some assistance to the auditor. We are interested to know the results of the audit, and how those results will be employed in further assessing and managing this important part of complaint management.

Police initiatives

Recently and over the next year, significant reforms have been and will be implemented by NSW Police in managing complaints. Those reforms include:

- coordinating complaint management across NSW Police through a high level steering committee, chaired by the Senior Assistant Commissioner, with representatives from the Police Association and relevant commands.
- establishing complaint management teams within each command to assess all complaints and inquiries and provide high level direction to investigators.
- providing high level support through professional standards consultants located within the Special Crime and Internal Affairs Command and Region offices.
- implementing professional standards reviews, chaired by the Deputy Commissioner (Field Operations), to share information and provide advice and support to local commanders. Prior to the reviews, information concerning complaints, including involved officers, complaint categories, investigators and investigation timeframes, will be collected.
- integrating complaint process improvements into commanders' work performance agreements.
- reviewing and revising processes which lead to removal of or serious action against police officers following complaint investigations, including interim action (for example, suspension) pending complaint outcomes.
- providing enhanced complaint handling and investigation training to complaint management team members and complaint investigators.
- revamping the investigators' manual.
- rolling out a new computer database, called c@ts.i, which will provide powerful new tools for complain management.

All of these developments provide opportunities to improve the management of complaints. It may be necessary, in an administrative sense, to know how these processes are being implemented from command to command across NSW Police. The most important measure of their success, however, will be whether in fact complaint management does improve; whether complaints are dealt with in a timely and effective manner; whether complainants and involved officers think complaint handling was fair and appropriate; and whether officers the subject of complaint are being managed well during and after the process.

As already noted, I have very recently been advised that NSW Police is proposing measures focusing on many of these outcomes. I understand that the measures will, in time, be incorporated into local and region commanders' performance agreements. Work has already begun on mechanisms to catch relevant information, including enhancements to the c@ts.i computer system.

Conclusions and recommendations

This report has outlined how NSW Police is performing in key areas of managing police complaints. There is much good work, and significant system enhancements are in hand.

The need for a whole of organisation approach to measuring performance in complaint management has been identified, and a process has commenced to develop appropriate indicators. Given the string of new initiatives in place or planned, it is an ideal time to settle key indicators and benchmarks, and to begin to measure performance.

Because performance measures will drive complaint management, very careful consideration of what is measured, how it is measured and how commanders will be accountable for their performance is crucial to the future of complaint management in NSW Police. In addition, future improvements will be guided by what works best. Process focused indicators are unlikely to achieve improved outcomes for police officers or the community. On the other hand, result focused indicators will provide real impetus to identify, examine, explain and implement best practice measures.

In light of the matters raised in this report, I recommend:

- NSW Police, as a matter of priority, finalise performance measures for complaint management within commands and across the organisation.
- In finalising performance measures, and the methods proposed to measure performance, NSW Police consult with key interested groups within the community, including consultation with police officers as appropriate.
- Investigators, commanders and senior managers be accountable for their complaint management in a genuine and transparent manner, guided by key performance measures.
- NSW Police publish annually, in its annual report or other publicly available documents, how it is performing in complaint management.
- NSW Police provide a report to my office within three months which details its progress in addressing these recommendations.

