

Police and Improper Use of E-mail

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

December 2000

NSW Ombudsman

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 section 31 of the *Ombudsman Act*. 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 section 31AA of the *Ombudsman Act* in relation to the tabling of the report and request that you make it public forthwith.

Yours faithfully,



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December 2000

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WARNING

**THIS REPORT CONTAINS
HIGHLY OFFENSIVE LANGUAGE
AND
DESCRIPTIONS OF SEXUAL ACTS
AND
OTHER BEHAVIOUR
WHICH MANY PEOPLE MAY
FIND DISTURBING**

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Introduction

The purpose of this special report to Parliament is to highlight to all public sector agencies the importance of developing and implementing appropriate strategies to minimise the improper use of corporate electronic mail (e-mail) systems.

The catalyst for this report was a review conducted by my Office into 405 NSW Police Service investigations of alleged e-mail misuse by police. The review indicated that misuse of the Police Service e-mail system by its own officers was widespread.

If such misconduct is prevalent in the Police Service, there is good reason to believe that similar problems may exist in other public sector agencies. It follows that valuable lessons can be learnt from the problems recently encountered by the Police Service in this area.

It should be emphasised that this report is not concerned with the personal morality of the individuals involved. My main concern is that persons employed in the government sector, using resources funded by the public, should comply with the law and demonstrate an acceptable level of professional and ethical conduct in the performance of their duties.

Operation Providence

On 17 November 1999, a memo message with a pornographic image attached was mistakenly sent by a Sergeant to a Local Area Commander via the Police Service electronic memo system.

The image consisted of a photograph of a nude female with arms and feet trussed behind her, suspended by ropes and chains and by a large cargo-type hook inserted into her vagina. A male is depicted grabbing the female's hair, and forcing her to engage in the fellatio of his exposed erect penis. The caption attached to the photograph read — 'Gives new meaning to the phrase "hook, line and sink-her"!'.

After the Local Area Commander reported his receipt of the offensive image, Internal Affairs committed significant resources to investigating the matter under the reference 'Operation PROVIDENCE'. The inquiries by Internal Affairs involved extensive work by about 10 officers over a period of two months. Audit trails in respect of the offensive image were created, and the memo mailboxes of numerous officers were suspended from use in order that inappropriate material could be retrieved for evidentiary purposes.

A small number of the more serious matters were fully investigated by Internal Affairs. However, the majority of matters were allocated for investigation to the respective commands responsible for the individual officers involved.

In an effort to ensure consistency, the Commander (Special Crime and Internal Affairs) provided investigating commands with the Office of Film and Literature Classification *Guidelines for the Classification of Publications*¹, as well as guidelines for management responses² in respect of officers found to have misused the system. These guidelines for management action were agreed upon at a meeting between the Commander (Special Crime and Internal Affairs) and representatives of the Ombudsman.

¹ See Annexure C of this report.

² See Annexure D of this report.

To date more than 460 officers have been identified as either transmitting or receiving offensive material on the Police Service memo system. The involved officers vary in rank from Probationary Constable to Inspector. In addition, some commands have found inappropriate material on their computer files which cannot be traced to particular officer(s). In one case unidentified officer(s) were found to have accessed child pornography sites on the internet.

A total of 134 different images of an inappropriate nature have been retrieved from officers' mailboxes. These images comprise cartoons, photographs and video clips ranging from soft 'Playboy' type nudity up to graphic depictions of bestiality, sexual violence or disturbing depictions of bodily functions. In some cases, text of an offensive nature has been found without any accompanying images.

Relevant Police Service policies

The Police Service's *Electronic Mail Policy Statement* (Statement) specifically regulates usage of the Police Service e-mail system, including proscribing its use for unlawful activities or for sexual or other forms of harassment. It sets out the responsibilities of users, advising them to become familiar with relevant criminal offences and internal policies. Users are also required to notify 'supervisors and appropriate Service agencies of any perceived misuse of the electronic mail system'.³

The Statement also sets out the responsibilities of commanders and managers. This includes the need to ensure all users are informed about their own responsibilities, and that appropriate checks and disciplinary procedures are in place to detect and remedy improper use.⁴

In addition to its Statement, the Police Service has a number of other internal policy documents applicable to use of its e-mail system. The Police Service's *Code of Conduct and Ethics* (Code) guarantees all members a workplace free of harassment or unfair discrimination, and places an obligation on members to report such activity if it occurs. Harassment is specifically defined by the Code as including the display of 'sexually suggestive, racist or other offensive or derogatory material such as posters or cartoons'. The use of obscenities or offensive language is proscribed, and members are required to make 'efficient and economical use of public resources'.⁵

The Statement also sets out the Police Service's responsibility for the training and development needs of its officers. Managers and commanders are held to be accountable for keeping staff informed of applicable legislation, for instilling corporate values as a cornerstone of proper conduct, and for taking appropriate action against members who fail to comply with the Code and related standards of conduct. The Code requires all members of the Police Service to report suspected misconduct or substantial waste of public resources.⁶

The Police Service's *Gender Based and Sexual Harassment Policy* (Policy) also provides broad principles applicable to e-mail usage throughout the Police Service. The Policy reiterates the Police Service's commitment to ensuring a safe workplace, where its members and customers are

³ See Annexure B of this report.

⁴ *ibid.*

⁵ See relevant extracts from the *Code of Conduct and Ethics* at Annexure E of this report.

⁶ *ibid.*

treated with respect and sensitivity.⁷ It points out that discrimination and harassment breach Federal and State legislation, and warns that prompt action, including disciplinary measures and removal from the Police Service, may follow contraventions of the Policy. All employees are required to report breaches of the Policy to supervisors, commanders or managers.⁸

Managers and supervisors are required to 'create an environment in the workplace where all employees understand harassment will not be tolerated and complaints will be treated seriously'. The Policy expressly warns that non-verbal sexual harassment includes 'sending sexually offensive material through unsolicited . . . e-mail'.⁹

Criminal offences

In addition to breaching Federal and State anti-discrimination legislation,¹⁰ the circulating of inappropriate material on the Police Service e-mail system may involve the commission of criminal offences. Relevant criminal legislation includes:

Section 578B of the *Crimes Act 1900* (NSW) — relating to the possession of child pornography;

Section 578C of the *Crimes Act 1900* (NSW) — relating to the publishing of child pornography or indecent articles;

Section 85ZE(1) of the *Crimes Act 1914* (Cth) — relating to using a 'carriage service' to menace or harass another person, or in such a way as would be regarded by reasonable persons as being, in all circumstances, offensive.¹¹

Police Service Regulation

As noted above, the *Code of Conduct and Ethics*, *Electronic Mail Policy Statement* and *Gender Based and Sexual Harassment Policy* all require members of the Police Service to report misconduct by colleagues. A similar obligation was set out in the *Police Service Regulation 1990* (NSW):¹²

Clause 30. Police officer to report misconduct

(1) If:

- (a) an allegation is made to a police officer that another police officer has engaged in conduct which, in the opinion of the officer to whom the allegation is made, constitutes a criminal offence or other misconduct, or
- (b) a police officer sincerely believes that another police officer has engaged in any conduct of that kind,
the officer is required to report the conduct or alleged conduct by the other officer to a senior police officer (being a police officer who is more senior in rank than the officer making the report).

⁷ See Annexure F of this report.

⁸ *ibid.*

⁹ *ibid.*

¹⁰ *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Human Rights and Equal Opportunity Act 1986* (Cth), *Disability Discrimination Act 1992* (Cth), and the *Anti-Discrimination Act 1977* (NSW).

¹¹ The NSW Police Service memo system is run through telecommunication lines, and for the purposes of this legislation would constitute a 'carriage service'.

¹² The *Police Service Regulation 1990* was repealed on 1 September 2000 and has been replaced with the *Police Service Regulation 2000*. Similar provisions to Clause 30 of the repealed regulation can now be found at Clause 20 of the new *Police Service Regulation 2000*.

Clause 31. Misconduct to be reported to Commissioner

A senior officer to whom conduct (or alleged conduct) by a police officer is reported as referred to in clause 30 is required to report it promptly to the Commissioner or a police officer nominated by the Commissioner if the senior officer believes that the conduct (or alleged conduct):

- (a) constitutes (or would constitute) a criminal offence by the officer, or
- (b) could provide sufficient grounds for taking section 73 dismissal action, or making a reviewable section 173 order or a section 181D order, with respect to the officer.

The Ombudsman's review

Between July and November of this year, the Ombudsman reviewed 405 recently completed Police Service investigations into e-mail abuse. Those investigations were conducted by 72 separate commands, including Internal Affairs, and involved all 11 police regions.

The Ombudsman was dissatisfied with the outcomes of investigations in 37 per cent of the cases reviewed,¹³ and has highlighted some of the more alarming problems in the case studies section of this report.¹⁴ The following section discusses the types of deficiencies identified as a result of the Ombudsman's review.

Insufficient weight attached to prior complaints

There was little evidence on the papers provided to the Ombudsman to suggest that investigators or commanders had checked the complaint histories of subject officers for relevant matters. Prior complaints of misuse of the Police Service's computer, or previous allegations of sexual assault or harassment, may indicate a pattern of behaviour by an individual officer that poses significant or unacceptable risks to the Police Service or the public.

In one particularly alarming case, a Local Area Commander implemented what the Ombudsman considers to be wholly inadequate management action in respect of a female officer with a troubling complaint history including previous e-mail misconduct. This was despite the fact that the Commander was fully cognisant of the officer's prior misconduct, that he had previously attempted to modify the officer's behaviour by placing her on a Performance Agreement, that the Police Service Psychologist held concerns over the officer's mental state, and that two prior warnings had been issued to the effect that further misconduct might lead to the officer's removal from the Police Service.¹⁵

¹³ It should be noted that investigative deficiencies have also been found to exist in those cases where the Ombudsman has expressed satisfaction with the outcomes of investigations. Such deficiencies, however, were not considered so significant as to affect the outcome or to require remedial action by the Police Service.

¹⁴ See Annexure A.

¹⁵ See case study 'a' at Annexure A of this report.

Failure to adhere to classification guidelines

In 30 per cent of cases, there was no evidence to demonstrate that investigators had attempted to classify the images involved.¹⁶

In 42 per cent of cases, investigators inaccurately classified the material with reference to the guidelines.¹⁷

The failure to accurately classify the images involved has the potential to result in deficient outcomes, as the type of management action required differs according to the nature of the material.¹⁸ Indeed, most of the errors in classifying the material led to the misconduct of individual officers being minimised.

The use of ineffective investigative techniques

In 57 per cent of cases, the subject officers were investigated by means of a formal interview, while in 28 per cent of cases the investigation was conducted solely by means of directive memoranda. The Ombudsman, along with the Royal Commission into the New South Wales Police Service and the Police Integrity Commission,¹⁹ have identified the use of directive memoranda as an ineffective investigative technique.

The use of directive memoranda facilitates collusion between officers under investigation, and can serve to forewarn such officers as to the strength of the evidence against them. Investigation by directive memoranda further deprives the investigator of the opportunity to study the demeanour of the suspect. Poorly framed directive memoranda result in inadequate information being obtained, and unless followed up by formal interview, are unlikely to canvass important areas of the evidence in sufficient detail. Some of the responses to directive memoranda obtained in the course of Operation PROVIDENCE consist of no more than a short paragraph of information.

A further 12 per cent of the investigation reports forwarded to the Ombudsman contain neither directive memoranda nor records of interview. In some cases investigators simply noted that they had 'spoken' to the officers under investigation, without sufficiently detailing the content of those conversations in the investigation papers.

Failure to clarify issues arising from the investigation

The Police Service operates two types of memo systems, one being memo for Windows™ and the other being a mainframe memo system. Advice from the Police Service is that attachments can only be accessed via memo for Windows™. In 7 per cent of cases, the officers under investigation claimed to have been unable to access the attachments which contained the offensive material

¹⁶ See case study 'd' at Annexure A.

¹⁷ See case study 'b' at Annexure A.

¹⁸ See Annexure D.

¹⁹ Police Integrity Commission, *Special Report to Parliament — Project Dresden — An Audit of the Quality of NSW Police Service Internal Investigations*, April 2000, pp. 23–24.

because they only had access to the mainframe memo system. In 60 per cent of these cases, there was no indication given that investigators had tested such claims by ascertaining the type of memo system in use.

Investigators failed to attempt to establish the nature of the relationship between the sender and recipient in 57 per cent of cases. Investigators failed in 65 per cent of cases to establish whether the material was solicited by the recipient. In 40 per cent of cases investigators failed to adequately question the officers under investigation about the identity of the sender or recipient connected to them by the audit trail.²⁰

As the investigations were conducted in isolation by various commands, there was little attempt to corroborate the accounts of senders with recipients. In several cases, investigators failed to pursue conflicts apparent from the respective accounts of senders and recipients. In one case the Police Service failed to note that a recipient was also a sender.

In 30 cases the Police Service failed to investigate additional officers until alerted by the Ombudsman to their involvement in the circulation of offensive material. In 26 of these cases, the identities of the additional officers should have been readily apparent to the Police Service, either from audit trails, or as a result of other information provided to the investigators of these matters.

Failure to canvass with offenders their knowledge of relevant law and policies

Investigators failed to canvass with the officers under investigation the question of potential criminality involved in the sending of offensive material in 90 per cent of cases. In 43 per cent of cases, investigators failed to question the officers under investigation regarding their knowledge of relevant Police Service policies.

Inappropriate findings arising from investigation

Where the available evidence supported adverse findings being made against particular officers, investigators failed to do so in 8 per cent of cases.²¹

In 13 per cent of cases, investigators, or senior officers responsible for certifying investigations, took into account what the Ombudsman believes to be inappropriate mitigation put forward on behalf of subject officers.²² In a number of cases, this inappropriate mitigation led to no adverse finding being made against the officer concerned.²³

In 44 per cent of cases, the information recorded by investigators on the Complaints Information System (CIS) was either inadequate or incorrect. Examples include CIS narratives indicating incorrectly that the officers under investigation did not access the attachments in question, or incorrectly recording no adverse findings where adverse findings should have been made. In many cases no narrative at all was entered in the appropriate CIS field.

²⁰ See case studies 'e' and 'f' at Annexure A.

²¹ See case studies 'd' and 'i' at Annexure A.

²² See case studies 'f' and 'i' at Annexure A.

²³ See case studies 'e' and 'i' at Annexure A.

Inappropriate management outcomes

In 31 per cent of the total number of cases, investigators and/or commanders recommended and/or implemented management action which was not consistent with the Police Service's guidelines specifically developed for the investigation of these matters.²⁴

If the guidelines were adhered to, investigators and commanders should have recommended a reviewable action pursuant to s. 173 of the *Police Service Act* in 43 of the 405 cases reviewed. In 77 per cent of those 43 cases, no such recommendation was made.

If the guidelines were adhered to, investigators and commanders should have recommended officers be considered for removal from the Police Service, pursuant to s. 181D of the *Police Service Act*, in 32 of the 405 cases reviewed. In 88 per cent of those 32 cases, no such recommendation was made.

To date, four officers out of the 405 cases reviewed have been nominated for removal from the Police Service pursuant to s. 181D of the *Police Service Act*. The Police Service advises that a further six officers involved in e-mail misuse, arising from investigations not included in the 405 cases reviewed by the Ombudsman, have been nominated for removal from the Police Service.

Cultural problems

It is disturbing that as many as 460 out of a total of 13,500 NSW police officers were identified in connection with misuse of the Police Service's e-mail system. The vast majority of these officers came to light as the result of a single audit trail followed in response to a lone complaint. It is therefore reasonable to assume that other networks of officers may have engaged in similar misconduct within other sections of the Police Service.

It was a strongly held view by many officers involved in the circulation of inappropriate material that such conduct is acceptable.²⁵ The explanations provided by officers in an attempt to justify their e-mail activities were many and varied:

- A Constable in North Metropolitan Region failed to report the receipt of an image depicting female couples engaged in oral sex, and a close-up photograph of a vagina, made up by means of attached false eyes to resemble a face. He referred to his seven years of police service, as well as his 'fairly open view of sex and nudity', to explain that 'being a police officer has de-sensitised my opinion of what is considered "offensive" and what is not';
- A Senior Constable within Northern Region was found to have requested that another officer send him a photograph of a woman engaging in sexual intercourse with a clearly aroused horse. The officer, a former member of the Mounted Police, claimed to have solicited the material out of curiosity 'due to [his] lifelong involvement with horses';

²⁴ See case studies 'd', 'e', 'f', 'g' and 'i' at Annexure A.

²⁵ See case studies 'a', 'd', 'f', 'g' and 'h' at Annexure A.

- A Detective Sergeant within City East Region was investigated for failing to report the receipt of 14 offensive images. One of the images was entitled 'beer as requested', and depicted a can of beer being poured into a schooner glass which was in turn inserted into a shaved vagina. The officer explained that he viewed this particular memo attachment 'presuming it was on the subject of a social meeting or the brewing of beer which [he does] at home';
- The same 'beer image' was received by a Senior Constable within Georges River Region, along with the caption: 'Boys, Is that a warm beer! (With added yeast infection)'. Also received was a close-up photograph of a penis, ejaculating onto the face of a topless female purporting to be a television celebrity. The Senior Constable explained his actions as follows:

I was of the understanding that what I was doing was common practice by a large percentage of the rest of the Service . . . Coming from a medical and health science background in the Army I have little shame in the human body or its functions and have never been embarrassed about the human form;

- An Acting Sergeant admitted to showing other police two video clips 'which [he] considered to be humorous' — one of a train colliding with a small child, and another of 'an Asian woman sticking her fingers or her hand down her throat and making herself vomit . . . She recovered items from her vomit which she appeared to unwrap and swallow. She then drank the vomit fluid which remained'; and
- In defending his failure to report the receipt of offensive images, an Education and Development Officer within the Legal Professional Development Unit stated:

What I perceived to be an innovative way to impact on morale was the transmission of jokes via the MEMO system . . . I found the jokes that were forwarded to my mailbox to be momentary relief from daily stresses . . . In my peer support role I found this useful in dealing with the morale issue.

Interestingly, these attitudes were shared by both male and female officers alike. Even after investigation, there appeared to be few officers willing to acknowledge their inappropriate conduct or express genuine contrition for their actions.²⁶

In a number of cases, the inappropriateness of the material is even questioned by investigators and commanders.²⁷ In some cases, investigators ignored the Office of Film and Literature Classification's *Guidelines on the Classification of Publications* to proffer their personal view that the material in question was 'relatively benign'. Others sought to excuse the failure of officers to report the presence of offensive material because they (the recipients) were not personally offended.

One investigator recommended that a female officer, found to have sent three offensive images to over 60 officers, be treated leniently because 'in disseminating the material, it was not the Constable's intention to offend and she considered it harmless fun between close friends'.

Another investigator, in successfully arguing that no adverse finding be recorded against a female Constable who failed to report the receipt of two offensive images, commented as follows:

It appears that [the Constable] has accessed the mail sent to her, read that mail and deleted that mail . . . I would . . . recommend that she be expunged as the involved officer and placed only as a witness in relation to this matter as I believe that her actions in relation to this matter have not been what could be considered to be misuse of the electronic mail system . . .

²⁶ See case studies 'a', 'c', 'd' and 'g' at Annexure A.

²⁷ See case study 'd' at Annexure A.

This failure on the part of even senior officers to appreciate what constitutes inappropriate conduct is worrying. The *Electronic Mail Policy Statement* clearly stipulates that commanders and managers are responsible for seeing that 'disciplinary procedures are in place for inappropriate use of the Electronic Mail Systems and [that] random checks . . . are conducted to ensure that there is no improper material being used or transmitted throughout the organisation . . .'.²⁸

Given that the officers responsible for enforcing the Police Service's codes and policies display such attitudes, it is not surprising to find that a large proportion of the investigations appear superficial in nature.²⁹ Nor is it surprising that, in many cases, recommendations for management action fail to reflect the seriousness of the conduct.³⁰

Equally of concern is that it was frequently alleged during the course of investigation that there had been a failure on the part of the Police Service to fully acquaint officers with guidelines and policies pertaining to the use of e-mail.³¹

It is clear from the following that many officers were not only ignorant of the criminal law and relevant departmental policies in this area, but that they were also using the Police Service's e-mail system under the misapprehension that their communications should remain private:

- A Licensing Officer within City East Region who received three offensive images, and forwarded one on, stated:

The person I sent this to is a good mate of mine . . . I spoke to him about it prior and he gave me permission to send it to him. He told me he wouldn't be offended by this photo;
- A Detective Senior Constable within Georges River Region who failed to report the receipt of offensive images, including one involving bestiality, stated:

When I viewed the seven pornographic photos I did not find them to be personally offensive, or of a criminal nature . . . I believe that any person over the age of eighteen could obtain the same photographs from magazines at Newsagents;
- A Detective Senior Constable within North Metropolitan Region failed to report the receipt of 13 separate offensive images, including a video of a nude male inserting his arm inside the anus of a nude female. This video was accompanied by the message text 'I had a good wack over this. Come to think of it, I've never had a bad wack. Hmmm, who the fuck rubbed my stiffie?' When questioned, the Detective stated:

These images were forwarded to me from [a Senior Constable] who I have known on a professional and personal level over the past eight years . . . I did not find the images to be offensive in nature having had exposure to this type of material in the past, as I am sure most adults have . . . At the time of receiving these images, I was not aware that I was acting in contravention to any Departmental guidelines . . . At the time the memo system was introduced, there was no formal training provided in its use or guidelines regarding the use of the system for receiving private correspondence. As I was of the opinion that any mail received on my memo system was of a private and personal nature, with no other person having access to it, I did not believe that anyone else would be exposed to or take offence to the private mail that I receive'; and

²⁸ See Annexure B.

²⁹ See case study 'e' at Annexure A.

³⁰ See case studies 'a' and 'f' at Annexure A.

³¹ See case study 'i' at Annexure A.

- A Detective Senior Constable within Endeavour Region, who failed to report the receipt of a video depicting a woman using her vagina to ‘smoke’ a cigarette, stated when interviewed:

. . . in respect to the image . . . I did not find it offensive and, and I, I was surprised when I learned . . . well, how seriously this whole issue was being taken to tell you the truth . . . I, I’ve been involved in investigations relating to sending offensive material and to my knowledge the, the receiver would have to find it offensive before any, any offence was committed.

While one would hope that the existence of internal policies, knowledge of the criminal law, commonsense and an understanding of community standards would sufficiently alert police to the inappropriateness of the activities described in this report, relevant case law certainly suggests that employers have an obligation to ensure that any internal policies governing the use of e-mail are not only clearly delineated, but effectively communicated to employees.³²

Again, the *Electronic Mail Policy Statement* makes it clear that it is commanders and managers who are responsible for ensuring that ‘all Officers working within their Commands/Branches of the NSW Police Service are informed of their responsibilities with regard to the use of the Electronic Mail System’.³³

Police Service response to issues of concern

The Ombudsman issued two provisional statements to the Police Service about these matters, the first on 10 July 2000, the second on 13 November 2000. The Police Service was invited to comment on both statements. It was not until 30 November 2000 that the Police Service formally responded to the Ombudsman’s provisional statements in the form of a letter from Deputy Commissioner Moroney. After acknowledging the delay in the Police Service’s response to our concerns, Mr Moroney made the following comments:

Insofar as the specific issues raised through Operation Providence are concerned, the Service acknowledges with considerable disappointment that the reported actions of a number of its officers were plainly wrong and inappropriate. The conduct and attitudes revealed are unacceptable and will adversely impact on the reputation of the Service in the eyes of the community.

In addition, the Service acknowledges that the conduct of some commanders, supervisors and managers charged with investigation of reported instances was not to the required professional standard in respect of such aspects as the quality of investigation, determination of appropriate managerial action and consistency of approach.

Clearly, there were in some cases (a minority but no less significant for that) lapses in our quality control or review mechanisms. Overall, issues raised in Operation Providence give serious cause for concern regarding cultural values and standards of some within the Service, as well as a number of in-house policies, practices and procedures.

Commander Brammer and the Special Crime and Internal Affairs command — in consultation with your office - have instituted a program of review of all completed Operation Providence investigations. This is designed to identify and rectify any investigative deficiencies or inappropriate management outcomes. It will also enable the Ombudsman to initiate managerial action against investigators and commanders who are shown to have been deficient in carrying out their duties.

³² See *Hale v. Australian and New Zealand Banking Group Limited*, Australian Industrial Relations Commission, Commissioner Larkin, 14 March 2000.

³³ See Annexure B.

The Service will implement a range of initiatives including:

- Consideration of the impact of issues raised insofar as they relate to the education and training of commanders, supervisors and individual officers.
- A review of our computerised information systems and data bases (to include as a minimum the COPS system and electronic mail), related probity issues and audit procedures.
- Additionally, the Service has introduced content filtering of incoming electronic mail. Restrictions on the amount of material able to be transmitted have also been imposed, limiting the system's capacity to transmit video images.

While on the topic of IT processes, I might mention that only this week the Police Service Information Management Board endorsed a 'Code of Best Practice for Information Management' . . . This Code will now be disseminated throughout the Police Service for the information and attention of all our officers.

We are not taking these issues lightly. The Police Service accepts that some of its people, and some of its processes, have been found wanting. We can, and we will, put in place a whole range of remedial strategies that will address technology, systems, processes, training (and the related issues of recruitment and selection), and the like.

More importantly in the longer term, however, are the wider, cultural issues revealed in all these inquiries. The Police Service recognises with some disappointment the indications of ongoing cultural problems inherent in such aspects as large numbers of officers engaging in transmission of distasteful material, the failure of supervisors to prevent the misuse of official duty time and Police Service equipment and systems, and the failure of at least some investigators and commanders to recognise the serious individual and corporate failings and thoroughly and ethically investigate cases coming to their notice. They may be a minority of instances, but the lack of investigative rigour and supervisory/command oversight and accountability is at the heart of this problem.

Of course, these issues are not confined to the Operation Providence matters. Similar results have been noted through our own studies and a number of Police Integrity Commission reports such as Operation Dresden. Clearly, a whole range of remedial actions is required, but on any assessment, a short-term fix is not available. Culture can and is being changed but it will not happen overnight.

We are now turning our minds to this wider, much more difficult problem. I do not necessarily have the answer but I am, for instance, impressed by the work being done at Canobolas Local Area Command (at Orange) with its Principles and Behaviours Framework. That may not be the total answer but it is certainly an interesting concept which I will be pursuing as one option in the Police Service's consideration of the broader issues involved here.

Additionally, as you know, I have introduced Professional Standards Review Panels across each Region Command (with their application to Specialist Operations Commands to follow in 2001). These Panels are delivered by Commander Brammer of SCIA command, Chief Inspector Holder of the Employee Management Branch and myself.

The primary purpose of the Panels is to discuss openly with Commanders contemporary issues relating to professional standards and conduct and the application of risk management principles. General panel sessions are followed up with one-on-one discussions with Region and Local Area Commanders.

This endeavour is very much a new approach to dealing with issues associated with a professional service delivery model. There has so far been positive feedback on these Panels from the Regions where they have been held. Over the last two days, I have participated in a further such Panel at Southern Rivers Region (at Wagga Wagga). Again, feedback was positive and I believe it was a most useful exercise.

If we are truly to make a difference where 'cultural' issues are concerned, our efforts in the identification and maintenance of professional standards must in my view be linked to a re-evaluation of the role and responsibilities of Professional Standards Managers within the Service. I am committed to undertaking that evaluation.

While the Ombudsman is pleased with a number of aspects of the Police Service's response, it is disappointing that it took a significant amount of time for the Police Service to provide a response to our provisional statements. Furthermore, it should be said that, while Mr Moroney's letter does contain a general overview of the issues involved, it does not include a sufficiently detailed response to the specific issues and recommendations raised in the provisional statements. In particular, there is a lack of detail about how the Police Service will address in a timely fashion the large number of incidents of improper conduct by particular police and inappropriate investigations and management decisions by their commanders.

Our survey of e-mail misuse in the general public sector

In light of the issues raised by Operation PROVIDENCE, and our general concerns about the potential for misuse of e-mail within the public sector, the Ombudsman developed a survey in September 2000 designed to obtain information about the extent to which public officials are misusing the internet or e-mail by creating, accessing or transmitting pornographic, sexually explicit or other offensive material. The survey, which was sent to 48 public authorities and 30 local councils selected at random, also addressed how public sector organisations are responding to inappropriate use of their communication devices. The Ombudsman received responses from 40 public authorities and 23 local councils, representing a total response rate in excess of 80 per cent. The analysis of survey results is based on responses received as at 5 December 2000.

The survey showed that misuse of communication devices is not a problem unique to the Police Service, but an issue of concern public sector wide.

Approximately 77 per cent of public authorities and 39 per cent of local councils surveyed reported at least one incident of misuse of communication devices. On the basis of the survey it is difficult to reach firm conclusions about the factors responsible for the substantially lower rate of reported misuse among local councils. This could have been due to the fact that a number of council respondents had only recently made e-mail and/or internet facilities available to staff. A number had no systems in place to randomly or routinely monitor use of the internet or e-mail.

The number of staff members identified by agencies as being involved in the incidents of misuse varied from one employee through to 50 employees. In most cases the number of staff members identified as having misused the agency's communication devices was between two and five. The period of reported misuse ranged from individual occasions to over 12 months.

The survey findings do not represent the actual level of misuse among these agencies, merely incidents discovered, reported and recorded. It is likely that the true incidence of misuse is more extensive than the survey suggests.

In the majority of cases, the misuse involved accessing, transmitting or the downloading of material that was pornographic or sexually explicit. Four organisations reported that the material involved child pornography and one organisation reported that the material contained images of bestiality. In other cases, the material concerned was reported to be offensive or otherwise inappropriate. Examples in this last category included militant/extremist material, offensive jokes or cartoons (sexist/racist/smutty), offensive comments about other staff members, and harassment of staff.

Misuse of communication devices in the wider public sector is occurring despite the widespread adoption of policies on the use of communication devices. Most of the agencies the Ombudsman surveyed had a policy in place for acceptable use of employer's communication devices, although a number had only been adopted in the last 12 months. It was not possible to tell from many of the responses received whether the identified misuse pre- or post-dated the adoption of policies.

Conclusions

The issue of e-mail misuse has relevance for the whole of the public sector. Based on lessons that can be learnt from Operation PROVIDENCE and our public sector survey, it is the Ombudsman's view that any public sector strategy which seeks to minimise e-mail misuse should contain the following elements:

Good policy

Public sector agencies need policies which clearly articulate what is expected of staff in relation to the use of the e-mail system.

However, it is important to recognise that the formulation of an appropriate policy is not in itself sufficient to protect an agency against misuse of its communication devices. Operation PROVIDENCE demonstrates that, while the Police Service had developed a reasonable policy concerning e-mail misuse, it did not ensure that there was adequate implementation of the policy, including the education of its staff about the requirements of the policy.

Agencies need to ensure that their staff are aware of and understand the policy. A common feature of cases of unfair dismissal for misuse or alleged misuse of communication devices in the workplace has been the employee's claim that they were either unaware of the employer's policy or that the policy was unclear and had not been properly drawn to the attention of employees.

A number of agencies have intended or are proposing to, introduce an on-line message display at log-on. Approximately half the agencies surveyed required staff to sign the policy or some other agreement as a pre-condition for use of communication devices. The Ombudsman's survey findings suggest that misuse of communication devices may be less prevalent among employees who had been required to sign a declaration attesting that they had read, understood and agreed to abide by the policy.

Proactive auditing, investigation and preventative measures

Agencies must be proactive in terms of preventing, detecting and responding to misuse of communication devices. They have a responsibility to institute measures for monitoring and controlling the use of communication devices, to encourage or require reporting by staff of breaches of the policy, and to take appropriate action in response to cases of misuse.

Operation PROVIDENCE illustrates the value of an e-mail audit followed by rigorous investigation. By creating an audit trail arising from one incident of e-mail misuse, the Police Service identified hundreds of officers who had apparently sent or received inappropriate material. Operation PROVIDENCE also illustrates that auditing and initial investigative work needs to be coupled with a rigorous investigative follow up where required. It was in this follow up investigative stage that the Police Service was found to be wanting. Without the Ombudsman's comprehensive review of the Police Service investigations, many significant issues of concern and inconsistencies would not have been identified.

It is important not only to detect e-mail misuse, but also to use technology that works to prevent it. In this respect, a number of commercially available products that block access to prohibited sites on the internet appear to be effective. Several agencies reported that cases of misuse ceased after the installation of such programs. Software is also available to monitor incoming and outgoing e-mail for certain words, file types and attachment size, and our survey showed that such software is used by a number of agencies. A number of agencies employed software to generate reports on access to internet sites, while other logging of user activity and random reviews of sites accessed by users were relatively common methods used by agencies to monitor employee use of communication devices.

Consistent standards

An important way of demonstrating the message that accessing, transmitting or creating sexually explicit or otherwise offensive material is unacceptable is by dealing with instances of misuse in a consistent and appropriate way.

Our review of Operation PROVIDENCE highlights the need for public sector agencies to clearly formulate and communicate to their staff their position on the types of management action which will be taken in response to e-mail misuse. Furthermore, agencies need to ensure that their policies on this issue are consistently enforced.

Recommendations

In the Conclusions section of this report, the Ombudsman has outlined the three basic elements of a public sector strategy for combating the misuse of e-mail systems. While the Ombudsman does not propose to make formal recommendations that all public sector agencies adopt these strategies, these strategies would form a solid foundation for a whole of public sector approach to effectively deal with this issue.

The Ombudsman's provisional statements in relation to police misuse of e-mail contained the following recommendations:

- the Police Service should conduct its own review of every investigation into misuse of the e-mail system, with a view to rectifying any investigative deficiencies or inappropriate management outcomes;
- as a result of such review, the Police Service should take action, where appropriate, against investigators and commanders who have failed to reasonably carry out their responsibilities in these matters;
- the Police Service should consider the need for more effective Police Service wide random audits of the e-mail system, along the lines of audits conducted in respect of the use of COPS [Computerised Operational Policing System];
- the Police Service should immediately move to better educate all officers regarding the various legislation and policies relevant to misuse of the e-mail system. Consideration should be given to having officers formally acknowledge their obligations in this area through the signing of individual statements of responsibility similar to that employed in respect of COPS;
- the Police Service should urgently re-examine its reform implementation process, with a view to improving strategies aimed at eradicating the inappropriate cultural values demonstrated by the large number of officers commented on in this report; and
- the Police Service should seriously consider limiting the duties of officers found to have engaged in the dissemination or solicitation of the more troubling material uncovered as a result of our investigation. This is particularly so where that material suggests that an officer's attitudes towards sexist and generally degrading activities could justifiably give rise to apprehensions on the part of the public concerning the officer's ability to sensitively and impartially deal with cases involving such matters as domestic violence or sexual assaults.

As can be seen from Deputy Commissioner Moroney's response to our provisional statements, the Police Service has not fully addressed these various recommendations. I therefore recommend that the Police Service provide the Ombudsman as soon as possible, and in any event within three months of this report, with a detailed report outlining the Police Service's response to each of the recommendations.

Annexure A: Case studies

Case study 'a'

A female Constable was found to have exchanged obscene jokes and messages via the e-mail with a male officer at another patrol. These messages in part referred to sexual contact between the two officers. In one of her messages, the Constable also revealed that she had improperly taken home a lost animal that came into her possession while performing her duties as a police officer.

Two photographic images sent to the Constable by the male officer depicted:

- a male bending over atop a concrete structure, exposing his anus and defecating in a long 'jet-stream'; and
- a nude, obese dead body lying on a pavement, bearing the caption 'Why fat people should not Bungee Jump'.

The images were in turn accompanied by the following text:

Few of my holiday snaps, and had a sus [sic] vindaloo from a local bloke selling from the back of a cart. See the fun I had from it (refer attached). Also saw this sight on the roadway (near the cart that I bought the vindaloo from), and as it was still warm gave it a hit and then took the photo.

My dick drips green!

[name of officer deleted]

When asked by the investigator if she agreed such images were offensive, the Constable replied, 'I could appreciate them being offensive to some but when you showed me I was not offended, I laughed . . . '.

One of the e-mail messages received by the Constable from her colleague was as follows:

WARNING TO ALL FEMALES INTERESTED IN HAVING A SEXUAL ENCOUNTER WITH
[name of male officer deleted]

1. Make sure that you can accommodate him. (Train with a fire extinguisher first!)
2. Wear a lifejacket (The torrent of cum incredible, and no, there are no flags to swim between)
3. Limit moaning to two hours before and after the encounter.
4. Just because a girl has big stretch marks around her mouth, doesn't automatically mean she's blown [name of officer deleted] . . .

On the same day, the Constable replied with the following message:

. . . Being one who has accommodated [sic] and does not have oral stretchys, I can honestly tell you that you are not as superiorly endowed as you would like to believe
. . . a screw is a screw . . .

When asked by the investigator if she considered the above text to be offensive, the Constable replied, 'No, it is private between him and I. And I am offended that the Service or you have seen this.'

The Constable's Local Area Commander subsequently informed the Ombudsman that he intended to have her write a 1,000 word essay on the responsibilities of users of the memo system and the need to report misconduct, and to provide a 'six minute intensive training format' on the topic to her peers. In addition, the Constable would be required to present and discuss her research on the topic to her Local Area Command (LAC) Professional Standards Council.

In notifying the Ombudsman of his proposed management action, the Local Area Commander noted that the Constable 'has previously been counselled in relation to the inappropriate use of the e-mail system in August 1998'. This previous matter had been recorded as 'minor unprofessional conduct' on the command's Local Management Database. It involved the officer sending 'unprofessional messages' on the Police Service memo system, and writing the following messages on the muster room noticeboard in an area where members of the public were brought for interview:

Ideas for Kids' Books

- Bob the Germ's wondrous journey into, and back out of your digestive system
- The Care Bears that mauled the Park Ranger and were shot
- Daddy loses his job and hits the bottle

Move Silently, Strike Swiftly and Carry a Big Gun

Thought for the Day -

'Aim Straight, and Don't Hesitate'

The Constable admitted to sending the e-mail and writing most, but not all, of the messages on the noticeboard, explaining her unprofessional conduct as a product of her 'warped sense of humour'. She added that other officers were involved, but refused to disclose their identities. Unable to grasp the inappropriateness of her actions, the Constable was referred to the Police Service Psychologist. The Local Management Database entry notes that the Psychologist 'harbours some concerns about [the Constable's] welfare and mental state', and that the officer's access to computer systems had been rescinded.

While the above examples of e-mail misuse are disturbing when viewed in isolation, when examined in the context of the Constable's full complaint history they create serious alarm:

- In 1997 a complaint that the officer had used offensive language to a member of the public was declined after inquiries.
- In 1998 the Constable was found to have inappropriately acted as a support person during the interview of a juvenile, knowing that the juvenile's parents had not consented to her performing such a role. She contravened Commissioner's Instructions by failing to reveal her police identity to the Custody Officer or investigating officers, and failed to reveal to investigators her knowledge concerning the whereabouts of an alibi witness. The Constable was also found to have induced the juvenile to participate in an Electronic Recording of Interviews with Suspects (ERISP) interview by holding out false promise of bail. The officer's Local Area Commander advised the Ombudsman that she would be counselled for compromising a serious criminal investigation, placed on a remedial program, and 'reminded that should any further adverse (sustained) complaints be received relating to her conduct, these subject matters may be included in a consideration for a s. 181D, Loss of Commissioner's Confidence'.

- In 1998 the Constable was also referred to the Police Service Psychologist for assessment of her psychological condition after being found to have created a fictitious Computer Incident Dispatch System (CIDS) message which resulted in police investigating a non-existent disturbance. Although the investigator of this matter found that there was sufficient evidence to support a criminal charge of Public Mischief, the Local Area Commander advised the Ombudsman that he intended to place the Constable on a six month Performance Agreement.
- In 1998 the Local Area Commander also noted the following action taken with respect to the officer:

As the new Local Area Commander, it came to my notice that [the Constable] has come under adverse notice on many occasions during her short policing career. After acquainting myself with the officer's background I . . . counselled her in relation to the following issues:-

 1. Her failure to complete COPS entry [number deleted] which she initiated some months ago . . . Despite several reminders seeking her completion, she failed to do so.
 2. Her attitude and content of electronic memos sent by her from this Command.
 3. Her frequent absenteeism due to sick leave.
 4. Several CIS matters which are being addressed separately.

Her reply to this session was that she was having a difficult year . . . I clearly informed her that I intend to provide any assistance required to enhance her behaviour . . . Equally, I informed her that if her behaviour did not change that I would initiate actions to terminate her services within the Police Service . . .
- In 1998 a female complainant alleged that the Constable had made a series of telephone calls to police stations whilst off duty from the complainant's home, using false voices and identities to report strange incidents and to impersonate an Inspector of Police conducting customer service audits. The complainant also alleged that the Constable had requested her (the complainant's) son to steal and burn her (the Constable's) motor vehicle in order to facilitate a fraudulent insurance claim, and that the officer had worn her appointments on two occasions while off duty at home in an attempt to intimidate her and her youngest son. The investigation was discontinued after the complainant elected not to proceed with her complaint, the investigator noting his concern that the complainant held a genuine fear of reprisal by the Constable against her and her family. This led to records being checked for bogus telephone calls made by the Constable, and for random checks being made on her gun locker when off duty.
- In 1999 a female member of the public alleged that the Constable had made harassing telephone calls to her premises, including death threats to her son. The calls were traced to a telephone to which the public had access, and as the Constable claimed to be elsewhere at the material time the investigation was discontinued.
- In 1999 it was found that the Constable had on a number of occasions called a male officer a pejorative Lebanese nickname despite being requested not to do so. The male officer felt victimised, and considered her conduct to be 'unprofessional, obnoxious, offensive and possibly racial'. The Constable 'was provided [with] advice and guidance in regards to the inappropriate use of nicknames when addressing fellow officers' and 'reminded of the expectation that the Police Service has that she conduct herself in a professional manner at all times in her dealings with other members of the Service'.

- The Constable in turn complained that the male officer had driven a police vehicle in a dangerous manner whilst conveying prisoners. Although this complaint was determined by the Police Service to be a ‘payback complaint’, the allegation was found to be proven. The investigation also found that the Constable and her fellow officer had inappropriately handcuffed the prisoners prior to placing them inside the vehicle. An issue yet to be addressed is the failure of the Constable to report the matter at the time it occurred.

Case study ‘b’

A Police Prosecutor was investigated for failing to report the receipt of the following 12 offensive images:

- A composite of four close-up photographs entitled ‘Barbie’s Vacation’, depicting a Barbie™ doll protruding in various positions from a female’s vagina;
- A computer game involving a topless female;
- A close-up photograph entitled ‘beer as requested’, depicting a can of beer being poured into a schooner glass inserted into a female’s shaved vagina;
- A video-clip of a penis ejaculating onto the face of a woman, accompanied by the text ‘Eyewash . . .’;
- A group photograph of numerous nude female couples engaging in oral sex;
- A photograph of two nude females engaging in sexual intercourse by means of a double dildo;
- A superimposed photograph, purporting to be that of a celebrity female tennis player, exposing her pubic area;
- A video-clip of a nude female inserting a live eel into her vagina;
- A photograph of five nude parachutists;
- A video-clip of a nude male with his penis nailed to a board;
- A video-clip of a topless female on an exercise bike; and
- A photograph of an obese, nude female sitting on the face of a male, accompanied by the text ‘New punishment for sex offenders. Slow death by suffocation!’

The Prosecutor stated in response to a directive memorandum that, whilst ‘some of the contents of the messages, photos etc were quite shocking’, he was ‘not personally offended’. He claims that he therefore did not believe there was any obligation on his part to report the matter to his supervisor.

In recommending that the Prosecutor be managerially counselled, the investigator commented that ‘the material transmitted appears to fall into the “restricted” classification of publications which (whilst offensive) would appear to be lawfully available to members of the public at the appropriate venues’. This recommendation was accepted by the General Manager of Court and Legal Services.

The images of a female inserting an eel into her vagina (bestiality) and of a penis nailed to a board (sexual violence) have both been classified as Refused Classification by the Office of Film and Literature Classification. The investigator’s comment about the availability of such material is therefore incorrect. It is particularly worrying that even members of the Police Service’s Court

and Legal Services Branch appear to be ignorant of the law with respect to the dissemination of Refused Classification material.

Case study 'c'

An Acting Inspector, working as a Duty Officer on Sydney's eastern beaches, was found to have saved a number of offensive memo files on the computer situated inside the Duty Officers' Room of the station. These involved numerous and lengthy exchanges of 'memo sex' between the Acting Inspector and a person named 'Connie' in the USA. A brief extract of one of these exchanges is reproduced hereunder:

My darling Connie,

I got energetic today, plus I was inspired by the vast numbers of topless and near naked [sic] females covering our beaches. Did I tell you that all Australian beaches are topless (at least) and quite a few hundred are nude (officially and unofficially). I saw all these naked women and I thought of you . . . Anyway, I was inspired to write Part 6.

We have spent the day on the launch, naked, enjoying each other's company and bodies . . . I am lying on the beach with my head in your lap . . . Every so often I would turn my head and kiss your thigh, or, if I felt energetic, I would turn around and kiss your pussy . . .

You take my cock out and start rubbing it, giving me a hand job. You stand behind me, rubbing your breasts against my back as you pull on my cock. Your other hand carresses [sic] my balls as you lick the middle of my back . . . You pull on me in a regular manner. Your hand firm but gentle on the shaft of my cock. I start to cum and you increase your speed . . . I can't control it anymore and I cum . . . My cock starts to grow soft from the cum. You move around quickly, kneel and put my cock in your mouth and suck on the shaft and wipe [sic] your tongue around the head. You take the last of my cum in a single swallow . . .

Hugs and kisses

[name of officer deleted] xoxoxoxoxo . . .

Upon learning that the matter was to be investigated, the Duty Officer sent an e-mail message on the Police Service system to one of his colleagues in a neighbouring station:

. . . I have found out that the investigations into my heinous [sic] crimes has finally begun. I have practised wringing my hands and begging forgiveness. I can fake contrition with the best of them . . .

This in turn prompted a reply from the Duty Officer's colleague:

Oh hail great lepper [sic]. News from this side. I have found out that Pete [surname of Inspector deleted] is handling the great e-mail saga and for the life of him cannot understand why it was given to him or why it wasn't handled in the same fastidious methods as the 100 other e-mail scandals that went on in this LAC. GOOD LUCK & BEST WISHES.

After being contacted by the investigator in an effort to arrange an interview, the Duty Officer e-mailed him to advise of his availability:

Peter,

. . . I hope we can get this cleared up, as it has already been 3 months and I have not heard 'one word' from anyone. Like my hair, my patience is getting thin (not with you, but the system). IA have already called and said the delay is not their fault (Funny, they called out of the blue!!) You may not be aware but I have been nominated for a job at [name of station deleted] and the only thing stopping me is this inquiry and some minor

EMS [Employee Management Scheme] thing at [name of station deleted], again nothing forthcoming. As you can imagine, I want to get out to [there] and start working (15 minutes from home and \$30,000 pay rise if I win any appeals). Sitting here is costing me money and my sanity. I hope you can get me closer to home.

Cheers

[name of officer deleted]

PS. I can even be interviewed over a phone considering I wrote a file confessing my sin (?) . . .

An extract from the investigator's eventual interview of the Duty Officer is reproduced below:

Q : Do you recall being spoken to by [a Superintendent] . . . in regard to a number of items of a sexually explicit nature that were located on the hard drive of the computer in the Duty Officer's room . . . ?

A : Yes . . . I made a full confession of my complicity, acknowledging what I did, acknowledging that I knew what I did was wrong and advising that it did not interfere with my policing duties . . .

Q : Are you aware of the Police Service electronic mail policy guidelines?

A : Yes . . . I knew what I did was wrong. I have conceded that, offered my apologies and promised that it will never happen again. I now wait for the punishment . . .

It is difficult to accept the Duty Officer's assertion that his frequent e-mail correspondence with 'Connie' did not interfere with his duties. The creation of a new position of Duty Officer was a key element within the post-Royal Commission reforms implemented by Commissioner Ryan, carrying with it the highest standards of supervisory responsibilities. Significantly, in an e-mail message sent to another colleague, the Acting Inspector subject of this investigation commented on the acute shortage of Duty Officers in his station:

. . . At this very moment there is an upheaval occurring within our ranks/roster here as we are very short of Duty Officers. The boss has placed the crime co-ordinator down with us. He works 10 hour shifts and the boss still wants him to do the crime co-ordinator's job plus the D.O. job. To facilitate this he is to do a majority of day shifts, while the rest of us poor schmucks have to carry the 12 hour night shifts . . .

The investigator recommended in his investigation report that 'suitable managerial action be taken against [the Duty Officer] . . . commensurate with other officers who were similarly found to have inappropriately used the Police Memo System'. No comment was made by the investigator concerning the Duty Officer's admission, in an e-mail sent to his colleague, that he was faking remorse in respect of his actions.

Case study 'd'

A Local Area Commander investigated a female Senior Constable's failure to report the receipt of three offensive images, as well as her onward transmission of one of the images to a colleague in the same command. These images comprised:

- a photograph of a nude male, purporting to be 'Motumbo . . . a Black African from Senegal', with an oversized penis, accompanied by a racist text containing coarse language; and
- two computer games depicting nude or topless females.

Upon concluding his investigation, the Local Area Commander summed up his findings as follows:

I believe that it is fair to say that [the Senior Constable] claims that the subject memo graphics were not offensive and therefore reportable as misconduct . . . The Electronic Mail Policy Statement establishes that the System is to be used responsibly and within normal standards of professional conduct. The question to be considered is whether the circulation of the memo attachment depicting females in various states of address, and a naked male should have been reported by the Senior Constable as being in breach of the 'normal' standards of professionalism required for users of the system.

Whilst it is difficult to determine what conduct would be within 'normal' standards I believe that the 'reasonable person' test should be applied and take into account factors such as the age and length of service of the police officer concerned, the memo audience, existing community standards, and prevailing cultural and privacy considerations. Balanced with these considerations are the complex issues associated with the maintenance of professional standards, public confidence and the Police Service image.

Having regard to the above mentioned considerations and to the evidence I record NO ADVERSE FINDING against [the Senior Constable] on this issue.

The Local Area Commander made no attempt to classify the images in accordance with the Office of Film and Literature Classification *Guidelines for the Classification of Publications*, and has clearly failed to appreciate the standards of behaviour required by the Police Service's *Electronic Mail Policy Statement*. In applying his own model for testing the offensiveness of the material, the Commander has also ignored the Police Service's *Code of Conduct and Ethics* and *Gender Based and Sexual Harassment Policy*.

Over 50 per cent of the e-mail investigations conducted within this LAC were found to be deficient. It is not surprising that many officers within this LAC displayed open hostility towards the investigation into their e-mail activities, given the attitudes expressed by their own Commander.

Case study 'e'

A female Constable within City East Region was investigated for failing to report the receipt of three offensive e-mail images, and for forwarding one on to another officer. This material comprised:

- a cartoon depicting a male sitting on a toilet, accompanied by the message – 'A nice little cartoon for you, entertainment for the whole family! P.S. I got [name of celebrity deleted] masturbating if any of the guys you work with are interested . . .';
- the above referred to image, purporting to be that of an actor, masturbating; and
- a photograph of a male NSW police officer, in uniform, simulating fellatio on the exposed imitation 'penis' (actually a salami) of another NSW police officer in uniform.

Although the Constable admitted to receiving the cartoon 'from an internet acquaintance from Denmark', no attempt was made by the investigator to further identify this alleged sender.

When asked why she had forwarded the image of the celebrity masturbating on to another officer, the Constable replied 'I don't know I just think that he asked for it and I sent it'. No attempt was made by the investigator to confirm the Constable's assertion that the image she sent had been solicited.

The Constable also admitted to receiving the photograph of NSW police engaged in a simulated sex act 'from another police officer'. The investigator failed to mention in his investigation report the identity of the police officer allegedly responsible for sending this photograph to the Constable.

Although the face of one of the NSW officers in the photograph was clearly visible, the investigation papers contained no reference to the possible identity of this officer. It also appeared that the photograph had been posed for inside NSW Police Service premises. In addition to attempting to identify the officers who appeared in the photograph, the investigator should have attempted to ascertain the identities of any other police or civilians who might have been present at the time of the incident. It would appear that at least one other person was involved in the capacity of photographer. If the incident was staged inside a police station, the investigator should have ascertained if the act took place in the public view.

The investigator, an Acting Inspector, recommended that the Constable be dealt with managerially. His Local Area Commander duly informed the Ombudsman that he had 'spoken to the officer and reminded her of her responsibilities in the use of the e-mail system'. Quite aside from the investigative deficiencies identified above, the management action implemented by the Local Area Commander is inconsistent with the Police Service's guidelines for such matters.

Case study 'f'

A Sergeant performing the role of Team Leader within North Metropolitan Region was investigated for sending three offensive electronic memos to a total of 16 fellow officers. These recipients included the Sergeant's son (also a police officer) and two subordinates within his own team.

When asked in a formal interview how he came into possession of the material, the Sergeant replied that 'it was sent to me in the Police E Mail system'. No further questions were asked in an effort to identify the person(s) responsible for sending the material to him. The Sergeant stated that he did not report receipt of the memos as it was his belief that the material was not offensive. He adds that he sent the material to fellow officers because 'he thought that they would enjoy it. It was amusing not offensive'.

The Sergeant acknowledged his obligations as a supervisor, and stated he was aware of the Police Service's *Electronic Mail Policy Statement* and *Gender Based and Sexual Harassment Policy*.

In finding that the Sergeant had misused the Police Service's e-mail system, the investigating Inspector put forward the following mitigation:

Although transmitting the materials [the Sergeant] has not written any of the accompanying texts. Secondly, the transmission of these materials appears to have been carried out during night shifts around the middle of the shift when it would be expected that the work load of the shift has decreased.

. . . he did not consider . . . the materials . . . as being offensive, nor would the transmission to the selected recipients cause harm or offence to those persons . . . [the Sergeant] considered the material to be merely amusing and inoffensive . . . he did not consider the transmission of [the] material as being either misconduct or misuse of the memo system . . .

Note must be taken of the selected recipients . . . they were selected persons . . . who he believed would not be offended . . . In particular one of the recipients listed is [the Sergeant's] son. It is submitted that, while this of itself does not relieve [the Sergeant] of the fact that he has committed an offence, it is support for the contention that [the Sergeant] would not have intentionally engaged in the misuse of the memo system where he would have placed his friends and son in jeopardy had he not actually believed that he was committing an offence. Further, while he is a supervisor, the transmission was to friends, albeit police officers, and not a general dissemination.

[The Sergeant] is clearly very distressed and embarrassed by his actions. He is remorseful and now realises that his actions may have jeopardised his career and has expressed his regret. Of note [the Sergeant's] contrition is shown by the fact that he apologises for his actions to both the Police Service and his Commander. Further, [the Sergeant] has, in person, prior to this investigation, approached the Commander of [his] Local Area Command and offered his sincere apologies.

Consideration should also be had of [the Sergeant's] previous CIS history. There is nothing recorded against this officer of a similar nature or of any other matter that is of concern. This may be indicative of the good character of [the Sergeant].

While there can be no condoning of the actions of [the Sergeant] in the transmission of these materials, consideration should also be had of the explanations provided [by him]; the unusual circumstances, such as the transmission to his own son; his genuine display of remorse; realisation that he may have jeopardised his career, and previous good character, when considering imposing . . . penalties against him for those actions.

The investigator recommended that the Sergeant be counselled, receive a severe reprimand from his Commander, be appointed a mentor and placed under increased supervision, and be tasked to write a 3,000 word essay entitled 'An Analysis of the Use and Misuse of the Police Service's Electronic Mail System'.

In endorsing the investigator's recommendations, the Local Area Commander commented as follows:

. . . Whilst it is . . . clear that [the Sergeant] should have drawn existence of the offending memos to the attention of a senior officer that position is to a certain extent mitigated by the officer's perception that the memo was not offensive.

[The Sergeant] now has to live with the knowledge that through his actions he has caused colleagues and even his own son the stress of complaints records being created and the possibility that some or most of them will have an adverse finding recorded against them. This may well be his harshest punishment.

Without wishing in any way to minimise the nature of the action itself, I consider it important that it be judged in the overall contexts of motive, risk factor, history and ultimately officer value to the Police Service. [The Sergeant] recognised prior to receipt of this complaint file that he should not have re-transmitted the memo and approached this office to tender a formal apology. I do not believe that there was any malicious motive involved and I further believe that the action was simply a serious error of judgement. His CIS record is not a matter for concern. The risk of a recurrence can be virtually eliminated through the obvious remorse and distress displayed by him and he does not represent poor value for money as an officer of this Command. It takes a great deal of time and money to train an officer to [the Sergeant's] level so the value of Section 181D action needs serious contemplation in relation to the nature of the offence. As the offence is best described as an error, has no precedent, there is little or no adverse history

and virtually no future risk of transgression I cannot support such action. Similarly I do not consider Section 173 'reviewable action'³⁴ as appropriate in this case . . .

The management action implemented by the Local Area Commander is at odds with the Police Service's management guidelines for such cases provided by Internal Affairs to all LACs. With regard to the mitigation put forward on the Sergeant's behalf, the following comments can be made:

- The fact that the Sergeant did not add his own text to accompany the offensive images should not be seen as a mitigating factor;
- The Sergeant sent the offensive images at 9.34pm, 10.04pm and 11.04pm respectively. It is to be hoped that a supervisor would have sufficient responsibilities to keep him occupied at this time of night. Without ascertaining how busy the LAC was at the times and date in question, mitigation based on an expectation 'that the work load of the shift [had] decreased' appears questionable;
- The Ombudsman finds it difficult to accept the proposition put forward that the Sergeant's misconduct 'is to a certain extent mitigated by the officer's perception that the memo was not offensive'. Whilst an officer of the Sergeant's rank and service may be ignorant of specific criminal offences pertaining to the sending of offensive e-mail, he has readily acknowledged his awareness of relevant Service policies. The Sergeant's own personal views as to what constitutes offensive material are irrelevant;
- The Sergeant also states that the recipients of his memos were carefully selected, in that they would not be offended by the material received. This assertion has not been tested by asking the 16 recipients if they were in fact offended by any of the material;
- It is contended that the Sergeant 'would not have intentionally engaged in the misuse of the memo system where he would have placed his friends and son in jeopardy had he not actually believed that he was not committing an offence'. An equally likely possibility is that the Sergeant embarked upon his misconduct in the misguided belief that it would not be detected;
- It is suggested that prior to this specific matter being investigated, the Sergeant came forward to apologise for his actions to his Commander. No reason is offered as to why the Sergeant should come forward and admit to misconduct when he clearly believed that his actions were not improper. The investigation into the Sergeant's actions was initiated on 2 February 2000, and the complaint file was received by the investigator on 14 March 2000. The date the Sergeant came forward to apologise for his actions has not been detailed in the investigation papers. It is highly likely, however, that by the time the officer came forward he had learnt of the existence of a wide-ranging Internal Affairs investigation into e-mail misuse. As early as 13 December 1999, Commissioner Ryan had announced the existence of such an investigation at a press conference, warning that such activities would not be tolerated, and that criminal charges or

³⁴ Section 173 of the *Police Service Amendment (Complaints and Management Reform) Act 1998*, provides that the Commissioner may take 'reviewable action' with respect to a police officer's misconduct or unsatisfactory performance. Such action may include a reduction of the officer's rank or grade, a reduction of the officer's seniority, a deferral of the officer's salary increment, or any other action (other than dismissal or the imposition of a fine) that the Commissioner considers appropriate.

dismissal from the Police Service may follow.³⁵ It is therefore probable that the Sergeant's apology was motivated more by a growing realisation that his misconduct would be uncovered through audit and investigation than by any genuine feeling of remorse; and

- The investigator puts forward further mitigation, in that while [the Sergeant] is a supervisor, the transmission was to friends, albeit police officers, and not a general dissemination'. It is this Office's view that insufficient weight has been attached to the fact that the Sergeant is a supervisor. The fact that he abused this position of trust, leading subordinates (and his son) into misconduct, should not be seen as mitigation, but rather as an aggravating factor.

Case study 'g'

A Senior Constable within Macquarie Region was investigated for receiving, and in turn forwarding on to another officer, an image entitled 'VEGETARIAN'. This consisted of a photograph of a nude female contorted to expose her vagina and anus. A bunch of carrots protruded from her vagina, two carrots were inserted into her mouth, and her anus was held open by two inserted fingers.

When asked to respond to a directive memorandum, the officer commented as follows:

. . . I find it offensive that my system can be accessed by persons I have not authorised or been told have access to it . . . I did not find the material I sent . . . to be offensive . . . I do however find it offensive that I should be singled out from [my LAC] when the practice of receiving and sending such material as this was endemic within the station . . .

. . . I resent the implication that I deal in pornography when such material is readily available through a number of other legal and socially acceptable sources.

. . . I consider this whole incident nothing more than a waste of departmental time and effort . . . I have no doubt that I will be managerially counselled in some shape or form to show to the outside world that justice is seen to be done but I consider that I am being used as an example whilst the widespread use of the system by other persons is ignored. I was not aware that the sending of this material was a misuse of the e-mail system, because of its widespread use for transmitting this material, but I am not using the excuse of not knowing this as a defence.

. . . If I am guilty of anything then it is of being naïve in believing that the department would respect my privacy and treat me in a fair and even handed manner.

It strikes me as being typical of a system which lacks proper direction and consistency, that I can be criticised for a breach of such a trivial and menial nature . . .

[I recommend] that this matter be dealt with in a manner appropriate to its trivial nature and that no official departmental action be taken against myself.

Whilst a photograph depicting an image of this kind may be 'socially acceptable' in some circles, the sending of such material via the Police Service e-mail contravenes the criminal law and numerous internal policies. The Senior Constable's failure to appreciate the seriousness of this matter is cause for concern. Under the guidelines drawn up by Internal Affairs, officers who send such material should be nominated for removal from the Police Service pursuant to s.181D of the *Police Service Act*. This did not occur in this case.

³⁵ Malcolm Brown: *Police face charges for e-mail porn*, Sydney Morning Herald, 14 December 1999.

It is also implied in the Senior Constable's belligerent response that he has knowledge of similar misconduct by other officers. No attempt was made by the investigator to pursue this avenue of further investigation.

Case study 'h'

A Constable within Endeavour Region was investigated for circulating the following internal e-mail memo to staff within his region:

HARBOUR CRUISE

THIS YEAR MARKS 138 YEARS OF MEN IN POLICING, COME AND HELP CELEBRATE THIS IMPORTANT MILESTONE BY COMING OUT ON A HARBOUR CRUISE.

DETAILS:

DATE: FRIDAY THE 19, MAY 2000 FROM: BIRKENHEAD POINT AT 12.00PM EXACTLY.

HOW MUCH: \$60 PER HEAD

WHAT DOES THIS INCLUDE: UNLIMITED BEER, BUFFET LUNCH, TWO EXOTIC ENTERTAINERS WHO FROM PREVIOUS EXPERIENCE ARE VERY GOOD FRIENDS, LINGERIE WAITRESS TO WAIT UPON OUR NEEDS AND OF COURSE THE FIVE HOUR CRUISE.

CAN PARTNERS COME: IF YOU ARE ASKING THIS QUESTION YOU ARE EITHER A SWINGER OF EPIC PROPORTIONS OR YOU JUST DON'T GET THE IDEA OF THE WHOLE DAY AND SHOULD PUT DOWN TO WORK.

HOW ABOUT THE GIRLS: OF COURSE WE WOULD NEVER DISCRIMINATE AGAINST THE WOMEN FOLK IN OUR FINE SERVICE AND THEY ARE MORE THAN WELCOME TO ATTEND KEEPING IN MIND THE STRONG POSSIBILITY OF NUDITY ON THE DAY

. . . ALSO KEEP IN MIND THE BOAT HOLDS TWO HUNDRED SO THE MORE THE MERRIER SO PASS THE WORD AROUND . . .

In his response to a directive memorandum, the Constable stated:

I have had the opportunity to organise harbour cruises in the past . . . On 17 April, 2000 I started planning a harbour cruise for workmates and friends in the service . . .

Under a fixed price there would be beer and soft drinks served as well as a buffet meal. There would be a lingerie waitress there to serve our drinks. There would also be two strippers who would perform three routines during the day. The cruise would go for about five hours . . .

In regards to the comments about the 138 years of men in policing, this was meant as a humorous comment . . .

By being so descriptive in the memo I was trying to, without offending people, let them know exactly what would happen on the day. I did not want someone to come along on the day who either through religious or personal beliefs would be offended by the content of the cruise.

I had no problems with women coming along on the cruise and I wished to convey this point. However, once again I wanted them to know exactly what would be happening before they set foot on the boat.

It was meant as a cruise without partners because of the content of the day . . .

It is worrying that sexist and inappropriate behaviour of this type still occurs within today's NSW Police Service. It is of concern that the Constable not only believed he could find sufficient officers interested in participating in such an activity, but that he felt he could freely make use of the Police Service's e-mail system to widely advertise the event.

Case study 'i'

A Senior Constable within City East Region was investigated for failing to report the receipt of an image of a nude female of Mediterranean appearance displaying an unusually large amount of pubic hair. The subject of the memo was titled 'how to get carpet burn 1999!!!', and the photograph was prefaced by the following accompanying text:

DEAR ALL,

Well currently in SPAIN and there is 2 barriers you need to get through if you want a slice of Spanish girl, one is the language barrier and the other is as follows . . .

In his subsequent report, the Senior Sergeant who conducted the investigation commented as follows:

There has been a general failure by the NSW Police Service to provide sufficient training in the use of Memo for Windows to the greater majority of staff within this command, although [the Senior Constable] admits he is aware of how to access memo attachments. From a general observation it appears that few at this command had any knowledge of the existence of the NSW Police Service Electronic Mail Policy prior to these matters being brought to light. In consideration of all the available evidence, I find that [the Senior Constable] received an unsolicited e-mail, then accessed the attachment which was of an offensive nature. Having done that, he eventually deleted the e-mail, but did not report its receipt because of his lack of knowledge of the Police Service electronic mail policy. Therefore, I make no adverse finding in respect of [the Senior Constable].

Whilst the Senior Constable may well have been ignorant regarding the specifics of the Police Service's *Electronic Mail Policy Statement*, it should still have been abundantly clear to him that using the Police Service network to disseminate pornographic, racist and sexist material constitutes unacceptable conduct. If the investigator found that the Senior Constable failed in his responsibilities in this area, then an adverse finding should follow.

Annexure B: NSW Police Service Electronic Mail Policy Statement



NSW POLICE SERVICE ELECTRONIC MAIL POLICY STATEMENT

This Policy document is intended to provide guidance to NSW Police Service employees concerning your rights and responsibilities regarding the proper use of NSW Police Electronic Mail, including Internet mail facilities. This policy applies to all employees including permanent, temporary, part time, students and contract employees.

Purpose

The NSW Police Service encourages the use of the electronic mail services to share information, improve communication, derive benefits of increased efficiency and to exchange ideas.

NSW Police Service property

Any electronic mail address or account associated with the NSW Police Service or any sub unit of the Service, assigned by the NSW Police Service to individuals, sub-units or function of the Service is the property of the NSW Police Service.

Service Restrictions

Those who use NSW Police Service electronic mail services are expected to do so responsibly. Usage is to comply with the Code of Conduct & Ethics, state and Federal laws, with this and other policies and procedures of the NSW Police Service, as well as with normal standards of professional and personal courtesy and conduct.

Misuse

NSW Police Service electronic mail services shall not be used for purposes which could reasonably be expected to cause, directly or indirectly, excessive load on any computing facilities, or unwarranted or unsolicited interference with others use of electronic mail or electronic mail systems.

Personal Use

NSW Police Service electronic mail services may be used for incidental personal purposes provided message content and time taken to compose the message is kept brief and such use does not breach the policies governing the use of NSW Police Service electronic mail services.

Security and confidentiality

The confidentiality of electronic mail cannot be assured. Such confidentiality may be compromised by applicability of law or policy, including this Policy, by unintended redistribution or because of inadequacy of current technologies to protect against unauthorised access. Therefore, users should exercise extreme caution when using electronic mail to communicate confidential or sensitive matters.

Policy Violations

Internal violations of NSW Police Service policies governing the use of electronic mail services may result in restriction of access to information technology resources. Internal action may also be applicable under other NSW Police Service policies, guidelines, implementing procedures, or Code of Conduct & Ethics.

...

SECTION 2 — GUIDELINES

Due to the nature of electronic mail systems and services a number of guidelines have been developed to ensure employees meet their responsibilities and obligations when making use of these devices.

MISUSE

In general, the NSW Police Service policy prohibits the theft or abuse of computing resources. Such prohibitions apply to electronic mail services and include (but are not limited to):

- unauthorised entry
- using, transferring, tampering with the accounts and other officers files
- interfering with the work of others or with other computing facilities

Under certain circumstances, the law contains provisions for criminal offences. Users of electronic mail are encouraged to familiarise themselves with these laws and policies.

RESPONSIBILITY

All members of the NSW Police Service who use the electronic mail system are responsible, in accordance with this Policy and the Code of Conduct & Ethics, for:

- a) contents being generated by your electronic mail account
- b) recognising your responsibility in managing your accounts by following appropriate Service security measures to avoid unauthorised use
- c) deleting all unnecessary or unsolicited material from your electronic mail account at the earliest possible opportunity
- d) ensuring use of the electronic mail system is for the discharge of your official duties
- e) actively discouraging the use and circulation of junk mail
- f) notifying supervisors and appropriate Service agencies of any perceived misuse of the electronic mail system

- g) managing your individual electronic mail account to avoid excessive use of network resources
- h) not misusing your electronic mail system as it might cause ramifications to the capacity and performance of the organisational computer environment
- i) storing information received or generated, in electronic format which is relevant to the business of Government in an appropriate manner
- j) compliance with the law and NSW Police Policy.

...

RESTRICTIONS

Do not use the electronic mail services for:

- unlawful activities
- commercial purposes (excluding from the auspices of the Service)
- personal financial gain
- personal use that is inconsistent with the Personal Use section.

Users are not to violate the Service policies and guidelines regarding intellectual property, sexual or other forms of harassment.

...

e) Commanders & Managers

Responsibilities include:

- All Officers working within their Commands/Branches of the NSW Police Service are informed of their responsibilities with regard to the use of the Electronic Mail System;
- Disciplinary procedures are in place for inappropriate use of the Electronic Mail Systems and
- Random checks on the NSW Police Service computer system are conducted to ensure that there is no improper material being used or transmitted throughout the organisation by way of electronic mail.
- Region/Branch Computer Systems Officers will be responsible for the installation of the Memo for Windows System within their respective areas of responsibility.

[Extract from *NSW Police Service Electronic Mail Policy Statement*]

Annexure C:

Office of Film and Literature Classification Guidelines for the Classification of Publications

GUIDELINES FOR THE CLASSIFICATION OF PUBLICATIONS 1999

CATEGORY 1 — RESTRICTED

Not available to persons under 18 years. (Not to be sold in Queensland.)

This classification is legally restricted to adults. Material which is given a restricted classification is unsuitable for those under 18 years of age. It may offend some sections of the adult community.

Material classified 'Category 1 — Restricted' must be distributed in a sealed wrapper.

Covers must be suitable for public display. Publications with covers which are considered not suitable for public display will not be permitted in this classification category unless sealed in plain opaque wrapping.

Category 1 — Restricted Contents:

- Violence:** Publications which promote, incite or instruct in violence are not permitted.
- The treatment of realistic violence may be detailed. Descriptions and depictions of violence that are excessive are not permitted.
- Descriptions and depictions of violence in a sexual context should not be exploitative.
- Descriptions and depictions of sexual violence should not be detailed. They should not be:
- gratuitous; or
 - exploitative.
- Gratuitous, exploitative or offensive depictions of cruelty or real violence will not be permitted.
- Sex:** Detailed descriptions of sexual activity involving consenting adults may be permitted. However sexual themes with a very high degree of intensity should not be described.
- Actual sexual activity may not be shown in realistic depictions. Simulated or obscured sexual activity involving consenting adults may be shown in realistic depictions. Genital contact is not permitted to be shown in realistic depictions.

Stylised depictions of sexual activity involving consenting adults may be more detailed than realistic depictions.

Nudity: Realistic depictions of nudity may contain genital detail and emphasis. Realistic depictions of obvious sexual excitement may be permitted. Realistic depictions may include touching of genitals.

Coarse Language: There are virtually no restrictions on coarse language in this category.

Adult Themes: Themes with a high degree of intensity may be dealt with. The treatment should not be exploitative.

Themes with a very high degree of intensity may be referred to, but not described in detail. The treatment should not be exploitative.

Descriptions and depictions of fetishes should not be exploitative.

Descriptions and depictions of fetishes in which non-consent or physical harm are apparent are not permitted. Descriptions and depictions of *revolting and abhorrent phenomena* are not permitted.

Descriptions of fetishes may contain detail.

Depictions of mild fetishes may be permitted.

Depictions of stronger fetishes are not permitted.

Drug Use: Descriptions and depictions of drug use may be permitted.

Detailed instruction in drug use is not permitted.

Drug use should not be promoted or encouraged.

Category 1 — Restricted Covers: As for 'Unrestricted'.

CATEGORY 2 — RESTRICTED

Not available to persons under 18 years. (Not to be sold in Queensland.)

This category is legally restricted to adults. Material which is given a restricted classification is unsuitable for those under 18 years of age. It may offend some sections of the adult community.

Material classified 'Category 2 — Restricted' may be not publicly displayed and may only be displayed in premises that are restricted to adults.

The classification criteria for the covers of 'Category 2 — Restricted' publications are therefore the same as for the contents of 'Category 2 — Restricted' publications.

Category 2 — Restricted Contents and Covers:

- Violence:** as for 'Category 1 — Restricted'.
- Sex:** Detailed descriptions of sexual activity involving consenting adults may be permitted.
Actual sexual activity involving consenting adults may be realistically depicted.
- Nudity:** Realistic depictions of nudity may include actual sexual activity.
- Coarse Language:** As for 'Category 1 —Restricted'.
- Adult Themes:** The treatment of themes with a very high degree of intensity should not be exploitative.
Descriptions and depictions of stronger fetishes may be permitted.
Descriptions and depictions of fetishes in which non-consent or physical harm are apparent are not permitted.
Depictions of *revolting and abhorrent phenomena* may be permitted. Stylised depictions and written descriptions may be more detailed than realistic depictions.
- Drug Use:** As for 'Category 1 — Restricted'

RC REFUSED CLASSIFICATION

Publications which contain elements which exceed those set out in the above classification categories are classified 'RC'.

Publications which fall within the criteria for 'RC' classification cannot be legally imported or sold in Australia.

The National Classification Code sets out the criteria for classifying a publication 'RC'. These include publications that:

- *describe, depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; or*
- *describe or depict in a way that is likely to cause offence to a reasonable adult a person who is or who looks like a child under 16 (whether the person is engaged in sexual activity or not), or;*
- *promote, incite or instruct in matters of crime or violence.*

Publications that appear to purposefully debase or abuse for the enjoyment of readers/viewers, and which lack moral, artistic or other values to the extent that they offend against generally accepted standards of morality, decency and propriety will be classified 'RC'.

Publications will be classified 'RC':

- (a) if they promote or provide instruction in paedophile activity;

or if they contain:

- (b) descriptions or depictions of child sexual abuse or any other exploitative or offensive descriptions or depictions involving a person who is or who looks like a child under 16;
- (c) detailed instruction in:
 - (i) matters of crime or violence,
 - (ii) the use of proscribed drugs;
- (d) realistic depictions of bestiality;

or if they contain gratuitous, exploitative or offensive descriptions or depictions of:

- (e) violence with a very high degree of impact which are excessively frequent, emphasised or detailed;
- (f) cruelty or real violence which are very detailed or which have a high impact;
- (g) sexual violence;
- (h) sexualised nudity involving minors;
- (i) sexual activity involving minors;

or if they contain exploitative descriptions or depictions of:

- (j) violence in a sexual context;
- (k) sexual activity accompanied by fetishes or practices which are revolting or abhorrent;
- (l) incest fantasies or other fantasies which are offensive or revolting or abhorrent.

Annexure D: Internal Affairs Management Guidelines

From: BRAMMER, MALCOLM [SMTP:BRAM1MAL@POLICE.NSW.GOV.AU]
Sent: Friday, 14 April 2000 10:23
To: . . . @NSWOmbudsman.nsw.gov.au
Subject: E-mail Invesitgation

. . .

Dear [Asssistant Ombudsman]

I have considered your summary of the principles agreed to and firstly make the following observations:

. . .

- That the merits of each case must be measured against the criteria in the guidelines.
- That ultimately, managers are responsible for the quality and appropriateness of their actions in dealing with each individual case. The ultimate test will be whether those decisions are founded upon articulated and cogent grounds and reflective of the gravity of the behaviour.

. . .

- I also agree that the issue of 'denigration of women' and workplace standards on discrimination and productivity necessarily needs to be considered, as well as community expectations.

Thus, the following principles should be applied . . . :

1. Officers who have sent Category 2 - restricted and Refused classification material through the Service e-mail should be considered under the provisions of s,181d.
2. Officers who have sent Category 1 - restricted material through the Service E-mail system should be considered under the provisions of s173d [reviewable sanctions]
3. Officers who fail to report having received through the e-mail system Category 1 - restricted, Category 2 - restricted material should be considered in the realms of a non-reviewable management response.
4. Where there is evidence that officer's actively solicited pornographic e-maills, consideration needs to be given to reviewable sanctions.
5. All mitigating and exacerbating factors should be noted in relation to each case. However, departure from the management responses outlined above should only occur if there are compelling reasons [and recorded] as to why a different kind of response is considered appropriate.

. . .

While the Ombudsman's input will be considered, the Police Service will make the final decision in each case.

Mal Brammer

Annexure E: NSW Police Service Code of Conduct and Ethics

Commissioner's Foreword

The purpose of this code is to set standards of behaviour and provide guidance in ethical decision making for all employees of the Service. On its own the Code can achieve very little unless you take full responsibility for your behaviour. You are to perform your duties with integrity and professionalism and ensure your decisions meet appropriate standards.

It is pleasing to note that shortly after the publication of version one of this Code in January 1997, our Culture Survey showed that the vast majority of you consider the Code to be clear about standards of behaviour expected by the Service.

...

We have all worked hard over the past two years towards creating an ethical police culture capable of delivering cost-effective crime reduction to the community.

I am proud of the progress we have made towards achieving this objective and look forward to even greater achievements in the years to come.

Introduction

The people of New South Wales have the right to expect Police Service officers, both sworn and un-sworn, to work with efficiency, fairness, impartiality and integrity.

Just as important, **you have the right** to a workplace free of any form of harassment, unfair discrimination or fear. This requires standards of behaviour of you and your colleagues which promote and maintain confidence and trust among ourselves and the public in our services.

The purpose of this organisational code is to make explicit, certain behaviours which are unacceptable for **all** sworn and un-sworn officers regardless of rank or grade, and to provide an ethical framework for your decisions and actions. Such a framework recognises it is not possible to address all ethical questions you might encounter. For that reason, you need to be aware of and comply with relevant legislation, this Code, Police Service policy, guidelines and instructions as they relate to your work, and you should seek additional advice from a person in authority whenever you are in doubt about any matter.

Statement of Values

Each member of the Police Service is to act in a manner which:

- Places integrity above all
- Upholds the rule of law
- Preserves the rights and freedoms of individuals
- ...
- Makes efficient and economical use of public resources, and
- Ensures authority is exercised responsibly.

Failure to Comply

If you fail to comply with this code or any other lawful directive, you will be asked to explain your actions. Should your conduct be contrary to the code's requirements, you might be subject to a range of managerial actions under the Employee Management Scheme, up to removal from the Service.

...

Guide to Ethical Decision Making

When you are faced with a decision which poses an ethical dilemma, you should consider, either alone or in consultation with your supervisor or specialist adviser (eg Employee Assistance Program, Chaplain, Peer Support Officer), the following questions:

- Is the decision or conduct legal and consistent with government policy?
- Is the decision or conduct in line with the Police Service's policy objectives and Code of Conduct?
- What will be the outcomes for yourself, your colleagues, the Police Service, other parties?
- Do you have a conflict of interest in making this decision and could it lead to private gain at public expense?
- Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

Reporting Corrupt Conduct

Corruption is deliberate dishonesty; deliberate unlawful conduct . . .

. . . You must report suspected corrupt conduct, misconduct, serious mismanagement or substantial waste of public resources.

Depending upon the circumstances, you should choose to report possible corrupt conduct or unethical conduct to:

- An officer senior in rank to you

- A Professional Standards' Council in your command
- Internal Affairs
- The Commissioner
- The Police Integrity Commission
- Ombudsman
- The Independent Commission Against Corruption

Under the Police Service Act and the Protected Disclosures Act 1994, you have certain protection from reprisals. There is also an Internal Witness Support Policy and Program operating within the Service. This program can ensure you are provided with assistance and support.

All managers and commanders must ensure you have the information you need about internal reporting procedures, and will notify you about any action taken or proposed in relation to the disclosure.

Criminal Convictions

If a criminal offence is proven against you in a court of law, there is a presumption of removal from the Service . . .

Discrimination and Harassment

You must not harass or discriminate against **your colleagues or members of the public** for any reason including:

- Gender
- Physical appearance
- Marital status
- Pregnancy
- Age
- Race
- Ethnic or national origin
- Physical or intellectual impairment
- Sexual preference
- Religious or political conviction.

If you witness harassment or discrimination, you should do something to stop it if possible and report it to your manager or other senior officer.

Examples of harassment include:

...

- Unwelcome remarks, jokes, innuendoes or taunting about a person's body, attire, marital status, sex, pregnancy, ethnic or national origin, sexual lifestyle or disability
- Displaying sexually suggestive, racist or other offensive or derogatory material such as posters or cartoons

...

- Practical jokes which may cause awkwardness or embarrassment

...

Essentially, harassment is any behaviour which results in a person feeling threatened, uncomfortable or unable to cope in their work environment.

Offensive Language

The use of obscenities or offensive language is unacceptable when dealing with members of the public or with other Police Service officers.

Management

All managers and commanders are accountable for the work-related needs of their staff and are expected to:

- Keep staff informed of legislation which applies to them and of the consequences if they fail to comply
- Develop and instil corporate values as the cornerstone of service and proper conduct
- Treat all staff with honesty and courtesy
- Act in accordance with this Code.

In particular, managers and commanders must:

- Inform staff of this code of conduct

...

- Develop and implement effective local corruption prevention measures
- Ensure staff create and maintain full and accurate records documenting activities, incidents, decisions and reasons for them.

...

- Comply with all legislative, industrial and administrative requirements of the police service
- Take appropriate action against staff who fail to comply with this Code and related standards of conduct.

...

Professional Competency and Development

The Police Service is responsible for the training and development needs of its officers. You are responsible for maintaining your professional competency and development.

...

Private Conduct

Lawful behaviour while off duty is not of concern unless it brings, or has the potential to bring, discredit to the Police Service.

All officers have an obligation to act and to be seen to act by the public in accordance with the spirit and the letter of the law including the terms of this Code of Conduct whether on or off duty.

Any private activity which adversely affects your job performance will be regarded as a work-related issue.

...

Use of Facilities and Equipment

Official facilities and equipment can be used only for private purposes when official permission has been given. This might include short private local telephone calls and limited use of facsimile equipment which does not disrupt official work.

...

Relevant Legislation

The main legislation which applies to Police Service officers and their standards of behaviour are the Police Service Act, 1990, the Police Service Regulation and the Public Sector Management Act, 1988. The following legislation might also be relevant:

...

- Police Integrity Commission Act, 1996
- Anti-Discrimination Act, 1977
- Independent Commission Against Corruption Act, 1998
- Ombudsman Act, 1974
- Protected Disclosure Act, 1994
- Public Finance and Audit Act, 1983.

Annexure F: NSW Police Service Gender Based and Sexual Harassment Policy

Commissioner's foreword

The NSW Police Service is committed to ensuring all its employees enjoy a workplace free of harassment and discrimination. This sentiment is a cornerstone of the Commissioner's *Code of Conduct and Ethics*.

I am committed to ensuring all Service employees enjoy a safe workplace, in which we treat each other and our customers with respect and sensitivity. Harassment has no place in our workplace.

Where harassment occurs, prompt action will be taken. This action will aim to remedy the situation and might include disciplinary action. As harassment is a breach of the *Code of Conduct and Ethics*, it might result in removal from the Service. Discrimination and harassment also breach Federal and State legislation.

Responsibilities of employees:

As employees, you have a responsibility to ensure your behaviour complies with the *Code of Conduct and Ethics*. Where you observe behaviour which breaches the code or this policy, you must tell your supervisor or commander/manager so they can take action.

Responsibilities of managers and supervisors:

As leaders in the workplace, you must provide a model through your own behaviour for others to follow. Create an environment in the workplace where all employees understand harassment will not be tolerated and complaints will be treated seriously. As managers and supervisors, you overall aim is to prevent harassment occurring and to act when it does, even when no complaint is made. In doing this, you will ensure your staff are aware of, and have access to, the Service's grievance procedures.

Provide advice about harassment, receive complaints and try to resolve them in line with the Service's grievance procedures. To help this, create a workplace environment in which staff feel safe to make a complaint without fear of victimisation. Also, assure staff that their grievance will be handled confidentially.

PJ Ryan
Commissioner of Police

What is sexual harassment?

Someone sexually harasses another if:

- they make an unwelcome sexual advance or an unwelcome request for sexual favours; and
- they engage in other unwelcome conduct of a sexual nature;

when a reasonable person, having regard to all the circumstances, would have anticipated the person harassed would be offended, humiliated or intimidated.

Conduct of a sexual nature includes making a statement (orally or in writing) of a sexual nature to someone or in their presence.

Behaviour is unwelcome if the individual alleging sexual harassment perceives it to be. It is irrelevant that the behaviour does not offend others or has been an accepted feature of the work environment in the past.

Harassment can occur between people of the same or opposite sex and applies equally to both sexes.

Sexual harassment can be verbal, non verbal or physical

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Examples of non verbal sexual harassment include:

- putting sexually suggestive, offensive or degrading/insulting material on walls, computer screen savers etc;

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- unwelcome sexual practical jokes;

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- sending sexually offensive material through unsolicited letters, computer, fax or E-mail; and

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Sexual harassment can be criminal

Examples of criminal offences include:

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- sending sexually offensive material by mail;

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Gender based harassment

This is behaviour based on sex role stereotyping. It is also known as sex based harassment. It can be directed to, or carried out by, a group or an individual.

This includes:

- belittling comments based on sex role stereotyping;
- unfair treatment due to pregnancy, marital status or commitment to family responsibilities;
- sexist language or remarks;
- sexist jokes;
- sexist practical jokes;
- sexist threats or insults; and
- sexist comments about someone, or a particular sex.

Seeking assistance and making a complaint

If you experience harassment, take immediate action. Your options include:

- seeking advice and help before deciding on further action to take. A booklet called *A guide to making an Equity Complaint* has been prepared to assist you and is available from:
 - Your Commander/Manager;
 - Region Human Resource Manager;
 - Internal Affairs Consultant;
 - Conflict Assessment Unit;
 - Internal Witness Support Unit; and
 - Equity & Diversity Branch.
- telling the person to stop the behaviour; and
- making a complaint through the Service grievance procedures, your union or any other external agency with authority to deal with the matter, such as the Anti Discrimination Board or the Human Rights & Equal Opportunity Commission.

The Service's grievance procedures aim to resolve the complaint quickly and allow for managerial or disciplinary action where appropriate. A variety of resolution methods is available and these are outlined in *A guide to making an Equity Complaint*. Initially, complaints will be dealt with at the workplace level using appropriate methods. Matters which are of a criminal nature or matters deemed serious by the Police Integrity Commission will need to be referred for investigation.

If a matter cannot be resolved at a local level, it will be reviewed by a special panel which will have the power to ensure it is resolved. This panel will comprise the Executive Director, Human Resources & Development, Commander, Internal Affairs and Manager Equity & Diversity. All panels will have at least one female member.

Experience shows the longer issues are left unresolved, the harder they are to resolve. Therefore, raise complaints about harassment at the first opportunity.

Why preventing harassment is important

Harassment damages the organisation and the people involved. It can result in major disruption to the work environment and affect how we do and feel about our job. The costs involved are personal and financial. Preventing harassment and dealing quickly with cases are all part of the good people management practices this organisation expects.

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