

LECC

Law Enforcement
Conduct Commission

Operation Shorewood: Review of how the NSW Police Force manages and investigates workplace equity matters

July 2020



Law Enforcement Conduct Commission

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FOREWORD

It is widely recognised that bullying, sexual harassment and discrimination in the workplace can cause serious harm to both employees and organisations. Under Australian law employers are required to provide a safe workplace, take care of their staff's physical and psychological wellbeing and take steps to recognise, assess and control threats, including bullying, sexual harassment and discrimination.

In the NSW Police Force all forms of bullying, discrimination, harassment (including sexual harassment), vilification and victimisation are collectively known as 'workplace equity matters'. The NSW Police Force has extensive policies and procedures that govern the behaviour expected of its employees in the workplace.

In 2018 the Commission commenced a project which involved research into the effectiveness of NSW Police Force processes and procedures that manage workplace equity matters. Our project involved a review of workplace equity matters that have been investigated between 2017 and 2018.

Timeliness of investigations, the experience of physical and/or psychological harm by complainants, low levels of complainant confidence in the way the NSW Police Force manages and investigates workplace equity matters and recidivist behaviour among some officers are important issues identified in our review.

The Commission has made six recommendations that focus on prevention and response. In particular the Commission considers that improving the timeliness of investigations and proper record keeping practices are key to an improved response to workplace equity matters.

The NSW Police Force has proposed significant changes to the way it manages workplace equity matters and timeliness standards for investigations generally – including investigations of workplace equity matters. The NSW Police Force anticipates that these proposed changes will address the intent of the Commission's recommendations. The Commission acknowledges the NSW Police Force commitment to improve and strengthen its systems and procedures relating to workplace equity matters. The Commission will consider the impact of the proposed changes in the course of our ongoing oversight work. Additionally, we will look at their effect on the way workplace equity matters are addressed after a further 12 months, allowing some time for the changes to take effect.

The Commission would like to thank the NSW Police Force, particularly the Professional Standards Command, for the collaborative approach applied throughout this project and for its willingness to engage in ongoing and productive dialogue to progress change.



The Hon. Reginald Blanch AM QC
Acting Chief Commissioner



The Hon. L Drake
Commissioner for Integrity

Office of the Chief Commissioner

21 July 2020

The Hon John Ajaka MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Jonathan O'Dea MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

In accordance with section 132(3) of the *Law Enforcement Conduct Commission Act 2016*, the Commission hereby furnishes to you its report entitled: *Operation Shorewood - Review of how the NSW Police Force manages and investigates workplace equity matters*.

Pursuant to section 142(2) of the Act, I recommend that this report be made public immediately.

Yours sincerely,



The Hon. Reginald Blanch AM QC
Acting Chief Commissioner



The Hon. L Drake
Commissioner for Integrity

Encl.

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RECOMMENDATIONS

- Recommendation 1: It is recommended that the NSW Police Force conducts a yearly audit on the timeliness of evidence-based investigations and mandatory resolutions to identify the root causes of the delay in completing investigations into workplace equity matters. 18
- Recommendation 2: It is recommended that the NSW Police Force reinforces the mandatory requirements for investigators to complete an extension request for evidence-based investigations and matters referred for resolution in circumstances where recommended timeframes are anticipated to be exceeded. This should be made in a timely fashion. The length of any approval of an extension request should be made based on the complexity of the investigation.....19
- Recommendation 3: It is recommended that the Interim Risk Management Guidelines for Police be amended to include a statement that it is mandatory that commanders or managers consider the need to implement interim risk management action for all subject officers in circumstances where investigations or resolutions may or do exceed the recommended timeframes for completion.....19
- Recommendation 4: It is recommended that the NSW Police Force specify where all records pertaining to workplace reviews are to be kept and who is responsible for record keeping in relation to workplace reviews..... 25
- Recommendation 5: It is recommended that on an annual basis the NSW Police Force compares the results of trend analysis reports prepared by the WREU and the PSC to ensure consistency across the organisation..... 27
- Recommendation 6: It is recommended that in circumstances where officers who are investigated for workplace equity matters take long-term sick leave, the NSW Police Force reinforces the requirement that investigations are completed within recommended timeframes. 31

1. OUR REVIEW

In the NSW Police Force (NSWPF) all forms of bullying, discrimination, harassment (including sexual harassment), vilification and victimisation are collectively known as 'workplace equity matters'. The NSWPF has developed internal policies, procedures and guidelines to manage them. When a workplace equity matter is raised in a complaint, a mandatory referral to the Workplace Relations Equity Unit (WREU) occurs. The role of the WREU is to provide consistent, expert written advice on workplace equity matters to requesting commands and districts.

To assess how well the NSWPF identifies, manages and investigates workplace equity matters, the Law Enforcement Conduct Commission (Commission) decided to review all workplace equity matters that were referred to the WREU in the period 1 July 2017 to 31 December 2018. This report presents the results of the Commission's review of 124 workplace equity matters and other records, including workplace reviews, workplace audits and trend analysis reports. The purpose of our review was to –

1. measure and benchmark compliance by the NSWPF with its *Respectful Workplace Behaviours Guidelines*;
2. assess the ability of the NSWPF to monitor and report on trends/outcomes of all workplace equity matters including formal investigations;
3. make recommendations to the NSWPF to increase compliance with its *Respectful Workplace Behaviours Guidelines* and strengthen NSWPF workplace equity matter processes.

Workplace equity matters occur for a number of reasons and there is no single solution that comprehensively addresses how to manage, investigate or prevent them.

The Commission's review presents an analysis of the complaints data for workplace equity matters, as well as a consideration of the other, more proactive work the NSWPF has indicated it does in order to identify and prevent workplace equity matters from occurring.

The Commission's review did not attempt to gauge the prevalence of workplace equity matters in the NSWPF. Our review relied predominantly on complaint data and workplace reviews to assess the NSWPF's performance in managing and investigating workplace equity matters. However, as will be discussed later in this report, while complaint data is an effective method of collecting information about misconduct, it is not a reliable indicator of the extent of bullying, harassment, discrimination, vilification and victimisation that occurs in the NSWPF.

It was also beyond the scope of our research to examine all potential underlying causes for workplace equity matters, which may include, among other things, establishing a balance between work demand and employees' resources, rigid hierarchical structures, organisational culture or the inability of management to provide a psychosocial safety climate¹ for employees. However, the Commission acknowledges that these causes contribute to the behaviour of people in the workplace and unless addressed some officers will continue to engage in this kind of subversive behaviour.

¹ Psychosocial safety climate refers to an organisational climate for employee psychological health, wellbeing, and safety. It is determined by organisational policies, practices, and procedures for the protection of worker psychological health and safety. It reflects senior management commitment, organisational participation, and general consultation in relation to stress prevention and safety at work. (Dollard, M.F., Bakker, A.B. Psychosocial safety climate as a precursor to conducive work environment, psychological health problems, and employee engagement, 24 December 2010).

1.1 SUMMARY OF REVIEW FINDINGS

Our review of 124 workplace equity matters established the following –

- The majority of issues investigated related to bullying (33 per cent); followed by sexual harassment (27 per cent); fail to comply with *Respectful Workplace Behaviours Guidelines* (20 per cent) and harassment (12 per cent).
- More women than men have been the target of workplace equity matters (59 per cent females vs 41 per cent males).
- Nearly 75 per cent of internal police complainants were of the rank of senior constable or below.
- Seventy seven per cent of officers the subject of complaints (subject officer) were male.
- Nearly half (49.4 per cent) of all subject officers were of the rank of sergeant and above.
- In 57 per cent of workplace equity matters the subject officers were of a higher rank than the internal police complainants.
- The majority of investigations into workplace equity matters (73 per cent) were conducted locally.
- In 11 per cent of investigations, the officer in charge of the investigation was either of a lower rank than the subject officer or of the same rank as the subject officer.
- In 21 per cent of investigations there is information that indicates that internal police complainants suffered medical/psychological harm as a result of being subjected to workplace equity matters.
- Sixty five per cent of finalised investigations exceeded the recommended time limit for completion.
- In 44 per cent of applicable investigations the NSWPF implemented strategies to manage the subject officer (interim risk management strategies) while they were being investigated.
- Fifty five per cent of investigations resulted in ‘sustained’ findings.
- Warning notices, conduct management plans and counselling sessions were the most commonly used management action for officers with sustained findings.
- Sixty four subject officers (35 per cent) had had previous workplace equity complaints; 19 per cent (33 subject officers) resulted in sustained findings.

1.2 NSW POLICE FORCE POLICIES ABOUT WORKPLACE EQUITY MATTERS

The NSWPF has developed comprehensive policies and procedures to identify, allocate, manage and investigate workplace equity matters.

The *Respectful Workplace Behaviours Guidelines* (Guidelines) and the *Respectful Workplace Behaviours Policy Statement* (Policy) are the key NSWPF policies that govern the behaviour of NSWPF employees in the workplace. All NSWPF employees are required to comply with the Guidelines and the Policy.

The Guidelines include definitions of what constitutes workplace bullying, discrimination, harassment (including sexual harassment), vilification and victimisation. (Refer to Appendix A for definitions).

1.3 MANAGING WORKPLACE EQUITY MATTERS

Workplace equity matters go through a number of internal stages which determine if a matter will be investigated, referred for resolution or declined. The stages include the –

- i. triage process;
- ii. specialist advice; and
- iii. Internal Review Panel.

1.3.1 TRIAGE PROCESS

When a workplace equity matter is reported, the relevant police area command (PAC) or police district (PD) (local command)² triages each complaint to determine the most appropriate way to manage it.³ All decisions about NSWPF complaints rest with commanders and managers who may delegate the process of triaging a complaint to a suitably qualified senior officer. This officer is referred to as a 'triage officer'.⁴ The triage officer must, among other things, determine the 'issues' raised by the complainant and clearly identify what issues relate to each subject officer.⁵ Issues pertaining to workplace equity matters must be referred to the WREU for information and advice on the appropriate course of action.⁶ NSW Police Force procedures stipulate that the triage can only be completed after a 'Notice of Advice' from the WREU has been received and recorded on the triage form.⁷ The triage officer must make one of the following three recommendations –

- i. refer to Complaint Management Team (CMT) for consideration – if a complaint requires an evidence-based investigation it must be managed by the CMT;⁸
- ii. refer for resolution;⁹ or
- iii. decline to investigate.¹⁰

When a matter is referred to the CMT for consideration the CMT conducts a risk assessment to determine if there are any risks to the investigation if the local command investigates the matter and if the local command has the necessary skills and resources to conduct the investigation. Once the CMT has endorsed the triage officer's recommendation and the commander has signed the triage form the triage process is completed.¹¹

1.3.2 SPECIALIST ADVICE

1.3.2.1 WORKPLACE RELATIONS EQUITY UNIT

All potential workplace equity matters must be reported to the WREU.¹² The role of the WREU is to –

- i. provide consistent advice about workplace equity matters across the NSWPF, and

² The NSW Police Force is consolidated into 32 metropolitan PACs and 26 PDs operating in regional areas. (NSW Police Force Annual Report 2017-2018, p. 4).

³ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 21.

⁴ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 21. The triage officer is either the professional standards duty officer, crime manager or equivalent.

⁵ NSW Police Force *PSDO [Professional Standards Duty Officer] Portfolio: A quick reference guide to complaint management*, p. 4. Accessed on NSW Police Force Intranet on 16/8/2019.

⁶ NSW Police Force *Workplace Equity Resolution Procedures*, Corporate Human Resources, November 2012, pp. 8, 10.

⁷ Workplace Relations and Equity Unit Advice Panel (WAAP): Procedural Instructions. These instructions govern the functions of the WAAP. The version available on the NSW Police Force Intranet site is the current version and was last reviewed in 2016. (Correspondence from NSW Police Force to Commission, 22 November 2018).

⁸ CMTs are mandatory for any command with police officers attached. The core members of the CMT are: local area commander; crime manager (or equivalent such as the professional standards manager for specialist commands); executive officer (or equivalent); professional standards duty officer (or equivalent). NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 48. The CMT is responsible for assessing complaints and determining the level of investigation; monitoring and reviewing complaints through to completion and assigning appropriate actions in resolving complaints. (Complaints and Employee Management (CMT/EMP) (NSW Police Force Intranet).

⁹ Matters referred for resolution do not typically warrant the formality, complexity and authoritative decision making associated with evidence-based investigations.

¹⁰ Approval from commander/manager is required to decline to investigate issue/s in accordance with s 141 of the *Police Act 1990*. CMT approval is NOT required. All documentation relied on to make the decision to decline must be uploaded on the current complaint management system. Matters can be declined under s 141(1) of the *Police Act 1990* and includes such matters as: Action has, is, will be taken to remedy complaint; frivolous, vexatious or not made in good faith; subject matter is trivial; conduct occurred too long ago; and alternate means of redress is/was available to the complainant. (NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, pp. 30-31).

¹¹ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 33. The triage form must be completed within 21 days from the date the complaint was received by the NSW Police Force.

¹² NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 24. This includes those matters which involve a combination of issues such as workplace equity matters in addition to other misconduct or inappropriate behaviours.

- ii. implement programs and strategies to strengthen respectful workplace behaviour in the NSWPF.¹³

Any NSWPF employee who feels that they have experienced this type of behaviour can contact the WREU directly for advice. The behaviour complained about must occur in the 'work environment' to fit the criteria of a workplace equity matter.¹⁴

All workplace equity matters that are referred to the WREU are dealt with by the Workplace Relations and Equity Unit Advice Panel (WAAP) which is convened as referrals are received.¹⁵ The WAAP will discuss and assess the matter and prepare a preliminary Notice of Advice that will be returned to the referring local command within 72 hours of initial receipt of the matter. If there are any delays the WREU will notify the delegate of the reasons for the delay and the expected date of completion.¹⁶ The Notice of Advice consists of –

- i. An assessment of the alleged conduct against the guidelines to determine if the alleged behaviour, if proven, would constitute a breach of these guidelines.
- ii. Recommendation(s) in respect to any appropriate interim risk management strategies.¹⁷

If requested, the WREU assists commanders, managers and supervisors to handle matters and ensure reasonable steps are taken to address and prevent inappropriate workplace conduct;¹⁸ monitor the performance of negative workplace behaviour prevention and management strategies; and assist in determining ongoing strategies after the matter has been resolved.¹⁹

The WREU conducts daily checks of IAPro, the NSWPF complaints system, to ensure that all workplace equity matters have been referred to it for advice.

1.3.2.2 PROFESSIONAL STANDARDS COMMAND

As with any misconduct matter, the management of workplace equity matters is the responsibility of the local command to which the subject officer is attached. The NSWPF has established a request for assistance process which enables local commands to formally seek the assistance of the Professional Standards Command (PSC) to conduct an evidence-based investigation. This may result in the PSC taking 'ownership' of the investigation. In these circumstances the PSC conducts the investigation. However, responsibility for the outcome and any resulting management action remains with the subject officer's local command.²⁰

The PSC and the WREU have a working agreement whereby workplace equity matters that are considered 'consequential' are brought to each other's attention.²¹ When such matters are identified the PSC informs the relevant local command to consider submitting a request for assistance to the PSC.

¹³ The WREU was established in 2009 following a review undertaken by Chris Ronalds in 2007. The review focussed on all NSW Police Force policies and procedures, training, support and complaint management procedures relating to sexual harassment and sex discrimination. (Inquiry into emergency services agencies, Police Submission, 21 July 2017). NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 25.

¹⁴ However, in some cases, such behaviour can occur outside the work environment; for example electronic communications via social media. (NSW Police Force *Respectful Workplace Behaviours Guidelines*, Workplace Relations & Equity Unit, Human Resources, December 2016, p. 9).

¹⁵ The WAAP quorum consists of: manager and/or senior coordinator, WREU professional standards officer and a minimum of one equity consultant or equity officer. (Workplace Relations and Equity Unit Advice Panel (WAAP): Procedural Instructions).

¹⁶ Workplace Relations and Equity Unit Advice Panel (WAAP): Procedural Instructions. Last reviewed in 2016.

¹⁷ Workplace Relations and Equity Unit Advice Panel (WAAP): Procedural Instructions, accessed on 28/6/2018 from NSW Police Force Intranet. http://intranet.police.nsw.gov.au/__data/assets/pdf_file/0020/616313/HR_-_WAAP_-_Advice_Procedural_Instructions.pdf

¹⁸ WREU can provide the following assistance: risk management strategies; specific lines of questioning to assist with threshold test for equity matters; attendance at CMT (advice on equity matters only); c@ts.i category classification. WREU can also provide a focused remediation session (one-on-one) with a subject officer who has adverse findings relating to a breach of the NSW Police Force *Respectful Workplace Behaviours Policy*. The session may form part of a Conduct Management Plan or another strategy as determined by the command. Upon request WREU can attend on training days at local command and region and deliver tailored presentations on respectful workplace behaviours.

¹⁹ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, pp. 7-8.

²⁰ Email from Senior Project Officer, NSW Police Force Professional Standards Command to Senior Project Officer, Law Enforcement Conduct Commission, 22 November 2018.

²¹ All reviewable matters are considered consequential by the NSW Police Force.

However, despite the availability of high level assistance, workplace equity matters that require an evidence-based investigation²² are not routinely referred to the PSC for investigation.²³

In addition, the Management Support Unit (MSU) within the PSC has a role in formalising non-reviewable²⁴ management action, as the MSU drafts all warning notices where non-reviewable action is proposed.²⁵

The PSC also has the capacity to address issues that arise in the workplace through workplace reviews.²⁶ This means that the PSC can attend a workplace and conduct voluntary non investigative interviews with staff to try and identify any key issues of concern and identify areas where the command can improve workplace management practices.²⁷ Workplace review personnel do not conduct any investigations into the issues/concerns raised by staff during these informal discussions. The review process does not deal with or generate internal complaints. Issues of concern or areas for improvement are matters for the attention of the commander of the local command where the workplace review was conducted.²⁸

At the completion of a workplace review, the PSC prepares a workplace review report (WRR) which includes recommendations to address concerns or issues that have been identified during the review. The WRR is provided to the requesting deputy/assistant commissioner²⁹ who, in turn, is required to inform the commander of the reviewed local command of the initial findings of the workplace review and to provide the commander with a copy of the WRR.³⁰ NSW Police Force guidelines stipulate that the commander of the area where the review was undertaken will report back via the region/specialist unit to the commander, PSC, in relation to the review process and its deemed effectiveness within six months of receiving the report.³¹

1.3.3 INTERNAL REVIEW PANEL

All matters where reviewable sanctions are recommended are mandatorily referred to the Internal Review Panel (IRP) or Commissioner's Advisory Panel (CAP).³²

The NSWPF Handbook provides a list of mandatory notifications that must be sent to the IRP/CAP. Of relevance to the Commission's review of workplace equity matters is the following –

A commander believes, having regard to an officer's conduct or performance following a sustained finding, there are sufficient grounds for taking reviewable action under section 173 or removal action under section 181D of the *Police Act 1990*. This may include but is not limited to:

- ...
- Sexual harassment or sexual misconduct issues
- Ongoing victimisation

²² An evidence-based investigation is necessary when there is a need to obtain evidence that will be admissible in criminal court proceedings, or where reviewable action is likely to be taken against a NSW police officer and this may be examined in other tribunals.

²³ Email from Senior Project Officer, NSW Police Force Professional Standards Command to Senior Project Officer, Law Enforcement Conduct Commission, 22 November 2018.

²⁴ Section 3.1.8 of this report provides information in relation to reviewable and non-reviewable action.

²⁵ Email from Senior Project Officer, NSW Police Force Professional Standards Command to Senior Project Officer, Law Enforcement Conduct Commission, 22 November 2018.

²⁶ The MSU, which is attached to the PSC, carries out workplace reviews. Workplace reviews can only be carried out upon the request and support of an assistant commissioner or equivalent. NSW Police Force *Workplace Review Guidelines*, Professional Standards Command, February 2018, p. 5.

²⁷ NSW Police Force Intranet, Workplace Reviews, Overview.

http://intranet.police.nsw.gov.au/organisational_units/corporate_services/professional_standards/management_support_unit/workplacereviews. Accessed on 27/6/2018.

²⁸ This information was included in records disseminated by the NSW Police Force to the Law Enforcement Conduct Commission on 9 April 2019.

²⁹ The MSU forwards the completed WRR to the Commander PSC for approval before disseminating the report to the deputy/assistant commissioner who approved the review request and is responsible for the command or unit.

³⁰ NSW Police Force *Workplace Review Guidelines*, Professional Standards Command, February 2018, p. 10.

³¹ NSW Police Force *Workplace Review Guidelines*, Professional Standards Command, February 2018, p. 5.

³² Members of the IRP/CAP include Assistant Commissioner, Professional Standards Command (Chair), Director, Management Action & Workplace Services, PSC, Commander, Human Resources, Region Commander, Field Operations, Assistant Commissioner, Specialist Operations. (NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 29).

o ...³³

The IRP considers matters that PSC has notified to it and makes recommendations to commanders/managers about appropriate management action under s 173 of the *Police Act 1990* or under *Police Regulation 2015*. The IRP reviews and considers notifications based on an officer's conduct, integrity, competence, and/or performance. The IRP makes its recommendations based on the documentation presented and examines the merits of each case. The subject officer's commander must be present either in person or via teleconference, to provide additional information to the IRP and to take part in discussions which result in recommendations to the IRP.³⁴

The IRP reviews the proposed action for some matters/investigations to ensure they comply with legislation, precedents and internal NSWPF procedures and that there is consistency about the implementation of reviewable management action across the NSWPF.³⁵

³³ NSW Police Force Handbook, Complete Version, as at 28 June 2018, 11.47am.

http://intranet.police.nsw.gov.au/policy_and_procedures/operational_policies/handbook_-_complete_version.

³⁴ NSW Police Force *Management Action Guidelines*, Professional Standards Command, 2019, p. 17. The subject officer's commander ultimately decides on s 173 appealable actions and is responsible for implementing the recommended action.

³⁵ NSW Police Force *Management Action Guidelines*, Professional Standards Command, 2019, p. 17.

2. METHODOLOGY

To assess how well the NSWPF manages and investigates workplace equity matters our review drew from a range of public and NSWPF sources. These included –

- i. contemporary literature and media search;
- ii. NSW Police Force policies and procedures;
- iii. consultation with the NSWPF;
- iv. NSW Police Force records.

2.1 LITERATURE AND MEDIA SEARCH

In March 2018, the Commission commenced preliminary research into approaches to the identification, investigation and prevention of workplace equity matters in other states and territories of Australia, and overseas. Our preliminary research drew heavily on the Victorian Equal Opportunity & Human Rights Commission *Independent Review into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police* (2015); the Government of South Australia Equal Opportunity Commission's *Independent Review into Sex Discrimination, Sexual Harassment and Predatory Behaviour in South Australia Police* (2016); the Australian Human Rights Commission *Fourth national survey on sexual harassment in Australian workplaces* (2018); *Inquiry into Emergency Services Agencies*, NSW State Emergency Services (2017); *Cultural Change: Gender Diversity and Inclusion in the Australian Federal Police*, by Elizabeth Broderick & Co (2016); and the *Response of the New Zealand Police to the Commission of Inquiry into Police Conduct: Final Monitoring report* (2017).

2.2 NSW POLICE FORCE POLICIES AND PROCEDURES

The Commission considered all NSWPF written policies, procedures and guidelines pertaining to the management and investigation of workplace equity matters. These included –

- i. *Respectful Workplace Behaviours Guidelines*, Workplace Relations & Equity Unit, Human Resources, December 2016
- ii. *Respectful Workplace Behaviours Policy Statement*
- iii. *Workplace Relations and Equity Unit Advice Panel* (WAAP) Procedural Instructions
- iv. *Workplace Equity Guide for Investigators* (2016)
- v. *Workplace Equity Resolution Procedures*, Corporate Human Resources, November 2012
- vi. *Workplace Grievance and Conflict Resolution Procedures*, Professional Standards Command, January 2018
- vii. *Professional Standard Duty Officer Portfolio – A quick reference guide to complaint management* (2014)
- viii. *Workplace Review Guidelines*, Professional Standards Command, February 2018
- ix. *Code of Conduct and Ethics*
- x. *Complaint Handling Guidelines*, Professional Standards Command, February 2016.

2.3 CONSULTATION WITH THE NSW POLICE FORCE

Ongoing consultation with the NSWPF formed an important part of the Commission's review. The project team has met with members of NSWPF discussing processes, procedures and systems governing the management and investigation of workplace equity matters. Commission staff participated in a Respectful Workplace Behaviours Framework Workshop organised by the NSWPF.

Prior to publication, the NSWPF was provided with an opportunity to comment on the accuracy, findings and recommendations contained in this report. In its response the NSWPF informed the Commission that the concerns raised in the Commission's draft report are the focus of 'a PSC led project looking at improvements to the management model used in the resolution of misconduct matters involving allegations of hostile workplace behaviour'. The PSC also advised the Commission that it had recently finalised a review of the timeliness in misconduct management. The review looked at timeliness

standards for all parts of the misconduct management process, including workplace equity matters. The PSC made a number of recommendations to the NSWPF Executive.³⁶ The PSC's recommendations were accepted.³⁷

The NSWPF advised the Commission that it does not have any objection to the principles underpinning the Commission's recommendations. The PSC anticipated that the proposed changes would address the principles underpinning the Commission's recommendations.³⁸

At the time of publication of this report, PSC's proposed changes to the management model used in the resolution of misconduct matters and timeliness standards for investigations have not been fully implemented. Accordingly, the Commission is unable to properly assess if the proposed changes implement the spirit of the Commission's recommendations. The Commission will conduct a further review in 12 months' to assess if the proposed changes to the management model and improvements of timeliness standards for all parts of the misconduct matters management process have been implemented and to ensure that they address the recommendations made in this report. The Commission will also track the progress of each recommendation made in this report in its annual reports.

In its response in May 2020 the NSWPF advised the Commission that responsibility for the Workplace Review Process had been transferred from PSC to the Human Resources (HR) Command. As part of this process, which was completed in March 2019, it was recognised that the Workplace Review Guidelines would need to be revised and realigned to the HR Command.³⁹ The Commission has not yet received a copy of the revised Workplace Review Guidelines. An assessment of the revised Workplace Review Process will be included in the Commission's next review.⁴⁰ The Workplace Review Process is considered in part 3.2 of this report.

2.4 NSW POLICE FORCE RECORDS

The NSWPF provided the Commission with 305 workplace equity matters that were referred to the WREU⁴¹ for the period 1 July 2017 to 31 December 2018. A total of 124 workplace equity matters met the Commission's criteria and were identified for review.⁴² For each matter we reviewed the initial complaint document, triage form and WREU advice, followed by a review of the final investigation report or mandatory outcome resolution report. For some matters we also reviewed Complaint Management Team (CMT) minutes and status reports.

The Commission also asked the NSWPF to provide copies of all –

- i. trend analysis reports on workplace equity matters conducted by the PSC and the WREU in the period 1 July 2017 to 31 December 2018;
- ii. workplace reviews conducted by the PSC in the period 1 January 2014 to 31 December 2018; and
- iii. workplace audits conducted by the WREU in the period 1 January 2017 to 31 December 2018.

³⁶ Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner of Integrity, Law Enforcement Conduct Commission, 8 May 2020.

³⁷ Email from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner of Integrity, Law Enforcement Conduct Commission, 2 July 2020.

³⁸ Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner of Integrity, Law Enforcement Conduct Commission, 8 May 2020, p. 4.

³⁹ Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner of Integrity, Law Enforcement Conduct Commission, 8 May 2020. As a result the NSW Police Force Workplace Review Guidelines, Professional Standards Command, February 2018, were retired in March 2019.

⁴⁰ Letter from A/Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner of Integrity, Law Enforcement Conduct Commission, 5 June 2020.

⁴¹ The WREU records every contact that is made with the WREU, whether the contact is a complaint, a request for information, an enquiry or a request for assistance by an investigator or a supervisor, on a Register. The Register assigns a unique identification number to each individual contact.

⁴² The Commission excluded the following matters – matters that were declined at the triage stage; matters where the WREU advised that they did not reach the threshold of a workplace equity matter; and matters that were lodged outside the timeframe specified by the Commission.

3. REVIEW FINDINGS

The Commission considered a range of NSWPF records that deal with bullying, harassment, discrimination, vilification and victimisation in the NSWPF. This section provides the findings of the Commission's review.

3.1 COMPLAINT/INVESTIGATION FILES

The Commission reviewed all workplace equity matters and their subsequent investigation/resolution reports for the period 1 July 2017 to 31 December 2018.

3.1.1 NUMBER AND TYPES OF ISSUES INVESTIGATED

Within IAPro, one complaint can have multiple issues and each issue can involve multiple officers. Each officer can have different findings recorded against them. The Commission's findings have been adjusted accordingly.

The NSWPF investigated 124 complaints, comprising 241 issues, which met the WREU threshold of a workplace equity matter.

Most issues related to bullying (33 per cent); followed by sexual harassment (27 per cent); fail to comply with the Respectful Workplace Behaviours Guidelines (20 per cent) and harassment (12 per cent). Victimisation, discrimination and 'WREU matters'⁴³ represented eight per cent of issues investigated.⁴⁴

3.1.2 GENDER OF INTERNAL POLICE COMPLAINANTS AND SUBJECT OFFICERS

Female officers in the NSWPF are more likely to be subjected to bullying, harassment (including sexual harassment), discrimination, vilification and victimisation than male officers. Our review of 124 matters identified a total of 143 known internal police complainants (IPC) – comprised of 128 sworn employees and 15 unsworn employees. Eighty four IPCs⁴⁵ (59 per cent) were female.⁴⁶ The remaining 59 IPCs were male.⁴⁷ In nine complaints IPCs were anonymous and it was not possible to determine their gender.

Male officers were more likely to be subject officers in workplace equity matters than females. Our review of 124 matters identified a total of 183 subject officers – comprised of 178 sworn employees and five unsworn employees. A total of 141 subject officers (77 per cent) were male.⁴⁸ Subject officers in six complaints were unknown and it was not possible to determine their exact numbers or gender.

Figure 1 shows the ratio of male and female subject officers and IPCs. Subject officers are predominantly male whereas IPCs are more likely to be female.

⁴³Some investigation reports recorded issues investigated as 'WREU matters'. This included unwanted sexual advances and unwelcome physical contact of a sexual nature. In some investigations it was not specified what 'WREU matters' were.

⁴⁴ The exact number of issues investigated were as follows: 80 issues of bullying; 66 issues of sexual harassment; 47 issues of 'fail to comply with Respectful Workplace Behaviours Guidelines; 31 issues of harassment (including six relating to homosexuality; nine relating to 'sex', eight relating to 'race'; three relating to 'disability'; two relating to 'illness'; one relating to 'carer' and two simply referenced as harassment); nine issues of victimisation; four issues of discrimination; and five issues of 'WREU matters'.

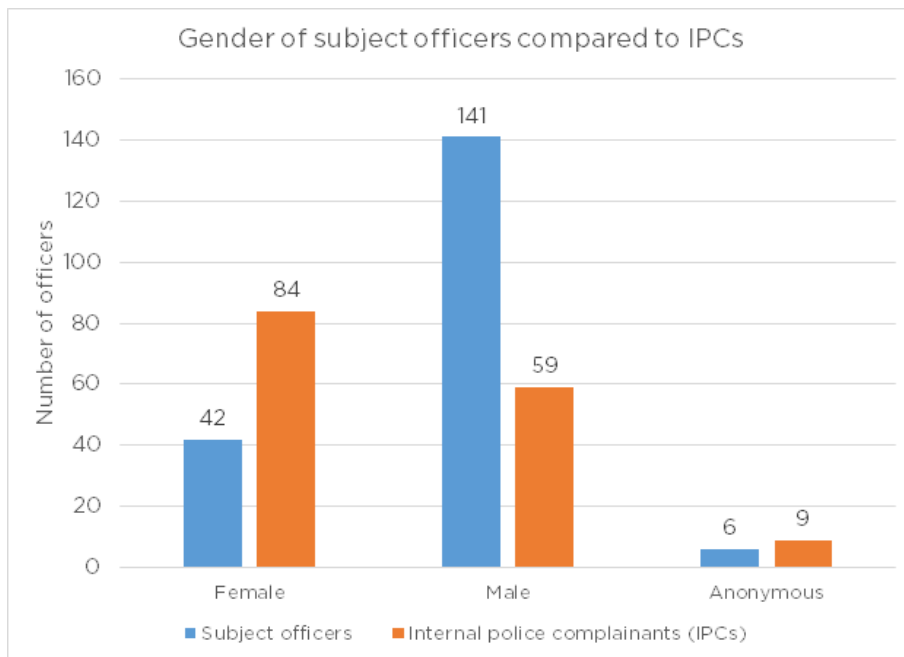
⁴⁵ Comprising 71 sworn officers and 13 unsworn officers.

⁴⁶ Some complaints involved more than one IPC.

⁴⁷ Comprising 57 sworn officers and two unsworn officers.

⁴⁸ Comprising 140 sworn officers and one unsworn officer.

Figure 1: Gender of subject officers and IPCs



3.1.3 RANK OF IPCS AND SUBJECT OFFICERS

The Commission found that 128 out of 143 IPCs were sworn officers and occupied the following ranks –

- i. 96 (75 per cent) senior constables or below
- ii. 29 sergeants
- iii. one inspector
- iv. two chief inspectors

Fifteen IPCs were unsworn officers and nine were anonymous. In summary, the majority of known IPCs (75 per cent) were of the rank of senior constable or below.

The Commission found that 178 out of 183 subject officers were sworn officers and occupied the following ranks –

- i. 88 (49.4 per cent) were in supervisory positions, more specifically:
 - a. 55 sergeants
 - b. five senior sergeants
 - c. 14 inspectors
 - d. eight chief inspectors
 - e. six superintendents, and
- ii. 71 senior constables
- iii. 17 constables, and
- iv. two probationary constables.⁴⁹

The rank structure within the NSWPF defines an officer's role and degree of responsibility. The top-down chain-of-command means that every officer in the NSWPF, except the Commissioner of Police, has a supervisor, and supervisors have more authority than their subordinates.⁵⁰ The Commission examined the rank relationship between subject officers and IPCs. Our results showed –

- i. in 50 matters (40 per cent) subject officers were of a higher rank than IPCs;

⁴⁹ One complaint included 17 officers (five senior constables and 12 constables). This particular complaint skewed the final results. This complaint related to a social media chat site where 17 subject officers made derogatory comments involving other members of their command. The WREU determined that these comments met the threshold of bullying, harassment and sexual harassment.

⁵⁰ The concept of the top-down chain of command is discussed in: Brandl, S.G, *Police in America*, February 2018, p. 42, Sage Publications. Accessed on 11 October 2019. https://www.sagepub.com/sites/default/files/upm-binaries/80717_Brandl_Police_in_America_Chapter_3.pdf.

- ii. in 24 matters (19 per cent) subject officers and IPCs were of the same rank;
- iii. in 15 matters either subject officers or IPCs were anonymous or unknown and it was not possible to establish the rank relationship;
- iv. in 11 matters subject officers were of a lower rank than IPCs;
- v. in 11 matters IPCs were unsworn employees and subject officers were sworn officers;
- vi. in ten matters there was a mix in ranks between subject officers and IPCs;
- vii. in three matters IPCs and subject officers were unsworn officers.

In summary, in the majority of matters (57 per cent) in which both the subject officer and the IPC were known, a power imbalance existed in favour of subject officers.⁵¹

Case study 1 provides an example of a sexual harassment matter involving a clear power imbalance between the subject officer and the IPC.

CASE STUDY 1:

Shortly after commencing duties at a specialist command, a female police officer (the IPC) noticed that her manager (the subject officer) subjected her to conduct which, in her view, amounted to sexual harassment. The subject officer repeatedly contacted the IPC online expressing his affection for her and asking her out on dates. The IPC told the subject officer that she was not interested in a relationship with him and to stop harassing her.

The IPC told other officers within the command what was happening to her. One officer told the IPC that the subject officer had told him that he was in love with the IPC and that he would not give up pursuing her. As a result the IPC felt very uncomfortable and tried to avoid the subject officer. The IPC cancelled work functions and made it very clear to the subject officer that she found his behaviour towards her unacceptable and that she did not share his feelings. Despite this, the subject officer continued to express his amorous feelings towards the IPC verbally and in writing.

A number of officers, including the subject officer's commander, spoke to him and told him that his behaviour towards the IPC was inappropriate and that he should 'back off'. However, the subject officer continued to sexually harass the IPC. The IPC became so anxious that she took days off work when she realised that she would be alone in the office with the subject officer.

The IPC, realising that the subject officer's behaviour would not stop, finally lodged a complaint. The NSWPF investigated the subject officer for sexual harassment. The investigation resulted in a sustained finding. The subject officer was served with a Commander's Warning Notice and relocated to another unit within the same command.

NSW Police Force managers and supervisors bear the responsibility of responding promptly, fairly and appropriately to workplace equity matters. As discussed in section 3.1.9, a failure to do so can lead to significant consequences for both the complainant and the NSWPF.

In case study 1 the commander and other officers within the command who were aware of the subject officer's misconduct sought an informal resolution by telling the subject officer to 'back off'. However this informal approach failed and the subject officer continued to sexually harass the IPC. Neither the commander nor any other officer initiated formal action via the complaint process and the conflict between the subject officer and the IPC remained unresolved until the IPC finally lodged a complaint.

The subject officer's commander should have informed the subject officer that a formal complaint would be lodged if the subject officer continued with his conduct, as required by s 211F of the *Police Act 1990*, which stipulates that all members of the NSWPF are under a duty to report misconduct of police officers. This did not occur, even though informal attempts at resolution with the subject officer had been

⁵¹ This percentage is derived by using 106 matters as the final count; this figure accounts for subtracting 15 matters where either subject officers or IPCs were unknown, and subtracting three matters where both the subject officer and the IPC were unsworn officers. Officers of higher rank are derived by adding 50 matters and 11 matters where IPCs are unsworn officers and subject officers are sworn officers.

unsuccessful. As a result the misconduct by the subject officer continued and all the officers who knew of it were also engaged in misconduct by not reporting it as they were required by legislation to do.

3.1.4 INVESTIGATING COMMAND

The NSWPF Misconduct Matter Allocation Risk Appraisal (MARA) process assists complaint handling managers to determine if complaints, based on a risk appraisal process, should be managed locally or should be transferred to another command for investigation or other action. The MARA process also helps the NSWPF identify and manage conflicts of interest and risks which may affect the investigation of misconduct. The MARA process involves two steps; MARA Part A and MARA Part B.

MARA Part A requires the CMT to conduct a comprehensive risk appraisal to identify and manage risks, including conflicts of interest, which may affect the command's ability to conduct the investigation. The completion of the MARA Part A form is mandatory for all CMT managed investigations.⁵² The decision to retain a complaint or to transfer it to another command for investigation ultimately lies with the commander.

If the CMT decides that a matter can be investigated locally, it selects an investigator with the necessary skills, knowledge, experience and rank to conduct the investigation. The selected investigator must complete MARA Part B – *Disclosure of Conflict of Interest by Investigator/Resolution Manager* (MARA Part B). MARA Part B assists investigators to declare any conflicts of interest or other risk they may feel would affect their ability to conduct an impartial investigation of the matter.⁵³

The Commission's review of 124 investigations found –

- i. 91 (73 per cent) were investigated locally;
- ii. 22 (18 per cent) were transferred to another command;
- iii. 11 (nine per cent) were investigated by the PSC.

The findings indicate that the majority of workplace equity matters were investigated within the same local command.⁵⁴ One of the risks associated with local investigations is that employees who have been subjected to workplace equity matters may be reluctant to lodge a complaint for fear of being victimised or a belief that the perpetrators will get off lightly. Another risk associated with local investigations is that victims may perceive that the investigation will not be impartial or may be investigated less vigorously than investigations conducted by PSC or another command.⁵⁵

3.1.5 RANK OF INVESTIGATING OFFICER

NSW Police Force guidelines stipulate that the CMT, when selecting an officer to conduct an investigation against another police officer, 'must consider the investigator's rank to ensure the investigator's rank is above that of the subject officer and likely police witnesses'.⁵⁶

Our review of 124 investigations found –

- i. in 105 investigations (85 per cent), the NSWPF **complied** with its guidelines. The rank of the officer in charge (OIC) of the investigation was above the rank of the subject officer(s);

⁵² NSW Police Force *Misconduct Matter Allocation Risk Appraisal (MARA) Guidelines*, January 2018, p. 7.

⁵³ NSW Police Force *Misconduct Matter Allocation Risk Appraisal (MARA) Guidelines*, January 2018, p. 11.

⁵⁴ NSW Police Force procedures stipulate that in circumstances where commands do not possess adequate resources or skills to undertake an investigation the command can request assistance from PSC. In these instances, PSC conducts the investigation, however responsibility for the outcome and any resulting management action remains with the subject officer(s) commander. NSW Police Force *Misconduct Matter Allocation Risk Appraisal (MARA) Guidelines*, January 2018, p. 9.

⁵⁵ Victorian Equal Opportunity and Human Rights Commission, *Independent Review into Sex Discrimination and Sexual Harassment, Including Predatory Behaviour in Victoria Police*, (Victorian Equal Opportunity & Human Rights Commission, Phase One Report, 2015, p. 379).

⁵⁶ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 52.

- ii. in 13 investigations the NSWPF *did not comply* with its guidelines. The OIC of the investigation was either of the same rank of the subject officer(s) or was below the rank of the subject officer(s);⁵⁷
- iii. in six investigations the Commission was unable to determine if the NSWPF had complied with its guidelines.⁵⁸

The hierarchical structure of the NSWPF means that an officer junior in rank is not suitable to investigate a more senior officer. The NSWPF Complaint Handling Guidelines stipulate that the investigating officer must be of a rank that is above that of the subject officer. This avoids investigators feeling inhibited from investigating a more senior officer in an impartial and objective manner.

3.1.6 INTERIM RISK MANAGEMENT ACTION

The purpose of interim risk management action is for commands to take action on a temporary basis to manage identified risks relating to an individual's impact on the workplace while the individual is being investigated.⁵⁹ Interim risk management action is not final management action but is implemented while complaint issues are being investigated.

The NSWPF Complaint Handling Guidelines stipulate that the triage officer determines whether recommendations for interim risk management action should be implemented for subject officers of complaints. If the triage officer proposes interim risk management action it must be approved by the subject officer's commander/manager.⁶⁰ Interim risk management actions may include –

- i. a change of duties;
- ii. additional supervision;
- iii. rostering with more experienced staff;
- iv. securing or restricting access to firearms;
- v. rectifying systemic or procedural practices;
- vi. referring recommendations on organisational issues to responsible commands; and
- vii. suspension from duty and any other management action that appropriately alters relevant risks.⁶¹

Interim risk management action can be documented by either the use of an Interim Risk Management Plan (IRMP) or a file note served on the subject officer.⁶²

Action included in an IRMP is to be developed in consultation with the commander of the subject officer and should specifically address any identified risk issues.⁶³ An IRMP provides background to the complaint; detailed risk strategies for the subject officer and review dates. An IRMP is signed and dated by the subject officer, the monitoring officer, the reviewing officer and the subject officer's commander.

The NSWPF *Interim Risk Management Guidelines* state –

It is mandatory that commanders or managers consider the need to implement interim risk management action for those complaint matters that are criminally based and by their nature considered serious or if sustained will be referred to the Internal Review Panel or Commissioners Advisory Panel.⁶⁴

⁵⁷ In eight investigations the OIC was of the same rank as the subject officer; in five investigations the OIC was below the rank of the subject officer.

⁵⁸ The reasons for not being able to determine this procedural requirement included: No MARA B form attached to IAPro; and subject officers being unknown.

⁵⁹ NSW Police Force *Interim Risk Management Guidelines for Police*, Professional Standards Command, January 2018, p. 5.

⁶⁰ The decision to accept recommendations for interim risk management strategies and their implementation rests with the respective commander of the referring command pursuant to s 171 of the *Police Act 1990*.

⁶¹ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 28

⁶² NSW Police Force *Interim Risk Management Guidelines for Police*, Professional Standards Command, January 2018, p. 8. Matters that require a range of complex strategies are usually recorded on an IRMP, for less complex strategies, a file note to the subject officer may be enough.

⁶³ NSW Police Force *Interim Risk Management Guidelines for Police*, Professional Standards Command, January 2018, pp 8-9.

⁶⁴ NSW Police Force *Interim Risk Management Guidelines for Police*, Professional Standards Command, January 2018, p. 6.

Our review of 124 matters found –

- i. in 61 matters there was no mention of interim risk management action being considered or implemented – in one matter the subject officer was referred to the IRP, however the officer was not placed on an IRMP as required by the NSWPF Interim Risk Management Guidelines;
- ii. in 39 matters the NSWPF implemented IRMPs for subject officer(s)⁶⁵ – in one matter the subject officer was referred to the IRP, however the officer was not placed on an IRMP;
- iii. in 12 matters, the triage officer selected the option ‘Interim risk management’ on the triage form. While the triage form listed some of the actions considered, no IRMPs were attached to IAPro;
- iv. in eight matters, the triage officer noted that no interim risk management action was required. The reasons provided included - the subject officer was suspended; the issues raised by the complainant were too historic; the complainant was on sick leave; the subject officers remained unknown;
- v. in two matters the triage officer selected the option ‘interim risk management’ on the triage form. However, unlike matters listed in iii. above, no actions were listed on the triage forms and again no IRMPs were attached to IAPro;⁶⁶
- vi. in one matter the triage form stated that interim risk management action had been considered and ‘the complainant is transferred to another command’; in relation to the subject officer, the triage form mentioned: ‘when further information comes to light, further risk mitigation strategies relating to the subject officer will be considered’. There are no records on IAPro that indicate that this occurred;
- vii. in one matter the triage form mentioned that ‘an IRMP is currently being drafted...’. This matter was finalised in September 2018, however no IRMP was attached to IARro.

In summary, in 51 matters (44 per cent)⁶⁷, the NSWPF had either implemented IRMPs or mentioned interim risk management action on the triage form.

In more than half of the matters reviewed there was no mention of interim risk management action being considered or implemented.

Workplace equity matters significantly impact on staff morale and can also impact on the effective running of a command. The Commission anticipated that more subject officers would have been placed on an IRMP to ensure that local commands function efficiently while an investigation is being conducted; especially in circumstances where both the subject officer and the IPC remain at the same local command for the duration of the investigation.

3.1.7 TIMELINESS OF INVESTIGATION

Section 136 of the *Police Act 1990* requires police officers to carry out an investigation of misconduct in a ‘manner that, having regard to the circumstances of the case, is both effective and timely’. In addition, NSWPF guidelines have set a time limit of 90 days for all CMT managed investigations and 45 days for

⁶⁵ An IRMP may be in effect until any subsequent management action is determined and implemented. Management may alter the strategies or cease the plan, if circumstances require. However, the officer subject to an IRMP will be notified prior to the implementation of any changes. (This information is included in the IRMP template). IRMPs included detailed strategies of how commands will manage the risks identified as a result of the allegations of the complaint. NSW Police Force guidelines state: ‘Where a number or range of complex strategies are required, interim risk management action should be recorded in an Interim Risk Management Plan. (NSW Police Force *Interim Risk Management Guidelines for Police*, Professional Standards Command, January 2018, pp 8-9).

⁶⁶ In one matter the subject officer was suspended with pay 10 days after the complaint was lodged. This may be the reason why no IRMP has been implemented.

⁶⁷ This percentage is derived by using 116 complaints as the final count; this figure accounts for subtracting eight investigations where the NSW Police Force provided information why no interim risk management strategies were required.

matters that have been referred for resolution.⁶⁸ Matters referred for resolution allow for a less formal investigation and do not require the involvement of the CMT.⁶⁹ In instances where an evidence-based investigation approaches the 90 day requirement for completion, the NSWPF guidelines require the investigator to seek an extension from the CMT.⁷⁰ There is no such requirement for matters referred for resolution.

The Commission's review identified 62 evidence-based investigations and 62 matters that were referred for resolution.

In relation to the 62 evidence-based investigations our review found –

- i. 25 investigations were completed within the recommended timeframe of 90 days;
- ii. 35 investigations exceeded the recommended timeframe of 90 days, and in only six of these an extension request was attached to IAPro;
- iii. two investigations had been suspended as at July 2020.

In relation to the 62 Mandatory Resolution Outcome Reports (MROR) our review found –

- i. 18 MRORs were completed within the recommended timeframe of 45 days;
- ii. 44 MRORs exceeded the recommended timeframe of 45 days, and in only six of these an extension request was attached to IAPro.

The review findings indicated that 79 out of 122 finalised investigations (65 per cent) exceeded the recommended timeframes set by the NSWPF, from 16 days to 507 days. Only six out of 35 evidence-based investigations that exceeded the recommended timeframe of 90 days complied with the procedural requirement to complete an extension request.

There may be a number of reasons why investigations into workplace equity matters exceed the recommended timeframes, including: the complexity of the investigation or subject officers or IPCs being on sick leave. However, it is important that the NSWPF addresses timeliness issues to ensure that the negative effects of this type of behaviour in the workplace are dealt with quickly and successfully.

NSW Police Force guidelines further stipulate that it is important for investigations to adhere to reasonable timeframes to meet the requirements of procedural fairness. The NSWPF defines procedural fairness as follows –

Procedural fairness (also known as natural justice) is the common law duty imposed on decision makers, in certain circumstances, to act fairly in the making of administrative decisions which affect a person's right, interests and legitimate expectations. The duty to afford procedural fairness exists unless there is a specific statutory removal of that right.⁷¹

Our review findings also showed that in half of the investigations that exceeded the recommended timeframe subject officers were not placed on an IRMP. The risk exists, in circumstances of prolonged investigations, that IPCs and subject officers continue to work in the same workplace and conflict has not been resolved or managed appropriately. Another risk is that IPCs may be victimised or harassed by other officers within the workplace while investigations are ongoing.

The NSWPF has acknowledged this, and has conducted extensive research to examine the concept of 'temporal distance' - namely that the longer an investigation into misconduct takes, the less impact any management action will have on the subject officer. However, it remains unclear how this is to be addressed in practice.

Recommendation 1: It is recommended that the NSW Police Force conducts a yearly audit on the timeliness of evidence-based investigations and mandatory resolutions to identify the root causes of the delay in completing investigations into workplace equity matters.

⁶⁸ NSW Police Force *Complaint Handling Guidelines*, Professional Standards Command, February 2016, pp. 47 and 35.

⁶⁹ *Ibid*, p. 11.

⁷⁰ *Ibid*, p. 54.

⁷¹ NSW Police Force *Guidelines on procedural fairness and Part 8A evidence based investigations*, July 2017, p. 5.

Recommendation 2: It is recommended that the NSW Police Force reinforces the mandatory requirements for investigators to complete an extension request for evidence-based investigations and matters referred for resolution in circumstances where recommended timeframes are anticipated to be exceeded. This should be made in a timely fashion. The length of any approval of an extension request should be made based on the complexity of the investigation.

Recommendation 3: It is recommended that the Interim Risk Management Guidelines for Police be amended to include a statement that it is mandatory that commanders or managers consider the need to implement interim risk management action for all subject officers in circumstances where investigations or resolutions may or do exceed the recommended timeframes for completion.

NSW Police Force response

The NSWPF advised the Commission that the changes envisioned by the proposed revised management model and PSC's timeliness review will address the principles underpinning recommendations 1, 2 and 3.⁷²

3.1.8 MANAGEMENT ACTION

Management action is usually taken against police officers when misconduct has occurred and when complaint issues are sustained. NSW Police Force guidelines outline the range of supervisory and managerial responses available to the NSWPF to manage issues affecting police officers in the workplace. These guidelines stipulate that managerial outcomes should focus on corrective action rather than punishment.⁷³

There are two broad categories of management action that the NSWPF uses under Part 9 of the *Police Act 1990* –

- i. non-reviewable action;
- ii. reviewable and appealable action.

Non-reviewable action is not referred to the IRP and there is no avenue for appeal to the Industrial Relations Commission (IRC). Non-reviewable action includes coaching, mentoring, training and development, increased supervision, counselling, reprimand, warning, retraining, personal development, performance enhancement agreements, non-disciplinary transfer, change of shift (no financial loss) and restricted duties.⁷⁴

Reviewable action, by contrast, can be appealed at the IRC on the grounds that the recommended action is harsh, unreasonable or unjust. The following three types of action can be appealed under the *Police Act 1990* –

- i. Section 173(2) reviewable action;
- ii. Section 80(3) dismissal of probationary constables;
- iii. Section 181D loss of Commissioner's confidence.⁷⁵

Reviewable matters, which are referred to the IRP or the CAP, include –

- i. Deferral or loss of increment;
- ii. Reduction in rank;
- iii. Disciplinary transfer;
- iv. Permanent removal from specialist duty;

⁷² Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner of Integrity, Law Enforcement Conduct Commission, 8 May 2020, p. 4.

⁷³ NSW Police Force *Management Action Guidelines*, Professional Standards Command, 2019, p. 7.

⁷⁴ *Ibid*, p. 9.

⁷⁵ *Ibid*, p. 15.

- v. Any other action (other than dismissal) that the Commissioner considers appropriate (e.g. disciplinary transfer, forced payment of compensation to the NSWPF where the officer has been negligent etc.).⁷⁶

For evidence-based investigations with sustained findings and which are not referred to the IRP, the decision about appropriate non-reviewable action rests with the local command. NSW Police Force equity procedures provide no specific guidance to local commands to make decisions about taking management action at the conclusion of an investigation. The WREU has no role in providing specialist advice to local commands about management action in response to serious breaches of the policy.⁷⁷

The Commission's review assessed the outcome of investigations, and, where applicable, the type of management action taken.

At the time of publication of this report the NSWPF had finalised 122 investigations.⁷⁸ In 67 investigations (55 per cent) one or more issues pertaining to workplace equity matters resulted in sustained findings.

The most common management action for subject officers were warning notices (28 per cent). Other sanctions included: officer being placed on conduct management plan (15 per cent); referral to the IRP (14 per cent); counselling (14 per cent); non-disciplinary transfer (5 per cent); disciplinary transfer (3.7 per cent); reduction of increment (2.8 per cent). Other management action included training and development; changes of duties, reprimand, mentoring, coaching and sessions with the WREU. Two officers received s181D nominations.

In four per cent of cases subject officers resigned or were medically discharged prior to management action being taken.

3.1.9 PHYSICAL OR PSYCHOLOGICAL CONSEQUENCES EXPERIENCED BY INTERNAL POLICE COMPLAINANTS

The review assessed whether IPCs suffered any psychological, health or other harmful consequences as a result of being subjected to workplace equity matters. Our review of 124 matters found that 30 out of 143 IPCs (21 per cent) suffered from a range of physical and/or psychological consequences including –

- i. 11 IPCs lodged Incident Notification Forms⁷⁹ citing psychological injuries;
- ii. six IPCs stated that they felt anxious and often cried;
- iii. seven IPCs went on sick leave;
- iv. four IPCs arranged sessions with psychologists;
- v. three IPCs suffered from sleeplessness;
- vi. one IPC took anti-depressant medication;
- vii. one IPC experienced headaches and migraines;
- viii. one IPC was diagnosed with anxiety and Post Traumatic Stress Disorder.⁸⁰

In summary, approximately one in five IPCs suffered from either physical or psychological harm as a result of being a victim of a workplace equity matter. Conflict in the workplace not only affects individuals, but it also carries a range of negative repercussions for the organisation.

⁷⁶ NSW Police Force *Management Action Guidelines*, Professional Standards Command, 2019, p. 17.

⁷⁷ Commanders and members of Complaints Management Teams determine management action. (NSW Police Force *Management Action Guidelines*, Professional Standards Command, 2019, p. 7). The Management Support Unit, Professional Standards Command, can provide management action advice to commanders seeking to implement non-reviewable action on an officer. Advice in relation to the implementation of reviewable and appealable action can be sought from the Professional Standards Command, Panel Operations Unit. (NSW Police Force Intranet, http://intranet.police.nsw.gov.au/organisational_units/corporate_services/professional_standards/management_support_unit/management_action, accessed on 28 January 2020.

⁷⁸ Two investigations remained suspended.

⁷⁹ Any police employee who has received a workplace injury must complete a P902 Incident Notification form and submit this form to his/her supervisor. Where an injury or illness occurs, the command is obligated to mitigate the impact of injuries through the implementation of suitable injury management practices with an aim to reduce workers compensation costs and injured worker lost time hours. (NSW Police Force *Injury Management Policy*).

⁸⁰ Some IPCs listed more than one physical or psychological consequence as a result of workplace equity matters.

On an individual level, several studies have verified that increased stress and mental distress are possible psychological aftermaths of workplace bullying,⁸¹ even up to two years later.⁸² Investigators have also identified the consequences of sleep disturbances,⁸³ depression and anxiety;⁸⁴ major depression;⁸⁵ mood, anxiety, and adjustment disorders;⁸⁶ and even work-related suicide.⁸⁷ The results of a study conducted in the US Army showed that soldiers who worked in units with high levels of sexual harassment had higher levels of suicidal behaviors than units having lower levels of sexual harassment.⁸⁸ Research found exposure to bullying⁸⁹ and sexual harassment⁹⁰ to be a significant predictor for subsequent increases in mental health problems. Researchers have also identified a number of medical consequences as a result of conflict in the workplace. These included higher blood pressure,⁹¹ neck pain,⁹² and greater general health complaints.⁹³ Conflict in the workplace can also lead to an increase in absenteeism,⁹⁴ a greater likelihood of long-term absence due to sick leave,⁹⁵ and greater rates of unemployment through either job loss or voluntary resignation.⁹⁶

On an organisational level, the Australian Industry Group (AiG) submitted that bullying complaints not only reduce workplace morale, but can prove to be a costly and time-consuming exercise for employers. Employers may be faced with the potential cost of defending bullying allegations under work health and safety laws, legal representation, settling a complaint, and the negative publicity that may arise as a result of the complaint.⁹⁷ Workplace bullying often results in staff turnover and subsequent additional recruitment costs; management down time – due to the significant time involved in responding to, and investigation of, allegations of workplace bullying; loss of productivity – due to sick leave and/or workers compensation claims; diminishment of workplace culture – worker morale can be negatively impacted due to workplace bullying, and the impact on company reputation.⁹⁸

⁸¹ Lahelma E, Lallukka T, Laaksonen M, Saastamoinen P, Rahkonen O. Workplace bullying and common mental disorders: a follow-up study. *J Epidemiol Community Health*. 2012;66:e3. Finne LB, Knardahl S, Lau B. Workplace bullying and mental distress-- a prospective study of Norwegian employees. *Scand J Work Environ Health*. 2011;37:276-287.

⁸² Finne LB, Knardahl S, Lau B. Workplace bullying and mental distress-- a prospective study of Norwegian employees. *Scand J Work Environ Health*. 2011;37:276-287.

⁸³ Lallukka T, Rahkonen O, Lahelma E. Workplace bullying and subsequent sleep problems—the Helsinki Health Study. *Scand J Work Environ Health*. 2011; 37:204–212. Niedhammer I, David S, Degioanni S, et al. Workplace bullying and sleep disturbances: findings from a large scale cross-sectional survey in the French working population. *Sleep*. 2009; 32:1211-1219.

⁸⁴ Hurley, J., Hutchinson, M., Bradbury, J. and Browne, G., 2016, 'Nexus between preventive policy inadequacies, workplace bullying, and mental health: Qualitative findings from the experiences of Australian public sector employees', *International journal of mental health nursing*, Vol. 25, Issue. 1, pg. 12-18.

⁸⁵ Ruguiles R, Madsen IE, Hjarsbech PU, et al. Bullying at work and onset of a major depressive episode among Danish female eldercare workers. *Scand J Work Environ Health*. 2012; 38:218-227.

⁸⁶ Nolfe G, Petrella C, Zontini G, Uttieri S, Nolfe G. Association between bullying at work and mental disorders: gender differences in the Italian people. *Soc Psychiatry Psychiatr Epidemiol*. 2010; 45:1037-1041.

⁸⁷ Routley VH, Ozanne-Smith JE. Work-related suicide in Victoria, Australia: a broad perspective. *Int J Inj Contr Saf Promot*. 2012;19:131-134.

⁸⁸ Griffith, J., 2017, 'The Sexual Harassment-Suicide Connection in the US Military: Contextual Effects of Hostile Work Environment and Trusted Unit Leaders', *Suicide and Life-Threatening Behavior*.

⁸⁹ Einarsen, S., & Nielsen, M. B. (2015). Workplace bullying as an antecedent of mental health problems: A five-year prospective study and representative study. *International Archives of Occupational and Environmental Health*, 88, 131-142. doi:10.1007/s00420-014-0944-7[Crossref], [PubMed], [Web of Science®], [Google Scholar]

⁹⁰ Australian Human Rights Commission, *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces*, 2018.

⁹¹ Tuckey, M.R., Dollard, M.F., Saebel, J. and Berry, N.M., 2010, 'Negative workplace behaviour: temporal associations with cardiovascular outcomes and psychological health problems in Australian police', *Stress and Health*, Vol. 26, Issue. 5, pg.372-381.

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⁹³ Hurley, J., Hutchinson, M., Bradbury, J. and Browne, G., 2016, 'Nexus between preventive policy inadequacies, workplace bullying, and mental health: Qualitative findings from the experiences of Australian public sector employees', *International journal of mental health nursing*, Vol. 25, Issue. 1, pg.12-18.

⁹⁴ Magee, C., Gordon, R., Robinson, L., Caputi, P. and Oades, L., 2017, 'Workplace bullying and absenteeism: The mediating roles of poor health and work engagement', *Human Resource Management Journal*, Vol. 27, Issue. 3, pg.319-334.

⁹⁵ Vingard E, Lindberg P, Josephson M, et al. Long-term sick-listing among women in the public sector and its associations with age, social situation, lifestyle, and work factors: a three-year follow-up study. *Scand J Public Health*. 2005; 33:370-375.

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⁹⁷ The Parliament of the Commonwealth of Australia, *Workplace Bullying, We just want it to stop*, House of Representatives, Standing Committee on Education and Employment, 2012, AiG, *Submission 59*, pp. 10-11.

⁹⁸ Ibid, Harmers Workplace Lawyers, *Submission 88*, p. 11. Safe Work Australia, *The Australian Workplace Barometer: Report of Psychological Safety Climate and Worker Health in Australia: December 2012*.

3.2 WORKPLACE REVIEWS

Issues arise in the workplace which may negatively impact on the effectiveness of a command and cannot be resolved locally. In these instances, commanders can request the assistance of the PSC⁹⁹ to conduct a workplace review to identify issues adversely affecting the workplace and to assess how the command deals with these issues.

During the period of review (1 July 2017 to 31 December 2018) the NSW Police Force *Workplace Review Guidelines* were in place. These stipulated that a workplace review could only be carried out upon the request and with the support of an assistant commissioner or equivalent.¹⁰⁰ The Guidelines were retired in March 2019, and it is not yet clear what will replace them. However the Commission considered the operation of workplace reviews during the review period as a means of identifying and resolving workplace issues within commands.

While the complaints process focuses primarily on the conduct of individual officers, workplace reviews are much broader in scope and attempt to establish if conflict within a particular local command is systemic, what the causes are, and what actions are necessary to resolve issues identified. Some indicators that may give rise to workplace reviews include internal complaints, high rates of sick leave, workers' compensation claims, staff wishing to transfer, grievances reported or low morale.¹⁰¹

There are three steps involved in conducting a workplace review –

- i. a request for assistance to the PSC to conduct a workplace review;
- ii. following the review, the PSC prepare a workplace review report (WRR) to the requesting deputy/assistant commissioner which includes recommendations for improvement;
- iii. the commander of the area reviewed reports back to the PSC within six months of receiving the WRR.

The Commission found that of the workplace reviews that had been conducted, the majority had been proactively initiated by the local command. Such requests for assistance had cited, among other things, conflict in the workplace, a high number of internal complaints and work related injuries.

The NSWPF conducted 12 workplace reviews in the period 1 January 2014 to 31 December 2018; all of them were supported by an assistant commissioner.

3.2.1 REQUESTING A WORKPLACE REVIEW

The Workplace Review Guidelines stipulated that all requests for assistance (RA) to PSC to conduct a workplace review should identify any actual or perceived issues impacting on the requesting command. In addition, commanders requesting a workplace review were required to provide evidence that they had attempted to resolve issues within their local command prior to submitting a RA through their region.¹⁰²

The NSWPF provided the Commission with 10 out of 12 RAs for workplace reviews. Some of the issues listed as impacting the requesting local commands included –

- i. significant workplace conflict between the Senior Management Team;
- ii. problems with particular officers;
- iii. significant workplace conflict between management and staff;
- iv. lack of decision-making and leadership; and
- v. a significant number of complaints within the command which relate to sexual harassment, discrimination and bullying by some officers.

⁹⁹ The Management Support Unit is one of the specialist units within PSC and, among other things, conducts workplace reviews. The MSU also provides support and advice to commands regarding conduct and performance management of sworn staff.

¹⁰⁰ NSW Police Force *Workplace Review Guidelines*, Professional Standards Command, February 2018, p. 5.

¹⁰¹ Portfolio Committee No. 4 – Legal Affairs, Inquiry Into Emergency Services Agencies, Questions on Notice – Commissioner of Police 10 November 2017.

¹⁰² NSW Police Force *Workplace Review Guidelines*, Professional Standards Command, February 2018, p. 5.

In seven RAs commanders outlined measures they had already undertaken before they sought the assistance of the PSC to address the issues within their local command. Some of the measures included, but were not limited to –

- i. meetings and discussions with the local area commander;
- ii. human resources review;
- iii. meetings with crime managers;
- iv. cultural surveys;
- v. confidential interviews with staff;
- vi. review of workplace equity complaints;
- vii. regular assistance by the WREU;
- viii. equity training provided by the WREU;
- ix. transfer of officers; and
- x. assistant commissioner attending command and outlined his/her expectations in regard to appropriate workplace behaviour etc.

The fact that some commanders had already taken these measures and still sought assistance through a workplace review suggests that there may have been very challenging or entrenched issues in their commands.

3.2.2 WORKPLACE REVIEW REPORTS

After completing a workplace review, the PSC was required to provide a written workplace review report (WRR) to the requesting deputy/assistant commissioner, including recommendations for improvement.¹⁰³

The Guidelines further stated –

A key recommendation of the workplace review is that the commander of the reviewed command/unit is debriefed¹⁰⁴ in respect of the initial report findings and a copy or redacted version of the report is provided to them by the deputy/assistant commissioner.¹⁰⁵

The purpose of a workplace review was to try and solve conflicts in the workplace that local commands were unable to resolve internally. The WRR was the key document emanating from a workplace review. The NSWPF advised the Commission that historical workplace review reports are kept on the NSWPF Records Management System (RMS).¹⁰⁶

The NSWPF provided the Commission with copies of all 12 WRRs for reviews conducted in the period 1 January 2014 to 31 December 2018.

All 12 WRRs included recommendations to improve workplace practices. The recommendations focussed primarily on general issues that were grouped into:

- industrial agreements;
- supervisory issues;
- team work;
- deployment and training;
- clarification of roles and responsibilities;
- inappropriate workplace relationships/unprofessional behaviour;
- rotation of staff;
- rostering;
- poor morale;
- physical environment;

¹⁰³ NSW Police Force *Workplace Review Guidelines*, Professional Standards Command, February 2018, pp. 2, 10.

¹⁰⁴ The region/specialist commander conducts the debriefing. (NSW Police Force *Workplace Review Guidelines*, Professional Standards Command, February 2018, p. 8).

¹⁰⁵ NSW Police Force *Workplace Review Guidelines*, Professional Standards Command, February 2018, p. 10.

¹⁰⁶ Correspondence from NSW Police Force, Professional Standards Command, to Law Enforcement Conduct Commission, 28 November 2019.

- communication; and
- distribution of workload etc.

Four WRRs included specific recommendations to address workplace equity matters, as outlined below:

- i. One WRR commented on the entrenched culture of misbehaviour, including sexual harassment, led by senior officers and emulated by junior staff.

The WRR recommended formal training by the WREU for supervisors and staff in the Criminal Investigation Unit (CIU) including Equity Awareness, a Respectful Workplace Communication Workshop or a presentation tailored to the needs of the CIU. In response the command implemented sergeant training days; removed two problematic officers from the command and held regular training days on performance, conduct and professional development.

- ii. One of the major issues identified in another WRR was a 'clique' driven by the team leaders, which was fostering a climate of bullying and harassment towards staff that were not in the 'clique'.

The WRR recommended formal training by the WREU for supervisors and staff in the CIU. In response the command implemented a number of initiatives and strategies, including the transfer of a number of officers who were part of the identified 'clique' to other commands which provided the opportunity for new recruitment into the command.

- iii. One WRR noted that behavioural issues at a metropolitan command had occurred over a number of years and related predominantly to a small number of staff. The most commonly mentioned behaviour was bullying/harassment, including sexually explicit and inappropriate banter in the workplace. Prior to the workplace review, staff from the WREU had visited the command on a number of occasions to provide support and training. The behaviour of this group of officers led to a variety of complaints and work-related injuries that affected the command as a whole. One of the recommendations included in the WRR was that some officers be transferred out of the command to mitigate the negative mental health affect that they had on other staff.

It is not clear whether the recommendations from this WRR were implemented, as the NSWPF did not provide the Commander's report.

- iv. One WRR commented that participants had reported harassment/bullying issues and felt that nothing had been done to address these concerns. In particular, participants were concerned about the behaviour of one senior staff member who did not follow the chain of command and unfairly favoured one group of staff who were part of the 'clique'.

The WRR recommended a training presentation to staff, facilitated by PSC, focussing on the Code of Conduct and Ethics, Respectful Workplace Behaviour, relevant legislation/policies, performance and conduct issues, complaint handling processes/information and case studies.

It is not clear whether the recommendations from this WRR were implemented, as the NSWPF did not provide the Commander's report.

The Commission's concerns about the absence of the Commanders' reports are addressed in 3.2.3 below.

3.2.3 RESPONSE TO WORKPLACE REVIEW BY REQUESTING COMMANDER

A commander who has requested a workplace review was required to –

- i. report to their region/specialist commander on the command position of the review process and any initiatives or action undertaken following the review, within six months of receiving the workplace review report, and
- ii. complete an evaluation report to the PSC within six months of the review report being received.¹⁰⁷

¹⁰⁷ NSW Police Force *Workplace Review Guidelines*, Professional Standards Command, February 2018, pp. 8-9.

For the purpose of our review, the NSWPF provided the Commission with two reports to region/specialist commanders, and seven evaluation reports to the PSC.¹⁰⁸ Three commanders completed an evaluation report to the PSC within six months of receiving the WRR.

The Commission is concerned that only two out of 12 local commands provided their responses to region/specialist commanders; also missing were five out of 12 commanders' evaluation reports to the PSC. The NSWPF's inability to provide copies of reports to commanders and evaluation reports suggests that not all records relating to workplace reviews are stored on RMS.

The lack of records relating to workplace reviews is a deficiency. The NSWPF Workplace Review Guidelines included no guidance on who was responsible for record keeping practices pertaining to workplace review documents or where these records need to be stored.

The Commission is concerned that some records pertaining to workplace reviews were not available for review. Workplace review records are an important resource to any new commander who commences duties at a local command where a workplace review has been conducted in the past. The results and recommendations included in a WRR go beyond the complaints process and provide a holistic view of issues and conflicts that may impact on the effective running of a local command. The WRR, and records accounting for the response to WRR recommendations are important resources for commanders and the NSWPF. These records contain valuable information about historical and ongoing problems within a command, what attempts have been made to address any identified problems and strategies for resolving ongoing issues.

The absence of workplace review records deprives any incoming commander of important information that describes the dynamics and issues that may assist in the management of the command.¹⁰⁹

Recommendation 4: It is recommended that the NSW Police Force specify where all records pertaining to workplace reviews are to be kept and who is responsible for record keeping in relation to workplace reviews.

NSW Police Force response

The NSWPF advised the Commission that the Workplace Review Guidelines were retired in March 2019 and the responsibility for workplace reviews has been transferred to the Human Resources Command. Recommendation 4 will be considered by the Effective Workplaces Unit (HR) when the protocols for the revised Workplace Review Process are devised.¹¹⁰

The Commission recognises that workplace reviews are valuable tools that assist the NSWPF in identifying and managing conflicts and potential systemic issues within particular local commands. At the time of publication of this report it is not clear what will replace workplace reviews. However, the Commission anticipates that this kind of review will be available under the revised framework. An assessment of the revised Workplace Review Process will be included in the Commission's next review.

3.3 TREND ANALYSIS

The NSWPF has a centralised complaints management database¹¹¹ that systematically records complaint information and outcomes. The amount of information that the NSWPF can collect from complaints is considerable and essential for analysis of trends over time. Both the PSC and the WREU have the capacity to provide reports to the NSWPF on trends about workplace equity complaints.

¹⁰⁸ Two of these seven evaluation reports to PSC were also forwarded to the relevant region/specialist commander. It is not clear if this replaces the requirement for commanders to report to their region/specialist commander on the command position of the review process.

¹⁰⁹ It is the responsibility of the requesting commander/manager to oversee the implementation of recommendations from workplace reviews. (NSW Police Force *Workplace Review Guidelines*, Professional Standards Command, February 2018, pp. 7-8).

¹¹⁰ Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner of Integrity, Law Enforcement Conduct Commission, 8 May 2020, p. 4.

¹¹¹ At the time of writing this report this database was IAPro.

The WREU has the capacity to conduct trend identification and analysis in relation to individual officers, commands, issues and management action. It produces regular trend data reports to the Assistant Commissioner, Human Resources Command, who then meets with each of the Deputy Commissioners to brief them of the content of these reports which ensures that they are across the issues in their respective areas.¹¹²

The Trend Analysis Unit (TAU)¹¹³ provides services in the analysis and reporting of complaints related data. The TAU can be utilised to –

- i. undertake research in complaint related trends;
- ii. report to the NSWPF Executive on complaint data; and
- iii. provide specific reports as requested by commands.

The role of the TAU is to ‘interrogate complaint data and provide a variety of trend reports to assist NSWPF Commanders with strategic decision making’.¹¹⁴ The PSC has advised the Commission that it has not conducted any specific trend analysis on workplace equity matters but it has the capacity to do so if requested.¹¹⁵

The PSC, the WREU and the Office of the General Counsel are also members of the Inter Command Forum (ICF) on Equity which convenes on a quarterly basis. Data and trends pertaining to workplace equity matters are a standing agenda item at this meeting. The Assistant Commissioner, Human Resources, and Assistant Commissioner, PSC, are standing members of the ICF. The ICF’s primary role is to provide –

- i. a collaborative approach to the identification and implementation of risk mitigation strategies relating to discrimination, harassment and bullying;
- ii. recommendations to Commissioner’s Executive Team (CET) for enhancements in the management of equity matters, including systems and procedures as required;
- iii. oversight and monitoring of strategic approaches to discrimination, harassment and bullying within the NSWPF to ensure safe, healthy workplaces; and
- iv. report to CET annually on equity matters and in particular contemporary issues around discrimination, harassment and bullying.

The WREU trend report for 2017-2018 sets out referral numbers of workplace equity matters to the WREU by months and calendar year, including number and types of allegations and the rank of subject officers and aggrieved officers.¹¹⁶ The trend report showed that just over half of all the matters referred to the WREU for assessment (53 per cent) met the threshold of being a workplace equity matter. These figures show that workplace equity matters can be difficult to assess at a local command level and confirms the importance of the WREU in assessing whether each allegation meets the threshold for workplace equity matters. The report also included data on how many referrals were made by individual regions/commands, details of the rank, gender and age group of aggrieved and subject officers, where these officers were stationed when the incident occurred and the outcomes for issues meeting the threshold of a workplace equity matter, i.e. sustained, not sustained, declined and unknown.

The PSC provided the Commission with a report that included statistical data on the total number of allegations of harassment, bullying, discrimination and sexual harassment for 1 January 2003 to 30 July 2018.¹¹⁷ The data shows that over the year groups, the number of allegations of harassment per year were declining, from roughly 135 per year in the 2003 to 2006 year group to 21 per year in 2017-2018. By contrast allegations of discrimination have remained fairly consistent over the years reviewed.

¹¹² These reports are provided every six weeks. (Email from A/Manager, Workplace Relations and Equity Unit, to Senior Project Officer, Professional Standards Command, 2 September 2019).

¹¹³ The Trend Analysis Unit forms part of Complaints Services which is located within the Professional Standards Command of the NSW Police Force.

¹¹⁴ http://intranet.police.nsw.gov.au/organisational_units/corporate_services/professional_standards/field_services. Accessed on 29 August 2019.

¹¹⁵ The PSC provided this information to the Law Enforcement Conduct Commission during a meeting on 22 January 2019.

¹¹⁶ Internal police complainants are referred to as ‘aggrieved’ in WREU trend reports.

¹¹⁷ Data is reported in the following year groups: 2003-2006, 2007-2016 and 2017-2018.

Of interest is the rise in number of sexual harassment allegations per year over the reported year groups and the high rate of sustained findings. In the 2007 to 2016 years the average number of sexual harassment allegations was 34 per year. This figure increased to 52 per year in the 2017-2018 year group. This represents an over 50 per cent rise in sexual harassment allegations in 2017-2018.

In the 2003-2006 year group only 1.3 per cent of allegations investigated (2 out of 152) resulted in a sustained finding. This figure increased to 23 per cent in the year group 2007 to 2016; and dropped back to 18 per cent for the year group 2017-2018.

The Commission compared the two data sets provided by the PSC and the WREU and noted that there were some inconsistencies in the figures. By way of example the PSC recorded 144 allegations of bullying in 2017-2018; the WREU recorded 114 allegations of bullying in the same period. Other inconsistencies related to harassment (43 vs 71); and discrimination (15 vs 10). The PSC acknowledged in its report that there are 'currently some difficulties reporting with absolute accuracy but that will be rectified when code is developed to correctly define relationships between data extracted from IAPro'.¹¹⁸

One of the aims of the Commission's review was to assess the NSWPF's ability to monitor and report on trends and outcomes for workplace equity matters.

The NSWPF centralised complaints management system allows it to collect specific data and to identify organisation-wide trends in relation to workplace equity matters. The amount of data that the NSWPF can collect from complaints is significant. The Commission requested copies of all trend analysis reports on workplace equity matters conducted by the PSC and the WREU for a five year time period. Both the WREU and the PSC provided the Commission with reports that consisted predominantly of tables and figures. However, neither the PSC nor the WREU provided the Commission with any analysis of the complaint data it had collected. It therefore remains unclear how this data has been used to deter or reduce bullying, harassment and discrimination in the NSWPF.

We anticipate that the NSWPF could undertake analysis and assessment of the potential risks posed by workplace equity matters and produce specifically tailored treatment strategies to show how the NSWPF will manage the risks that workplace equity matters pose to local commands and the NSWPF more broadly. However, the NSWPF did not provide the Commission with information about the way it targets problem areas, records 'lessons learnt' as a source of information for continuous improvement or the way it evaluates the success of its strategies to reduce workplace equity matters.

The Commission recognises that trend analysis can be extremely valuable as an early indicator of potential problems and issues within particular local commands. Pro-active data analysis can assist the NSWPF to be in touch with workplace equity matters across the whole organisation and provide it with a mechanism to monitor organisational responses and to make informed decisions as to how to address underlying causes.

Recommendation 5: It is recommended that on an annual basis the NSW Police Force compares the results of trend analysis reports prepared by the WREU and the PSC to ensure consistency across the organisation.

NSW Police Force response

The NSWPF proposes to establish a single data source utilising the IAPro centralised complaints management system. The NSWPF anticipates that this single data source will better support data analysis, trend monitoring and the development of continuous improvement strategies and will address the principles underpinning Recommendation 5.¹¹⁹

The NSWPF also advised the Commission that it uses trend analysis data in a number of ways-

¹¹⁸ Email from Senior Project Officer, Professional Standards Command to Senior Project Officer, Law Enforcement Conduct Commission, 9 April 2019 including trend analysis reports from the Trend Analysis Team, Professional Standards Command.

¹¹⁹ Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner of Integrity, Law Enforcement Conduct Commission, 8 May 2020, p. 4.

- i. it drives the WREU business plan, including but not limited to developing projects such as the 'Just Joking Campaign', WREU Banter and Harassment videos and Social Media Poster campaigns;
- ii. trend analysis data also informs training and early intervention services under the WREU continuous improvement program;
- iii. local commands can ask for analysis of their commands via the request for assistance process;
- iv. trend analysis data, which is divided into Regional and Specialist Commands is provided to each Deputy Commissioner every six weeks. These reports ensure that each Deputy Commissioner is across the issues in their respective areas and is in a better position to devise strategies to address them.¹²⁰

3.4 WREU PRESENTATIONS AND WORKSHOPS

One of the roles of the WREU is to provide training and coaching sessions to 'appropriate audiences'.¹²¹ The presentations and/or workshops range from raising awareness of equity issues; conflict management workshops; assisting commands to build a safe, inclusive and respectful workplace to tailored presentations to suit the specific needs of a command/business unit.¹²²

The NSWPF conducted 178 presentations/workshops in the period 1 January 2017 to 31 December 2018; 108 were conducted in 2017 and 70 in 2018. The presentations were spread across metropolitan commands, regional districts and specialised units.

3.5 WORKPLACE AUDITS

The WREU can also provide physical workplace audits which can either be initiated through a Request for Assistance (RA) from a local command or be proactively initiated by the WREU.¹²³ The aim of these audits is to identify items that may reasonably and foreseeably give rise to, and/or reflect inappropriate workplace behaviour standards including but not limited to: offensive and derogatory materials in the form of posters, graffiti, magazines, screen savers etc.

The WREU conducted five workplace audits in the period 1 January 2017 to 31 December 2018. The audits identified no major hazards. Two commands complied with all requirements listed in the Safety Observation Form. Three commands did not display HR Equity posters in the workplace. The recommended action was for the WREU to send a set of equity posters to the three commands to be displayed in areas such as the office, meal room and notice board in the hallway. The WREU also recommended 'regular six-monthly checks by local supervisor' and annual WREU inspections for those three commands.

¹²⁰ Email from A/Manager, Workplace Relations and Equity Unit, to Senior Project Officer, Professional Standards Command, 2 September 2019.

¹²¹ NSW Police Force *Workplace Equity Resolution Procedures*, Corporate Human Resources, November 2012, pp. 7-8.

¹²² NSW Police Force *Workplace Equity Guide for Investigators*, Human Resources, December 2016, p. 16.

¹²³ Email from Senior Project Officer, NSW Police Force Professional Standards Command to Senior Project Officer, Law Enforcement Conduct Commission, 22 November 2018.

4. KEY OBSERVATIONS

Six key observations may be made about workplace equity matters in the NSWPF. These may have an impact on how the NSWPF manages this type of behaviour in workplaces across the organisation.

4.1 SUBJECT OFFICERS PREVIOUSLY INVESTIGATED FOR WORKPLACE EQUITY MATTERS

Our review found that 64 out of 183 subject officers (35 per cent) had previously been investigated for workplace equity matters. More specifically –

- i. 36 officers had been investigated for one workplace equity matter;
- ii. 16 officers had been investigated for two workplace equity matters;
- iii. six officers had been investigated for three workplace equity matters;
- iv. three officers had been investigated for four workplace equity matters; and
- v. three officers had had been investigated for five workplace equity matters.

Investigations into 33 out of 64 subject officers resulted in sustained findings for workplace equity matters. More specifically –

- i. 24 officers had one previous sustained finding;
- ii. eight officers had two previous sustained findings; and
- iii. one officer was medically discharged prior to any management action being taken.

Management action for these 33 officers were predominantly counselling sessions, followed by warning notices and conduct management plans. Four officers were referred to the IRP and one officer was served with two s181D notices.¹²⁴

These results indicate that previous management action failed to deter some officers from engaging in future workplace equity matters.

Case study 2 provides an example of an officer who has previously been investigated for workplace equity matters and who continued to engage in workplace equity matters.

CASE STUDY 2:

In 2017 a senior male officer (the subject officer) of a regional command was investigated for numerous allegations of sexual harassment of several junior female officers at the command. The subject officer publicly commented on being in an intimate relationship with one of the female officers (IPC 1). The subject officer interrogated IPC 1 and other officers within the command about IPC 1's personal relationships. The subject officer told IPC 1 that he first thought she was a lesbian as she would not sleep with him. Other female police witnesses (six in total) came forward and confirmed the subject officer's sexual harassment of IPC 1 and other inappropriate behaviour towards other female officers.

One police witness stated that she had heard the subject officer refer to a junior male officer on a number of occasions as 'faggot' and that he referred to an Aboriginal officer as 'the dumbest cop I've ever met'. It was further alleged that the subject officer publicly commented on other female officers'

¹²⁴ The two complaints, and subsequent two s181D nominations, date back to 2006. One complaint related to the subject officer inappropriately touching a female civilian on a number of occasions; in the second complaint the subject officer made sexual comments towards several civilian female parole officers. The subject officer was served with two separate s181D notices. There are no records on IAPro that provide any information as to why the subject officer was not removed from the NSW Police Force. However, the Commission identified a letter from the NSW Police Force to the Ombudsman's office which informed the Ombudsman that the two complaints had gone to the IRP with the outcome being 'referred to COP for 181D review'. The letter also stated that 'alternative recommendations by the IRP is that the Officer is the subject of the following S173 Reviewable Action and that he is to be managerially transferred from Command X to a suitable location and a reduction in Rank from Sergeant year 1 to Senior Constable Level 6'. There are no further records on IAPro that provide information on the type of management action the subject officer received.

sex lives and made sexually suggestive comments about their clothing. Several police witnesses, who were very junior officers, held genuine fears of negative consequences and reprisal from the subject officer. They told investigators that they were very conscious of the rank and seniority of the subject officer and believed that nothing would be done about his behaviour.

A number of issues of sexual harassment were sustained. The matter was referred to the Internal Review Panel. However, the subject officer resigned prior to any management action being taken.

The subject officer had previously been investigated for sexual harassment and bullying at a different command. In that matter, IPC 2, a female constable, alleged that the subject officer had referred to her as 'cunt stable'. IPC 2 told investigators that initially she had a good relationship, even friendship, with the subject officer. However due to the subject officer's generally aggressive behaviour with members of the public and his intimidating behaviour towards staff at the local command IPC 2 ended her friendship with the subject officer.

The investigator concluded that the subject officer used his rank and seniority to harass IPC 2 and the issue of harassment was sustained. The subject officer was placed on a six months conduct management plan (CMP) and issued with a Region Commander's Warning Notice. The CMP reinforced, among other strategies, the NSW Police Force *Harassment, Discrimination & Bullying Policy* with the subject officer to ensure that the subject officer had a clear understanding of his obligations under this policy.

It may be beneficial for the NSWPF to conduct further research to find out why previous management action seems to have had little or no effect on the behaviour of these 33 officers and to develop additional strategies or methods to deter officers engaging in future workplace equity matters.

4.2 SUBJECT OFFICERS GOING ON LONG-TERM SICK LEAVE

Our review identified 14 subject officers who went on long-term sick leave as a result of being investigated – two of the officers were medically discharged prior to the finalisation of the investigation.

One of the issues that arises from officers going on sick leave is that investigations may be either delayed or suspended, which prolongs the finalisation of investigations. Our review found that seven investigations in which subject officers went on long-term sick leave exceeded the recommended timeframes by up to 390 days.

As mentioned in section 3.1.7 of this report, nearly two thirds of investigations exceeded the recommended timeframes set by the NSWPF. If this happens, there is a risk that IPCs may continue to be victimised or harassed in the workplace. There is also the risk to IPCs physical and mental wellbeing. Lodging a complaint against a fellow police officer can be a stressful experience and it is important that investigations are completed in a timely manner to achieve closure for both the IPC and the subject officer.

If a subject officer who is being investigated goes on long-term sick leave there are provisions within NSWPF procedures to finalise investigations even if the subject officer cannot be recalled to participate in a non-criminal interview or refuses to respond to the allegations.

NSW Police Force procedures stipulate that an officer on sick leave may not be recalled to duty for the purpose of participating in a non-criminal interview. In these circumstances an investigation should not be unduly delayed owing to the inability to interview a police officer on sick leave. A commander has the option to either suspend or progress the investigation. A commander can suspend an investigation if the matter would not warrant dismissal or if the investigation is unable to be completed due to insufficient evidence. In these cases, NSWPF guidelines stipulate that the investigation should be completed as far as practical and a record of the officer's refusal to be interviewed should be attached to the complaint file.¹²⁵

¹²⁵ NSW Police Force *Complaint Practice Note: 11/11, interviewing police officers when on certified sick leave*; updated: 26 July 2018.

In instances where the investigation is progressed procedural fairness requires that the subject officer is given the opportunity to respond to the allegations before a final decision is made. If the officer had been given the opportunity to respond but did not respond, the investigator may make a decision notwithstanding the absence of a response.¹²⁶

Recommendation 6: It is recommended that in circumstances where officers who are investigated for workplace equity matters take long-term sick leave, the NSW Police Force reinforces the requirement that investigations are completed within recommended timeframes.

NSW Police Force response

The NSWPF advised the Commission that the changes envisioned by the proposed revised management model and PSC's timeliness review will address the principles underpinning recommendation 6.¹²⁷

4.3 UNDER-REPORTING OF WORKPLACE EQUITY MATTERS

The Commission relied predominantly on complaints to measure and benchmark compliance by the NSWPF with its Respectful Workplace Behaviours Guidelines. The Commission did not attempt to assess the prevalence of workplace equity matters in the NSWPF because of the limitations of the complaint data.

Complaint data is often used as an indicator to measure the extent of misconduct in an organisation. However, the volume of complaints is not necessarily a reliable indicator of the extent of misconduct.

First, under-reporting of incidents of sexual harassment, sex discrimination and other types of adverse workplace behaviour is common. Research has shown that very few people report workplace sexual harassment to their organisations.¹²⁸ It is estimated that only between five and 30 per cent of victims lodge formal complaints in their workplace.¹²⁹

In 2018 the Australian Human Rights Commission conducted its fourth national survey on sexual harassment in Australian workplaces. The survey found that reporting of workplace sexual harassment continued to be low. Only 17 per cent of people who had experienced sexual harassment at work in the last five years had made a formal report or complaint about the harassment.¹³⁰

Only 27 per cent of the 4011 NSWPF employees who participated in the 2019 People Matter survey had confidence in the ways that the NSWPF resolves grievances.¹³¹ Eighteen per cent of survey respondents indicated that they had been subjected to bullying at work in the last 12 months and 28 per cent of survey respondents indicated that they had witnessed bullying at work. Unfortunately, the survey did not ask if the respondents had reported the bullying incidents to the NSWPF.¹³² However, the reported low confidence in grievance resolution suggests that formal complaints are not representative of the scale of the misconduct.

The reasons why employees are reluctant to report workplace equity matters are manifold: a lack of trust in the reporting system; a perception that there is a lack of confidentiality; reporting misconduct can have negative consequences for a person's career¹³³ or result in a complainant being ostracised or victimised; there are few or no consequence for the perpetrators;¹³⁴ the organisation has a culture that

¹²⁶ Ibid.

¹²⁷ Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner of Integrity, Law Enforcement Conduct Commission, 8 May 2020, 4.

¹²⁸ Juanita M Firestone and Richard J Harris, 'Perceptions of effectiveness of responses to sexual harassment in the US military, 1988 and 1995' (2003) 10(1) *Gender, Work and Organization*, 43.

¹²⁹ Tristin Wayte et al, 'Psychological issues in civil law' in James Ogloff (eds), *Taking psychology and law into the twenty-first century* (Springer, 2002); Juanita M Firestone and Richard J Harris.

¹³⁰ Australian Human Rights Commission, *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces*, 2018.

¹³¹ The response rate for the NSW Police Force was 19 per cent which represents 4011 of 20914 respondents.

¹³² People Matter 2019, NSW Public Sector Employee Survey, Agency Report, Justice, NSW Police Force.

¹³³ ICAC.OPI, *Public Integrity Survey 2018*, South Australia, December 2018.

¹³⁴ Australian Human Rights Commission 'Review into the Treatment of Women in the Australian Defence Force' – 22 August 2012 – Phase Two of Commission's review. Rutherford, A. and Rissel, C., 2004. A survey of workplace bullying in a health sector organisation. *Australian Health Review*, 28(1), pp.65-72. *Sex Discrimination, sexual Harassment and Predatory Behaviour in South*

discourages reporting instances of sexual harassment and bullying among other reasons.¹³⁵ Victorian police employees reported that they were excluded, ostracised, shamed and physically and emotionally abused for making a report or not 'fitting in'.¹³⁶ In addition, many had experienced sex discrimination or sexual harassment but said they were 'reluctant to report the incident or seek support as they did not want others to view them as 'weak' or lacking the resilience necessary to cope with police work.¹³⁷ One of the alarming findings of the 2018 National Survey in Australia was the rise in negative consequences for workplace sexual harassment complainants over the years of the survey.¹³⁸

Complaint data is a valuable method of collecting data about misconduct, the characteristics of subject officers and complainants, the type of workplace behaviour, including the ways in which they occur, the reasons why they occur and the consequences on individuals and the organisation. However, it is, by no means, a reliable measure of the prevalence of this type of behaviour in an organisation.

For the above reasons the number of workplace equity matters that led to an investigation are likely to underrepresent the true extent of workplace equity matters in the NSWPF.

4.4 FEAR OF REPRISAL

As mentioned in the previous section, there are a number of reasons why people are reluctant to lodge complaints. Our review of 124 investigations into workplace equity matters identified twelve IPCs who had expressed their fear of reprisal or of being targeted if it became known that they had lodged a complaint. Some of their comments are listed below.

A female sergeant lodged a complaint on behalf of two of her staff members who alleged that they had been bullied by a senior officer. The female sergeant stated -

I also (sic) of the view that I believe I will be targeted in a detrimental manner as a result of this complaint. I am further of the view that [complainant 1] and [complainant 2] perceive that they will be further targeted as well.

A junior female officer complained about being victimised by some of her colleagues -

It took me several months to put my complaint into writing for fear of reprisal and in turn I feared my career in the New South Wales Police Force could be ruined given what I had already experienced in my short time as a Constable.

One anonymous complainant alleged that he/she had witnessed the subject officer bullying a number of staff at a local command. The complainant stated -

This is an anonymous complaint through fear of reprisals from [subject officer].

Case study 3 is an example of the complainant waiting until she transferred to another command before lodging a complaint for fear of reprisal from the subject officer.

CASE STUDY 3:

In early 2017 a junior female police officer (the IPC) lodged a complaint about the behaviour of a senior officer (the subject officer). The alleged behaviour included bullying, homophobic, racist and misogynistic comments towards herself and other officers. The IPC stated that the behaviour of the subject officer impacted on her work as she became too anxious to approach him for advice in his role as supervisor.

Australia Police, Independent Review, Government of South Australia, Equal Opportunity Commission, November 2016. Australian Human Rights Commission 2012, *Working without Fear: Results of the Sexual Harassment National Telephone Survey 2012*, p. 11.

¹³⁵ Independent Review into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police, Victorian Equal Opportunity & Human Rights Commission, Phase One Report, 2015, pp. 289, 350. Elizabeth Broderick & Co., Cultural Change: Gender Diversity and Inclusion in the Australian Federal Police, 2016, p. 9.

¹³⁶ Ibid, p. 15.

¹³⁷ Ibid, p. 15.

¹³⁸ Australian Human Rights Commission, *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces*, 2018, p. 102.

The NSWPF commenced an investigation into the subject officer and interviewed the IPC and a number of officers. The IPC and some of the officers mentioned a number of incidents where the subject officer had shown his dislike and contempt for the IPC and others. These incidents included the subject officer saying to another officer that the IPC is: '...a fucking idiot, she won't be going anywhere'; actively sabotaging the IPC's career prospects by not supporting any requests to attend training courses; constantly resubmitting any work by the IPC; making homophobic comments about the IPC and other officers' sexuality; and referring to women as 'fatties' or 'fat chicks'. The subject officer boasted about his close relationship with other senior officers which discouraged officers from complaining about his behaviour.

The IPC stated that she lodged this complaint because she was transferring to another command and therefore did not need to fear any repercussions from the subject officer. According to the IPC there were many police officers who had been victimised by the subject officer but who were too scared to make a complaint as the subject officer was known to 'ruin careers'. This allegation was validated during interviews with several police witnesses who had been subjected to similar behaviour by the subject officer and who mentioned that they had been too afraid to lodge a complaint for fear of reprisals by the subject officer.

The issue of harassment (homosexuality) was sustained. The subject officer resigned prior to any management action being taken.

The Commission's review identified 12 IPCs who were afraid of reprisal if it became known that they had lodged a complaint. It is important that employees have confidence and trust in NSWPF complaints processes to encourage them to lodge complaints against officers who engage in bullying, harassment, discrimination, victimisation and vilification in the workplace. Officers must have faith in the ability of the NSWPF to protect them from reprisal.

4.5 OFFICERS ON PART-TIME OR RESTRICTED DUTIES

The Commission's review identified eight workplace equity matters which included information that IPCs were bullied, discriminated against or harassed because of their part-time status or restricted duties.

While current Respectful Workplace Behaviours Guidelines do not specifically mention officers who either work part-time or who are on restricted duties, the guidelines state –

NSW Police Force (NSWPF) has a responsibility to provide a safe, ethical, inclusive and productive work environment and to set standards of behaviour that supports a workplace culture free of bullying, discrimination and harassment.¹³⁹

Case study 4 describes a situation where three officers felt they were targeted by a senior officer because of their flexible work arrangements or restricted duties.

CASE STUDY 4:

Three female officers (IPC 1, IPC 2 and IPC 3) at a metropolitan command complained about discrimination and harassment because of their part-time, permanent restricted duties (PRD) or restricted duties status by a senior officer (the subject officer).

IPC 1, suffering from PTSD, had transferred to the command as a PRD officer. IPC 1 described a number of incidents with the subject officer, who was her immediate supervisor. According to IPC 1 nothing she did at work was valued by the subject officer. She received endless criticism and has felt considerable strain from being pushed to meet unattainable deadlines. The subject officer had also told her that she was out of the loop and that other staff did not respect her because of her restrictions. IPC 1 was told by IPC 3 that the subject officer had said that IPC 1 and IPC 2 were 'pains' as they were part-time, PRD and restricted duties.

¹³⁹ NSW Police Force *Respectful Workplace Behaviours Guidelines*, Workplace Relations & Equity Unit, Human Resources, December 2016, p. 5.

As a result IPC 1 felt anxious and was losing confidence in her ability to do the job. IPC 1 and IPC 2 expressed their fears that the subject officer was trying to push them out the door because of their part-time and PRD status.

The matter was referred to the WREU for assessment. The WREU determined that the behaviour met the threshold of harassment (carer's responsibilities) and harassment (disability).

The NSWPF commenced an evidence-based investigation against the subject officer. The investigation found no evidence that the subject officer harassed or bullied the complainants because of their flexible work arrangements and concluded that the subject officer was within his rights to have 'high expectations that work was being completed'. The issues of harassment (carer's responsibility/disability) and bullying (carer's responsibility/disability) were not sustained.

The NSWPF recognises the needs of some employees to have flexible work arrangements¹⁴⁰ and has developed comprehensive procedures¹⁴¹ and review processes to manage these types of arrangements.

The NSWPF also acknowledges that police officers have one of the most 'high risk' jobs in the state and that some of them will be injured and Hurt on Duty through a work related incident. If this occurs, officers are entitled to redeployment under the Restricted Duties Policy¹⁴² and commanders are responsible to provide injured officers with suitable employment as an integral part of the rehabilitation process.¹⁴³ One IPC stated that she submitted her report to –

Bring to light the work environment that I am currently in and the discrimination I have been subjected to, being PRD and Part Time.

Becoming a PRD officer is a distressing process and I should not be made to feel invaluable because of this status that happened as a result of a workplace injury.

Since becoming a PRD Officer I have never felt subject to discrimination until now.

Discriminating, harassing or bullying officers who are either on flexible work arrangements or on restricted duties clearly breaches NSWPF procedures and obligations.

The Commission undertook a review of oversight agency reports and publicly available documents to identify what other Australian police jurisdictions have done to address and manage workplace equity matters. A brief description of the publications consulted is provided below.

The Equal Opportunity Commission's *Independent Review into Sex Discrimination, Sexual Harassment and Predatory Behaviour in South Australia Police* found that there appeared to be a 'misalignment between written policy and the practical reality of VFWA [Voluntary Flexible Working Arrangements] in SAPOL' and numerous review participants suggested that the policies were difficult to access. The review found that South Australia Police (SAPOL) part-time workforce was significantly lower than the rates of part-time employment across the broader SA public sector.¹⁴⁴ In addition the review found that those who seek to work flexibly are often 'discriminated against and stigmatised'¹⁴⁵ and that there was a perception that taking up flexible working arrangements may hinder career progression.¹⁴⁶ The review

¹⁴⁰ Flexible Work Arrangements (FWA): Flexible work practices apply to individual employees through an application and approval process. Includes part time work, job sharing, leave without pay and other arrangements such as preferred shifts or changes to start and finish times.

¹⁴¹ NSW Police Force *Flexible Work Arrangements Guidelines*, Workforce Relations and Strategy, Human Resources Command, January 2019.

¹⁴² The NSW Police Force Intranet shows that the *Restricted Duties Policy for Police* is currently under review

¹⁴³ Policing Issues & Practice Journal, *Pre 88 and Post 88 Officers Hurt on Duty Schemes*, January 2004, pp. 20-21.

¹⁴⁴ Government of South Australia Equal Opportunity Commission, *Sex Discrimination, Sexual Harassment and Predatory Behaviour in South Australia Police*, November 2016, pp. 73-74.

¹⁴⁵ *Ibid*, p. 97.

¹⁴⁶ *Ibid*. p. 76.

recommended, among other things, that SAPOL normalise flexible work for all staff regardless of gender or rank.¹⁴⁷

In 2015 the Victorian Equal Opportunity & Human Rights Commission published its *Independent Review into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police*. The review found that even though Victoria Police (VicPol) had a number of policies/guidelines and statements which guide flexible work and part-time work within VicPol¹⁴⁸ women experienced both overt and subtle discrimination in accessing flexible work arrangements as well as a general attitude of hostility towards them on the basis of their flexible work arrangements.¹⁴⁹ The review made a number of recommendations about flexible working arrangements to VicPol, including a review and amendments to all arrangements relating to flexible work¹⁵⁰ and training of all its supervisors in dealing with flexible working requests.¹⁵¹

4.6 WORKPLACE EQUITY MATTERS CAN LEAD TO OTHER TYPES OF MISCONDUCT

Review results demonstrated that workplace equity matters can, at times, lead to other types of misconduct by NSWPF employees. The review identified 24 officers who were investigated for 'fail to report misconduct'. The issues included officers being aware of other officers engaging in bullying, harassment (including sexual harassment) and discrimination in the workplace and failing to comply with the requirement of s 211F of the *Police Act 1990* which stipulates that members of the NSWPF are under a duty to report misconduct of police officers.

By way of example, one workplace equity matter related to a group of officers from a particular metropolitan command who had formed a chat group on a social media site. The group had approximately 17 members. The IPC provided information that group messages contained discussions about a number of other staff members. The messages were sexually explicit, racist, demeaning, bullying, harassing and offensive. The group also engaged in derogatory comments about another staff member, discussing her intimate personal life and talking about her in a sexually explicit manner. All officers were investigated for allegations ranging from 'fail to report misconduct'; 'breach of Respectful Workplace Behaviours Guidelines'; 'contravene the personal use of social media Policy and Guidelines' and 'sexual harassment through group chats'. The majority of issues investigated resulted in sustained findings. Management action for subject officers included warning notices, conduct management plans, mentoring, equity remediation sessions, suspension with pay, and temporary relocation.

Other forms of misconduct, which related directly to workplace equity matters, included breach of Social Media Policy, breach of Code of Conduct, neglect of duty and unwelcome text messages.

The Commission's analysis of evidence contained in complaints and investigative records showed that sexual harassment by some subject officers sometimes escalated to more serious criminal offences, including sexual offences, indecent assaults and sexual misconduct.

Case study 5 is an example of how a workplace equity matter can lead to other types of police misconduct.

¹⁴⁷ Ibid. p. 98.

¹⁴⁸ Victorian Equal Opportunity & Human Rights Commission, *Independent Review into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police*, Phase One Report, 2015, p. 194.

¹⁴⁹ Ibid. p. 196.

¹⁵⁰ Ibid. p. 199.

¹⁵¹ Ibid. p. 210.

CASE STUDY 5:

Subject officer 1

A male senior constable (subject officer 1) was investigated for sexual harassment of a number of female NSWPF officers through social media sites. These officers alleged that subject officer 1 deliberately attended the police station when they were working and invaded their personal space. Subject officer 1 also sought to meet with them outside work. The investigation also comprised allegations of indecent assault on an unsworn female officer. Subject officer 1's sexual harassment of women extended to female victims of crime who were also contacted by him, causing them distress and concern.

The NSWPF interviewed a number of police officers as part of its investigation into the allegations against subject officer 1. During these interviews, information came to light that some female officers who were sexually harassed by subject officer 1 had discussed his behaviour with subject officer 2 who was a supervisor at the police station where subject officer 1 was working. One police witness stated that subject officer 2 had warned her about the behaviour of subject officer 1 informing her that subject officer 1 had sent 'dick pics' to other female staff members and that he was a 'predator'. Subject officer 2 was interviewed by investigators and asked about his knowledge of subject officer 1's behaviour and why he had failed to report his misconduct. Subject officer 2 stated that one female staff member had spoken to him about subject officer 1 but that she had told him not to do anything about it. Subject officer 2 admitted that he was aware that subject officer 1 had also harassed a woman who worked in a local shop.

At the completion of the investigation, the matter was forwarded to the Office of the Director of Public Prosecutions (ODPP). The ODPP found that there was prima facie evidence to support criminal charges involving two indecent assault offences alleged to have been committed by subject officer 1. Criminal proceedings against subject officer 1 did not commence based on discretionary grounds by the ODPP.¹⁵²

The NSWPF investigation returned sustained findings against subject officer 1 for sexual offences, sexual misconduct, sexual harassment and unprofessional conduct. The matter was referred to the Internal Review Panel. However subject officer 1 was medically discharged from the NSWPF prior to the complaints management process being finalised.

Subject officer 2

Information was obtained from police witnesses during the investigation into subject officer 1 that subject officer 2 was aware of misconduct and possible criminal allegations surrounding the actions of subject officer 1 and his alleged interaction with female staff but had failed to formally report this to senior management. As a result the NSWPF investigated subject officer 2 for 'failure to report misconduct'. The investigation resulted in a sustained finding. The investigator noted that subject officer 2 had a responsibility as a senior officer under s 211 of the *Police Act 1990* to report misconduct. The investigator also commented that subject officer 2 had failed to formally advise the Senior Management Team of subject officer 1's behaviour and had subject officer 2 acted earlier the behaviour of subject officer 1 and the impact it had on 'young and impressionable officers' could have been prevented. Subject officer 2 was issued with a Region Commander's Warning Notice.

This outcome for subject officer 2 indicates that the NSWPF recognises that a supervisor plays a key role in identifying and responding to workplace equity issues as they emerge, and that inaction is a significant failure. Subject officer 2, a senior officer, not only failed in his duty to report the behaviour of subject officer 1 but also failed in his responsibility as a supervisor to provide a physical and psychological safe workplace, free of harassment, bullying and discrimination for his officers.

¹⁵² This information was included in CMT minutes, 25 July 2019. There was no further information why the ODPP decided not to continue with criminal proceedings against subject officer 1.

Managers and supervisors must be able to recognise the seriousness of workplace equity matters and be prepared to address them. Managers and supervisors who turn a blind eye to this type of behaviour and hope that the issues will disappear not only condone the behaviour but also bear some responsibility for the damage the behaviour causes to other staff.

While clear and robust policies and procedures are an important tool to address workplace equity matters their mere existence is not sufficient. It is up to managers and supervisors to clearly communicate and model the expectations of the NSWPF regarding the way employees are to conduct themselves in the workplace. This also requires managers and supervisors to address and eliminate workplace equity matters as soon as they arise. Workplace equity matters allowed to continue affect the workplace and can result in absenteeism, high staff turnover, stress, reduced organisational efficiency, and low employee morale.

5. CONCLUSION

Mutual respect for the dignity and safety of others at all levels within the workplace is one of the key characteristics of a successful organisation. An organisation's values are reflected in how it manages and responds to workplace equity matters.

In its corporate policies and procedures the NSWPF expresses its responsibility and commitment to provide a work environment that is 'safe, ethical, inclusive and productive' and which is free of bullying, discrimination, harassment, vilification and victimisation. The expectations of the NSWPF are clearly communicated in these documents, as are the consequences of failing to meet them. Unfortunately, despite the clarity of those expectations our review showed that bullying, discrimination, harassment, vilification and victimisation was experienced across all levels of the NSWPF with women most likely to be the target. It is not uncommon that organisations experience such issues, despite clear policy statements condemning such conduct. The policies and procedures that govern conduct in the workplace are an important first step in managing workplace equity matters as they define what is considered acceptable and unacceptable behaviour in the workplace. They also reinforce the standards expected of employees. However, these policies and procedures will carry little weight if the NSWPF response to their violation is perceived as weak, inconsistent or inadequate. In instances where officers engage in workplace equity matters it is important that the NSWPF intervenes early to reassure all of its employees that bullying, harassment and discrimination is not being tolerated in the workplace, regardless of the rank or the seniority of the perpetrator. Ultimately, the onus is on the NSWPF to provide a safe and ethical workplace to all its employees.

The NSWPF manages workplace equity matters predominantly through the complaints process. As discussed in section 4.3 while complaint data can provide some useful information about the nature of workplace equity complaints it has its limitations as an indicator of misconduct. As with many other types of police misconduct, the number of workplace equity matters reported is probably lower than that which occurs in local commands across the NSWPF and does not accurately reflect the extent of the problem.

Half of the subject officers of workplace equity complaints were of senior rank, including 14 inspectors, eight chief inspectors and six superintendents. Their alleged misconduct is incompatible with the high standard of behaviour that officers of that rank and experience are required to demonstrate.

Our review indicated that one out of every five complainants experienced physical and/or psychological consequences as a result of being the victim of workplace equity matters including mental distress, sleep disturbances, anxiety and depression. These health issues have a deleterious impact, both on the officers involved and more broadly the NSWPF. Affected employees may need to take sick leave, may be less productive or leave the NSWPF altogether. Unhappy workplaces breed low staff morale, and this can affect many employees beyond those directly involved in any conflict. The NSWPF bears the cost of losing highly trained staff to illness or who exit the job, and claims under workers compensation may lead to higher insurance premiums for the State.

The Commission's review also showed that the majority of investigations into workplace equity matters exceeded the recommended timeframes set by the NSWPF. Resolving complaints should take 90 days for evidence-based investigations and 45 days for less serious matters. It is important that investigations into workplace equity matters are completed in a timely manner to ensure that conflict among staff is resolved as quickly as possible and the workplace is free of harmful behaviour.

Our review also found that a third of subject officers had previously been investigated for workplace equity matters. This finding seems to indicate that previous NSWPF management action and/or intervention strategies had little or no impact on the behaviour of these officers. It remains unclear why officers who have previously been sanctioned for workplace equity matters continue to engage in this type of misconduct. One reason may be that previous management action was insufficient to deter officers from engaging in workplace equity matters or, with the passage of time, some officers revert back to 'old habits'. The Commission considers that the rate of recidivism among officers is an important measure of how well the NSWPF is able to manage officers who have engaged in previous misconduct,

including workplace equity matters. There may be merit in conducting additional research into the causes of reoffending by some officers.

The Commission's review identified a number of IPCs who were reluctant to report officers who had engaged in this type of misconduct because they either had no confidence in the NSWPF complaints process, feared reprisals, or believed that there were few or no consequences for the perpetrators. Creating and maintaining a safe, inclusive and respectful workplace requires, among other things, that all employees understand what behaviour falls into the category of a 'workplace equity matter'. Additionally, to maintain a safe, inclusive and respectful workplace, it is necessary that organisational consequences are enforced for officers who are in breach of the expected norms.

It is hoped that the findings and recommendations published in this report assist the NSWPF to improve compliance with the Respectful Workplace Behaviours Guidelines to provide a safe and productive workplace for its employees, free of harassment, bullying and discrimination.

Another objective of the Commission's review was to go beyond the complaints process and its stated limitations and assess two additional NSWPF processes – workplace reviews and trend analysis – that provide a more holistic view of issues, conflicts and trends within the NSWPF.

While workplace reviews appear to be an effective means of exploring issues within commands, the lack of some records impacted on our ability to properly assess the effectiveness of the Workplace Review Process and whether strategies recommended in workplace review reports were implemented. The Commission also notes it was difficult to see how trend analysis has been effectively utilised by the NSWPF to identify the triggers for workplace equity matters.

It is hoped that the proposed changes to the management of misconduct matters will bring improvements to the identification and timely resolution of workplace equity matters, and assist in maintaining a safe and productive workplace for its employees, free of harassment, bullying and discrimination.

APPENDIX A

WHAT CONSTITUTES WORKPLACE BULLYING?

Workplace bullying is repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety.¹⁵³

Examples of bullying behaviour may include but is not limited to:

- abusive, insulting or offensive language or comments
- aggressive and intimidating conduct
- belittling or humiliating comments
- being subjected to practical jokes
- unjustified criticism
- deliberately excluding or isolating employees
- withholding information that is necessary for effective work performance
- setting unreasonable timeframes or constantly changing deadlines
- setting tasks that are unreasonably below or beyond a person's skill level
- denying access to information, supervision, consultation or resource to the detriment of the worker
- spreading misinformation or malicious rumours
- changing work arrangements such as rosters and leave to deliberately inconvenience a particular group.¹⁵⁴

What is not considered workplace bullying?

- Reasonable management action, including but not limited to:
- Setting reasonable performance goals, standards and deadlines
- Rostering and allocating working hours where the requirements are reasonable
- Not selecting an employee for a development opportunity where a reasonable process has been followed
- Informing an employee about unsatisfactory work performance in an honest, fair and constructive way
- Implementing organisational changes or restructuring
- Disciplinary action, including suspension or terminating employment.¹⁵⁵

¹⁵³ NSW Police Force *Respectful Workplace Behaviours Guidelines*, Workplace Relations & Equity Unit, Human Resources, December 2016, p. 10. This definition is based on the national definition in Safe Work Australia's publication - *Dealing with Workplace Bullying - A Workers' Guide*, May 2016, p. 4.

¹⁵⁴ NSW Police Force *Respectful Workplace Behaviours Guidelines*, Workplace Relations & Equity Unit, Human Resources, December 2016, December 2016, pp. 10-11.

¹⁵⁵ Email to all staff at a regional command from Region Commander, 18 May 2018.

WHAT CONSTITUTES DISCRIMINATION?

Discrimination occurs when a person is treated less favourably than another person or group because of one of the following characteristics: Sex, race, age, marital or domestic status, homosexuality, disability, transgender status, or carer's responsibilities.¹⁵⁶

WHAT CONSTITUTES HARASSMENT (INCLUDING SEXUAL HARASSMENT?)

Harassment is unwelcome under both State and Commonwealth legislation if:

- it is unwelcome, uninvited or unreciprocated; and
- a reasonable person would anticipate that the recipient would be offended, humiliated, intimidated; and
- it is either sexual in nature or targets a person on a discriminatory ground.

The Guidelines further state that harassment 'can occur regardless of whether or not a person intended to harass another person'.¹⁵⁷

WHAT CONSTITUTES VILIFICATION?

Vilification occurs where by public act, a person incites hatred towards, serious contempt for, or severe ridicule of a person or groups of persons because of race, colour, nationality, descent, ethno-religious or national origin; homosexuality; HIV or AIDS status; or transgender status.¹⁵⁸

WHAT CONSTITUTES VICTIMISATION?

Victimisation occurs where a person is subject to a detriment in retaliation for some action they have taken, or intend to take, or have helped someone else take, in relation to a complaint of harassment, discrimination, bullying, vilification or victimisation. This includes people who have agreed to be witnesses in relation to a person's complaint.¹⁵⁹

¹⁵⁶ NSW Police Force *Respectful Workplace Behaviours Guidelines*, Workplace Relations & Equity Unit, Human Resources, December 2016, December 2016, p. 12.

¹⁵⁷ *Ibid*, p. 14.

¹⁵⁸ *Ibid*, pp. 14-15.

¹⁵⁹ *Ibid*, p. 15.

GLOSSARY

GLOSSARY	DISCRIPTION
CAP	Commissioner's Advisory Panel
CET	Commissioner's Executive Team
CMT	Complaint Management Team
IAPro	NSW Police Force complaints system
ICF	Inter Command Forum
IPC	Internal police complainant
IRC	Industrial Relations Commission
IRMP	Interim risk management plan
IRP	Internal Review Panel
MARA	Misconduct Matter Allocation Risk Appraisal
MROR	Mandatory Resolution Outcome Report
MSU	Management Support Unit
OIC	Officer in charge
PAC	Police area command
PD	Police district
PSC	Professional Standards Command
RA	Request for assistance
SMT	Senior Management Team
TAU	Trend Analysis Unit
WAAP	Workplace Relations and Equity Unit Advice Panel
WREU	Workplace Relations Equity Unit
WRR	Workplace review report

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