

# LECC

Law Enforcement  
Conduct Commission

## Review of the effectiveness of NSW Police Force Conduct Management Plans

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October 2021

# LECC

## Law Enforcement Conduct Commission

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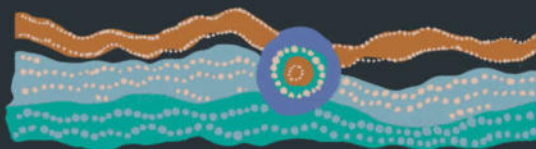
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ISBN 978-1-74003-035-9

The Law Enforcement Conduct Commission acknowledges and pays respect to the Traditional Owners and Custodians of the lands on which we work, and recognises their continuing connection to the lands and waters of NSW. We pay our respects to the people, the cultures, and the Elders past and present.



## Office of Commissioner

26 October 2021

The Hon Matthew Ryan Mason-Cox MLC  
President  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

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

Dear Mr President and Mr Speaker

In accordance with section 138 of the *Law Enforcement Conduct Commission Act 2016* (the Act), the Commission hereby furnishes to you its report entitled:  
*Review of the effectiveness of NSW Police Force Conduct Management Plans.*

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

Yours sincerely,



The Hon Lea Drake  
Commissioner

# Foreword

The NSW Police Force has a broad range of management action responses to address officer misconduct. Their main objective is to modify and improve the performance of its officers in instances where they have engaged in conduct that is contrary to NSW Police Force policies and procedures. Conduct Management Plans are a framework designed to support the implementation of management action in the workplace.

In 2020 the Commission commenced a project which reviewed the effectiveness of NSW Police Force Conduct Management Plans to modify the conduct of officers who have engaged in misconduct. Our project involved a review of all officers who were placed on a Conduct Management Plan between 1 January 2017 and 1 January 2018.

Our review found that some officers continued to engage in misconduct after having successfully completed one, or several, Conduct Management Plans. Some officers engaged in similar misconduct while they were still on a Conduct Management Plan. This is of particular concern as one of the key strategies of a Conduct Management Plan involves close monitoring and supervision of an officer by two senior officers.

As a result of our review the Commission has made ten recommendations to the NSW Police Force. In particular, the Commission considers that improving the timely implementation of Conduct Management Plans and proper record keeping practices are key to improving the effectiveness of Conduct Management Plans.

Nonetheless, the Commission is concerned that any disciplinary process, by itself, will not be enough to eliminate misconduct or poor performance by NSW Police Force officers. Our review has shown that Conduct Management Plans do not deter all officers from engaging in misconduct. The NSW Police Force has recently implemented major changes to the way it manages and addresses misconduct matters, which are underpinned by a focus on remediating officers rather than penalising them, particularly for failures to follow policy. Given how recently these changes have been implemented, we have not yet reviewed them to assess how, or if, they will improve the effectiveness of Conduct Management Plans or repeat officer misconduct.

The Commission would like to thank the NSW Police Force for the collaborative approach applied throughout this project and for its readiness to engage in ongoing and productive dialogue to progress change.



The Hon Leanne Drake  
Commissioner

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# 1. Our review

The NSW Police Force (NSWPF) has a wide range of supervisory or managerial responses to manage conduct issues affecting police officers in the workplace. These responses are referred to as ‘management action’. The type of management action the NSWPF can take against officers can vary greatly and is determined by the type and seriousness of the conduct that occurred. The primary purpose of NSWPF management action is to help address misconduct<sup>1</sup>, to hold officers accountable for their actions and to ensure they act in accordance with NSWPF policies, procedures, values and expectations.

Conduct Management Plans (CMPs) are a framework designed to support the implementation of management action in the workplace. Conduct Management Plans can be used to address sustained findings from a complaint investigation (conduct issues) or a pattern of behaviour observed over a period of time through daily management (performance issues).<sup>2</sup>

This Commission’s report deals **only** with CMPs that have been implemented to respond to sustained findings of misconduct arising from complaints. Any reference to a CMP in this report refers only to this category of CMP.

The main purpose of misconduct related CMPs is to assist the NSWPF to modify the behaviour of officers who have engaged in misconduct and to provide a level of heightened supervision, reporting and feedback to ensure the appropriate standard of conduct is upheld. The critical component of a CMP is monitoring the involved officer<sup>3</sup> against specifically tailored strategies to achieve this purpose.

The Law Enforcement Conduct Commission (the Commission) conducted a review of 168 involved officers who have been placed on a CMP between 1 January 2017 and 1 January 2018. The objectives of its review were to –

1. examine compliance by the NSWPF with the NSW Police Force *Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019;
2. identify the primary reasons why involved officers were placed on a CMP and whether they had previously been placed on a CMP;
3. gauge the effectiveness of CMPs in preventing further misconduct; and
4. make recommendations to the NSWPF to improve the effectiveness of their CMP procedures.

This report presents the findings of the Commission’s review and ten recommendations to assist the NSWPF in strengthening its CMP procedures.

While this report was finalised in October 2021, our analysis of officer complaint histories and the strategies employed by the NSWPF to address officer misconduct presented in this report concluded in early August 2021. Any changes to the complaint histories or management strategies after August 2021 have not been captured by this review.

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<sup>1</sup> The *NSW Police Force Management Action Guidelines*, Professional Standards Command, May 2019, use the terms misconduct, inappropriate conduct or undesirable course of conduct to describe behaviour that can lead to management action. *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, also refer to ‘misconduct’. For consistency purposes, the Commission has adopted the term ‘misconduct’ throughout this report.

<sup>2</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 5.

<sup>3</sup> The NSWPF refers to officers who have been placed on a CMP as ‘involved officer’. The Commission has adopted this term throughout this report when referring to officers who have been placed on a CMP.

## 1.1 Summary of review findings

Our review established the following –

- Over 80% of involved officers were of the rank of constable or senior constable.
- For 66% of matters the Commission was unable to locate any documents on IAPro to confirm whether an involved officer had satisfied all of their CMP strategies, however the NSWPF informs the Commission that it expects such documents to be held in an officer's Personnel file. Record management for CMPs is discussed further in Chapter 3.
- One in five involved officers (21%) had previously been placed on a CMP before 1 January 2017 – 1 January 2018.
- Seventy involved officers (42%) were the subject of subsequent further sustained<sup>4</sup> findings from complaints.
- Fifty-one CMPs (30%) were implemented between one year and three years after a complaint had been received and assessed by the NSWPF.
- No conflict of interest declarations by the plan supervisor and the reviewing officer were located in any of the 168 CMPs reviewed.
- Nearly a quarter of involved officers (24%) are no longer employed with the NSWPF.

## 1.2 NSW Police Force management action

The purpose of a disciplinary system within a professional organisation is to protect the public, to maintain proper standards of conduct and to protect the reputation of the organisation. It is not to punish.<sup>5</sup>

The primary purpose of NSWPF management action is to hold officers accountable for their actions, to modify their conduct and to prevent similar conduct arising in the future. However, the NSWPF recognises the need for flexibility in dealing with behaviour by its officers both while they are on and off duty. The NSWPF determines whether an issue is conduct or performance based before it takes any management action. The *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, (CMP Guidelines) define the difference between conduct and performance as follows –

The line between conduct and performance issues is often a fine one.

The real difference is the extent to which an officer deliberately failed to do what he or she knew was expected. If so, the failure may be characterised as a conduct issue.

However, to the extent that an officer's actions arise out of incompetence, mistake or poor judgement or lack of understanding of proper procedures, the matter is really a performance issue.<sup>6</sup>

The NSWPF uses two broad types of management action with respect to police officer misconduct or unsatisfactory performance. These are set out in Part 9 of the *Police Act 1990* –

1. non-reviewable action; and
2. reviewable and appealable action.

Non-reviewable action comprises remedial action which is primarily used for performance-based issues and corrective action which is primarily used for conduct-based issues. Non-reviewable action includes coaching, mentoring, training and development, counselling,

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<sup>4</sup> In the NSWPF a sustained finding means that the allegations are true by a majority of the evidence gathered during the investigation and the conduct at issue is a violation of NSWPF policies and procedures.

<sup>5</sup> The Wood Report - *Royal Commission into the New South Wales Police Service, Final Report, Volume II: Reform*, Sydney, May 1997, para 4.15., p. 310.

<sup>6</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, pp. 5-6.



reprimand, warning, non-disciplinary transfer, restricted duties, change of shift and performance enhancement agreements.<sup>7</sup> There is no avenue of appeal to the New South Wales Industrial Relations Commission (IRC) for this type of management action. However, non-reviewable action can be reviewed by the next level of command.<sup>8</sup>

Reviewable action that the Commissioner of Police (CoP) may take with respect to a police officer who engages in misconduct includes a reduction of the police officer's rank or grade, a reduction of the police officer's seniority, a deferral of the police officer's salary increment and any other action (other than dismissal or the imposition of a fine) that the CoP considers appropriate.<sup>9</sup>

The reviewable action process does not result in termination of employment. The CoP is the only person who has the authority to dismiss an officer if the 'Commissioner does not have confidence in the police officer's suitability to continue as a police officer, having regard to the police officer's competence, integrity, performance or conduct'.<sup>10</sup>

Officers have a right of appeal against reviewable action and a no confidence dismissal to the IRC on the basis that the action is 'harsh, unreasonable or unjust'.<sup>11</sup>

### 1.2.1 What is a Conduct Management Plan?

The CMP Guidelines define a CMP as follows —

A CMP is a formal document with specific strategies aimed at addressing conduct relating to a specific officer identified and supported by commanders or managers.

The objective is to assist the officer to modify their behaviour to an appropriate standard through implementing strategies inclusive of supervision, providing timely feedback and reporting progress to the officer.<sup>12</sup>

Conduct Management Plans can only be used for sworn officers.<sup>13</sup>

The NSWPF Management Action Guidelines state that the use of a CMP 'should support other management action being taken with the involved officer'.<sup>14</sup>

One of the critical components of a successful implementation of a CMP is that the involved officer receives ongoing monitoring, guidance and feedback for the duration of the CMP, which, under the existing CMP Guidelines is generally between three to six months.<sup>15</sup> The

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<sup>7</sup> The full list of non-reviewable action is listed in Schedule 1 of the *Police Act 1990* (NSW). Refer to Appendix A for a complete list of all non-reviewable NSWPF management action.

<sup>8</sup> *NSW Police Force Management Action Guidelines*, Professional Standards Command, May 2019, p. 7.

<sup>9</sup> *Police Act 1990* (NSW) s 173(2).

<sup>10</sup> *Police Act 1990* (NSW) s 181D.

<sup>11</sup> *Police Act 1990* (NSW) ss 174(1) and 181E(1).

<sup>12</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 6.

<sup>13</sup> Misconduct matters for unsworn employees (e.g. administrative officers, temporary and ministerial employees) fall under the delegated authority of the Administrative Officer Conduct Unit, Professional Standards Command. (*NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 5.)

<sup>14</sup> *NSW Police Force Management Action Guidelines*, Professional Standards Command, May 2019, p. 22.

<sup>15</sup> The NSW Police Force has advised the Commission it is reviewing the CMP Guidelines, and the revised Guidelines will not specify a timeframe or duration for CMPs. (Letter from Commander, Management Action and Workplace Services, Professional Standards Command, NSW Police Force, to Manager Prevention, Law Enforcement Conduct Commission, 22 July 2021).

NSWPF nominates two senior officers to fulfil these functions: the plan supervisor<sup>16</sup> and the reviewing officer. Their functions are discussed in more detail in section 3.3.2 of this report.

While the Complaint Management Team<sup>17</sup> (CMT) develops CMP strategies for an involved officer, the commander, or an officer acting in that position, must approve all CMP strategies before they are developed and implemented.<sup>18</sup> Conduct Management Plan strategies can be drawn from Schedule 1 Non-reviewable action of the Police Act.<sup>19</sup> Appendix A includes Schedule 1 Non-reviewable action of the Police Act.

A CMP contains specific requirements in relation to its implementation, monitoring of the involved officer and finalisation. These requirements will be discussed in more detail in Chapter 3 of this report.

As mentioned, the primary focus of a CMP is to modify an involved officer's conduct to ensure it meets the requirements, expectations and values of the NSWPF and to reduce the likelihood of involved officers engaging in future misconduct.<sup>20</sup> To gauge the effectiveness of CMPs in deterring future officer misconduct the Commission reviewed the complaints history of all involved officers, dating back to 2010, to find out if these officers had previously been placed on a CMP and whether they continued to be investigated for misconduct after having satisfied all of their previous CMP strategies.

While there is a large body of research on police disciplinary systems, and their failure to deter police misconduct,<sup>21</sup> few studies have examined the effectiveness of disciplinary actions to reduce police misconduct and whether officers who are formally disciplined for misconduct are deterred from engaging in future misconduct.<sup>22</sup> The Commission will refer to some of the existing research throughout this report.

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<sup>16</sup> The CMP Guidelines were reviewed and updated in July 2019. Prior to that review the plan supervisor was referred to as the 'mentor'. For consistency purposes the Commission has used the term plan supervisor throughout this report. (Letter from A/Assistant Commissioner, Professional Standards Command, NSW Police Force, to Executive Director Operations, Law Enforcement Conduct Commission, 8 December 2020, p. 6.).

<sup>17</sup> Complaint Management Teams 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) and 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)

<sup>18</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 10.

<sup>19</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 10.

<sup>20</sup> This is also consistent with findings of the Wood Royal Commission into the New South Wales Police Service, Interim Report February 1996, p. 62 which stated that the objectives of a police disciplinary system are to, among other things: 'assist members to modify and correct unsatisfactory behaviour'.

<sup>21</sup> Walker, S. (2005) *The new world of police accountability*. Thousand Oaks, CA: SAGE. Stephens, D.W. (2011) *Police Discipline: A Case for Change*, New Perspectives in Policing, Harvard Kennedy School, Program in Criminal Justice Policy and Management.

<sup>22</sup> Harris, C.J., & Worden, R. E. (2014) The Effect of Sanctions on Police Misconduct, *Crime and Delinquency*, Vol 60(8), pp. 1258-1288. Reynolds, P. D., & Helfers, R. C. (2018) Do disciplinary matrices moderate the effects of prior disciplinary actions on perceived organizational support (POS) among police officers? *International Journal of Police Science & Management*, 20(4), 272-283.

## 2. Methodology

The Commission conducted this review pursuant to section 27 of the *Law Enforcement Conduct Commission Act 2016* (LECC Act).

Section 27 of the LECC Act confers on the Commission administrative functions relating to education and prevention of officer misconduct. These functions give the Commission the capacity to assess and make recommendations about programs and procedures that the NSWPF has in place to deal with officer misconduct or maladministration, and agency maladministration, including programs and procedures to prevent such misconduct or maladministration, or which educate the staff of the NSWPF about such misconduct or maladministration.<sup>23</sup>

To assess the effectiveness of CMPs in modifying officer conduct, our review drew from a range of NSWPF sources.

These included –

- a) NSWPF policies and procedures;
- b) consultation with the NSWPF; and,
- c) NSWPF records.

### 2.1 NSW Police Force policies and procedures

The key NSWPF document that assists commands to determine the difference between conduct and performance, to identify when a CMP can be used and how to develop, implement and finalise a CMP are the CMP Guidelines.

The CMP Guidelines have recently been the subject of a comprehensive review by the NSWPF. At the time of publication of this report, revised guidelines have been drafted, but not yet finalised. The NSWPF advised the Commission that the findings of the Commission's review will be taken 'into consideration in the finalisation of the CMP guidelines prior to publication'.<sup>24</sup> The Commission has not been provided with a copy of the draft revised CMP Guidelines.

The Commission has also reviewed the NSW Police Force *Management Action Guidelines* which provide instructions for commanders and members of CMTs for implementing reviewable and non-reviewable management action for police officers.

### 2.2 Consultation with the NSW Police Force

Ongoing consultation with the NSWPF formed an important part of the Commission's review. In November 2020 the Commission contacted the NSWPF Professional Standards Command (PSC) and sought clarification in relation to some of its CMP processes and procedures. The NSWPF provided the Commission with a written response in early December 2020.

In mid-December 2020 Commission staff met with members of the PSC to discuss CMP systems, processes and procedures.

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<sup>23</sup> Section 27 of the LECC Act gives the Commission the same functions with regard to the NSW Crime Commission.

<sup>24</sup> Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner for Integrity, Law Enforcement Conduct Commission, 16 July 2021, p. 1.

Between December 2020 and January 2021 the Commission liaised on a regular basis with the NSWPF to seek further clarification and advice in relation to its CMP processes.

In mid-March 2021 Commission staff met with members of the PSC to discuss the Commission's preliminary findings and to explore some possible strategies to improve the effectiveness of CMPs in modifying the conduct of some involved officers who continue to engage in misconduct after having completed a CMP.

## 2.3 NSW Police Force records

The Commission conducted a search on IAPro, the NSWPF misconduct matters information system, for all officers who had been placed on a CMP between 1 January 2017 and 1 January 2018 (noting that the Commission's review only considered CMPs relating to conduct issues).<sup>25</sup> A total of 168 involved officers met the Commission's criteria and were selected for review. Our review included all involved officers who had been placed on a CMP in 2016 and completed it in 2017 or who had been placed on a CMP in 2017 and completed it in 2018.

For each of the 168 involved officers the Commission reviewed the final evidence-based investigation report<sup>26</sup> or Mandatory Resolution Outcome Report (MROR),<sup>27</sup> followed by a review of the CMP, monthly progress reports, chronology and Warning Notices, where available. For some matters we also reviewed CMT minutes and status reports to clarify outstanding queries, such as reasons for any delay in implementing a CMP or other types of management action that had been implemented.

The Commission also reviewed each involved officer's complaints history<sup>28</sup> to ascertain if they had previously been placed on a CMP and whether they continued to engage in misconduct after the completion of the CMP.

## 2.4 Consultation with the Police Association of NSW

The Commission provided the Police Association of NSW (PANSW) with a copy of the draft report for their consideration and comment. The PANSW supported proposed recommendations 1, 2, 3, 6, 10 and aspects of recommendation 5. It also indicated it supported the general thrust of recommendations 8 and 9. Relevant comments from the PANSW are included in the body of the report.

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<sup>25</sup> Section 129(1) of the *Police Act 1990* requires misconduct information to be registered in the misconduct matters information system.

<sup>26</sup> 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.

<sup>27</sup> Matters referred for resolution do not typically warrant the formality, complexity and authoritative decision-making associated with evidence-based investigations.

<sup>28</sup> Our review of complaints dated back to 2010. Complaints prior to 2010 were not reviewed.

# 3. Review findings

This chapter outlines the findings of the Commission’s review of 168 involved officers who were on a CMP between 1 January 2017 and 1 January 2018.

## 3.1 Classifications and allegations

Section 129(1) of the Police Act stipulates that ‘all police complaints, administrative employee complaints and agency complaints about the NSW Police Force received by the Commissioner and the LECC’ must be registered in the misconduct matters information system. The current NSWPF misconduct matters information system is called IPro.<sup>29</sup>

IPro is divided into broad classifications and each classification includes a number of allegations.<sup>30</sup> By way of example, customer service is a classification which comprises the following allegations –

- fail to take appropriate action – fail to investigate;
- fail to take appropriate action – fail to provide progress (on matter);
- fail to be accessible – customer discrimination;
- fail to keep informed – fail to contact;
- unprofessional conduct – disrespectful behaviour; and
- customer service not provided.<sup>31</sup>

Within IPro, one complaint can involve multiple allegations and each allegation can involve multiple officers. Each officer can have different findings recorded against them. The Commission’s findings have been adjusted accordingly.

Prior to the implementation of IPro the NSWPF used a system called c@ts.i, which had its own classification list. Where necessary the Commission tried, as far as possible, to match the classifications of these two systems. For some matters, the Commission relied on previous c@ts.i classifications, such as ‘misconduct’, ‘corruption/misuse of office’ and ‘other criminal act or omission (not elsewhere specified)’ which are not listed in the current IPro Allegation List.

Some of the 168 involved officers considered by the Commission were the subject of more than one complaint.<sup>32</sup> In total the NSWPF investigated 206 complaints which resulted in 533 sustained findings. Appendix B provides a comprehensive overview of the classifications, allegations and number of involved officers.<sup>33</sup>

Table 1 provides a summary of the classifications, number of involved officers and number of sustained findings for the complaints against the 168 involved officers.

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<sup>29</sup> IPro came into force in May 2018.

<sup>30</sup> In April 2018 IPro replaced c@ts.i. This change of systems led to a change in terminology. Whereas c@ts.i referred to ‘issues’ IPro refers to ‘allegations’. (Letter from A/Assistant Commissioner, Professional Standards Command, NSW Police Force, to Executive Director Operations, Law Enforcement Conduct Commission, 8 December 2020, p. 4.). For ease of reference, the Commission used the term allegation when referring to complaints throughout this report.

<sup>31</sup> IPro Allegations List May 2020, p. 2.

<sup>32</sup> Some involved officers were investigated as a result of several complaints in close proximity to each other. In these circumstances the NSWPF developed and implemented one CMP to address sustained misconduct in a number of complaints (s 3.3.7 refers). The NSWPF conducted 102 evidence-based investigations and 104 MRORs.

<sup>33</sup> As mentioned one complaint may include multiple allegations which means that one involved officer may have three different sustained findings for allegations within one IPro classification. The Commission’s results in relation to involved officer numbers in Appendix B reflect this.

Table 1: Classifications, number of involved officers and number of sustained findings

IAPro Classification	Number of involved officers	Number of sustained findings
<i>Service Standards/Ethical Standards/Guidelines</i>	102	266
<i>Customer Service</i>	48	63
<i>Investigation</i>	30	46
<i>Dishonesty</i>	22	29
<i>Judicial/Evidence</i>	19	30
<i>Information/Telecommunication</i>	14	26
<i>Workplace Relations Equity matters</i>	14	23
<i>Police Powers</i>	9	13
<i>Use of Force</i>	8	12
<i>Other Criminal Act or omission (not elsewhere specified)</i>	7	9
<i>Traffic</i>	6	6
<i>Misconduct</i>	4	4
<i>Corruption/misuse of office</i>	3	4
<i>Other offences (not elsewhere specified)</i>	1	1
<i>Drugs/Alcohol</i>	1	1

The majority of sustained findings related to the classification *Service Standards/Ethical Standards/Guidelines*. A total of 102 out of 168 involved officers (61%) fell within this classification, with 266 allegations being found sustained. The types of allegations ranged from failure to comply with NSWPF policies and procedures; unreasonable/unprofessional behaviour; failure to create records; neglect of duty; disobey reasonable direction; failure to provide duty of care to disposal/handling of property/exhibits and unauthorised use of service resources.

*Customer Service* represented the second highest category. Forty-eight involved officers were investigated for, among other things, failure to take appropriate action in investigations; unprofessional conduct; failure to be accessible; failure to keep victims or witnesses informed and failure to provide customer service.

The third highest classification related to *Investigations*. Thirty involved officers were investigated for failures to adequately investigate matters as required by NSWPF investigation procedures. As a result of these failures some investigations became statute barred or were dismissed at court.

Case study 1 describes the circumstances of an involved officer who had failed to adequately investigate two matters which were subsequently withdrawn prior to court hearing.

### Case study 1:

In April 2016 a senior constable at a regional command (involved officer) was the officer in charge (OIC) of a common assault matter. Four months into the investigation the NSWPF allocated a second officer (second OIC) to assist in the investigation. Due to the delay in completing the investigation, the second OIC sought for the matter to be withdrawn to prevent a failed prosecution. The police prosecutor agreed with this course of action and the charges were withdrawn. The NSWPF investigated the involved officer for conducting a deficient and inadequate investigation. The investigation resulted in a sustained finding.

Eight months later<sup>34</sup> the involved officer responded to a domestic violence incident and subsequently charged the offender with breaching an Apprehended Violence Order (AVO) and assault. The matter was listed before the Local Court for hearing in May 2017. The involved officer failed to complete and serve a brief of evidence and did not subpoena the victim to attend court. On the day of the court hearing the victim was unable to be located. As a result the court matter was withdrawn to avoid costs being awarded. The NSWPF investigated the involved officer for conducting an inadequate investigation and established that the involved officer was aware of the court date; failed to subpoena the victim and also failed to further clarify points determined by the prosecutor as critical for the outcome of the case. The investigation resulted in a sustained finding.

The involved officer was served with a Commander Warning Notice and was placed on a six month CMP for these two matters. The Commander Warning Notice stated that as a result of the involved officer's misconduct two matters were withdrawn prior to hearing as a result of insufficient evidence. Both of these investigations required basic investigations to be carried out to produce the required evidence. The involved officer's failure to adequately investigate these two matters in a timely manner resulted in two potential convictions for violent offences going unpunished.

Twenty-two involved officers were placed on a CMP for *Dishonesty* offences which included involved officers lying to investigators conducting enquiries; covering up inappropriate conduct and falsifying official records, such as COPS reports and statutory declarations.

Nineteen involved officers were investigated for *Judicial/Evidence* offences which included involved officers preparing and submitting inadequate or deficient briefs of evidence; failing to serve briefs of evidence; failing to attend court, or misleading the court and failing to subpoena or notifying witnesses of upcoming court dates.

Fourteen involved officers were investigated for *Information/Telecommunication* offences which included unauthorised access to information held in the Computerised Operational Policing System (COPS)<sup>35</sup> and improper disclosure of information held in COPS to persons not authorised to receive that information; accessing confidential information of persons that the involved officer had grievances against or convenience accesses by involved officers about themselves or others at their request. The misuse of police computer systems and confidential police information is a high risk issue as most of this information is sensitive and there are legal requirements that information obtained in the course of police work should be appropriately protected and only accessed or released for legitimate purposes. The release of confidential police information is particularly concerning as it can jeopardise police investigations and compromise the safety of citizens, the community and other police officers.

NSW Police Force employees who access confidential information<sup>36</sup> without authorisation to do so are in breach of s 308 of the *Crimes Act 1900* which stipulates that such accesses constitute an offence<sup>37</sup> and Clause 76 of the Police Regulation 2015 which instructs all members of the NSWPF to treat all information which comes to their knowledge in their official capacity

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<sup>34</sup> Even though the incidents occurred eight months apart, they only came to the attention of the NSWPF in April and June 2017 respectively and thus were investigated within one month of each other.

<sup>35</sup> COPS is an electronic data system where the NSWPF stores operational and intelligence information. COPS is the main repository for any information on persons, organisations, locations, objects and vehicles that come to the attention of NSW police officers during the performance of their duties. The only way information is created on COPS is when a report is created or updated.

<sup>36</sup> Confidential information is '**ALL** information which comes to the knowledge of a NSW Police Force employee in their official capacity'. Definition on NSWPF Intranet:

[http://intranet.police.nsw.gov.au/policy\\_and\\_procedures/confidential\\_info](http://intranet.police.nsw.gov.au/policy_and_procedures/confidential_info). Accessed on 6 November 2020.

<sup>37</sup> Depending on the seriousness of the access and the intentions of the persons conducting the unauthorised access this can result in an indictable offence or a summary offence.

with the strictest confidentiality and not use or disclose it without proper authority. These legislative requirements are also incorporated in the NSWPF Code of Conduct and Ethics.<sup>38</sup>

Fourteen involved officers were placed on a CMP for *Workplace Relations Equity Matters* which included bullying, harassment (including sexual harassment) and victimisation of other officers within the NSWPF.

Nine involved officers were placed on a CMP for misuse of *Police Powers* by failing to comply with the *Law Enforcement (Powers and Responsibilities) Act 2002* in relation to arrests and searches of persons. By way of example one involved officer failed to arrest a domestic violence offender and failed to record in the COPS event report that the victim held fears for her safety.

Eight involved officers were investigated for *Use of Force* offences, which included assault and use of force with a police appointment.<sup>39</sup>

Six involved officers were investigated for *Traffic* offences, which included drink driving; failure to follow NSWPF pursuit procedures and unnecessary speeding. One involved officer who tested positive at a road breath test was subsequently charged with offences of driving with a middle range prescribed concentration of alcohol and resist arrest. The involved officer pleaded guilty to both offences and was disqualified from driving for six months.

Four involved officers were investigated for *Misconduct* offences which included two involved officers being the subject of AVO proceedings; one involved officer failing to aid an injured person and one involved officer failing to report suspected misconduct.

Three involved officers were placed on a CMP for sustained findings from complaints within the classification *Corruption/Misuse of Office*. The breaches included failing to declare a conflict of interest; breaches of the declarable associations policy and one involved officer misusing his authority for his personal benefit.<sup>40</sup>

In summary, the acts of misconduct for which involved officers were placed on a CMP ranged widely, from failure to comply with NSWPF policies and procedures, unprofessional conduct (customer service related), failure to investigate, lying to investigators conducting enquiries, falsifying official records to improper disclosure of confidential police information, unreasonable use of force and theft.

## 3.2 Rank of involved officers

Our review found that the 168 involved officers held the following ranks –

- 101 (60%) senior constables
- 35 (21%) constables
- 18 sergeant
- seven leading senior constables
- four probationary constables
- two inspectors
- one chief inspector.

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<sup>38</sup> *NSW Police Force Code of Conduct and Ethics*, Part 9: 'An employee of the NSW Police Force must not make improper use of their position or NSW Police Force information or resources'.

<sup>39</sup> Police appointments include firearms, tasers, batons and defensive sprays.

<sup>40</sup> As mentioned one involved officer may be the subject of two sustained findings for two allegations within the same classifications. As recorded in Appendix B while there are three recorded involved officers, one of them was the subject of two sustained allegations.



In summary, the majority of involved officers (85%) held the rank of constable or senior constable.<sup>41</sup>

### 3.3 Conduct Management Plan

This section of the report provides an overview of NSWPF requirements for recording, developing, implementing and finalising a CMP and the results of the Commission's review of 168 involved officers who were placed on a CMP between 1 January 2017 and 1 January 2018.

#### 3.3.1 Recording of CMP

The CMP Guidelines state that where an involved officer is placed on a CMP as part of management action of a sustained finding from a Part 8A complaint investigation, a copy of the signed CMP should be attached to the relevant IAPro record. Recording the CMP on IAPro also goes towards satisfying the CoP's obligation under section 137(1)(b)(ii) of *the Police Act 1990* to provide the Commission with '... advice as to any action already taken, and as to the Commissioner's decision concerning any action to be taken, with respect to the misconduct matter'.<sup>42</sup>

The Commission sought advice from the NSWPF about when this requirement came into force. The NSWPF advised the Commission that amendments to the Police Act first appeared on 1 July 2017 and prior to that time it was common practice for CMPs to be recorded on an involved officer's personnel file.<sup>43</sup>

The Commission's review —

- located 153 CMPs (91%) on IAPro
- was unable to locate 15 CMPs on IAPro.<sup>44</sup>

Of the 15 CMPs that were not recorded on IAPro, nine commenced after 1 July 2017 and therefore should have been uploaded to IAPro. Six CMPs commenced prior to 1 July 2017 and, according to the NSWPF, these CMPs are likely to be recorded on those involved officer's personnel file. The Commission did not examine the personnel files of these officers.

Case study 2 describes the circumstances of a matter where due to a lack of relevant CMP records the Commission was unable to review the strategies the NSWPF had implemented to modify the conduct of the involved officer.

#### Case study 2:

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In early 2015 the involved officer who had been in the NSWPF for 13 years and held the rank of leading senior constable (LSC) was investigated for conducting an inadequate investigation into an attempted credit card fraud. The investigation resulted in a sustained finding and the commander recommended that the involved officer be placed on a three month CMP and be subject 'to stringent review of an appropriately appointed supervisor'. The commander further noted that failure to adhere to the provisions of the CMP would lead to the revocation of the involved officer's LSC status. The Commission was unable to locate any records on IAPro that provided information as to whether the involved officer had satisfied all of the CMP strategies.

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<sup>41</sup> This percentage includes 60% senior constables, 4% leading senior constables and 21% constables.

<sup>42</sup> Section 137 of the *Police Act 1990*. *NSW Police Force Conduct Management Plans - Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 14.

<sup>43</sup> Email from Manager, Management Support and Training Unit, Professional Standards Command, NSW Police Force, to Senior Project Officer, Law Enforcement Conduct Commission, 5 February 2020.

<sup>44</sup> In one matter the involved officer was medically discharged prior to the implementation of the CMP and no copy of the CMP was recorded on IAPro.

In late 2016 the involved officer was again investigated for conducting an inadequate investigation and a failure to create a COPS event report in relation to that matter. Both allegations were sustained and the involved officer was issued with a Commander Warning Notice in March 2017. The CMT minutes stated that the CMP was served on the involved officer one week prior to the Commander Warning Notice. The Commission was unable to locate a copy of the CMP on IAPro.

In the absence of any records pertaining to the involved officer's CMPs in 2015 and 2017 the Commission was unable to assess what strategies the NSWPF had implemented to modify the conduct of the involved officer and whether the involved officer had satisfied all of the CMP strategies. The Commission's review identified that in 2015 the involved officer held the rank of LSC; in 2017 the involved officer held the rank of senior constable. The Commission can only surmise that the involved officer had failed the strategies in the 2015 CMP. As stated by the commander at the time, 'failure to adhere to the provisions of the CMP will lead to the LSC status of the officer being revoked'.

### 3.3.2 Plan supervisor and reviewing officer

When an involved officer is placed on a CMP a two-tiered process of supervision is activated. This process, which is set out in the CMP Guidelines, requires the commander, or an officer acting in the position, to appoint a plan supervisor and a reviewing officer.

The first level of supervision is carried out by the nominated plan supervisor whose role it is to –

- meet regularly with the involved officer to provide ongoing advice, support, guidance and feedback for the duration of the CMP
- ensure that information collated is evidence based or where possible include examples of conduct that has been directly witnessed
- prepare reports that contain factual and evidence based observations which have been discussed with the involved officer and are free from personal opinion, rumour or comments that are not substantiated by individuals
- monitor the progress of the CMP
- address any issues recorded in the chronology with the involved officer and report on same to the reviewing officer.<sup>45</sup>

The plan supervisor has greater knowledge and experience than the involved officer and is generally higher in rank.<sup>46</sup> The plan supervisor plays a critical role in monitoring the involved officer against the strategies implemented in the CMP and in providing monthly updates on the progress of the involved officer. These monthly updates are recorded in monthly progress reports.<sup>47</sup>

The second level of supervision is carried out by a nominated reviewing officer whose role it is to oversee and review the progress of the involved officer based on the information contained within the monthly progress reports and other relevant information supplied by the plan supervisor and other management team members.<sup>48</sup> The reviewing officer is also required to

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<sup>45</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, pp. 11-12.

<sup>46</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 11.

<sup>47</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 15.

<sup>48</sup> The CMP Guidelines state that middle and senior managers should actively assist the plan supervisor in monitoring an involved officer. (*NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 12).

ensure that the command adheres to the CMP strategies and assist with any issues raised by the plan supervisor.<sup>49</sup>

The Commission's review located 152 CMPs that confirmed that the plan supervisor and the reviewing officer were of the appropriate rank to carry out their responsibilities. The majority of plan supervisors held the rank of sergeant;<sup>50</sup> the majority of reviewing officers held the rank of inspector; some held the rank of chief inspector or superintendent.

Of the remaining 16 CMPs the Commission —

- was unable to locate CMPs, monthly progress reports or any other records on IAPro for 13 matters;
- established that two CMPs were suspended but was unable to locate a CMP, monthly progress reports or any other records on IAPro for these two matters;
- located a copy of one unsigned CMP on IAPro which included no information in relation to the name or rank of the plan supervisor and the reviewing officer.<sup>51</sup>

### 3.3.3 Conflict of interest declarations

The CMP Guidelines state that the plan supervisor and the reviewing officer must confirm that they have no conflicts of interest which may impact on their suitability to carry out these roles. If a potential conflict of interest is identified with a nominated plan supervisor or reviewing officer the NSWPF either assesses the suitability of the officer to continue in the nominated role or selects another officer to perform the role.<sup>52</sup> The CMP Guidelines provide no specific advice regarding how and where the identification and management of conflicts of interest are to be recorded.

The Commission considers the requirement to declare, identify and manage conflicts of interest by the plan supervisor and reviewing officer to be applicable in all 168 CMPs. Given that the plan supervisor and the reviewing officer are generally from the same command as the involved officer the Commission expected to locate conflict of interest declarations on IAPro as these declarations provide assurance that the close supervision and monitoring of an involved officer was carried out in an independent, impartial and transparent manner.

The Commission sought to establish whether the plan supervisor and the reviewing officer had considered and/or declared conflicts of interest.

Our review found that none of the 168 CMPs documented any considerations of the identification, declaration and management of conflicts of interest by the plan supervisor and the reviewing officer on IAPro. The Commission contacted the NSWPF and requested copies of all conflict of interest declarations by the plan supervisor and the reviewing officer. The NSWPF advised the Commission:

As the current CMP does not clearly identify instances where a conflict of interest has been declared and managed, finding such examples will be difficult and time consuming, and

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<sup>49</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 12. The reviewing officer is ordinarily of higher rank and possesses the necessary skills to perform the requirements mentioned in the CMP Guidelines. In some instances, the reviewing officer may be the commander or manager. (Letter from A/Assistant Commissioner, Professional Standards Command, NSW Police Force, to Executive Director Operations, Law Enforcement Conduct Commission, 8 December 2020, p. 2).

<sup>50</sup> In matters where the involved officer held the rank of sergeant or above, the plan supervisor was of a higher rank.

<sup>51</sup> The involved officer had been medically discharged prior to the implementation of the CMP. NSWPF records stated that this CMP had not been implemented.

<sup>52</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 11.

...the CMP Guidelines are currently under review. PSC will include a specific section which will document how identified conflicts of interest are being managed.<sup>53</sup>

In the absence of specific guidance in the CMP Guidelines, the identification and management of potential conflicts of interest by the plan supervisor and the reviewing officer can be unreliable or inadequate and may impact on the successful completion of the CMP. Given the importance of upholding accountability, independence, transparency and impartiality when supervising and monitoring involved officers who have been placed on a CMP the Commission recommends that the NSWPF provides more specific advice in relation to their conflict of interest processes pertaining to CMPs.

**Recommendation 1:** It is recommended that NSW Police Force *Conduct Management Plans - Guidelines for Police Officers* specify that conflict of interest declarations by the plan supervisor and the reviewing officer must be documented and uploaded to IPro.

#### *NSW Police Force response*

The NSWPF advised it supported this recommendation, in principle.

The NSWPF advised that the draft revised CMP Guidelines provides clear instructions on the need to consider conflicts of interest when selecting a plan supervisor or reviewing officer and provides instructions on actions to be taken in the event that a conflict is identified or declared. Both the plan supervisor and reviewing officer are required to sign the CMP prior to its implementation.<sup>54</sup> The NSWPF also advised that the revised CMP template includes instructions to both the plan supervisor and the reviewing officer concerning the declaration of conflicts of interest, and a requirement that upon the signing of the document, neither officer has any undeclared conflicts.<sup>55</sup>

#### *Police Association of NSW response*

The PANSW supported Recommendation 1 stating that for involved officers to engage with a CMP they must have confidence that potential conflicts of interest in the selection of the plan supervisor and the reviewing officer are identified and avoided.<sup>56</sup>

### 3.3.4 Developing CMP strategies

As mentioned in section 1.2.1 the commander of the involved officer must approve all CMP strategies before they are developed and implemented.<sup>57</sup> The CMP Guidelines state that a CMP must include strategies that address all the identified conduct issues and modify the behaviour of the involved officer. The CMP Guidelines include a CMP template with a number of potential strategies.<sup>58</sup>

Each strategy will be in place for the duration of the CMP. At the conclusion of the CMP the plan supervisor and the reviewing officer conduct a review to consider whether the involved

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<sup>53</sup> Letter from A/Assistant Commissioner, Professional Standards Command, NSW Police Force, to Executive Director Operations, Law Enforcement Conduct Commission, 8 December 2020, p. 7.

<sup>54</sup> Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner for Integrity, Law Enforcement Conduct Commission, 16 July 2021, p. 4.

<sup>55</sup> Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner for Integrity, Law Enforcement Conduct Commission, 16 July 2021, p. 4.

<sup>56</sup> Letter from President, Police Association of NSW, to Commissioner, Law Enforcement Conduct Commission, 7 October 2021, p. 1.

<sup>57</sup> *NSW Police Force Conduct Management Plans - Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 10.

<sup>58</sup> *NSW Police Force Conduct Management Plans - Guidelines for Police Officers*, Professional Standards Command, Annexure 3: Example of a Conduct Management Plan, July 2019, pp. 22-26.

officer has satisfied all of the CMP strategies. If the involved officer has satisfied all of the CMP strategies, the CMP will conclude. If the involved officer has not satisfied all of the CMP strategies, the NSWPF may consider further management action.<sup>59</sup>

Of the 153 CMPs<sup>60</sup> that were located on IAPro our review found that all of them included specifically tailored strategies that addressed the misconduct identified in NSWPF investigations. The majority of CMPs included the following strategies —

- mentoring by a senior officer (plan supervisor);<sup>61</sup>
- reinforcing professional conduct, policy awareness and compliance;
- allocating different duties to the involved officer to ensure they are subject to a closer level of supervision and support;
- complaint, work performance and conduct monitoring; and
- the plan supervisor preparing written monthly progress reports to the reviewing officer for the duration of the plan in regards to an involved officer's conduct and professionalism.

Other strategies which were included in some, but not all CMPs, were —

- participation in training and development; and
- relocation of the involved officer to a different command for the duration of the CMP.

### 3.3.5 Signing a CMP

The CMP Guidelines state that the involved officer should read and sign the CMP. Their signature confirms that they understand the requirements of the CMP and that they have received a copy for their own records.<sup>62</sup> An involved officer is entitled to know the reasons for the strategies taken in the CMP and how they address the misconduct identified in the investigation.

In circumstances where an involved officer refuses to sign the CMP their commander, or an officer acting in the position, must first attempt to clarify the involved officer's concerns and explain the reasons for implementing the CMP, its requirements, and that it will be implemented regardless of whether the involved officer signs or refuses to sign it. The commander must then make a note on the CMP that the involved officer refused to sign it.<sup>63</sup>

The plan supervisor and the reviewing officer must also sign the CMP after the commander has explained their obligations to them.

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<sup>59</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 23.

<sup>60</sup> In section 3.3.2 of this report we stated that one CMP did not include the name or rank of the plan supervisor and reviewing officer and that the CMP had not been implemented. However, our review found that the CMP contained specifically tailored strategies to address the misconduct by the involved officer.

<sup>61</sup> This includes regular review meetings between the plan supervisor and the involved officer regarding the involved officer's progress for the review period and their adherence to the CMP strategies; specific examples of positive and negative behaviours/issues; reinforcement of expectations; references to relevant policies/legislation/guidelines and any issues that may affect the continuance of CMP strategies. (*NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, pp. 14-15).

<sup>62</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 13.

<sup>63</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 13.

The signature of the commander is an acknowledgement that they endorse the CMP and are prepared to support its implementation within their command.<sup>64</sup>

When all four parties have signed the CMP, the involved officer is told that the CMP has started and the strategies are in place.<sup>65</sup>

Of the 153 CMPs that were located on IAPro our review found —

- 128 CMPs (84%)<sup>66</sup> complied with the CMP Guidelines and included the signatures of the involved officer, the plan supervisor, the reviewing officer and the commander;
- 24 CMPs (16%) missed some of the required signatures;<sup>67</sup>
- one unsigned CMP.<sup>68</sup>

The Commission's review identified that there is a lack of guidance in the CMP Guidelines as to whose responsibility it is to attach records pertaining to a CMP to IAPro. While the CMP Guidelines state that it is the responsibility of the NSWPF to ensure that a copy of the signed CMP is recorded on IAPro, they do not specify who is responsible for attaching this document to IAPro. Clearer specification of the responsibility may increase record-keeping compliance.

**Recommendation 2:** It is recommended that NSW Police Force *Conduct Management Plans - Guidelines for Police Officers* specify who is responsible for attaching a copy of the signed CMP to IAPro in circumstances where a CMP is implemented in connection with a misconduct matter.

#### *NSW Police Force response*

The NSWPF response indicated support for this recommendation insofar as it applies to conduct related CMPs. Accordingly, the revised CMP Guidelines state:

“Where a CMP is entered into in connection with a misconduct matter, a copy of the signed CMP should be included in the relevant IAPro reference. It is the responsibility of the executive officer to upload this document to the relevant IAPro record. All ancillary documents are to be filed in the officer's personnel file”.<sup>69</sup>

#### *Police Association of NSW response*

The PANSW supported Recommendation 2 stating that making it clear ‘who has responsibility for the relevant procedural step can only operate to improve the general management and implementation of a CMP’.<sup>70</sup>

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<sup>64</sup> NSW Police Force *Conduct Management Plans - Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 13.

<sup>65</sup> NSW Police Force *Conduct Management Plans - Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 13.

<sup>66</sup> 153 CMPs represent 100% and 128 CMPs represent 84%.

<sup>67</sup> Seven CMPs did not include the signature of the plan supervisor and the reviewing officer; seven CMPs did not include the signature of the reviewing officer; seven CMPs did not include the signature of the plan supervisor; three involved officers refused to sign their CMPs and their commanders made a note on the CMP that the involved officers had refused to sign it.

<sup>68</sup> The involved officer was medically discharged prior to the implementation of the CMP.

<sup>69</sup> Letter from Commander, Management Action and Workplace Services, Professional Standards Command, NSW Police Force, to Manager Prevention, Law Enforcement Conduct Commission, 22 July 2021.

<sup>70</sup> Letter from President, Police Association of NSW, to Commissioner, Law Enforcement Conduct Commission, 7 October 2021, p. 1.

### 3.3.6 Duration of a CMP

The CMP Guidelines state that a CMP will ‘generally be in place for between three to six months’ and that the duration of a CMP ‘should not exceed 6 months’.<sup>71</sup>

Our review found —

- 93 CMPs (56%) were in place for six months;
- 54 CMPs (33%) were in place for three months;
- 15 CMPs were in place for 12 months;
- one CMP was in place for one month;
- one CMP was in place for four months;
- one CMP was in place for nine months; and
- for three CMPs there were no records on IAPro that provided information as to their duration.<sup>72</sup>

In summary the majority of CMPs (89%) were in place for between three to six months as recommended in the CMP Guidelines. Our review was unable to locate any records on IAPro that provided information why 18 CMPs (11%) exceeded or fell short of the recommended timeframes.

**Recommendation 3:** It is recommended that the NSW Police Force *Conduct Management Plans - Guidelines for Police Officers* be amended to include a statement that it is mandatory for commanders or managers to provide an explanation when a CMP exceeds the recommended timeframe or is less than the recommended timeframe.

#### *NSW Police Force response*

The NSWPF did not support this recommendation, and instead have changed the timeframe requirements in the revised CMP Guidelines. The NSWPF advised:

The revised CMP guidelines do not specify a time period for a CMP. Each matter must be assessed on its own merits and any timeframes associated with a CMP must be sufficient to ensure that strategies outlined within the CMP are able to be monitored and behavioural changes are able to be measured.<sup>73</sup>

The NSWPF further advised:

Commanders have the discretion to extend or reduce the timeframe of a CMP. This does not mean that CMPs will be implemented with open ended timeframes. It allows for flexibility and should ensure that CMPs are only in place for as long as is necessary.<sup>74</sup>

#### *Police Association of NSW response*

The PANSW supported Recommendation 3 and disagreed with the NSWPF’s decision to remove from the Guidelines the statement that a ‘CMP should not exceed 6 months’. The Association further stated:

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<sup>71</sup> NSW Police Force *Conduct Management Plans - Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 6 and p. 22.

<sup>72</sup> In section 3.1.3 of this report we reported that the Commission was unable to locate 15 CMPs on IAPro. Information as to the duration of a CMP can also be recorded in monthly progress reports, CMT minutes, evidence-based investigation reports or MRORs. As a result the Commission was able to determine the duration of a further 12 CMPs even though they were not uploaded to IAPro.

<sup>73</sup> Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner for Integrity, Law Enforcement Conduct Commission, 16 July 2021, p. 4.

<sup>74</sup> Letter from Commander, Management Action and Workplace Services, Professional Standards Command, NSW Police Force, to Manager Prevention, Law Enforcement Conduct Commission, 22 July 2021.

Frankly, it is difficult to conceive of a circumstance in which any corrective action should require more than 6 months of intrusive supervision (at least in the first instance). Any individual CMP must specify its intended duration from the outset, lest an involved officer face an open-ended CMP.<sup>75</sup>

### 3.3.7 Number of complaints linked to a CMP

The CMP Guidelines state that a CMP is implemented to 'manage and correct conduct relating to isolated incidents or ongoing patterns of sustained misconduct'.<sup>76</sup>

Our review of 168 CMPs found –

- 142 CMPs (84%) were implemented as a result of one complaint;
- 17 CMPs (10%) were implemented as a result of two complaints;
- seven CMPs were implemented as a result of three complaints;
- two CMPs were implemented as a result of four complaints; and
- one CMP was implemented as a result of six complaints.<sup>77</sup>

In summary, 27 involved officers were placed on a CMP for sustained findings in more than one complaint.

The following case study describes the circumstances of an involved officer who was on a six month CMP as a result of six complaints between October 2016 and June 2017 and who has failed to satisfy all of the CMP strategies.

#### Case study 3:

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The involved officer, a senior constable with over 20 years of experience, was investigated for six complaints between October 2016 and June 2017. Each of the six investigations resulted in a number of sustained findings. The majority of sustained findings related to the involved officer's failure to –

- follow basic investigative procedures;
- conduct adequate investigations;
- be impartial in investigating matters;
- follow lawful and reasonable directions;
- provide adequate customer service to members of the public;
- follow reasonable inquiries before disposing of exhibits; and
- create and maintain records on COPS regarding investigations.

The involved officer was placed on a six month CMP in December 2017 and issued with a Region Commander Warning Notice. In March 2018 the plan supervisor advised the command that the involved officer had failed all CMP strategies; had failed to display any improvements in any areas or shown any initiative to improve their situation. The plan supervisor expressed their concern that if the involved officer were allowed to continue in a fully operational capacity they would pose an unacceptable risk to the reputation of the NSWPF. The involved officer went on long-term sick leave four months into the six month CMP. The CMP was suspended and the involved officer resigned from the NSWPF in September 2018.

### 3.3.8 Monthly progress reports

The CMP Guidelines state that the plan supervisor is required to provide monthly progress reports that contain 'factual and evidence based observations which have been discussed with

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<sup>75</sup> Letter from President, Police Association of NSW, to Commissioner, Law Enforcement Conduct Commission, 7 October 2021, p. 1.

<sup>76</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 8.

<sup>77</sup> A total of 206 complaints are linked to the 168 CMPs reviewed.



the involved officer'.<sup>78</sup> The CMP Guidelines provide detailed instructions on the type of information that should be included in monthly progress reports, most notably —

- reports should be free from speculative opinion, bias and unsubstantiated claims
- reports should contain specific examples of positive and negative behaviours
- all matters discussed with the involved officer should be included in the report
- completed progress reports should be submitted to the reviewing officer for comment prior to their forwarding to the commander or manager etc.<sup>79</sup>

The CMP Guidelines state that 'there is no requirement to upload monthly progress reports onto IAPro as the ongoing management of the officer is being done under Part 9 of the *Police Act 1990*'.<sup>80</sup> The CMP Guidelines specify that a copy of the CMP, together with the accompanying monthly progress report must be kept in the involved officer's electronic personnel file.<sup>81</sup>

The Commission's review identified —

- 41 investigations (24%) had uploaded all applicable monthly progress reports to IAPro;
- 101 investigations (60%) had not uploaded any monthly progress reports to IAPro;<sup>82</sup> and
- 26 investigations had uploaded some, but not all, monthly progress reports to IAPro.

Even though the CMP Guidelines do not require monthly progress reports to be uploaded to IAPro the Commission considers that they should be uploaded to a centralised database. Monthly progress reports are a useful source of information for both the NSWPF and the Commission, and access to these reports facilitates oversight of the impact of CMPs on both individual officers and more generally, as a framework for dealing with the conduct of officers. Monthly progress reports track the successes and/or failures of an involved officer in meeting their CMP strategies and provide assurance to the NSWPF and external stakeholders that an officer with conduct issues is closely monitored and supervised by a more senior officer. Centralised records also increase accountability, and allow for trend analysis, both in terms of the success of CMP strategies and processes and the behaviours of involved officers. The Commission has found examples of matters where access to the monthly progress report would have assisted in the oversight of complaints – case study 2, above, is one such example.

**Recommendation 4:** It is recommended that the NSW Police Force ensures that the plan supervisor uploads all monthly progress reports to a centralised storage location accessible by the Commission in circumstances where a CMP is implemented in connection with a misconduct matter.

*NSW Police Force response*

The draft recommendation presented to the NSWPF was that the CMP Guidelines stipulate that monthly progress reports (relating to conduct based CMPs) be uploaded to IAPro, as this database is accessible by the Commission as well as centrally accessible by PSC.

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<sup>78</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 12.

<sup>79</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 15.

<sup>80</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 14.

<sup>81</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 16.

<sup>82</sup> Seven out of 101 CMPs had either been suspended or cancelled prior to their implementation.

The NSWPF did not support this approach as it considers that the monthly progress reports do not form part of the management action outcome for any associated misconduct matters' but relate to 'ongoing employee management'.<sup>83</sup> For this reason, the NSWPF considered that IAPro is not a suitable repository, and preferred that monthly progress reports be saved into an officer's personnel file.

#### *Police Association of NSW response*

While the PANSW did not support the view that all monthly progress reports should be uploaded to a centralised storage location it accepted that it would be appropriate to upload the final progress evaluation report, which confirms whether or not an officer has successfully completed their CMP strategies, to an officer's complaints history. The PANSW commented that the current practice of keeping monthly progress reports on an individual officer's personnel file should be maintained.<sup>84</sup>

The Commission considers that transparency of monthly progress reports is important for the assessment and oversight of misconduct matters. Failure to perform under a CMP is relevant when considering the original management action and may be relevant to consideration of responses to subsequent misconduct. After considering the NSWPF response, the Commission reframed the recommendation to allow for the identification of a suitable centralised database in which monthly progress reports can be stored to allow for access by the Commission and centrally within the NSWPF as needed for the oversight of responses to misconduct.

The Commission will work with the NSWPF to identify a suitable, centrally accessible database for the storage of monthly progress reports. Once it has been identified, the CMP Guidelines should clearly reflect where monthly progress reports will be expected to be saved.

### 3.3.9 Chronology

The CMP Guidelines refer to the use of an 'electronic chronology' by the plan supervisor to record 'day to day management interaction regarding issues or the progress of the involved officer' in meeting the CMP strategies.<sup>85</sup> In broad terms, the purpose of the chronology is to document the interaction between the plan supervisor and the involved officer and to collate this information to assist in identifying potential patterns of behaviour by the involved officer and to determine the appropriateness of CMP strategies.<sup>86</sup>

The plan supervisor is required to address any issues documented in the chronology with the involved officer and report those issues to the reviewing officer whose responsibility it is to respond to any issues raised by the plan supervisor.<sup>87</sup> The CMP Guidelines provide no advice as to where chronologies are to be recorded.

The Commission considers the requirement to maintain a chronology to be applicable in 165 out of 168 CMPs. In the three CMPs considered not applicable, two involved officers were medically discharged prior to the implementation of their CMP. In the third matter, the involved

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<sup>83</sup> Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner for Integrity, Law Enforcement Conduct Commission, 16 July 2021, p. 5.

<sup>84</sup> Letter from President, Police Association of NSW, to Commissioner, Law Enforcement Conduct Commission, 7 October 2021, p. 2.

<sup>85</sup> *NSW Police Force Conduct Management Plans - Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 11.

<sup>86</sup> *NSW Police Force Conduct Management Plans - Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 7.

<sup>87</sup> *NSW Police Force Conduct Management Plans - Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 12.

officer refused to sign the CMP and there are no further records on IAPro that explain how the NSWPF then proceeded in this matter.

Of the 165 applicable CMPs reviewed —

- for nine CMPs, records located on IAPro confirmed that the plan supervisor had maintained a chronology; and
- for 156 CMPs, the Commission was unable to locate any documents on IAPro that demonstrated whether or not the plan supervisor had maintained a chronology.

The CMP Guidelines do not specify if the use of a chronology by the plan supervisor is a mandatory requirement. The NSWPF should clarify its position in this regard. If it is mandatory, the Commission recommends that this is reflected in the CMP Guidelines.

**Recommendation 5:** It is recommended that NSW Police Force *Conduct Management Plans – Guidelines for Police Officers* be amended to specify where the chronology is to be recorded.

*NSW Police Force response*

The NSWPF did not support this recommendation. It advised:

The use of a chronology to record day to day management interactions is a suggested way of recording any exchanges between the supervising officer and the officer subject to the CMP but is not a mandatory requirement. The information recorded in a chronology (where used) would assist in the preparation of the monthly progress reports, which will be included in an officer's personnel (employment) file.<sup>88</sup>

The Commission remains of the view that increased specificity about how chronologies should be used and where they should be stored would increase the likelihood that such a useful tool is used, and potentially increase the effectiveness of CMPs.

*Police Association of NSW response*

While the PANSW did not fully support Recommendation 5 it did concur with the Commission's comments that the CMP Guidelines should be amended to clarify where chronologies ought to be stored if used. The PANSW suggested that the CMP Guidelines should also explicitly state that the use of an electronic chronology is not a mandatory requirement.<sup>89</sup>

### 3.3.10 Finalising a CMP

The CMP Guidelines specify that at the conclusion of the CMP the plan supervisor and the reviewing officer are required to make an assessment and recommendations as to whether the involved officer 'has satisfied all of the CMP strategies' and if 'their conduct is at the required level'.<sup>90</sup> Their assessment and recommendations are recorded in a final progress evaluation report which must be endorsed by the commander or manager of the involved officer.<sup>91</sup> The

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<sup>88</sup> Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner for Integrity, Law Enforcement Conduct Commission, 16 July 2021, p. 5.

<sup>89</sup> Letter from President, Police Association of NSW, to Commissioner, Law Enforcement Conduct Commission, 7 October 2021, p. 2.

<sup>90</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 15.

<sup>91</sup> The Commission sought clarification from the NSWPF in relation to the final progress evaluation report. The NSWPF advised the Commission that the final progress evaluation report is not a separate report; the outcome of an involved officer's CMP is to be recorded 'on the final monthly progress report'. (Letter from A/Assistant Commissioner, Professional Standards Command, NSW Police Force, to Executive Director Operations, Law Enforcement Conduct Commission, 8 December 2020, p. 8.).

CMP Guidelines state that the involved officer should be informed if they have ‘successfully met the CMP requirements’ before they complete the plan.<sup>92</sup>

If an involved officer fails to ‘meet CMP requirements’ a commander can consider further management action in the form of section 173 non-reviewable action, section 173 reviewable action or make recommendations that the CoP consider section 181D removal.<sup>93</sup>

The Commission considers the requirement to complete a final progress evaluation report to be applicable in 162 of the 168 CMPs. The remaining six CMPs were considered not applicable as two involved officers had resigned prior to the completion of their CMP; two involved officers were medically discharged prior to the completion of their CMP; one CMP was suspended prior to its completion and one involved officer refused to sign the CMP and there are no records on IAPro that explain how the NSWPF proceeded in regard to this involved officer.

Of the 162 applicable CMPs the Commission —

- located 45 final monthly progress reports on IAPro which included an assessment and recommendation by the plan supervisor and reviewing officer as to whether the involved officer had satisfied all of the CMP strategies;
- located one report which included an assessment and recommendation by a commander that the involved officer had satisfied all of the CMP strategies;<sup>94</sup> and
- was unable to locate 116 final progress evaluation reports (72%) on IAPro that provided information as to whether or not the involved officers had satisfied all of the CMP strategies.

In relation to the record keeping requirements for final progress evaluation reports the CMP Guidelines simply state that ‘a suitable notation should be made on command records that the involved officer has successfully met the CMP requirements’.<sup>95</sup> The CMP Guidelines do not specify what is meant by ‘command records’ and where these reports are to be kept.

The Commission considers the final progress evaluation report to be a key document that provides an assessment of the progress of the involved officer in meeting the strategies outlined in the CMP and recommendations by both the plan supervisor and the reviewing officer as to whether the involved officer has satisfied the strategies outlined in the CMP. As mentioned in section 3.3.8 there is no requirement to upload monthly progress reports to IAPro. Recommendation 4, above, is that all monthly progress reports, which would include the final progress evaluation report, are to be uploaded onto a centrally accessible database. In our draft report we suggested to NSWPF that the misconduct matters information system, IAPro, should house the monthly progress reports. However, the NSWPF has indicated that as there is no requirement within the Police Act to store this information onto that system, they opposed that suggestion. The Commission considers that if another centrally accessible database can be identified, that would be a suitable alternative to storage on IAPro.

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<sup>92</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 16.

<sup>93</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 16.

<sup>94</sup> In this matter, the involved officer was placed on a one month CMP. There was no nominated plan supervisor and the Commander of the involved officer was the reviewing officer.

<sup>95</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 16.

### 3.3.11 CMP outcome

When an involved officer reaches the end of their CMP the reviewing officer will assess whether or not the involved officer has satisfied all of the CMP strategies. If an involved officer has failed to satisfy all of the CMP strategies their commander can consider further management action.<sup>96</sup>

The Commission considers the requirement that the reviewing officer assess if an involved officer has satisfied, or failed to satisfy, all of the CMP strategies to be applicable in 159 of the 168 CMPs.<sup>97</sup>

Of the 159 applicable CMPs —

- for 51 CMPs (32%) the Commission was able to locate sufficient information on IAPro to confirm that the involved officer had satisfied all of the CMP strategies and their conduct was at the required level;
- for three CMPs the Commission was able to locate sufficient other information on IAPro to confirm that the involved officer had not satisfied all of the CMP strategies and that their conduct was not at the required level;<sup>98</sup> and
- for 105 CMPs (66%) the Commission was unable to locate sufficient information on IAPro to confirm whether or not the involved officer had satisfied all of the CMP strategies.

In summary, for two thirds of CMPs reviewed the Commission was unable to locate any records on IAPro that provided information as to whether or not an involved officer had satisfied all of the CMP strategies.

Our review established that three involved officers had failed to satisfy all of the CMP strategies. A brief summary of the actions taken by the NSWPF in relation to the three involved officers is presented below —

1. In January 2018 the involved officer, who held the rank of sergeant, was placed on a three month CMP for failing to follow procedures relating to the disposal of exhibits. The involved officer did not satisfy all of the CMP strategies and was advised that the CMP was to be extended by a further four months with a completion date of August 2018. The involved officer also failed to satisfy all of the extended CMP strategies.

In addition the involved officer was investigated for three separate complaints and the NSWPF placed the involved officer on a six month Interim Risk Management Plan<sup>99</sup> (IRMP), starting August 2018, while reviewable action was being considered and the three outstanding complaints were finalised. As a result of sustained findings in two of the three complaints the involved officer was issued with an Assistant Commissioner Warning Notice in February 2019.

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<sup>96</sup> *NSW Police Force Conduct Management Plans - Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 16.

<sup>97</sup> In the nine CMPs considered not applicable, three involved officers resigned prior to the completion of their CMP; two involved officers were medically discharged prior to the completion of their CMP; the CMPs of two involved officers were suspended prior to their completion; one CMP was terminated due to the involved officer's mental capacity and one involved officer refused to sign the CMP and there are no records on IAPro that explain how the NSWPF proceeded in this matter.

<sup>98</sup> The Commission was able to confirm the outcome of a CMP by identifying other records, such as emails, memos or letters from commanders to involved officers advising them that they have satisfied all of the CMP strategies or notations by a commander on a CMP that an involved officer has satisfied all of the CMP strategies.

<sup>99</sup> The purpose of an IRMP is for commands to take action on a temporary basis to manage identified risks relating to an involved officer's impact on the workplace, most commonly used during police complaint investigations. (*NSW Police Force Interim Risk Management Guidelines for Police*, Professional Standards Command, April 2020, p. 6.)

2. In April 2016 the involved officer entered into a six month CMP in relation to failing to progress a number of investigations in a timely manner and not recording action taken in those cases within the set timeframes. In early 2017 the CMP of the involved officer was extended by a further six months due to the involved officer's failure to satisfy all of the CMP strategies. That CMP was to conclude in August 2017. However following a further sustained finding in another internal investigation it was determined that the conduct of the involved officer was not to the required standard expected by the NSWPF and the CMP was extended by another six months. The amended CMP was to be completed in December 2017.

In February 2018 the commander of the involved officer advised him that he had failed to satisfy all of the extended CMP strategies and final management action was yet to be decided. However, due to the risks associated with these matters the involved officer was served with an IRMP and temporarily transferred to another command. The NSWPF investigated the involved officer's failure to satisfy all of the CMP strategies. This issue was sustained. The final management action for the involved officer involved a managerial transfer to another command. The CMT minutes noted that the involved officer will be transferred to a police station 'where a greater level of intrusive supervision can be consistently provided and an independent assessment as to the officer's expected level of conduct can be undertaken'.<sup>100</sup>

3. Following sustained findings in an internal investigation in June 2017 for unprofessional behaviour and failing to comply with policies and procedures the involved officer, who held the rank of sergeant, was placed on a three month CMP, concluding at the end of October 2017. At the end of the three month CMP the reviewing officer recommended that due to performance issues identified by the plan supervisor the monitoring of the involved officer needed to continue. The commander of the involved officer agreed and the CMP continued for another three months. The last monthly progress report located on IAPro contained inconclusive information.<sup>101</sup> The reviewing officer noted that the current CMP 'strategies were not achieving the improvement in conduct and performance required' and 'clearly there are barriers to learning for the involved officer that are not being resolved by this plan'. The commander implemented additional CMP strategies in the extended CMP which included a different plan supervisor and preparation of training days.

The Commission was unable to locate the amended CMP, additional monthly progress reports or final progress evaluation report on IAPro. Accordingly it is unclear whether or not the involved officer had satisfied all of the amended CMP strategies.

The Commission considers that all records pertaining to the development, implementation and finalisation of a CMP should be located on IAPro. The CMP Guidelines do not specify who is responsible for uploading records pertaining to CMPs to IAPro. Clearer guidance in the CMP Guidelines may improve record-keeping practices.

**Recommendation 6:** It is recommended that NSW Police Force *Conduct Management Plans – Guidelines for Police Officers* specify who is responsible for uploading documents relating to a CMP to IAPro in circumstances where a CMP is implemented in connection with a misconduct matter.

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<sup>100</sup> There are no records on IAPro that explain what type of duties the involved officer was carrying out at the new command.

<sup>101</sup> Report Number 4, dated and signed 29/12/2017.

**Recommendation 7:** It is recommended that the NSW Police Force conducts regular audits of CMPs to find out if all records relating to a CMP are uploaded to IPro in circumstances where a CMP is implemented in connection with a misconduct matter.

#### *NSW Police Force response to Recommendations 6 and 7*

The NSWPF advised the Commission that the revised CMP Guidelines include an instruction that in circumstances where a CMP is entered in connection with a misconduct matter it is the responsibility of the executive officer to upload a copy of the signed CMP to the relevant IPro record.<sup>102</sup> However the NSWPF stated that associated progress reports and other documents will only be included in the officer's employment file.<sup>103</sup>

The opinions of the Commission in relation to this approach are detailed above at 3.3.8.

#### *Police Association of NSW response*

The PANSW supported Recommendation 6 stating that making clear 'who has responsibility for the relevant procedural step can only operate to improve the general management and implementation of a CMP'.<sup>104</sup>

The PANSW did not support Recommendation 7 but made no submission as to whether it is necessary or appropriate to conduct a regular audit of IPro records stating that this is a question of resourcing for the NSWPF.<sup>105</sup>

### 3.3.12 Timeliness of CMP implementation

A number of studies and research papers have confirmed that the impact of management action on an officer is severely compromised the longer it takes from the time the misconduct occurred to management action being implemented.<sup>106</sup> For example, an officer may perform well in the interim and is likely to resent the burden of management action many months, or even years, after an investigation has been completed.<sup>107</sup>

Our review found that NSWPF disciplinary procedures can take a considerable amount of time from when the NSWPF has received and assessed a complaint<sup>108</sup> to when an involved officer is placed on a CMP. The Commission considers that for a CMP to be as effective as possible, it should be implemented at the earliest possible opportunity to effectively modify the conduct of an involved officer.

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<sup>102</sup> Letter from Commander, Management Action and Workplace Services, Professional Standards Command, NSW Police Force, to Manager Prevention, Law Enforcement Conduct Commission, 22 July 2021

<sup>103</sup> Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner for Integrity, Law Enforcement Conduct Commission, 16 July 2021, p. 5.

<sup>104</sup> Letter from President, Police Association of NSW, to Commissioner, Law Enforcement Conduct Commission, 7 October 2021, p. 2.

<sup>105</sup> Letter from President, Police Association of NSW, to Commissioner, Law Enforcement Conduct Commission, 7 October 2021, p. 2.

<sup>106</sup> Stephens, D.W. (2011), *Police Discipline: A Case for Change*, New Perspectives in Policing, Harvard Kennedy School, Program in Criminal Justice Policy and Management, p. 7. Office of Police Integrity, Victoria, *A Fair and Effective Victoria Police Discipline System*, October 2007.

<sup>107</sup> U.S Department of Justice Office of Community Oriented Policing Services, Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice, 2003, p. 24. Office of Police Integrity, Victoria, *A Fair and Effective Victoria Police Discipline System*, October 2007, pp. 34-36.

<sup>108</sup> During the assessment of a complaint, the triage officer determines if the matter should be referred to the CMT for consideration of an evidence-based investigation or the matter is referred for resolution. (*NSW Police Force Complaint Handling Guidelines*, Professional Standards Command, February 2016, p. 22).

The Office of Police Integrity's 2007 report: *A Fair and Effective Victoria Police Discipline System* noted that there are three elements to a good disciplinary process. One of the elements is:

It must operate promptly. A delayed outcome with lingering uncertainty is often stressful for the employee concerned and may well be worse than the penalty itself. It is also a potential cause of dysfunction within the workplace.<sup>109</sup>

In addition, research found that while the severity of perceived disciplinary action 'offered little deterrent threat' to police misconduct, the certainty of disciplinary action and how quickly it was implemented did.<sup>110</sup>

The CMP Guidelines state that, in instances where an involved officer is subject to reviewable or non-reviewable action, the CMP should be served at the same time as any 'final order is served'.<sup>111</sup> Warning Notices fall under the category of non-reviewable action. The Commission interpreted this as meaning that a CMP should be served at the same time as a Warning Notice. In addition, NSWPF Management Action Guidelines state that 'where a Warning Notice is to be issued, consideration should be given to implementing a Conduct Management Plan'. These guidelines further state that a CMP can be used as part of counselling, which is non-reviewable action, or in conjunction with any level of Warning Notice.<sup>112</sup>

The NSWPF Management Action Guidelines state that a Warning Notice is appropriate 'where the circumstances of an incident or the sustained adverse history of an officer are of such magnitude that a delegated officer considers the imposition of a reviewable or appealable action is foreseeable should such misconduct continue'.<sup>113</sup>

The purpose of a Warning Notice is to ensure that the involved officer is aware of the gravity of the misconduct and the potential consequences for them should they continue to engage in similar levels of misconduct.

The NSWPF can issue four types of Warning Notices —

- Commander Warning Notice;
- Region Commander/Assistant Commissioner Warning Notice;
- Deputy Commissioner Warning Notice; and
- Commissioner Warning Notice.<sup>114</sup>

Our review found that the NSWPF had issued 143 Warning Notices to the 168 involved officers considered in our review.<sup>115</sup> More specifically —

- 69 Commander Warning Notices;
- 65 Region Commander/Assistant Commissioner Warning Notices;<sup>116</sup>
- seven Commissioner Warning Notices; and

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<sup>109</sup> Office of Police Integrity, *A Fair and Effective Victoria Police Discipline System*, October 2007, p. 20.

<sup>110</sup> Pogarsky, G., & Piquero, A. R. (2004). *Studying the research on deterrence: Can deterrence theory help explain police misconduct?* *Journal of Criminal Justice*, 32, p. 381.

<sup>111</sup> *NSW Police Force Conduct Management Plans – Guidelines for Police Officers*, Professional Standards Command, July 2019, p. 8.

<sup>112</sup> *NSW Police Force Management Action Guidelines*, Professional Standards Command, May 2019, p. 12.

<sup>113</sup> *NSW Police Force Management Action Guidelines*, Professional Standards Command, May 2019, p. 10.

<sup>114</sup> *NSW Police Force Management Action Guidelines*, Professional Standards Command, May 2019, pp. 10-11.

<sup>115</sup> Twelve involved officers received no further management action apart from the CMP; nine involved officers were counselled; one involved officer received a reduction in grade; one involved officer's LSC status was revoked; one involved officer received coaching and one involved officer lost his increments.

<sup>116</sup> Four of the 65 Region Commander Warning Notices were not located on IAPro; one Region Commander Warning Notice had not been served on the involved officer.



- two Deputy Commissioner Warning Notices.

Our review found that 88 out of 168 involved officers were served with a Warning Notice and a CMP at the same time.

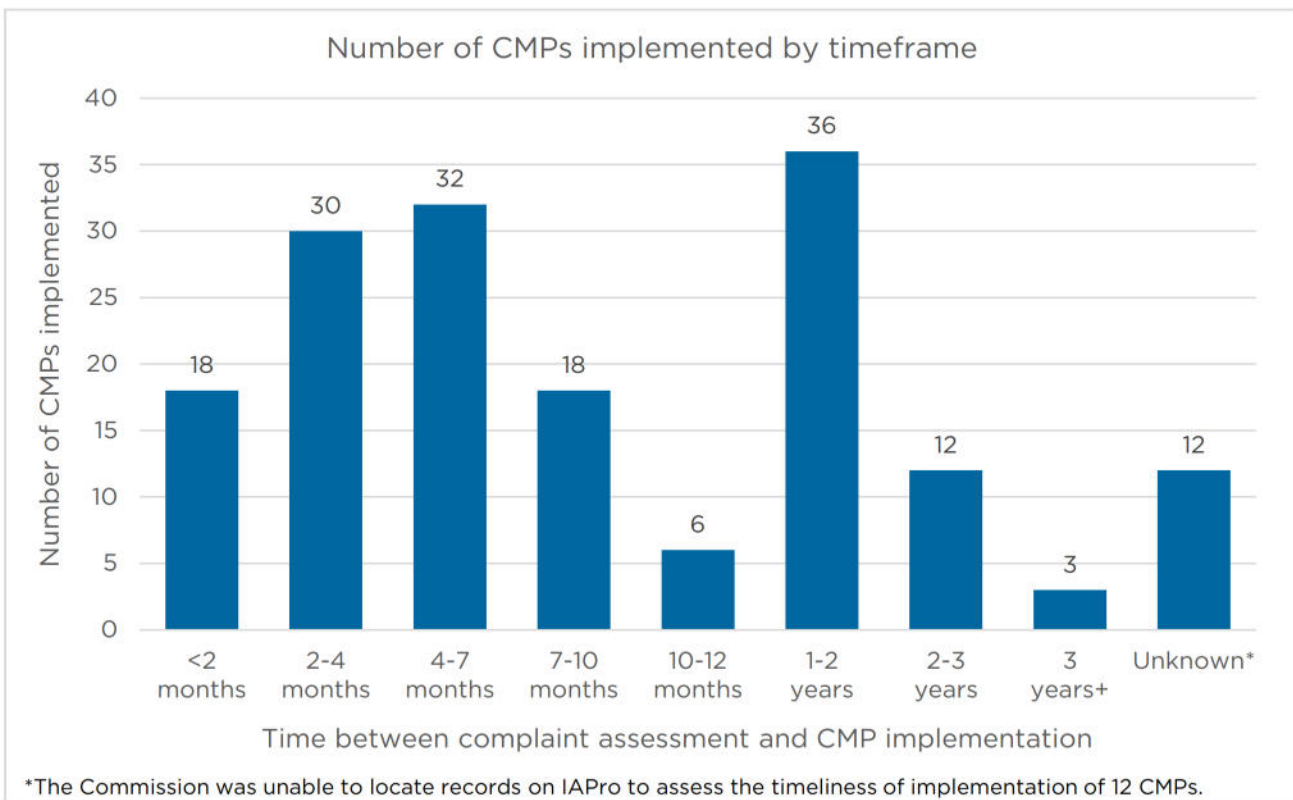
As mentioned in section 3.3.7 of this report, 27 involved officers were placed on a CMP as a result of more than one sustained complaint investigation. In such circumstances, the CMP Guidelines provide the following instructions –

When the CMP relates to multiple complaint matters, ensure that each individual complaint is linked to the primary complaint.<sup>117</sup>

Accordingly our review assessed the timeliness of CMP implementation based on the date when the primary complaint was received and assessed by the NSWPF.

Figure 1 provides an overview of the time between when the NSWPF had received and assessed a complaint and the time when CMP strategies were implemented.

Figure 1: Number of CMPs implemented by timeframes



The Commission considers the timeliness of CMP implementation to be applicable in 167 of the 168 CMPs. One CMP was considered not applicable as it was cancelled prior to its implementation. However, our review only located information pertaining to the timeliness of CMP implementation for 155 CMPs. For 12 of the 167 applicable CMPs (7%) the Commission was unable to locate any information or records on IAPro to confirm the date when they were implemented.

Our review found that 48 out of 155 involved officers (31%) were placed on a CMP within four months after the NSWPF had received and assessed a complaint. Fifty out of 155 involved

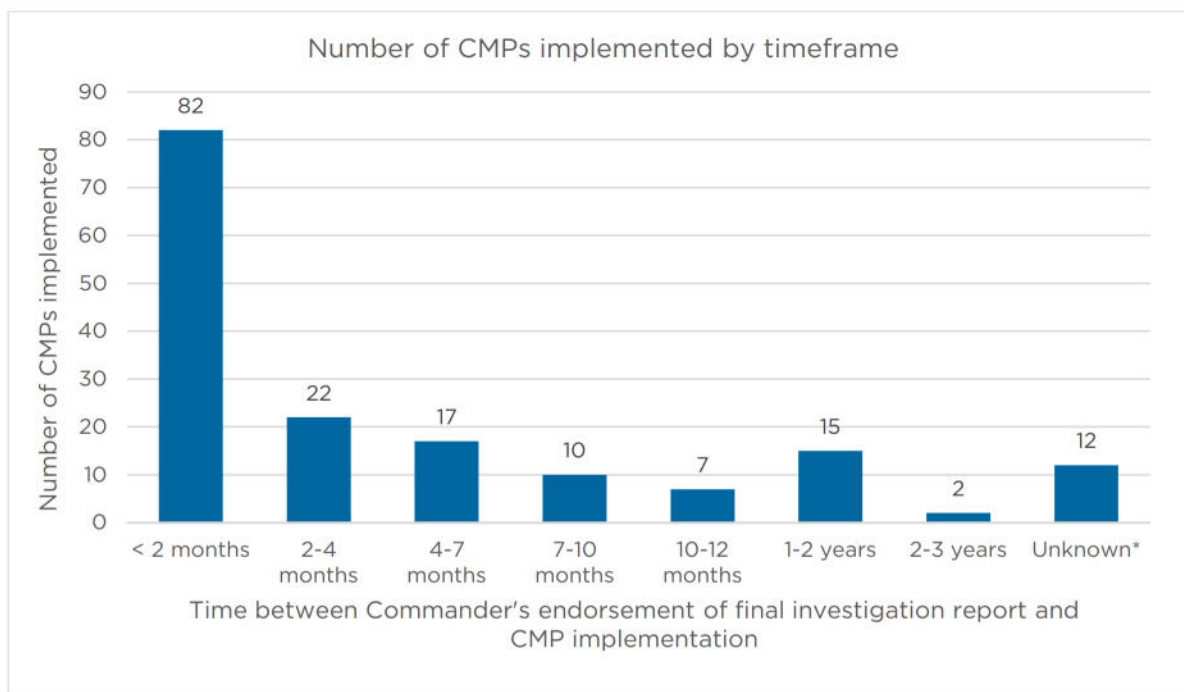
<sup>117</sup> NSW Police Force Conduct Management Plans - Guidelines for Police Officers, Professional Standards Command, July 2019, p. 14.

officers (32%) were placed on a CMP between four and ten months after the NSWPF had received and assessed a complaint; six involved officers were placed on a CMP between ten and 12 months after the NSWPF had received and assessed a complaint; 36 involved officers were placed on a CMP between one and two years after the NSWPF had received and assessed a complaint; 12 involved officers were placed on CMP between two and three years after the NSWPF had received and assessed a complaint and three involved officers were placed on a CMP more than three years after the NSWPF had received and assessed a complaint.

Our review established that the main reason for delay in the implementation of a CMP was that the investigation exceeded the recommended timeframes set by the NSWPF. The NSWPF Complaint Handling Guidelines relevant to the CMPs that were reviewed set a time limit of 90 days for all evidence-based investigations and 45 days for matters that have been referred for resolution.<sup>118</sup> The Commission considers an investigation has concluded when the commander has endorsed the final investigation report.<sup>119</sup> It should be emphasised that in January 2021 the NSWPF implemented a new model for the management of misconduct matters which aims to improve the timeliness of the resolution and investigation of officer misconduct. This new approach was not applicable for the period the subject of this review. It is hoped that this new approach will improve these timeframes.

Another way of considering the timeliness of CMP implementation is to count the time from the conclusion of an investigation (when a Commander has endorsed the final investigation report) and the time when CMP strategies were implemented. Figure 2 illustrates this approach.

Figure 2: Number of CMPs implemented by timeframes



<sup>118</sup> NSW Police Force Complaint Handling Guidelines, Professional Standards Command, February 2016, pp. 47 and 35.

<sup>119</sup> According to NSWPF Complaint Handling Guidelines the commander has overall responsibility for the management and investigation of complaints. In addition to assuming responsibility for the outcome of the investigations, the commander/manager must make any determination in relation to management action to be taken against the subject officer/s. (NSW Police Force Complaint Handling Guidelines, Professional Standards Command, February 2016, p. 55.). The NSWPF Complaint Handling Guidelines 2016 have been replaced with the NSWPF Misconduct Management Framework.

Timeliness for CMP implementation improves considerably when it is counted from the time a Commander has endorsed the final investigation report. However, as stated earlier, research has shown that the impact of disciplinary action on an officer is much less effective in situations where there is a significant time lapse between the times when the misconduct occurred to management action being implemented.

The finalisation of investigations can be delayed for a number of reasons which in turn results in delays in implementing CMPs, as illustrated by Figure 1 and the analysis of the timeliness of the finalisation of resolutions and complaints that is detailed below.

As mentioned in section 3.1 of this report the NSWPF investigated 168 involved officers, comprising 206 complaints. Our review identified 102 evidence-based investigations and 104 matters that were referred for resolution.

In relation to the 102 evidence-based investigations our review found —

- 30 investigations were completed within the recommended timeframe of 90 days;
- 72 investigations exceeded the recommended timeframe of 90 days.

In relation to the 104 Mandatory Resolution Outcome Reports (MROR) our review found —

- 44 MRORs were completed within the recommended timeframe of 45 days;
- 60 MRORs exceeded the recommended timeframe of 45 days.

The Commission's review identified a number of reasons why investigations exceeded the recommended timeframes, including —

- NSWPF was awaiting legal advice from the Office of the Director of Public Prosecutions (ODPP) as to whether there was enough evidence to criminally charge an involved officer;
- involved officers were criminally charged;
- delays in court hearings;
- concurrent criminal proceedings taking place;
- investigations being suspended due to involved officers being on long-term leave, including sick leave<sup>120</sup>, annual leave, carer's leave, maternity leave or recreational leave;
- investigations being suspended while the incidents were investigated as critical incidents;<sup>121</sup>
- deficiencies with investigator's report identified during the quality review process and the investigator tasked to investigate additional issues;
- competing work priorities of the officer in charge (OIC) of the investigation;

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<sup>120</sup> Commission Operation Shorewood also found that in instances where officers went on long-term sick leave investigations were either delayed or suspended, which in turn prolonged the finalisation of investigations. However, the NSWPF has provisions within its internal procedures to finalise investigations even if an officer cannot be recalled to partake in a non-criminal interview or refuses to respond to the allegations. A commander can 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. In instances where the investigation is progressed procedural fairness requires that the 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. (Law Enforcement Conduct Commission, *Operation Shorewood: Review of how the NSW Police Force manages and investigates workplace equity matters*, July 2020, pp. 30-31).

<sup>121</sup> A critical incident is an incident involving a member of the NSWPF that results in the death of, or serious injury to, a person. The NSWPF is required to investigate the actions of its members involved in a critical incident.

- changes in OICs; and
- delays between the time that an investigator had completed the investigation and the time that a commander had endorsed the final report.<sup>122</sup>

It is worth noting that the NSWPF may also implement interim risk management strategies, where appropriate, during the period from receipt of a misconduct allegation to the final determination of the matter.<sup>123</sup> The purpose of interim risk management action is for commands to take action on a temporary basis to manage identified risks relating to an involved officer's impact on the workplace while the involved officer is being investigated. Interim risk management strategies should remain in place until the risks are no longer an issue or until final management action has been implemented.<sup>124</sup> The Commission did not review how many involved officers were placed on an IRMP while they were being investigated, as it fell beyond the scope of our review. This information would be available to the NSWPF to consider in any further analysis it may conduct on the timeliness and efficacy of responses to misconduct.

In addition, delays in implementing CMPs also occurred after the NSWPF had finalised a complaint investigation. Some of the reasons for further delays included —

- matters being referred to the Industrial Relations Commission;
- delayed responses by involved officers to investigation reports; and
- involved officers refusing to respond to s 173(5) notices.<sup>125</sup>

While NSWPF Complaint Handling Guidelines specify the time that an internal investigation of misconduct may take they do not specify the time that the implementation of management action may take place.

The Commission accepts that the timely implementation of a CMP can be delayed for reasons which are beyond the control of the NSWPF, however such delays can have an impact on the effectiveness of a CMP in modifying the conduct of an involved officer.

Commissioner Wood, who chaired the Royal Commission into the New South Wales Police Service, identified a number of significant weaknesses in the complaints and discipline processes operating at the time. Of interest in relation to delays in these processes were his comments that the system was 'characterised by substantial delays' and 'productive of anxiety and uncertainty during the long waiting period, sometimes leading to genuine stress-related illness'.<sup>126</sup>

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<sup>122</sup> Our review established that in 61 out of 206 investigations (30%) there were delays ranging from 10 days to over 100 days from the time that an investigator had completed the investigation to the time that a commander had endorsed its findings. In 40 investigations, the commander had endorsed the investigation report between 10 and 30 days after the investigator had signed off on it; in 16 investigations the commander had endorsed the investigation report between 30 and 60 days after the investigator had signed off on it and in four investigations the commander had endorsed the investigation report between 60 and 100 days after the investigator had signed off on it. In the majority of matters the Commission was unable to locate records on IAPro that explained why these delays occurred.

<sup>123</sup> Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner for Integrity, Law Enforcement Conduct Commission, 16 July 2021, p. 3.

<sup>124</sup> *NSW Police Force Interim Risk Management Guidelines for Police*, Professional Standards Command, April 2020, p. 13.

<sup>125</sup> Before making an order for reviewable action the CoP must give an involved officer the opportunity to make a written submission in relation to the proposed order and must take into consideration any written submissions received from the involved officer.

<sup>126</sup> The Wood Report - *Royal Commission into the New South Wales Police Service, Final Report, Volume II: Reform*, Sydney, May 1997, para 4.1., p. 307).

The Office of Police Integrity's report cited above noted that some police members avoid disciplinary proceedings by leaving work on WorkCover, or taking sick leave or other leave. The report noted:

When this happens, it can be very difficult, if not impossible to tell whether the member is suffering a genuine stress-induced medical condition or is malingering to avoid the consequences of the hearing.<sup>127</sup>

Our research established that as at October 2020, 40 out of 168 involved officers (23%) have now left the NSWPF. The reasons for separation from the NSWPF were as follows –

- 19 involved officers left for medical reasons;
- 19 involved officers resigned;<sup>128</sup>
- one involved officer was dismissed; and
- one involved officer retired.

As at the date of publication one involved officer remained on long-term sick leave.

The rate of separation within the cohort of involved officers in our review is noticeably higher when compared to general attrition from the NSWPF in the similar timeframe. The 2018-2019 NSW Police Force Annual Report stated that police turnover was 3.6%, up from 3.1% in 2017-18.<sup>129</sup>

Case study 4 describes the circumstances of an involved officer who was placed on a three month CMP nearly three years after an investigation into his conduct had been finalised. The involved officer was the subject of two further sustained complaint investigations several months after being placed on a CMP. This raises questions about the utility of a CMP in modifying officer conduct so long after the misconduct occurred.<sup>130</sup>

#### Case study 4:

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In late 2013, the involved officer, a senior constable at a Metropolitan command, was investigated (investigation A) for acting unprofessionally and inappropriately towards a juvenile during a patrol and for making unsolicited enquiries into the sex life of another officer. In early 2014 the involved officer was transferred to another command for a three month period as part of an IRMP following the allegations in relation to investigation A. Both issues resulted in a sustained finding.

The involved officer continued to come under adverse notice at the new command for inappropriate and unprofessional behaviour towards some of his colleagues. This was of particular concern as the involved officer was working at the new command as part of an IRMP put in place as a result of prior allegations of his inappropriate behaviour. The involved officer was directed by a senior officer to respect the privacy and personal space of other staff. As a result of new allegations the involved officer was investigated (investigation B) for alleged breaches of the Code of Conduct and Ethics and disobeying a reasonable direction by a supervisor. Both allegations were sustained. Investigation B was finalised in October 2014. This matter went before the Internal Review Panel (IRP) which recommended, in June 2016, reviewable action (reduction in rank and disciplinary transfer to another command) and non-reviewable action (Commissioner Warning Notice and 12 month CMP).

The NSWPF made numerous attempts to identify a suitable command to permanently place the involved officer. In September 2016 the involved officer was placed on another IRMP while decisions on management action in relation to investigation B were still pending. In July 2017, more than two

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<sup>127</sup> Office of Police Integrity, *A Fair and Effective Victoria Police Discipline System*, October 2007, p. 36.

<sup>128</sup> Some of the reasons included job dissatisfaction, other careers, moving overseas/interstate, dissatisfaction with working conditions and disciplinary resignation. One involved officer was served with a removal order under s 181D but resigned prior to action taken.

<sup>129</sup> *NSW Police Force 2018-19 Annual Report*, p. 20.

<sup>130</sup> In the NSWPF a sustained finding means that the allegations are true by a majority of the evidence gathered during the investigation and the conduct at issue is a violation of NSWPF policies and procedures.

years and eight months after the finalisation of investigation B the involved officer was placed on a three month CMP. Only the first two monthly progress reports are located on IAPro and there are no further records that advise if the involved officer has satisfied all of the CMP strategies.

The involved officer was the subject of two further investigations in 2018 which resulted in three sustained findings for failure to comply with policy and procedures. This matter was also referred to the IRP. The involved officer was placed on an IRMP awaiting the recommendations from the IRP. In late 2019 the matter was discussed at the IRP with the recommendation that the involved officer's rank be reduced. The involved officer was also served with a Commissioner Warning Notice. The matter went before the IRC as the involved officer had recanted the acceptance of the recommended CMP through the IRC. In late 2020 the involved officer discontinued proceedings before the IRC and agreed to settle the proceedings with the NSWPF. The involved officer received a reduction in rank.

Previous Commission research (Operation Shorewood) found that the NSWPF has exceeded the timeframes for completing evidence-based investigations and MRORs set by the NSWPF Complaint Handling Guidelines.<sup>131</sup> As part of its response to the Commission's findings in Operation Shorewood, the NSWPF had advised the Commission that it had finalised a review that examined, among other things, the timeliness standards for investigations.<sup>132</sup> Changes to the timeliness standards were implemented in January 2021. Given the recency of this implementation, the Commission is unable to assess the impact of the new process on resolving delays in completing investigations, especially in matters where there are concurrent criminal proceedings or the NSWPF is awaiting advice from the ODPP, often delayed, as to whether there is enough evidence to criminally charge an involved officer.

The Commission considers that it would be beneficial for the NSWPF, through a unit with responsibility for monitoring the effectiveness of the complaints system and management action, such as PSC, to conduct analysis of the CMP framework. This should include consideration of the timeliness of the implementation of CMPs from both the misconduct and the finalisation of any subsequent resolution or investigation. This analysis could be done by way of audit.

**Recommendation 8:** It is recommended that the NSW Police Force conducts regular audits on the timeliness of implementing a CMP to identify and understand the root causes of delays and develop strategies to prevent them where possible, or to minimise their impact on involved officers.

#### *NSW Police Force response*

The NSWPF indicated that it 'supports, in-principle, the basis for [this] recommendation'. It also highlighted the recent changes to the management of misconduct matters implemented in January 2021, stating:

The enhancements provide greater scope for the consideration of risk, and in particular the risks associated with the behaviour of involved officers. This may include the finalisation of matters utilising the enhanced resolution process or the implementation of interim risk management strategies, while more formal investigations are conducted. The enhancements achieved through the introduction of the enhanced resolution process should reduce delays and create a more timely, proportionate and fair response to allegations of misconduct.<sup>133</sup>

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<sup>131</sup> Law Enforcement Conduct Commission, *Operation Shorewood: Review of how the NSW Police Force manages and investigates workplace equity matters*, July 2020, p. 38.

<sup>132</sup> Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner of Integrity, Law Enforcement Conduct Commission, 8 May 2020.

<sup>133</sup> Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner for Integrity, Law Enforcement Conduct Commission, 16 July 2021, p. 6.

The Commission will monitor the changes to the management model used in the resolution of misconduct matters, including the enhanced resolution process, to assess if these changes improve timeliness standards for investigations.

#### *Police Association of NSW response*

The PANSW supported the general thrust of Recommendation 8 but made no submission on whether 'regular audits' are necessary to improve timeliness in the implementation of CMPs. Furthermore, the PANSW commented that delays in the implementation of CMPs are unacceptable and whether explicable as beyond the control of the NSWPF 'one must question the utility of their implementation at a time far removed from the relevant conduct'. In addition, the PANSW strongly agreed with the broad proposition that for any disciplinary step (including a CMP) to be effective it should be proportionate and implemented at the earliest possible opportunity to afford the involved officer procedural fairness.<sup>134</sup>

### 3.4 Involved officers with prior CMPs

One of the objectives of the Commission's review was to ascertain whether involved officers had previously been placed on a CMP.<sup>135</sup>

Our review found that 35 out of 168 involved officers (21%) had previously been placed on a CMP. More specifically —

- 18 involved officers had been placed on one CMP;
- 12 involved officers had been placed on two CMPs;
- three involved officers had been placed on three CMPs; and
- two involved officers had been placed on four CMPs.

Our review also found that 13 out of 35 involved officers had been on previous CMPs for similar misconduct. The previous misconduct included —

- failure to investigate/inadequate investigation (seven involved officers);
- breaches of the Code of Conduct and Ethics (two involved officers);
- failure to create/maintain records (two involved officers); and
- incivility/rudeness and neglect of duty (two involved officers).

In terms of the time period between involved officers' previous CMPs and CMPs that formed part of the Commission's review we established that 12 out of 13 involved officers<sup>136</sup> had previously been placed on a CMP between one and four years ago for similar misconduct and one involved officer's previous CMP was six years ago.

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<sup>134</sup> Letter from President, Police Association of NSW, to Commissioner, Law Enforcement Conduct Commission, 7 October 2021, p. 2.

<sup>135</sup> As mentioned previously, the Commission's review extended back to 2010. Any complaints prior to 2010 were not reviewed.

<sup>136</sup> Three out of 13 involved officers have medically retired from the NSWPF and two involved officers have resigned.

The purpose of a CMP is to modify an involved officer's conduct to ensure they do not engage in further misconduct. However our review findings have shown that 35 involved officers continued to engage in misconduct and 13 involved officers (8%) continued to engage in similar misconduct to the type addressed in previous CMPs.<sup>137</sup> In these cases CMPs were unable to correct the involved officer's conduct. This may be for a variety of reasons, not all of which may be visible to the Commission's review and analysis.

The following case study provides an example where previous CMP strategies were unable to correct the conduct of the involved officer.

### Case study 5:

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In early 2013 a senior constable at a Metropolitan command (involved officer) commenced an investigation into a fraud matter which involved the use of a stolen credit card to purchase goods. The involved officer was provided with the credit card details and a description of the person of interest. Although the involved officer conducted some initial enquiries he failed to record his actions in the relevant case management file and failed to conduct any further enquiries in the subsequent 12 months. The NSWPF investigated the involved officer for inadequate investigation and lack of impartiality. The investigation resulted in a sustained finding. The involved officer was placed on a six month CMP and served with a Commander Warning Notice.

The involved officer's CMP strategies included —

- reinforcement of the NSWPF Code of Conduct and Ethics and Statement of Values with the involved officer;
- reinforcement of the investigation priorities included in the NSWPF Handbook;
- meeting with the command's Education and Development Officer and completing six minute intensive training exercises in relation to the NSWPF Code of Conduct and Ethics, Brief and Court Matters and Customer Service Guidelines;
- completing a Time Management Course;
- reviewing the NSWPF Fraud Investigation Standard Operating Procedures;
- discussing any questions or misunderstanding about any of the above strategies or any other operational policies and procedures with the involved officer's plan supervisor;
- the plan supervisor assisting the involved officer with case management/investigations to ensure that cases were completed in a timely and satisfactory manner; and
- the plan supervisor reviewing the involved officer's cases every fortnight to ensure that they were actioned appropriately and in a timely manner.

In addition, the involved officer was placed on a six month training course and a Constables Development Program to improve his skills in fraud matters, investigations and their timely completion.

The CMP concluded in the first half of 2015. There were no monthly progress reports or other records on IAPro to confirm the outcome of the involved officer's CMP.

In early 2016 a person reported a stolen car and a related fraud matter to the involved officer. After the initial report of this matter the involved officer did not conduct an adequate investigation into the stolen vehicle and fraud matter. The NSWPF investigated the involved officer for failure to investigate. The investigation found that while the involved officer clearly recognised that there was a fraud element to this incident, because he stated in his original event narrative that the offenders transferred or sold the stolen car 'by way of fraud', he failed to provide the victim with a *Fraud Assessment form*, as required by NSWPF Fraud Standard Operating Procedures. The OIC of the investigation established that there were clear lines of inquiry which were not pursued by the involved officer and he made insufficient attempts to identify the offender or recover the stolen car.

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<sup>137</sup> Four involved officers had satisfied all of their previous CMP strategies; for nine involved officers there were no records on IAPro to confirm if they had satisfied all of their previous CMP strategies.



The investigation resulted in a sustained finding and the involved officer was placed on a six month CMP and served with a Region Commander Warning Notice. The involved officer declined to sign the CMP and there are no records on IAPro that explain how the NSWPF proceeded in this matter.

It is of concern that the involved officer, despite being placed on the CMP in 2014 continued in his failure to investigate fraud matters in a timely and appropriate manner. However, as there were no monthly progress reports and no final progress evaluation report uploaded to IAPro, the Commission is not in a position to assess whether or not the involved officer had satisfied all of his 2015 CMP strategies.

The Commission reviewed, where available, all previous CMP strategies for the 13 involved officers. Our review found —

- eleven CMPs included strategies that appeared relevant to address the misconduct of the involved officers;
- for two CMPs, the Commission was unable to locate any records on IAPro that included information as to the type of strategies that were developed and implemented to modify the conduct of the involved officers.

In summary, 35 out of 168 involved officers had previously been placed on a CMP; 13 of them (8%) for similar misconduct. These involved officers continued to engage in misconduct and it appears that the strategies implemented in their previous CMPs failed to modify their conduct.

We mentioned in section 3.3.12 of this report that the NSWPF issued 143 Warning Notices to the 168 involved officers considered in the Commission's review. Our review established that 21 out of the 35 involved officers with previous CMPs were issued with one previous Warning Notice and three involved officers were issued with two previous Warning Notices.

NSW Police Force Management Action Guidelines state that in circumstances where a Warning Notice has been issued to an officer: 'It is critical that the subject officer is aware of the magnitude of the misconduct and the possible range of consequences that are available, inclusive of removal or dismissal, should he or she continue to engage in inappropriate conduct'.<sup>138</sup>

Our findings show that even though some officers continued to engage in misconduct they were issued with further Warning Notices rather than facing more serious consequences such as removal or dismissal from the NSWPF.

There may have been a range of particular reasons which contributed to the continued misconduct for each of these involved officers. However it is worth considering a range of research suggesting that rather than acting as a deterrent,<sup>139</sup> prior punishment – in the form of police sanctions – can, in fact, increase recidivism among some police officers.<sup>140</sup>

Pogarsky and Piquero examined whether police officers were influenced by deterrence considerations. They found that officers who had previously been subject to disciplinary action were more likely to engage in future misconduct. They offered two possible explanations for this finding. First, past offending may indicate that the person has a disposition towards engaging in misconduct.<sup>141</sup> Second, individuals who have experienced punishment in the past

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<sup>138</sup> NSW Police Force Management Action Guidelines, Professional Standards Command, May 2019, p. 11.

<sup>139</sup> Nagin, D.S. (1998). Criminal deterrence research at the outset of the twenty-first century. *Crime and Justice*, Chicago Journals, Volume 23, pp 1-42.

<sup>140</sup> Pogarsky, G., & Piquero, A.R. (2003). Can punishment encourage offending? Investigating the 'resetting' effect. *Journal of Research in Crime & Delinquency*, 40, pp 95-120.

<sup>141</sup> Pogarsky, G., & Piquero, A. R. (2004). Studying the research on deterrence: Can deterrence theory help explain police misconduct? *Journal of Criminal Justice*, 32, p. 378.

may believe they are less apt to face punishment again.<sup>142</sup> Under this explanation, referred to as ‘resetting’, individuals may believe a punishment experience helps insulate them from further apprehension for subsequent offences. The reasoning is simply ‘lightning never (or rarely) strikes twice’.<sup>143</sup>

Harris and Worden compared the outcomes of police sanctions on future sustained findings from complaints. The results of their research showed that police sanctions did not deter misconduct and, worse, prompted more misconduct.<sup>144</sup> They stated that it is unclear from the data why this was the case but suggested that the most plausible explanation was that the perceived injustice of the disciplinary system may have actually promoted officer misconduct.<sup>145</sup>

Similarly Myhill and Bradford have examined police officers’ perceptions of procedural justice in organisational decision-making and how those perceptions are linked to various outcomes, including organisational commitment, job satisfaction and commitment to comply with organisational values and expectations. They found that officers who felt that their organisation treated them fairly and with respect were more likely to identify with their organisation and as a result were more likely to ‘buy into’ its values, objectives and procedures. However, they also stated that ‘It is possible, of course, for the inverse to occur: procedurally unfair treatment can lead to the development of deviant identities and oppositional cultures’.<sup>146</sup>

While procedural justice and procedural fairness are critical to a well-functioning misconduct management approach, other scholars found that personal characteristics affected the deterrence process in a number of ways. For example, highly impulsive offenders were more likely to reoffend than less impulsive individuals and were characterised by their ‘here and now’ orientation.<sup>147</sup>

It may be beneficial for the NSWPF to consider conducting a more in-depth analysis of characteristics of recidivist police misconduct matters to assist in identifying underlying contributors to repeat officer misconduct.

The PANSW supported this observation and stated that it would welcome the opportunity to be a partner in such a research project.<sup>148</sup>

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<sup>142</sup> Pogarsky, G., & Piquero, A. R. (2004). Studying the research on deterrence: Can deterrence theory help explain police misconduct? *Journal of Criminal Justice*, 32, p. 380.

<sup>143</sup> Pogarsky, G., & Piquero, A. R. (2003). Can punishment encourage offending? Investigating the “Resetting” effect. *Journal of Research in Crime and Delinquency*, Vol 40 No. 1, p. 100.

<sup>144</sup> Harris, C.J., & Worden, R. E. (2014) The Effect of Sanctions on Police Misconduct, *Crime and Delinquency*, Vol 60(8), p. 1281.

<sup>145</sup> Harris, C.J., & Worden, R. E. (2014), The Effect of Sanctions on Police Misconduct, *Crime and Delinquency*, Vol 60(8), p. 1258.

<sup>146</sup> Myhill, A. and Bradford, B. (2013). Overcoming cop culture? Organizational justice and police officers’ attitudes toward the public”, *Policing: An International Journal of Police Strategies & Management*, Vol. 36 No. 2, p. 3. Accessed via : <https://www.researchgate.net/publication/263300810>.

<sup>147</sup> Gottfredson, M.R. and T. Hirschi (1990) *A General Theory of Crime*. Stanford, CA: Stanford University Press. Nagin, D.S., & Pogarsky, G. (2001). Integrating celerity, impulsivity, and extralegal sanction threats into a model of general deterrence: Theory and evidence. *Criminology*, 39, 404 - 430.

<sup>148</sup> Letter from President, Police Association of NSW, to Commissioner, Law Enforcement Conduct Commission, 7 October 2021, p. 3.

### 3.5 Involved officers subject of further sustained findings from complaints

Another aim of the Commission's review was to assess the effectiveness of CMPs in preventing further officer misconduct. The Commission conducted a review of the complaints history of all 168 involved officers for the period following the completion of their CMP. One measure of effectiveness that can be considered is whether officers received further sustained findings following a CMP, and more pertinently, whether those further sustained findings were for similar types of misconduct.

The Commission's review found that 70 out of 168 involved officers (42%) received further sustained findings from complaint investigations.<sup>149</sup> More specifically, as at October 2020 –

- 35 involved officers received sustained findings from one complaint investigation;
- 17 involved officers received sustained findings from two complaint investigations;
- nine involved officers received sustained findings from three complaint investigations;
- three involved officers received sustained findings from four complaint investigations;
- four involved officers received sustained findings from five complaint investigations;
- one involved officer received sustained findings from six complaint investigations; and
- one involved officer received sustained findings from seven complaint investigations.

Of significance, 22 of the 70 involved officers (13%) received further sustained findings for similar misconduct to the type that placed them on a CMP between 1 January 2017 and 1 January 2018.<sup>150</sup> Eleven involved officers were still on a CMP when they engaged in similar misconduct; eight involved officers engaged in similar misconduct between one and nine months after completing their CMP, and three involved officers engaged in similar misconduct between 14 and 23 months after completing their CMP.<sup>151</sup>

Overall, 70 out of 168 involved officers (42%) received further sustained findings from complaint investigations; 13% of them for similar misconduct.

While there may be a range of factors that can contribute to how well a CMP works, the Commission was particularly concerned to find that 11 involved officers were still on a CMP when they engaged in similar misconduct. This seems to indicate that the strategies, which included close supervision and monitoring of the involved officers' operational activities, were not effective and the supervision and monitoring performed by plan supervisors and reviewing officers, particularly in cases of repeated similar misconduct, should be closer examined.

In addition, our review found that 28 out of 70 involved officers with further sustained findings from complaint investigations (which were sustained after the CMP that fell within the review period) were issued with one further Warning Notice and four involved officers were issued with two more Warning Notices. As mentioned, this raises questions about the usefulness of

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<sup>149</sup> Seventy involved officers received a total of 141 sustained findings from complaints.

<sup>150</sup> Management action for these further sustained findings from complaints for the 22 involved officers included: CMP (7); Region Commander Warning Notice (7); Deputy Commissioner Warning Notice (2); Commissioner Warning Notice (1); Commander Warning Notice (3); non-disciplinary transfer (2); disciplinary transfer (2); counselling (3); reduction in rank or grade (3); suspension with pay (1). Five involved officers resigned and one involved officer was dismissed prior to any further management action being taken.

<sup>151</sup> The CMP outcomes for the 22 involved officers who had been placed on a CMP between 1 January 2017 and 1 January 2018 were as follows: six involved officers have satisfied all of the CMP strategies; for 13 involved officers the Commission was unable to locate records on IAPro to confirm the outcome of their CMPs; one CMP was suspended prior to its completion and one involved officer resigned prior to the completion of their CMP.

NSWPF management action, be it CMPs or Warning Notices, in modifying the conduct of involved officers who have engaged in misconduct.

It may be beneficial for the NSWPF to conduct further research to learn why previous CMP strategies seemed to have had little or no impact on some involved officers and to develop additional strategies to deter these officers from engaging in further misconduct.

As mentioned in section 1.2.1 of this report a CMP includes tailored strategies to correct identified conduct issues of an involved officer. By way of example, if an investigation established that an involved officer failed to adhere to a particular policy, the CMP would include detailed strategies that reinforce an involved officer's understanding of their requirements under this particular policy. In circumstances where an involved officer receives further sustained findings from complaints for similar misconduct, the effectiveness of the CMP, or the involved officer's willingness to modify their conduct, needs to be examined.

The following two case studies describe the circumstances of involved officers who failed to modify their conduct despite being placed on a CMP that included specifically tailored strategies to address their misconduct.

### Case study 6:

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The involved officer who held the rank of sergeant had been in the NSWPF for close to 20 years when he was served with a Region Commander Warning Notice and placed on a six month CMP in 2017 as a result of sustained findings for —

- taking unauthorised absence from the workplace;
- failing to adequately monitor a person in custody;
- failing to create records; and
- failing to comply with policy and procedures.

The CMP was suspended after five months when the involved officer was investigated for another complaint. This complaint included allegations that the involved officer made comments of a sexual nature towards a female colleague. These comments were made in the presence of other officers. The NSWPF investigated the involved officer for allegations of unprofessional conduct and unprofessional behaviour. Both allegations were sustained. In 2018 the involved officer was served with a Region Commander Warning Notice, received a reduction in rank to senior constable and placed on another six month CMP. The involved officer successfully completed the second CMP in June 2019. One of the strategies of the CMP included reinforcement of the Code of Conduct and Ethics and the NSWPF Respectful Workplace Behaviours Guidelines.

Four weeks after the successful completion of the CMP the involved officer was the subject of a similar complaint which included allegations of repeated sexual harassment and unwanted sexual advances towards a female police officer. The subsequent NSWPF investigation resulted in sustained findings.

In both complaint matters the involved officer approached the victims and spoke to them about the incidents in breach of a direction not to approach the victims.

The involved officer is an experienced officer who has completed mandatory training on respectful workplace behaviour in 2012, 2017 and 2019 as part of his CMP strategies and attended a one-day workshop on workplace equity in 2019. The involved officer's complaints history indicated that the CMP strategies had not modified his conduct and he did not seem to understand the seriousness of his actions nor the Respectful Workplace Behaviours objectives.

The officer was dismissed from the NSWPF in February 2021.

Case study 7 provides an example of an involved officer who had previously been investigated for falsifying official records and who engaged in similar misconduct after having completed a

three month CMP in early 2018. One of the questions raised by this example is whether the tailored strategies were appropriate to address the identified misconduct, and whether strategies aimed at general reinforcement of an officer's knowledge of the Code of Conduct is something that can be properly monitored or gauged by supervising officers.

### Case study 7:

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In 2017 a senior constable (involved officer) of a regional command was investigated for a failure to provide customer service to a witness in a court matter and falsifying official documents. The investigation found that the involved officer failed to assist a prosecution witness in a court matter with processing their expenses and forged the witness's signature upon a *Claim for Payment of Witness Expenses* in late 2016.

The involved officer was issued with a Commander Warning Notice and placed on a three month CMP in late 2017. One of the CMP strategies focussed on reinforcing the involved officer's understanding of the Code of Conduct and Ethics which states, among other things, that an employee of the NSWPF must 'know and comply with all policies, procedures and guidelines that relate to their duties' and s 7 of the *Police Act 1990* which states 'Each member of the NSW Police Force is to act in a manner which places integrity above all and upholds the rule of law'. In addition, the CMP required the involved officer to undergo a number of six minute intensive training exercises focusing on professional conduct, the NSWPF Statement of Values and policy awareness. The NSWPF advised the involved officer that he had achieved the 'minimum standard' required to satisfy the strategies of the CMP. The team leader of the involved officer was required to continue monitoring the involved officer's performance and conduct.

The involved officer was the subject of two further complaints in 2018 which resulted in sustained findings for failing to serve a brief of evidence, conducting a deficient investigation into a domestic violence matter and failing to serve an AVO. The involved officer was issued with a Commander Warning Notice and received counselling.

In 2020 the involved officer was investigated for falsifying an official police record relating to a person search which did not occur. The allegations were sustained and the involved officer was issued with a Region Commander Warning Notice which stated that the involved officer's misconduct was a breach of the NSWPF Code of Conduct and Ethics and s 7 of the *Police Act 1990*. The same policy and procedures breaches had been addressed in the involved officer's 2018 CMP and, judging from this latest complaint, failed to modify the conduct of the involved officer.

The above two case studies appear to support existing research that suggests that disciplinary action does not deter misconduct and, in some cases, results in more misconduct.<sup>152</sup> Research found that deterrent effects were more effective among officers without prior experience of department discipline, indicating punishment experiences may erode the deterrence process, a finding which is similar to deterrence studies using other populations.<sup>153</sup>

Pogarsky and Piquero examined the extent to which formal and informal sanction threats influenced officers' decisions to commit misconduct and whether these processes were related to prior punishment experience and the impulsivity of officers. The study found that certainty of punishment was the largest deterrent effect for officers and far surpassed the deterrent effect of punishment severity.<sup>154</sup>

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<sup>152</sup> Harris, C.J., & Worden, R. E. (2014). The Effect of Sanctions on Police Misconduct, *Crime and Delinquency*, Vol 60(8), pp. 1258-1288.

<sup>153</sup> Pogarsky, G., & Piquero, A. R. (2004). Studying the research on deterrence: Can deterrence theory help explain police misconduct? *Journal of Criminal Justice*, 32, 371-386.

<sup>154</sup> Pogarsky, G., & Piquero, A. R. (2004). Studying the research on deterrence: Can deterrence theory help explain police misconduct? *Journal of Criminal Justice*, 32, pp. 372, 376.

Other scholars established that informal (extralegal) sanction threats, such as guilt, embarrassment and shame were often more effective in deterring police misconduct than formal (legal) sanction threats.<sup>155</sup> Grasmick and Bursik measured the perceived deterrent effect of three kinds of punishment (legal sanctions, shame and embarrassment) for three types of illegal conduct (drink driving, petty theft and tax cheating) on 360 adults. They found that for all three offences shame had a deterrent effect and for two of the three offences (tax cheating and drink driving) shame had the greatest direct deterrent effect.<sup>156</sup> In other words conscience or internal controls (shame) was a stronger deterrent than fear of what others might think (embarrassment).<sup>157</sup>

Research into the extent to which deterrence theory could explain two types of police misconduct has found that while police officers are 'deterable' by both legal and extralegal factors, a subgroup of highly impulsive officers appeared unresponsive to sanction threats. The critical issue is how to identify this group of officers.<sup>158</sup> Early-intervention/early warning systems were cited as the most promising approach to identify officers who are at risk of engaging in further misconduct.<sup>159</sup>

Tyler *et al.* found that if officers who were the subject of complaints viewed their organisation as treating them with dignity and respect, giving them the opportunity to tell their side of the story and basing their decisions on facts and are free of bias (procedural fairness) then these officers were more likely to conform to organisational guidelines and procedures.<sup>160</sup> Researchers found that fair disciplinary practices shaped officers attitudes towards their organisations and improved their performance, efficiency and support for organisational policies and procedures.<sup>161</sup>

Donner *et al.* conducted a comprehensive literature review on procedural justice<sup>162</sup> in policing. The meta-review identified 46 studies.<sup>163</sup> Of these 18 studies examined procedural justice focussing on decision-making in police organisations. Overwhelmingly findings from the 18 studies demonstrated that if police officers perceived the actions of their organisations towards them to be procedurally fair or just, they were more committed to the organisation,

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<sup>155</sup> Pogarsky, G., & Piquero, A. R. (2004). Studying the research on deterrence: Can deterrence theory help explain police misconduct? *Journal of Criminal Justice*, 32, p. 372.

<sup>156</sup> Grasmick, H. G., and Bursik, R.T. (1990). Conscience, Significant Others, and Rational Choice: Extending the Deterrence Model. *Law & Society Review*, 1990, Vol. 24, No. 3 (1990), pp. 853-854.,

<sup>157</sup> Grasmick, H. G., and Bursik, R.T. (1990). Conscience, Significant Others, and Rational Choice: Extending the Deterrence Model. *Law & Society Review*, 1990, Vol. 24, No. 3 (1990), pp. 840, 853-854.

<sup>158</sup> Pogarsky, G., & Piquero, A. R. (2004). Studying the research on deterrence: Can deterrence theory help explain police misconduct? *Journal of Criminal Justice*, 32, p. 382. The study administered a survey about police misconduct to several hundred police officers from a mid-sized southwestern US police department. The survey presented two hypothetical scenarios involving acts of police misconduct. In the first scenario officers were asked to assume they had made a motor vehicle stop of a clearly intoxicated driver, who turned out to be an off-duty police officer. The question was whether the officer would pursue a clearly warranted drinking and driving investigation. The second scenario asked officers about a new neighbor who 'seemed suspicious' but had committed no apparent crimes. The issue was whether the officer would perform an unauthorized background check on the new neighbour.

<sup>159</sup> Pogarsky, G., & Piquero, A. R. (2004). Studying the research on deterrence: Can deterrence theory help explain police misconduct? *Journal of Criminal Justice*, 32, p. 382.

<sup>160</sup> Tyler, T.R., Callahan, P.E., & Frost J. (2007). Armed and dangerous (?): Motivating rule adherence among agents of social control. *Law & Society Review*, 41, 457-492.

<sup>161</sup> De Angelis, J., & Kupchik, A. (2007). Citizen oversight, procedural justice, and officer perceptions of the complaint investigation process. *Policing: An International Journal of Police Strategies & Management*, 30(4), 651-671. Boateng, G.D. (2014). Perceived organizational support and police officer effectiveness: Testing the organizational support theory in Ghana. *International Criminal Justice Review*, 24(2), 134-150. Myhill, A. and Bradford, B. (2013), "Overcoming cop culture? Organizational justice and police officers' attitudes toward the public", *Policing: An International Journal of Police Strategies & Management*, Vol. 36 No. 2, pp. 338-356.

<sup>162</sup> Procedural justice, as referred to in Donner *et al.*'s article is defined as: 'fairness and equity of decision making. It refers to the fairness of the processes and procedures that underlie any given outcome'. (p. 154).

<sup>163</sup> Twenty eight studies analysed procedural justice within the context of police-citizen encounters.

more satisfied in their job and more likely to accept outcomes of decisions made by the organisation, including outcomes of disciplinary investigations.<sup>164</sup> Related, the findings from one study also suggested that perceptions of procedural justice increased the likelihood of officers reporting police misconduct.<sup>165</sup>

The Commission is concerned that 70 out of 168 involved officers (42%) engaged in further misconduct after being placed on a CMP between 1 January 2017 and 1 January 2018; 22 out of the 70 involved officers (13%) for similar misconduct. The Commission recommends that the NSWPF conducts further research to identify the reasons why some involved officers continue to engage in misconduct and, in instances where they continue to engage in similar misconduct, explore reasons why previous CMPs failed to modify their conduct. This would likely require analysis of more detailed information than can be found on the IAPro records for the involved officers, and might consider information on involved officers' personnel files, engagement with the plan supervisor or reviewing officers or with the involved officers. It would seem most appropriate that this type of research is conducted by the PSC given its responsibility in setting policy direction related to the investigation and management of officer misconduct.

**Recommendation 9:** It is recommended that the NSW Police Force conducts yearly complaint audits of involved officers who have been placed on a CMP to find out if they have engaged in further misconduct and to explore whether the ongoing misconduct relates to deficiencies or gaps in the previous CMP strategies or the supervision of the CMPs.

#### *NSW Police Force response*

The NSWPF did not support this recommendation. Its response suggests that discussions that take place between an involved officer and a Commander at the conclusion of a CMP are sufficient:

Where a CMP is implemented a determination is made as to whether the officer's behaviour has been remediated as part of the finalisation process. Deficiencies or gaps in CMP strategies should be identified, and addressed, as part of the regular reviews between the plan supervisor, the involved officer and the relevant Commander.

When an officer fails to meet CMP outcome expectations, a commander may consider taking action that includes an increase in the timeframe for the CMP, or if misconduct is sustained, management action under the provisions of ss. 173 or 181D of the Police Act 1990.

As the Commissioner would appreciate, further allegations of misconduct are properly dealt with under the misconduct matters framework. One of the key considerations for delegates when determining management action to be taken in response to misconduct allegations, involves the consideration of an officer's misconduct history. Each matter needs to be determined on its own merits, taking all factors into consideration including the objective seriousness of the misconduct and any subjective factors relevant to the officer.<sup>166</sup>

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<sup>164</sup> Donner, C., Maskaly J., Fridell L., and Jennings, W.G. (2015). Policing and procedural justice: a state-of-the-art review. *Policing: An International Journal of Police Strategies & management*, Vol. 38 Iss 1, pp. 153, 161.

<sup>165</sup> Donner, C., Maskaly J., Fridell L., and Jennings, W.G. (2015). Policing and procedural justice: a state-of-the-art review. *Policing: An International Journal of Police Strategies & management*, Vol. 38 Iss 1, p. 166.

<sup>166</sup> Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner for Integrity, Law Enforcement Conduct Commission, 16 July 2021, p. 6.

### *Police Association of NSW response*

The PANSW supported the general thrust of Recommendation 9 but made no submission on whether 'yearly complaint audits' of involved officers placed on a CMP are necessary or appropriate.<sup>167</sup>

The Commission remains of the view some form of centralised analysis, by the PSC for example, of the efficacy of CMPs would assist in identifying why some officers continue to engage in misconduct despite previous management action and whether further guidance in tailoring CMPs may improve their effectiveness.

Previous Commission research found that some officers who had previously been investigated for workplace equity matters continued to engage in this type of misconduct. These findings seemed to indicate that previous NSWPF management action had been ineffective in modifying the conduct of these officers. The Commission suggested that there may be merit in the NSWPF conducting additional research into the causes of reoffending by some officers.<sup>168</sup>

Our review was unable to locate any information or records on IAPro as to how involved officers viewed their experiences while being on a CMP and their perceptions as to whether or not CMPs were fair processes that assisted them in modifying their conduct.

Research has shown that in order to improve officers' perception of procedural fairness police organisations should solicit employee input into the decision-making processes; this is known as having a voice in the decision-making process. The request for officer contribution must be genuine as otherwise officers will notice if it is not genuine and their views of procedural fairness within their organisation will diminish.<sup>169</sup>

It may be beneficial for the NSWPF to give involved officers the opportunity to voluntarily participate in a process that provides insight into their experiences and perceptions of being placed on a CMP and to establish if any changes may need to be made to the CMP process to improve its effectiveness. Including involved officers in the CMP process would allow them to reflect on their behaviour and provide the NSWPF with potentially valuable information as to whether the CMP strategies provided the involved officers with the necessary advice, guidance and skills to modify their conduct. It is possible that some CMP strategies may inhibit some involved officers from seeking assistance from their plan supervisor or reviewing officer. By way of example, one involved officer received sustained findings for inadequate brief preparation and failure to check a brief of evidence. The involved officer was on a CMP at the time that these new findings were made in a separate investigation. The involved officer agreed that he had mentoring officers to assist him whilst on the CMP but commented that he did not seek their assistance as he did not want to look 'stupid'.

Officers who are placed on a CMP are monitored and supervised by more senior officers within their command. It may be that some involved officers feel inhibited or are embarrassed to seek advice from their peers, especially in circumstances where they lack the necessary skills to carry out their policing duties. By giving involved officers an opportunity to voice their concerns and opinions without fear of retaliation or embarrassment the NSWPF may obtain useful information that assists in strengthening its CMP processes.

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<sup>167</sup> Letter from President, Police Association of NSW, to Commissioner, Law Enforcement Conduct Commission, 7 October 2021, p. 2.

<sup>168</sup> Law Enforcement Conduct Commission, *Operation Shorewood: Review of how the NSW Police Force manages and investigates workplace equity matters*, July 2020.

<sup>169</sup> Donner, C., Maskaly J., Fridell L., and Jennings, W.G. (2015). Policing and procedural justice: a state-of-the-art review. *Policing: An International Journal of Police Strategies & management*, Vol. 38 Issue 1, p. 167.



**Recommendation 10:** The Commission recommends that the NSW Police Force offers involved officers the opportunity to voluntarily participate in a process that provides insight into their experiences and perceptions of being placed on a CMP and to establish if any changes may need to be made to the CMP process to improve its effectiveness.

*NSW Police Force response*

The NSWPF supported this recommendation in principle. It advised:

CMPs are designed to assist officers in modifying their behaviour. A key component of the process involves the regular review meetings between the plan supervisor and the involved officer. These review sessions provide opportunity for both the plan supervisor and involved officer to discuss progress for the review period, and to raise any issues of circumstances that may affect the continuance of the CMP strategies.

As part of the Professional Standards Command's ongoing misconduct prevention process, it is agreed that involved officers may be able to provide valuable insights into the effectiveness of CMPs, and as such, further consideration will be given to the implementation of an informal feedback process during the course of the PSC review.<sup>170</sup>

The Commission remains of the view that a centralised approach to analysis of the experiences of officers who have been placed on CMPs may benefit any further analysis of their effectiveness.

*Police Association of NSW response*

The PANSW supported Recommendation 10 and expressed its desire to participate in such a research project.<sup>171</sup>

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<sup>170</sup> Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner for Integrity, Law Enforcement Conduct Commission, 16 July 2021, p. 7.

<sup>171</sup> Letter from President, Police Association of NSW, to Commissioner, Law Enforcement Conduct Commission, 7 October 2021, p. 3.

## 4. Conclusion

An underlying assumption of police disciplinary systems is that officers who are sanctioned for misconduct are less likely to engage in future misconduct.

The NSWPF has a comprehensive performance management and discipline system which aims to ensure the highest level of ethical and professional standards among its officers. This system recognises that a breach of law, policy or guidelines can occur because an officer made an honest error in judgement. It can also take place when an officer is fully aware of what is required but continues with the conduct nonetheless. The two situations require a different approach. For this reason, the NSWPF differentiates between conduct issues and performance issues which assist the organisation in selecting the most appropriate management action to address these issues.

A CMP can play a key role in modifying an involved officer's conduct as it includes both the agreement and acceptance by the involved officer of the necessary changes that are required to modify their conduct, along with ongoing monitoring and feedback by a nominated plan supervisor and reviewing officer. The aim of a CMP is not to punish an involved officer but to address conduct, behaviour and/or work performance deficiencies by providing assertive management support to ensure an involved officer's conduct stays within the framework of the law and NSWPF policies and procedures. It is a challenge for the NSWPF to achieve this objective.

There are limited studies that have examined the effectiveness of disciplinary action and whether disciplinary action deters officers from engaging in future misconduct. Nonetheless, a growing body of research has found that certainty of punishment, officers' perceptions of procedural fairness, and informal sanctions, including shame and embarrassment, can have a deterrent effect on officer misconduct.

The Commission's review examined two potential indicators to assess the effectiveness of CMPs in preventing officer misconduct –

1. whether involved officers have previously been placed on a CMP for misconduct;
2. whether involved officers continue to engage in misconduct after having successfully completed a CMP.

The review found that CMPs did not always modify the conduct of all involved officers. More specifically, 35 out of 168 involved officers (21%) were previously on a CMP; 13 of them for similar misconduct. Another 70 out of 168 involved officers (42%) received future sustained findings from complaints; 22 of them for similar misconduct.

The Commission was particularly concerned that 11 involved officers engaged in similar misconduct while they were still on a CMP which included, among other strategies, close monitoring and supervision by a senior officer. The rate of recidivism among some involved officers is a potential indicator of the effectiveness, or ineffectiveness, of a CMP in modifying their behaviour. However, the Commission's review was unable to establish why some involved officers who had previously been placed on a CMP continued to engage in misconduct. Further analysis by the NSWPF, particularly through directly engaging with involved officers and CMP supervisors, may shed further light on the reasons for the continued misconduct.

The Commission's review further established that the implementation and finalisation of a CMP can take many months, or even years. The Commission acknowledges that delays in

implementing a CMP can occur for reasons which are beyond the control of the NSWPF. However, research has shown that the impact of management action on an officer is severely compromised the longer it takes from the time the misconduct occurred to its final resolution. While it is hoped that the recent changes to the management of misconduct matters will improve the timeliness standards for implementing CMPs it is too early for the Commission to assess how these changes will reduce delays.

The Commission is concerned that some records pertaining to CMP processes were not available for review. Monthly progress reports, conflict of interest declarations and chronologies were not recorded on the primary NSWPF misconduct matters information system. No specific advice was provided in the CMP Guidelines regarding how and where conflict of interest declarations and chronologies are to be recorded. All CMP records contain information that should be uploaded to a centralised database to allow easy access to aggregate data and to facilitate the identification of potential trends in relation to CMP processes across the NSWPF. It would be preferable that this centralised database be accessible by the Commission to facilitate oversight of responses to misconduct. The lack of availability of some critical CMP records hindered the Commission's ability to adequately assess the effectiveness of CMP procedures for the 168 involved officers reviewed.

The NSWPF has recently revised its CMP Guidelines and made significant changes to its misconduct management model. The Commission's review predates these changes. Our ongoing work will include consideration of how these changes address the recommendations made in this report.

The findings and recommendations published in this report are intended to assist the NSWPF to improve the effectiveness of its CMP processes in modifying involved officer conduct to an expected standard.

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# Appendix A

## *Police Act 1990 No 47*

Current version for 11 December 2020 to date

### Schedule 1 Non-reviewable action

(Section 173)

- coaching
- mentoring
- training and development
- increased professional, administrative or educational supervision
- counselling
- reprimand
- warning
- retraining
- personal development
- performance enhancement agreements
- non-disciplinary transfer
- change of shift (but only if the change results in no financial loss and is imposed for a limited period and is subject to review)
- restricted duties
- recording of adverse findings

# Appendix B

IAPro classification	Allegations	Number of involved officers	Number of allegations	
Service Standards/ Ethical Standards/ Guidelines	Fail to comply with policy & procedures	Code of Conduct & Ethics	28	90
		Personal Use of Social media policy and Guidelines	5	8
		Conflict of interest policy & procedures	5	5
		Gifts & benefit register	4	4
		Arms & appointments	4	4
		Standing orders or Commissioners directives	4	5
		Sick leave mgmt.	3	3
		Declarable association policy	2	4
		Other	2	2
		NSWPF Withdrawal policy	1	23
		Domestic Violence	1	1
		Secondary employment	1	1
		EEP Guidelines <sup>172</sup>	1	1
		Unreasonable/ Unprofessional behaviour (not customer service related)		15
	Administration	Fail to create records	16	22
		Non/late submission of correspondence	2	2
		Unauthorised/inappropriate disposal/ handling of official records	1	1
	Neglect of duty		13	13
	Disobey reasonable direction		13	13
	Property/Exhibits	Fail/ Improper receipting	4	5
		Improper disposal	2	2
		Fail to keep secure	2	2
		Loss of exhibits	2	2
		Insufficient enquiries	1	1
	Unauthorised absence		8	8
	Services resources	Unauthorised use/misuse of official vehicle	5	6
		Misuse of other facilities/ equipment	2	2
Unreasonable conduct	Not otherwise specified	4	5	
Police appointments	Not safely stored	4	5	

<sup>172</sup> Enhanced Enforcement Program.

Customer Service	Fail to report misconduct		4	4	
	Service Delivery	Threats/intimidation	2	2	
	Duty of care	Fail to provide	2	2	
	Supervisory issues	Fail to adequately supervise	2	2	
	<b>TOTAL</b>		<b>102</b>	<b>266</b>	
	Unprofessional conduct	Incivility/rudeness		13	13
		Uncooperative behaviour		6	7
		Inappropriate behaviour		5	5
		Disrespectful behaviour		4	6
		Other (customer service)		3	3
		Unfair treatment		1	1
	Inconsiderate/insensitive behaviour		1	1	
	Fail to take appropriate action	Fail to investigate		14	16
	Fail to be accessible	Fail to provide assistance		4	4
	Inadequate customer service			3	3
	Fail to keep informed	Victim/witness		2	2
	Customer service not provided			2	2
<b>TOTAL</b>			<b>48</b>	<b>63</b>	
Investigation	Outcome	Deficient/ inadequate investigation	18	25	
	Process	Fail to investigate		5	6
		Inadequate administration of an investigation/case management		3	3
		Fail to comply with investigation SOPs or procedures		3	3
		Lack of impartiality		1	1
	Timeliness	Statute barred		6	6
		Delay investigation		2	2
<b>TOTAL</b>			<b>30</b>	<b>46</b>	
Dishonesty	Untruthfulness	Lie during enquiries	11	15	
		Covering up inappropriate conduct	2	2	
	Falsifying	Falsify official records	9	10	
		Forgery	1	1	
	Academic misconduct	Plagiarise work	1	1	
<b>TOTAL</b>			<b>22</b>	<b>29</b>	
Judicial / Evidence	Evidence	Inadequate brief preparation/fail to check brief	7	7	
		Collusion between police witnesses	3	3	
		False affidavit	2	4	
		Mislead the court	1	1	



	Prosecution	Fail to serve brief evidence	3	3
		Fail to attend court	3	3
		Fail to subpoena witness	3	3
		Other	2	2
		Adverse comment	1	1
		Fail to charge/prosecute/initiate proceedings	1	1
	Witness	Fail to notify	2	2
	<b>TOTAL</b>		<b>19</b>	<b>30</b>
Information/Tele-communication	Unauthorised / unlawful access	For personal gain/use	6	8
		On behalf of another	1	6
	Unauthorised/improper disclosure of information		6	7
	Provide incorrect or misleading information		2	2
	Misuse of email/internet		2	3
	<b>TOTAL</b>		<b>14</b>	<b>26</b>
Workplace Relations Equity Matters	Sexual harassment		8	8
	Bullying		5	8
	Harassment		3	3
		Gender based harassment	2	2
		Sex (including breastfeeding)	1	1
	Victimisation		1	1
	<b>TOTAL</b>		<b>14</b>	<b>23</b>
Police Powers	Fail to comply with LEPPRA	Arrest	4	4
		Searching	2	2
	Custody	Escape from custody	2	2
		Fail to caution	1	1
		Fail to meet requirements for vulnerable persons	1	1
		Inadequate monitoring/inspection	1	1
		Fail to comply with legislation/ code of practice	1	1
	<b>TOTAL</b>		<b>9</b>	<b>13</b>
Use of Force	Assault (on/off duty)		6	8
	Unreasonable use of force (on duty)	With arms/appointments	2	2
		Weaponless force	2	2
	<b>TOTAL</b>		<b>8</b>	<b>12</b>
Other criminal act or omission (not specified elsewhere)	Other summary offences		6	7
	Offence punishable upon conviction by maximum sentence of 5 years or more		1	1

	Offence punishable upon conviction by less than 5 years	Larceny	1	1
	<b>TOTAL</b>		<b>7</b>	<b>9</b>
Traffic	Driving offences	Drink driving	2	2
		Disobey red traffic signal	1	1
		Unnecessary speeding	1	1
	Fail to follow operational procedures	Pursuit procedures	1	1
		Safe Driving Policy	1	1
	<b>TOTAL</b>		<b>6</b>	<b>6</b>
Misconduct	Officer subject of AVO		2	2
	Fail to aid injured person or person needing aid		1	1
	Fail to report suspected/ alleged misconduct		1	1
	<b>TOTAL</b>		<b>4</b>	<b>4</b>
Corruption/misuse of office	Fail to declare a conflict of interest		2	2
	Breach of declarable associations policy		1	1
	Misuse authority for personal benefit or the benefit of an associate		1	1
	<b>TOTAL</b>		<b>3</b>	<b>4</b>
Other offences (not elsewhere specified)	Summary offence	Resisting arrest	1	1
	<b>TOTAL</b>		<b>1</b>	<b>1</b>
Drugs/Alcohol	Alcohol test	Positive alcohol test	1	1
	<b>TOTAL</b>		<b>1</b>	<b>1</b>

# Glossary

Glossary	Description
AVO	Apprehended Violence Order
c@ts.i	Previous NSW Police Force misconduct matters information system
CMP	Conduct Management Plan
CMT	Complaint Management Team
CoP	Commissioner of Police
COPS	Computerised Operational Policing System
EEP	Enhanced Enforcement Program
IAPro	NSW Police Force misconduct matters information system
IRC	Industrial Relations Commission
IRMP	Interim Risk Management Plan
IRP	Internal Review Panel
LECC Act	<i>Law Enforcement Conduct Commission Act 2016</i>
LSC	Leading senior constable
MROR	Mandatory Resolution Outcome Report
NSWPF	New South Wales Police Force
ODPP	The Office of the Director of Public Prosecutions
OIC	Officer in charge
PAC	Police area command
PANSW	Police Association of NSW
PD	Police district
PSC	Professional Standards Command

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