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Project Cyril: Using the NSW Police Force complaints system to identify system problems and solutions

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1. Introduction

1.1. Project background & aims

In addition to providing a mechanism for determining whether or not there is evidence an individual officer has engaged in misconduct or criminal offences, the effective investigation and analysis of complaints can enable police agencies to identify systemic or organisational factors which may have contributed to the conduct under investigation. In turn, this can provide the basis for a police agency to strengthen and improve policies, procedures, training, and communication or management practices so as to prevent future misconduct.

The legislative and policy framework for police complaint management in NSW acknowledges that the examination of organisational and systemic problems may form part of the scope of a complaint investigation.

Section 145(2) of the *Police Act 1990* (NSW) authorises the NSW Police Force (NSWPF) to extend its complaint investigations beyond the subject officer if the matter under investigation is indicative of a systemic problem; however this is a discretionary activity. It states:

> If the complaint under investigation is indicative of a systemic problem involving the NSW Police Force generally, or a particular area of the NSW Police Force, the investigation may extend beyond any police officer to whom the complaint relates:
>
> (a) To the NSW Police Force generally, or that particular area of the NSW Police Force, and
> (b) To other police officers and members of the NSW Police Force.

In the same vein, the NSWPF's *Complaint Handling Guidelines* (2012d) (the 'guidelines') indicate that it is important that complaint investigators bring relevant supervisory, managerial or organisational issues to the attention of management. The guidelines state:

> Where supervisory, managerial or organisational issues which may have contributed to poor performance are identified, it is important that these matters are brought to the attention of the commander / manager or organisational representative. Any comment

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included should be based on facts and not include personal opinion. Organisational outcomes include but are not limited to:

- Supervisory / managerial issues
- Training and development within or across commands relating to a particular issue
- Improvements to policies and standard operating procedures
- Amendments to legislation.

[Investigation reports] should include information on whether these issues contributed to the poor performance of the subject officer and actions recommended to prevent a reoccurrence.

In mid-2011, the Police Integrity Commission (the Commission) initiated a misconduct prevention project, codenamed Project Cyril, to examine the arrangements the NSWPF has in place for identifying systemic and organisational issues from its complaint investigations and whether those arrangements are working effectively. The aims of Project Cyril were to:

1. examine what guidance complaint investigators receive in identifying issues and developing solutions for consideration in complaint investigation reports

2. examine how complaint investigators perceive their role with regard to identifying organisational issues and making recommendations for changes to relevant systems and processes

3. evaluate the approach complaint investigators take to identifying organisational issues and making recommendations for changes to relevant systems and processes

4. identify examples of good practice in complaint investigation reports that identify issues and develop solutions for consideration as well

5. provide advice and recommendations to the NSWPF, if warranted, to improve its arrangements for the identification of organisational issues and proposals for change through complaint investigations.

This Research & Issues Paper seeks to address these aims. The remaining sections are as follows:

- Section 2 provides a brief review of the available literature on the use of complaints and complaint investigations to identify and develop solutions for organisational and systemic problems

- Section 3 examines previous Commission misconduct prevention projects of relevance to the topic

- Section 4 describes the complaint management process in the NSWPF
- Section 5 describes the methodology used to collect and collate information for the purposes of this project
- Section 6 provides the results of the Commission's research, together with an analysis of those results
- Section 7 presents the Commission's key observations and recommendations as to how current systems and practices may be strengthened.

In terms of the scope of the Commission's study, Project Cyril was focused solely on complaint investigations into sworn officers of the NSWPF. It did not examine the practices, systems or policies of the NSWPF with regard to the investigation and management of misconduct complaints against non-sworn employees of that agency.

A considerable number of complaint investigations were examined for the purposes of Project Cyril. However, the Commission's study did not seek to inquire into the conduct of the individual officers who were the subject of these complaints. Nor did it seek to review the findings reached in connection with those subject officers. Project Cyril was concerned only with those conclusions and recommendations from complaint investigations that related to organisational and systemic issues.

2. Literature review

Within the academic literature on policing and misconduct, it is recognised that complaint management represents an opportunity for police agencies to identify and address misconduct risks (Ede, Homel & Prenzler, 2002; Prenzler & Ronken, 2003; Punch, 2000, 2003). This argument is clearly articulated in Goldsmith's (1991, p. 209) statement that: 'Complaints against police inevitably raise issues and problems of a systemic kind'.

Within the academic literature on policing and misconduct, it is recognised that complaint management represents an opportunity for police agencies to identify and address misconduct risks.

Similar views have been presented by oversight bodies in other jurisdictions. In its 2006 review of the arrangements for police oversight in NSW ten years following the conclusion of the Royal Commission into the Police Service, the NSW Parliament's Committee on the Office of the Ombudsman and the Police Integrity Commission recommended that the NSWPF's Professional Standards Command[1]

[1] The Professional Standards Command (PSC) is a corporate command within the NSWPF that, according to the *Professional Standards Command Business Plan 2012 – 2013* (2012c), 'aims to encourage, promote and strengthen an ethical NSW Police Force and culture through developing and delivering professional standards products and services, and preserving the integrity and values of the NSWP Force'.

consider providing assistance and support to commands in considering systemic issues. The Committee recommended that:

> … [The] Professional Standards Command should continue to provide assistance and support to local area commanders and other senior officers involved in the management and investigations of complaints, and the handling of local management issues. Possible options to consider for advice and guidance are:
> …
> d) encouraging utilisation of complaint handling and police misconduct investigations for broader systemic management purposes, e.g. service delivery improvements, policy reforms, identification of systemic issues and officers at high risk.

In the United Kingdom, Her Majesty's Inspectorate of the Constabulary[2] (HMIC) (2006, p. 66) has expressed the view that complaints against police represent 'opportunities for organisational and individual learning and for service improvement':

> Industry and commerce have long recognised the value of having robust and effective mechanisms to manage customers' complaints and to ensure that organisational learning is captured and fed back to achieve constant improvement of service … Although the Police Service is not a profit-orientated organisation, the principle remains the same (Her Majesty's Inspectorate of the Constabulary, 2006, pp. 214).

Examples of this idea in action are the 'Learning the Lessons'[3] and 'Learning Point'[4] bulletins distributed by the Independent Police Complaints Commission in England and Wales and the Police Complaints Commissioner for Scotland respectively. Cases that feature in these bulletins provide resources for other police forces that face similar situations and may encourage them to strengthen their policies and practices. A recent report commissioned by the UK's Association of Police Chief Officers (APCO) (2013) echoes these sentiments, stating that it is important to monitor incidents so as to gain and disseminate knowledge learnt from them.

HMIC (2006), however, has highlighted that before this learning can be shared it is vital that systems are in place to encourage staff to put forward recommendations of good (and bad) practice for the benefit of organisational learning. They acknowledge that this happening is subject to police having the confidence to share such information 'warts and all' and to recognise that by doing so 'will produce positive results rather than blame or stigmatisation' (p. 220).

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[2] According to its website Her Majesty's Inspectorate of Constabulary (HMIC) independently assesses police forces and policing activities in the public interest. It further states that HMIC decides on the depth, frequency and areas to inspect based on its judgments about what is in the public interest. The website adds that in forming these judgments, it considers the risks to the public, the risks to the integrity of policing, service quality, public concerns, the operating environment, the burden of inspection and the potential benefits to society from the improvements that might arise from the inspection (HMIC, 2014).
[3] The 'Learning the Lessons' bulletins can be viewed at http://www.learningthelessons.org.uk.
[4] The 'Learning Point' bulletins can be viewed at http://www.pcc-scotland.org/news/learning_point_quality_matters.

Closer to home a report in 2007 published by the former Office of Police Integrity in Victoria reinforced the importance of evaluating complaints to identify trends:

> … the lynchpin of an effective disciplinary system is the ability to track, monitor and evaluate information relating to complaints about members and day-to-day performance management issues.
> …
> At a broader level, aggregated data can also identify trends that should prompt management to take proactive action to prevent serious problems. This data is an essential management tool that can support an organisation or an individual to improve performance, and match information against performance indicators (p. 42).

Similarly the NSW Ombudsman's *Effective complaint handling guidelines* (2010a) recommends that complaints are regularly reviewed so as to 'identify and rectify any systemic or recurring issues' (p. 12). The guidelines also state that if 'information on complaints raised with an agency are captured, classified and analysed, systemic and recurring problems will be more easily identified and rectified' (p. 27). Furthermore in its *2011 – 2012 Annual Report* the NSW Ombudsman acknowledges that: 'When police directly and genuinely engage with … the complaints process, issues and problems can be identified early and rectified. It also means that potential improvements can be made to the way the system operates' (p. 37).

… circumstances surrounding complaints can be embedded with issues that require systemic alterations ...

The theme that the circumstances surrounding complaints can be embedded with issues that require systemic alterations is also noted by the Independent Commission Against Corruption (2012). It highlights that the conduct of an individual does not necessarily lead to a disciplinary offence and that a weakness or incapacity may be highlighted in a complaint that warrants an administrative response, 'such as [the] provision of specific training or personal / professional development … [and that] there may also be systems issues that need to be addressed' (p. 22).

The Commonwealth Ombudsman's (2005) *Better Practice Guide to Complaint Handling* also suggests that complaints can indicate systemic or organisational problems in an agency. The guidelines state by way of example: '… a complaint could expose a need to improve the agency's recordkeeping or a need for better training or support for agency staff … A review of agency procedures and policies can be another beneficial outcome [of a complaint]' (p. 26). They recommend that complaints data is regularly analysed to see what is going wrong and what can be improved and assert that numerous complaints about the same issue:

> … are usually a sign of a systemic or recurrent problem that requires further investigation and possible action by the agency. For example, the complaints might reveal that legislation is being wrongly interpreted or applied, an internal manual contains confusing guidelines or incorrect advice, recordkeeping needs to be improved, or staff need further training (p. 27).

3. Previous Commission projects

Misconduct prevention projects undertaken by the Commission, to date, have not focused on the NSWPF's practices regarding the use of complaint investigations to identify organisational and systemic problems and solutions. Some of the information and observations presented in the Commission's reports regarding the identification and management of misconduct risks can, however, be seen to have relevance to this topic.

Project Manta, which culminated in the publication of two reports, examined how commands identify, communicate and manage misconduct risks. In both reports, the Commission presented the view that there are significant similarities between preventing misconduct and preventing workplace accidents. Workplace safety strategies are aimed at reducing accidents by identifying risks to employees' safety by hazards in the workplace and determining how to best modify work practices to eliminate or control the risks. Hazards arising in the workplace can differ markedly and include such things as, tears in the carpet, use of machinery and chemicals. In the same vein, police misconduct prevention strategies are focused on identifying opportunities or vulnerabilities associated with the nature of the work and the working environment. An 'integrity hazard' is 'anything (including the nature of the work, work practices or procedures) that has the potential to harm or compromise the integrity of the employee' (Gorta, 2011b, p. 7).

The similarities between workplace safety and misconduct prevention extends to the way in which investigations can be used to identify organisational and systemic issues. In the workplace safety context, investigations into accidents and 'near misses' provide an opportunity to better understand safety hazards and what went wrong:

> Investigating accidents, incidents or 'near misses' helps you to find out what went wrong, why it happened and, if a control measure was in place, why it failed. Perhaps the control measure which you thought was in place did not work because people at the workplace did not know about it (WorkCover 2001, p. 12).

Likewise, as noted, misconduct prevention investigations can reveal failings in systems and processes and provide valuable insights into how they may be rectified.

As mentioned in the previous section, the value of police agencies circulating publications highlighting 'lessons learned' from complaints has been emphasised by a number of UK police oversighting bodies. It would seem that the sharing of information – in regards to what went wrong and what systems and practices were consequently strengthened is regarded as essential by these agencies so as to equip officers to deal with similar problems in the future.

The notion that good ideas about systems and practices should be widely shared within police agencies as a means of preventing misconduct has been a theme in a number of reports published by the Commission.

The notion that good ideas about systems and practices should be widely shared within police agencies as a means of preventing misconduct has been a theme in a number of reports published by the Commission. *The Qualitative and Strategic Audit of the Reform Process (QSARP) of the NSW Police Service: Report 1* (2000)[5], overseen by the Commission, reviewed and assessed the progress of reform in the NSWPF following the conclusion of the Royal Commission into the NSW Police Service. This report highlighted that 'good ideas' developed at the local level were not being picked up and shared amongst other commands, as evident in the following excerpts below:

> One commander we interviewed identified the need for greater sharing of the learnings of what can work at LACs. His view is that this is not happening to the extent it should. He feels that at the local area commander Professional Development Forums (which are held every two months), there should be an opportunity for commanders to share improvement experiences and improvement strategies. The same opportunity should be available at Regional meetings. He described both these forums as currently being mainly 'top-down' in focus (p. 188).

> … we note that there would be value from greater sharing of the learnings from LACs. We have not found evidence that this information sharing is embedded in a process of business improvement within the Service (p. 188).

However the report highlighted that:

> Another commander interviewed told us that the Reform Coordination Unit (RCU) provided information on good practices from LACs, which has been shared with other LACs (p. 188).

More recently the Commission has published the research report *Project Manta 2: Managing Command Misconduct Risks* (Gorta, 2011a). This report examined the ways that NSWPF commands manage or treat misconduct risks. Consultations with commanders for this research found that they felt that commands would benefit from access to examples of innovative practice in misconduct prevention that have been employed by other commands. One commander described his position as 'a fairly isolated job' and suggested that commands would benefit from receiving case studies and suggested responses to emerging issues (p. 122).

Recommendation 10 of the report called for the development of a process to promote good strategies created by individual commands to other commands. Recommendation 10 stated that:

> … the NSW Police Force explores methods of identifying and promoting on an ongoing basis corruption prevention strategies found useful by one or more commands and informs the Commission of the strategies that it is going to put in place to do this (p. 143).

[5] The Hay Group was contracted by the Commission to conduct a Qualitative and Strategic Audit of the Reform Process (QSARP).

4. The complaint management process in the NSWPF: an overview

The following questions and answers provide an overview of the complaint management process in the NSWPF.

4.1 Who can make a complaint about the NSWPF and what can they complain about?

Under Part 8A of the *Police Act 1990* (NSW), any person, including members of the public and other police officers, can complain to the NSWPF, the NSW Ombudsman[6] or the Police Integrity Commission[7] about the unreasonable or improper conduct by a police officer. According to the *Complaint Handling Guidelines* (2012d, p. 12), a Part 8A complaint must:

- Be made in writing
- Relate to the conduct of a police officer
- Relate to conduct on or off duty
- Relate to conduct occurring anywhere.

According to Section 122 of Part 8A of the *Police Act 1990* (NSW) complaints can be made about a broad range of conduct ranging from poor customer service to serious criminal offences.

4.2 Who is responsible for investigating complaints?

The NSWPF has primary responsibility for investigating and resolving complaints. Less serious complaints, such as rudeness or minor performance issues are managed by the NSWPF without direct oversight by the NSW Ombudsman or the Commission. The NSWPF, however, must notify the NSW Ombudsman and / or the Commission of complaints that raise allegations of serious police misconduct, including conduct which is criminal, corrupt or unreasonable. The NSW Ombudsman and the Commission will then determine whether or not the NSWPF complaint investigation requires oversight by their organisation/s or needs to be directly investigated by the Commission or the NSW Ombudsman.

4.3 What is the Commission's role in oversighting complaints?

The Commission may oversight the handling of complaints against sworn and unsworn NSWPF officers. In general the Commission oversights complaints by

[6] The NSW Ombudsman independently reviews the way the NSWPF handles complaints about serious misconduct and also checks how police handle less serious complaints. The NSW Ombudsman regularly audits the way the NSWPF complaint-handling processes are working to ensure they are effective and comply with legislative requirements.
[7] The principal functions of the Police Integrity Commission are to detect, investigate and prevent police misconduct.

reviewing a final NSWPF complaint investigation report and considering whether an effective and timely investigation has been conducted.

4.4 What is the NSW Ombudsman's role in oversighting complaints?

The NSW Ombudsman reviews[8] NSWPF investigations about 'notifiable complaints' to determine whether the NSWPF has complied with its 'obligation to carry out the investigation in a manner that, having regard to the circumstances of the case, is both effective and timely' (s. 145 of the *Police Act* NSW (1990)). The NSW Ombudsman may also 'monitor' an investigation (including attending interviews conducted with the NSWPF) and confer with the NSWPF investigators to make suggestions about lines of enquiry (s. 146 of the *Police Act* NSW (1990)).

4.5 How are complaints investigated?

When a complaint is received by the NSWPF it is examined within a triage process. The purpose of triage is to identify and clarify complaint issues, determine the most appropriate way to manage the matter effectively and identify and satisfy legislative and administrative requirements. During this stage the Triage Officer[9] will assess the complaint and determine if:

- The investigation of the complaint should be declined
- The complaint should be referred for 'resolution'[10]
- The complaint should be referred to the Complaints Management Team for it to consider initiating an evidence based investigation[11]

Where the Complaints Management Team (CMT) decides that an evidence based investigation is to be initiated, it appoints an investigator to make inquiries into the allegation(s), to 'analyse and reach valid conclusions about the veracity of the allegation(s)' and to recommend whether or not the complaint against the subject officer/s should be sustained.[12]

If a CMT decides that a complaint is to be the subject of an evidence based investigation then the CMT itself assumes responsibility for guiding and overseeing

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[8] Protocols exist between the Commission and the NSW Ombudsman to avoid duplication in the oversighting of NSWPF investigations.
[9] The triage process can be performed by a suitably qualified senior officer such as the Professional Standards Duty Officer, Crime Manager or equivalent (NSWPF, 2012d, p. 18).
[10] The resolution process is an alternative investigation process developed to allow for a less formal investigation of complaints about police misconduct (NSWPF, 2012d, p. 4).
[11] An evidence based investigation involves gathering and documenting evidence 'that may be later considered in more formal proceedings' (such as courts or tribunals) (NSWPF, 2012d, p. 25).
[12] Depending on the complexity of the matter and the experience of the investigator, the CMT may appoint an investigation supervisor to assist in the management and investigation of the complaint (2011, p.47). Investigation supervisors are responsible for monitoring and checking the progress of an investigation as well as offering advice and guidance to the investigator through the course of the investigation.

the inquiries.[13] This is to ensure compliance with related legal and policy requirements. Whilst the CMT monitors, guides, reviews and endorses evidence based investigations the final determination on management action[14] to be taken against the subject officer/s is the responsibility of the commander (NSWPF, 2012d, pp. 45). Management action can take two forms:

Non-reviewable action: These actions aim to rectify and improve the performance of an officer. Non-reviewable actions are outlined in Schedule 1 of the *Police Act 1990* (NSW). Examples of non-reviewable actions are training and development, increased supervision, restricted duties, and recording of adverse findings.

Reviewable action: Reviewable actions are outlined in Section 173, Subsection 2 of the *Police Act 1990* (NSW) and include: reduction in rank or grade; reduction in seniority; and deferral of increment. Reviewable actions are those that can be appealed against by the subject officer/s on the basis that they are harsh, unreasonable or unjust (NSWPF, 2010). When reviewable action is proposed it is referred to the NSWPF Internal Review Panel (IRP). The aim of the IRP is to consider the issues and determine the most appropriate management action (NSWPF, 2010).

4.6 What corporate guidance is available to complaint investigators to assist them to conduct a complaint investigation?

The *Complaint Handling Guidelines* (2012d) aim to 'outline the action that must be taken when assessing and investigating complaints about police conduct' (p. 4). The guidelines provide advice on the processes to be followed when conducting a resolution investigation and an evidence based investigation.

4.7 Issue identification and rectification in the complaint management process

As noted, in the course of conducting an investigation an investigator may identify a systemic or organisational issue that they perceive requires rectification. At the conclusion of a complaint investigation the investigator is urged to complete and submit a report that includes details of the complaint investigation including any recommendations they make for changes to organisational or systemic matters.

No further guidance is provided within the *Complaint Handling Guidelines* (2012d) on how complaint investigations can be used to identify issues and how to make recommendations for consideration. However, the *Guide to completing mandatory resolution outcome reports* offers the following:

[13] It is mandatory that each command has a CMT. The core members of a CMT are the commander, the Crime Manager, Executive Officer and the Professional Standards Duty Officer. CMTs may also invite local and specialist personnel as required.
[14] 'Management action' is a term used to describe the range of supervisory or managerial responses available to the NSWPF to appropriately manage issues affecting employees in the workplace (NSWPF, 2010).

Has the resolution identified any possible supervisory, managerial, organisational or other issues which may need to be brought to the commanders attention? These issues may include inadequate supervision, relate to decision making processes adopted, compliance issues with policy or procedure, procedural issues such as lack of or outdated policy and acknowledgement of good police work.

Additional guidance can be found in the *Guide to completing an evidence based investigation report*. On page five, this document presents the following:

OTHER ISSUES:
It is very important to identify and recommend a remedy for any supervisory, managerial or organisational issues which may have contributed to any identified poor performance or misconduct or which may do in the future. Describe here whether or not these issues did contribute and what you recommend to be done, or what has been done, to prevent a recurrence.

Explanations should be based on factual information.

SUPERVISORY ISSUES:
e.g. inadequate supervision, failure to intervene, inadequate review (COPS verification, etc).

MANAGERIAL ISSUES:
e.g. decision making processes adopted, compliance issues with policy, procedure, inappropriate intervention.

ORGANISATIONAL ISSUES
e.g. systemic / procedural issues such as lack of (or outdated) policy and procedure.

OTHER:
e.g. acknowledging good police work, including a recommendation for commendations, citations or notations.

4.8 Are completed investigations subject to quality review?

Once a complaint investigator has completed a complaint investigation report a quality review should be conducted before the report is provided to the commander for consideration. Feedback on the quality review should be provided to the investigator and the CMT as soon as practical (NSWPF, 2012d).

4.9 Who makes decisions regarding the final outcome of the complaint? What happens following this decision?

Ultimate decision making responsibility in relation to complaints rests with commanders of local area or specialist commands, though CMT members are able to assist commanders in reaching their decisions. The *Complaint Handling Guidelines* (2012d, p. 53) highlight that:

Where an investigator has made a recommendation in respect of organisational issues which may have contributed to poor performance, it must be endorsed by the commander / manager. A separate submission about the issue and recommendation must be forwarded to the relevant command.

Once the NSWPF has finalised its investigation of a complaint it is required by legislation to send the NSW Ombudsman a report on its investigation. The NSW Ombudsman then decides whether it is satisfied with how the complaint was investigated or resolved, the outcome and any action that was taken as a result. It is then the responsibility of the NSWPF to provide feedback to a complainant about the outcome of their complaint.

4.10 What is the Professional Standards Command and what role does it play in the complaints management process?

The Professional Standards Command (PSC) is a corporate command within the NSWPF that, according to the *PSC Business Plan 2011 – 2012* (2012b), 'aims to encourage, promote and strengthen an ethical NSW Police Force and culture through developing and delivering professional standards products and services, and preserving the integrity and values of the NSWP Force'. The PSC aims to do this through:

- Assisting NSWPF commands to meet its responsibility to manage complaint issues
- Investigating serious police misconduct
- Monitoring corporate standards for complaint investigations
- Developing and promoting professional standards products and services

5. Methodology

In order to address the stated project aims Project Cyril was divided into three phases:

5.1 Phase 1: Review of NSWPF corporate guidance

The first phase was a review of NSWPF corporate guidance investigators receive to assist them in completing the 'organisational issues' component of the report. Documents reviewed included the *Complaint Handling Guidelines* (2012d), the *Complaint Handling Guidelines Policy Statement* (2012b), the *Guide to completing an evidence based investigation report* and *The Guide to completing mandatory resolution outcome report*. Relevant open source materials, including literature on policing and misconduct and publications from other oversight agencies, were also reviewed in this phase.

5.2 Phase 2: Review of complaint investigation reports

In the second phase a sample of resolution reports and evidence based investigation reports were reviewed in order to identify examples of good practice.

To enable it to perform its functions, the Commission has access to c@ts.i, (the Customer Assistance Tracking System) – an online complaints management system used by every NSWPF command to record, manage and report on complaints involving sworn NSW police officers.[15] In June 2011, the Commission ran a report across c@ts.i to identify the most recent 300 evidence based investigations that had been finalised, and in August 2011 to identify the most recent 300 mandatory resolution outcome investigations that had been finalised. Each of these complaints were then screened using the following criteria.

Complaints were excluded if:

- they were declined for investigation
- were sustained and an organisational or systemic issue was not identified by the investigation
- were not sustained and an organisational and / or systemic issue was not identified by the investigator.

Complaints were included if:

- a complaint was found to be sustained and an organisational or systemic issue was identified by the investigation

[15] This system is the most recent which the NSWPF has established pursuant to s. 129 of the *Police Act 1990* (NSW). The Commission's access is regulated by cl 54 of the Police Regulation 2008.

- a complaint was found to be not sustained and an organisational and / or systemic issue was identified by the investigation.

Using this process a final sample of 40 evidence based investigations and 40 mandatory resolution outcome investigations were selected for initial review.

The 40 mandatory resolution outcome investigations and 40 evidence based investigations were then further 'culled' down to seven mandatory resolution outcome investigations and six evidence based investigations. These were selected based on the region of the complaint so that all regions[16] of NSW were represented. Three complaints were selected from the South-West Metropolitan Region and the North-West Metropolitan Region; two from the Central Metropolitan Region; and one from the Western Region, Northern Region and the Southern Region. In addition, two complaints were selected from specialist commands[17]. The 13 complaints were also selected so that a diverse range of issues were covered. The issues these complaints grappled with included: items missing from a station; lying in a promotion application; soliciting bribes; failure to keep exhibits secure; driving while licence suspended; custody issues; unreasonable use of force; failed prosecutions; breach of the Privacy and Personal Information Act 1998; theft of official NSWPF property including theft of personal property; failure to attend court and notify witness; and statute barred investigations.

A close examination of these 13 investigations and their associated documents was then conducted. The 13 investigators who conducted these complaint investigations were identified and invited to participate in a research interview so that the Commission could learn about their practices in identifying issues and making recommendations for organisational change. Due to the sensitivity of information contained in complaint investigation reports research interview participants were assured that any information used in subsequent reporting by the Commission would be altered to remove any identifying details of persons, locations, specific allegations and so on. Research interview participants were also reassured that any information that could be used to identify them would not be used in any subsequent reporting by the Commission. One of the limitations of this research was that it was not possible to quantify the extent to which certain practices were adhered to by complaint investigators, given that only 13 complaint investigators were interviewed. However, on the whole, this approach enabled examples of good practice to be considered in-depth and for knowledge to be gleaned from the investigators of these complaints.

[16] There are 80 local area commands in NSW. These are divided into six regions – Central Metropolitan Region; South-West Metropolitan Region; North-West Metropolitan Region; Western Region; Northern Region and Southern Region.
[17] Specialist commands complement the general duties operational capability, covering land, sea and air operations.

5.3 Phase 3: Consultations

In this phase Commission staff conducted research interviews with the investigators of the 13 complaints identified in Phase 2 to:

- learn about their practices in completing the 'organisational issues' component of complaint investigation reports
- obtain follow-up advice in respect to the recommendations for policy and procedural change they had made within the report
- find out their suggestions as to how guidance provided by the NSWPF in identifying issues and making recommendations for consideration could be improved.

Research interviews were conducted either in person or over the telephone, depending on the availability of the complaint investigator and their location. An overview of the investigators interviewed, including their years of policing experience, rank, and the region they worked in at the time they conducted the complaint investigation can be found in Table 1 below.

Table 1: Research interview participants

Interviewee	Rank of interviewee (at time of investigation)	Years' experience	Region (at time of investigation)
A	Inspector	26 - 30	South-West Metropolitan
B	Sergeant	21 - 25	South-West Metropolitan
C	Sergeant	26 - 30	Specialist
D	Sergeant	10 - 15	Western
E	Superintendent	41 - 45	North-West Metropolitan
F	Inspector	21 – 25	Central Metropolitan
G	Inspector	36 – 40	North-West Metropolitan
H	Inspector	26 – 30	Southern
I	Inspector	26 – 30	Central Metropolitan
J	Inspector	21 - 25	Northern

K	Inspector	16 - 20	Specialist
L	Inspector	26 - 30	North-West Metropolitan
M	Inspector	26 - 30	South-West Metropolitan

In addition to the research interviews with complaint investigators, a number of other research interviews were conducted in order to gain a more in-depth understanding of the way in which the complaint process is being, or could potentially be, used as a means of identifying organisational issues and solutions through the complaints process. Within local area and specialist commands, key roles in the complaints management process are performed by Executive Officers, Professional Standards Duty Officers (PSDO) and Professional Standards Managers (PSM). According to information on the NSWPF intranet:

a. *Executive Officers* provide executive support to the local area command. This includes preparing ministerial correspondence and managing the administration component of the complaints management process from assessment to completion. Executive Officers also sit on the CMT.

b. *Professional Standards Duty Officers (PSDO)* are responsible for corruption prevention within their command, professional standards training and awareness, and complaints management. PSDOs are responsible for conducting the triage process, sit on CMTs, and ensure complaints are investigated in a timely manner.

c. *Professional Standards Managers (PSM)* provide advice on the conduct of Part 8A investigations undertaken at regional and specialist commands. PSMs report directly to the region / specialist commander and advise and support a corruption resistant environment.

The Commission interviewed officers from the NSWPF who, at the time the Commission was collecting information for its project, performed these duties[18].

The Commission also interviewed representatives from:

18 Representatives of the Commission also attended a Professional Standards Managers' conference in March 2012 and consulted with attendees about:

- their experience of complaint investigations being an opportunity to identify gaps or ideas
- the extent to which systems and strategies developed in response to organisational issues are shared between different geographical areas of the NSWPF
- opportunities for strengthening the skills of complaint investigators.

a. The NSWPF Education and Training Command in connection with the Internal Investigations Training Course (IITC)[19]
b. the Professional Standards Command
c. the Police Association of NSW (PANSW)
d. the NSW Ombudsman's Office.

Furthermore, the Commission provided the NSWPF with a consultative draft of the Project Cyril Research & Issues Paper and requested its views and comments. The response of the NSWPF to the Commission's findings is included throughout the findings section of this Paper. The Commission regards consultation with the NSWPF as a vital stage in the preparation of research reports as it allows the Commission to strengthen its advice and findings prior to publication and provides the NSWPF with an opportunity to provide input and comment on the accuracy of the factual information presented within the draft report.

6. Results

6.1 The NSWPF corporate position on issue identification and making recommendations in complaint investigation reports

As already noted, the NSWPF's internal *Complaint Handling Guidelines* (2012d) indicate that it is important for complaint investigators to bring relevant supervisory, managerial or organisational issues that they come across when conducting complaint investigations to the attention of their superiors. This enables the NSWPF to consider whether there are any system-based interventions needed to manage the risks identified through their investigations. It must be acknowledged, however, that there are challenges that face the NSWPF in giving effect to this policy intention 'on the ground'. Based on the information provided by PSC, a number of factors can be identified as limiting the extent to which the NSWPF is able to capitalise on its misconduct investigations in this manner. These are as follows:

… a number of factors can be identified as limiting the extent to which the NSWPF is able to capitalise on its misconduct investigations in this manner.

a. Misguided recommendations will be made

PSC representatives were sceptical that much of value would come from encouraging officers to identify organisational issues and solutions as part of the complaint investigation process. The reason for this thinking, it was explained, was that in the past proposals for change had been poorly conceived or not thought through or that the officer making them was not qualified or well placed to do so. This view was also highlighted in an interview with a complaint investigator,

19 The Internal Investigations Training Course (IITC) provides knowledge and skills to officers required to conduct investigations into police complaints. The Commission sought information on the IITC so as to gain an insight into the nature of the guidance provided through the IITC to prospective internal investigators on identifying whether there are any systems that need to be adjusted to manage the risk of misconduct / corruption.

formerly a PSM / PSDO who observed that fellow investigators could potentially come up with 'outlandish' and 'unrealistic' recommendations.

… officers may only occasionally conduct complaint investigations and may not be practiced or experienced in identifying organisational issues that may have contributed in some way to the misconduct occurring.

b. Complaint investigators may have insufficient time to identify organisational issues and make recommendations for change

The NSWPF's model for handling complaints relies on the use of officers drawn from a variety of different duty-types to conduct complaint investigations. They are not full-time complaint investigators and are, for the most part, required to juggle their complaint investigations with their regular duties. This being the case, PSC suggested that they simply may not have the time to turn their attention to the role organisational factors may have played in contributing to the misconduct.

c. Complaint investigations are focused too narrowly to allow for the identification of issues and making recommendations for consideration

According to PSC, complaint investigations tend to have a very narrow focus - that is they focus on discerning whether or not the available evidence supports a 'sustained' or 'not sustained' finding. PSC suggested that, as a consequence, complaint investigators do not necessarily have organisational issues in the forefront of their minds when they are conducting investigations.

d. Complaint investigators may not be skilled adequately to identify issues and make recommendations for consideration

As noted, the NSWPF relies on officers drawn from a range of different duty-types to conduct complaint investigations. One of the consequences of this approach is that officers may only occasionally conduct complaint investigations and may not be practiced or experienced in identifying organisational issues that may have contributed in some way to the misconduct occurring. PSC noted that it was not uncommon for officers to conduct only one complaint investigation per year.

On the question of whether or not complaint investigators have the requisite skills to be able to identify organisational issues, PSC observed that the capacity to identify systemic issues is not apparent in all complaint investigators. This command also noted that the means by which an officer could be trained in a skill of this nature was not apparent. In the same vein, one of the PSM / PSDOs interviewed for the project indicated that some complaint investigators struggled to identify organisational issues, given the varying skill levels found amongst these officers. This concern was also reflected in the comments of one complaint investigator who stated that the ability of fellow complaint investigators to identify issues and make recommendations for consideration depends on their experiences as an officer and their ability to think 'big picture'.

6.2 Complaint investigators perceptions on their role in identifying issues and making recommendations for consideration

As noted Project Cyril sought to gauge complaint investigators' perceptions of their role in identifying misconduct issues and broader solutions in the course of conducting a complaint investigation. These perceptions fell into three groups. The first group were those who felt that identifying organisational problems and developing solutions was not at the forefront of a complaint investigator's mind, but that this may happen once all evidence has been collected.

The second group were those who embraced the opportunity to identify issues and make recommendations for consideration. One investigator stated that: 'It is very important to identify organisational issues in the course of writing a complaint investigation report' and explained that the complaint investigation process provided an opportunity not only to examine the conduct of the subject officer, but to also consider what the agency could do to prevent a reoccurrence of such an incident. An example of this can be seen in *Example of Good Practice 1* (see Appendix 2). Similarly, a PSDO / PSM viewed complaint investigations as an opportunity to identify systems and processes that may be in need of adjustments. They stated that 'if misconduct occurs, it has been on our watch' and that it is therefore important to be conscious that systems and or processes 'may have let us down'.

However the majority of complaint investigators fell into the final group in that they did not feel that they had a role to play in identifying misconduct issues and broader solutions in the course of conducting a complaint investigation. A number of explanations were given for this. For instance, one complaint investigator explained that complaint investigators are solely focused on establishing whether or not a complaint is sustained or not sustained. Another reason why complaint investigators may perceive that they have no role to play in identifying broader misconduct issues and solutions is due to limited opportunities to do so. An Executive Officer explained that the bulk of complaints that come through their command were of a customer service nature and provided very little opportunity for identifying avenues for systemic and organisational change. Furthermore one complaint investigator was of the perception that most matters have been considered or 'covered off' by internal NSWPF policy and legislation and such matters do not require their attention.

Alternatively, some of these complaint investigators did not see it as their role to develop solutions for other commands or the NSWPF more generally. For example, one complaint investigator said that the recommendations he makes are specifically prescribed for their command and commented 'Who am I to make a recommendation to the [entire] NSWPF?' Another complaint investigator further

There are well-founded perceptions held by the NSWPF that reforming policies and systems within their large organisation is difficult.

explained that what works locally may not work in other commands and that it is important to consider the command context when developing a recommendation.

There are well-founded perceptions held by the NSWPF that reforming policies and systems within their large organisation is difficult. Previously in this paper we outlined a number of these identified by the NSWPF. It is perhaps not surprising then that some of the complaint investigators interviewed made comments that the suggestions they were proposing were not resulting in change. Absent any engagement on the part of the CMT or senior officers, the perception may arise amongst complaint investigators that the system is 'too hard' to change.

6.3 Types of recommendations proposed in complaint investigation reports

Appendix 1 provides an overview of the types of solutions proposed by the complaint investigators we consulted with in their complaint investigation reports. Appendix 1 provides for each complaint: the allegation category; a brief synopsis of the complaint investigated and any associated systemic issues identified, as well as the type of solution proposed.

6.4 Guidance provided to complaint investigators

One of the research aims of Project Cyril was to examine what guidance complaint investigators receive in identifying issues and developing solutions for consideration in complaint investigation reports. This section of the report presents interviewees' thoughts on five forms of guidance available to complaint investigators, these being the *Complaint Handling Guidelines* (2012d); the Internal Investigations Training Course; mentoring; the NSWPF intranet; and information packs. It also looks at the feedback complaint investigators receive once their complaint investigation report has been submitted and considered by the CMT.

6.4.1 The Complaint Handling Guidelines

As previously mentioned the *Complaint Handling Guidelines* (2012d) contain a section that invites the complaint investigator to identify any organisational issues and make recommendations for consideration. Complaint investigators were asked to describe how the current *Complaint Handling Guidelines* (2012d) were used and whether they referred to this specific section as a matter of course when conducting a complaint investigation. In response to this question the thoughts of complaint investigators fell into two categories. Those in the first category said that they only referred to the *Complaint Handling Guidelines* (2012d) when they were 'stumped' and did not know what to do. Those in the second category rarely, if ever, referred to the *Complaint Handling Guidelines* (2012d) and relied on their experience instead. These complaint investigators tended to have 30 years or more experience in the NSWPF and therefore did not feel it was necessary to refer

to the *Complaint Handling Guidelines* (2012d). Identifying issues and making recommendations for consideration was perceived by this group to be a 'common sense' activity. Only one of these interviewees indicated that the *Complaint Handling Guidelines* (2012d) did not provide assistance to officers when developing organisational solutions or identifying organisational problems. This interviewee did not explain why he / she thought this to be the case. It is important to note, however, that the complaint investigators consulted with were a small sample and therefore may not be representative of the complaint investigator 'population' within the NSWPF.

The majority of the interviewees did not feel that there was a need for the *Complaint Handling Guidelines* (2012d) to be amended. Only one interviewee stated that the guidance provided to officers through the *Complaint Handling Guidelines* (2012d) regarding the identification of issues and solutions could be improved. That officer suggested that there may be some benefit in inserting a section in the Guidelines - 'just a heading and a few paragraphs' - along the lines of: 'During the course of an investigation you may identify flaws that may need to be highlighted to a manager or even the corporate body of the NSWPF'. The opening paragraphs, he / she suggested, could say something like: 'The complaint investigation process is also an opportunity to make recommendations for changes to systems'. However caution was advised in terms of not providing information that is too detailed as complaint investigators may seek shortcuts, thereby, potentially engaging in a form of misconduct. According to the interviewee most officers will take a shortcut if the systems they are dealing with or the guidance they are supposed to comply with is long winded or seen as too onerous. He / she said they may reason 'my matter is not big therefore I will adjust or tailor the system for it'.

… the benefits and rationale for following this practice may not be immediately apparent to officers called upon to conduct such investigations, particularly since many of them may perform this role infrequently.

The practice of identifying organisational and systemic issues and solutions through complaint investigations can, as indicated in the literature review, assist with organisational and service improvement. Having said this, the benefit and rationale for following this practice may not be immediately apparent to officers called upon to conduct such investigations, particularly since many of them may only perform this role infrequently. For this reason, there would be merit in adding some explanatory text as to the *benefits* that come from identifying organisational and systemic issues and making recommendations for change as part of the complaint investigation process.

RECOMMENDATION 1

It is recommended that:

The NSWPF include within its *Complaint Handling Guidelines* an outline of the types of improvements to systems and processes that can result from complaint investigations. The rationale for this is to assist complaint investigators to understand the benefits that can arise from examining such issues as part of their investigations.

When launching the next iteration of the *Complaint Handling Guidelines*, the NSWPF develop and implement an internal promotional strategy to highlight the merits of identifying organisational and systemic issues through complaint investigations and draw attention to the relevant section of the document that provides guidance on this topic.

In its response to this recommendation, the NSWPF has indicated that a Complaints Practice Note (CPN) will be devised that will set out best practice in identifying organisational and systemic issues as well as the types of improvements to systems and processes that can occur as a result of doing so. The NSWPF advised that this CPN will be distributed to complaint handlers and practitioners and that reference will be made to the CPN in the next version of the *Complaint Handling Guidelines*.

The Commission supports the development of a CPN as a means of implementing recommendation 1. It remains of the view, however, that in addition to the preparation of a CPN a high level statement on the types of improvements to systems and processes that can result from complaint investigations should be included within the next version of the *Complaint Handling Guidelines*.

As indicated above the NSWPF proposes developing this CPN in such a manner as to address a number of the recommendations in this paper. The Commission has no objection, in principle, to the NSWPF using a single strategy, such as a CPN, to implement multiple recommendations. It will be important, however, that the Commission be provided with a draft version of this CPN for review to ensure that the intent of each recommendation is addressed.

6.4.2 The Internal Investigations Training Course

The Internal Investigations Training Course (IITC) has been developed to provide knowledge and skills to those officers (who have been identified by their commander) who are required to conduct investigations into police complaints. It is run monthly and includes 24 hours of face-to-face teaching followed by a six month

field component within which participants are required to complete a 'resolution' or an evidence based complaint investigation. Course participants are provided with a folio of the policies and procedures that they will make most use of.

Information on identifying systems related problems and solutions is not presented as a standalone module in the IITC and is instead 'sewn' into other modules. IITC participants are not provided with guidance on how to identify problems and solutions as doing so would 'overload participants with too much information'. The IITC does however endeavour to convey the 'message' to course participants that if there is a flaw or an opportunity for amending or improving a system identified through a complaint investigation then this information should be passed onto the commander or the CMT. One way this message is conveyed is through discussing scenarios where a systems-related problem is present. In addition the IITC encourages participants to familiarise themselves with policies that are relevant to the investigations they are conducting as this will enable them to assess whether the subject officer has breached them. The thought behind this is that through becoming familiar with the relevant policy ensures that the investigator is best placed to assess whether there has been a misinterpretation by the subject officer of what the policy intends or if there is a lack of clarity or some other shortcoming with the policy.

According to the NSWPF course participants are assigned a mentor or coach that they can consult with during the six month field component of the IITC. However the representative said that he had been informed by some previous course participants that their mentor or coach, when approached, had been too busy to assist them with a query and were directed to the NSWPF intranet instead.

The majority of interviewees recalled having completed the IITC some time ago and tended to rely on their general investigation skills to assist them in conducting complaint investigations. Only one of the interviewees had completed the IITC recently and said that he had learnt that it is imperative for investigators to look at 'how things can be done better' and 'to look beyond a matter being sustained or not sustained'. He also stated that complaint investigators should, if possible, 'look further than the findings and look at why it [the incident] occurred'. This practice is evident in *Example of Good Practice 2* (see Appendix 3).

However considering that the majority of interviewees had completed the IITC some time ago it is inevitable that certain aspects of the curriculum, such as identifying issues and making recommendations for consideration, may have been forgotten. Therefore how the NSWPF can remind complaint investigators who have completed the IITC some time ago of such aspects is a topic for consideration.

In its feedback on the draft of this report the NSWPF stated that these findings indicate 'an opportunity for the training in identifying corporate issues to be

strengthened' and that this matter would be referred to the Education and Training Unit for consideration. It is a matter for the NSWPF as to whether or not it makes changes to the IITC. The Commission's research, however, provides no information to suggest any changes are needed. The Commission considers that the focus should be on providing officers, who completed the IITC some time ago, with support in the form of training or resources to assist them in effectively identifying organisational and / or systemic issues and making recommendations for changes in complaint investigation reports.

RECOMMENDATION 2

It is recommended that the NSWPF examine ways in which it can equip officers (whose knowledge of the material taught in the Internal Investigations Training Course may have receded as a result the passage of time) in identifying organisational and / or systemic issues. Options may include conducting refresher training or developing online materials and resources.

In response to this recommendation, the NSWPF has informed the Commission that notification will be sent to officers advising that refresher training, through the IITC, is available. The NSWPF has also indicated that the Complaints Practice Note previously mentioned will be incorporated into the IITC materials and made available on the NSWPF intranet.

The Commission supports this approach as a means of addressing recommendation 2.

6.4.3 Mentoring

Complaint investigators were asked, aside from the mentoring they may have received as part of the IITC, whether they had received any other forms of mentoring to assist them in completing complaint investigations. When asked, the majority of complaint investigators interviewed indicated they had been conducting complaint investigations for some time and could not recall having a formal mentor that offered them guidance in this area. Instead of having a formal mentor some of the complaint investigators indicated that they were encouraged to 'bounce ideas' off the Crime Manager or Duty Officers. In fact a PSDO / PSM stressed that it was the responsibility of the commander or the complaint investigator's manager to offer them mentoring or support to enable them to complete their complaint investigation. However the extent to which this occurs was not identified in the course of conducting this research. Similarly one investigator explained that they received some assistance from an officer in the PSC in developing the recommendations for her report (a system recommendation in addition to a

recommendation that the allegations should be found not sustained) as it was the first time she had had sole carriage of an investigation.

6.4.4 The NSWPF intranet

The NSWPF intranet is one source of information that complaint investigators can refer to for information on policies and guidelines related to the complaint they are investigating. Complaint investigators were asked how they locate the information they require to conduct a complaint investigation and whether this information is easy to find. Nine of the complaint investigators said that they referred to the intranet when they were investigating complaints. The consensus from these complaint investigators was that the intranet could be navigated without difficulty if one was familiar with what the required documents might be called or where they may be located on the intranet. One investigator observed that there is a tendency for some duplication of information on the intranet which could lead to confusion and for some investigators to potentially experience 'information overload'.

6.4.5 Information packs

One complaint investigator interviewed for the purposes of this project indicated that officers at his command are allocated a complaint to investigate and are provided with a pack of information which outlines exactly what needs to be done according to the *Complaint Handling Guidelines* (2012d), the reporting format to be used and issues to be considered and included in the investigation report. This interviewee commented that, from the point of view of conducting complaint investigations, they found this very helpful. They were not asked nor did they indicate if this pack specifically contained information on identifying issues and making recommendations for consideration. Similarly, the Executive Officer we consulted with said that they supplied each complaint investigator with a USB stick that contained all of the paperwork relevant to the complaint to be investigated. However, the information pack and the USB initiative appear to be local practices as the *Complaint Handling Guidelines* (2012d) do not list either of these as a requirement. Whilst further consultation with the NSWPF found that the provision of documents on a USB stick was not supported, the Commission considers that there is merit in information packs being provided at a local level and that there are many different formats through which this information can be delivered other than through the use of USB sticks.

6.4.6 Feedback received on recommendations proposed in complaint investigation reports

Seven of the complaint investigators consulted for this project were not provided with feedback from their respective CMTs as to the outcome of the recommendations they had made, nor did they assume that their recommendations had been implemented. The remaining complaint investigators

assumed that their recommendations had been implemented but had never been informed what had become of them.

According to the PSC the extent of feedback complaint investigators receive depends on the commander. Whilst some commanders are good at providing feedback regarding recommendations to complaint investigators, others are not. Advice received from the PSC was that it is largely down to individual commanders as to whether or not feedback is provided to the complaint investigator who made the original suggestion or proposal. Further advice from the PSC highlighted that complaint investigators are able to obtain feedback from the officer responsible for the quality review of an investigation.

The Commission was also advised that if the recommendation made by a complaint investigator relates to a corporate issue then: '… the normal practice would be that the corporate policy owner would provide advice on the action undertaken to the officer / command that referred the issue via report. Internal reports are always returned to the author through the chain of command'. The small size of the Commission's sample precludes it from commenting on the extent to which the practice described by PSC is being followed. The fact that seven complaint investigators were not provided with feedback suggests this is not a universal practice. As a matter of general principle the Commission considers that the provision of feedback should be initiated by the CMT and should be a standard action that occurs whenever a recommendation relating to an organisational or systemic issue is made in a complaint investigation report.

6.5 The exchange of ideas generated from recommendations across local area commands

Project Cyril was interested in learning if and how 'good ideas' generated from recommendations made in complaint investigation reports are exchanged across local area commands. When asked if ideas and solutions to problems are shared amongst commands four of the complaint investigators stated that this does not occur. One interviewee stated that the NSWPF does a 'poor job' at harnessing ideas developed with commands and sharing that information internally. This perception was reinforced in that in the course of conducting this research the Commission came across a number of different solutions for managing the risk of failed prosecutions and statute barred cases at a local level, however these never appeared to be shared with other commands.

Reasons given by two complaint investigators and the additional research participants for this lack of sharing included that commands are insular by nature which results in little communication between them. The siloed nature of commands is reflected in one of the complaint investigator's observations that problems, once they have been identified in their command, and solutions are not shared with neighbouring commands. In addition complaint investigators indicated

that commands are reluctant to publicise good ideas as this would be indicating to other commands that something had 'gone wrong' within their command in the first instance. In addition a NSWPF corporate representative explained that commanders are competitive and have to differentiate themselves from others; therefore they would be more inclined to keep good initiatives to themselves and use them in their applications for promotion instead.

Some complaint investigators were under the impression that ideas are exchanged at the commander, Professional Standards Manager and Professional Standards Duty Officer level.

Commander level: When asked about whether there are opportunities for commands to share 'good' ideas that emerge from complaint investigation reports, some of the complaint investigators cited the regional meetings their commander attends as an opportunity for their commander to share any solutions they feel are of value. One complaint investigator suggested that these regional meetings may also be an opportunity for commanders to discuss the issues they are grappling with in their command and to find out how they have been dealt with in other commands. However none of the complaint investigators offered any examples of either of these having occurred.

Regional Professional Standards Manager level: Some of the interviewees were under the impression that good ideas could be exchanged at a Professional Standards Manager level. It was explained that Professional Standards Managers are in the position to identify trends and, if necessary, speak to their regional commander about them who then have the capacity to intervene if they deem appropriate through mediums such as training or reinforcing Standard Operating Procedures. In addition representatives from the PSC commented that Professional Standards Managers 'are not backward' in coming forward to the PSC and asking for assistance in dealing with an issue being experienced in their commands. Only one of the complaint investigators interviewed mentioned that he had received an email from his region's Professional Standards Manager highlighting a 'good idea', but said that this was rare.

Professional Standards Duty Officer level: One interviewee mentioned that Professional Standards Duty Officers attend forums and that ideas may be exchanged at these meetings. According to the Professional Standards Command forum attendees are usually not 'shrinking violets' and have robust discussions about the issues they are facing within their commands.

The NSWPF has advised the PIC that it does not have a corporate strategy for collecting and disseminating 'good ideas' derived from complaint investigations.

The NSWPF has advised the PIC that it does not have a corporate strategy for collecting and disseminating 'good ideas' derived from complaint investigations. PSC, through having primary responsibility for complaint management and corruption prevention, is responsible for a limited number of policies and systems in the NSWPF. The corollary of this is that good ideas for changes to corporate

systems and policies arising from complaint investigations may not fall within its area of responsibility. For instance, 'good ideas' relating to minimising failed prosecutions may be the responsibility of Prosecution Services to consider.

PSC does, however, have corporate ownership of the complaints data and endeavours to use this for the purposes of analysing issues of significance at a corporate and local level. The Systems Analysis and Planning Unit of the PSC is responsible for performing this task, however the identification and dissemination of good ideas from commands does not form part of the unit's duties. PSC was also asked what types of trend analysis where conducted in regards to complaints. The advice from PSC is that its current resources, together with technical issues related to c@ts.i, precludes this type of work from occurring.

Prior to publishing this report the Commission was advised that the PSC was developing a misconduct risk register that would contain 'treatment strategies for risks developed by the field' and which, when implemented, would be accessible through the NSWPF intranet. This register was cited as an opportunity for good ideas to be documented and shared and would be developed through 'the local corruption resistance planning process[20] and not as a result of complaint investigations'. The NSWPF, however, explained that if a complaint investigation report uncovers a problem at the local command level then management may integrate the recommendations into the Command Corruption Resistance Plan and that those recommendations will then be captured in the MPU register.

There are some aspects of the approach proposed by PSC that may limit its effectiveness. Command Corruption Resistance Plans, while presenting strategies as to how specific command level risks are to be managed, do not provide information on the process by which they were developed or the context in which they were developed. Such a level of detail is neither relevant nor desirable in a planning document of this nature. However, if the value and relevance of an organisational or systemic solution is to be understood by a wider audience within the NSWPF, and its applicability determined, information needs to be provided on the context in which it was developed and the problem it is seeking to address. It is suggested that the NSWPF needs to consider other options for identifying and promoting good ideas of a systemic or organisational nature developed through complaint investigations.

[20] Corruption Resistance Planning is an ongoing command level risk management exercise 'designed to identify corruption risks and appropriate resources and responses to employ to ensure they are well managed' (NSWPF, 2012e, p. 6).

RECOMMENDATION 3

It is recommended that the NSWPF:

Develops and implements a strategy for identifying and promoting throughout the organisation 'good ideas' of a systemic or organisational nature developed through complaint investigations.

Consults with the Commission in regards to the proposed strategy prior to implementation.

In response to recommendation 3 the NSWPF has proposed a new arrangement whereby recommendations made at command level for systemic change, when endorsed by relevant commanders, be notified to the PSC. Further, that such strategies be publicised in the *Police Monthly*[21] magazine.

The Commission supports this approach but will explore with the NSWPF additional measures that can be implemented, such as the creation of a database of 'good ideas'.

6.6 Complaint investigators' approaches to identifying issues and making recommendations for consideration

This section … [contains] an overview of suggestions as to how issue identification and solution proposing can be improved in complaint investigations.

One of the key focuses of Project Cyril was to canvass complaint investigators approaches to identifying issues and making recommendations for consideration. This section reveals some of the approaches the complaint investigators the Commission interviewed take to doing so and concludes with an overview of suggestions as to how issue identification and solution proposing can be improved in complaint investigations.

6.6.1 Approaches to identifying issues

The complaint investigators were asked what methods they use to identify issues. Five investigators shared the approaches and strategies they use to identify systemic, organisational and leadership issues in the course of conducting a complaint investigation.

Familiarising oneself with relevant policies and guidelines: One strategy is to become familiar with the relevant policies and guidelines that might have a bearing on the complaint investigation. Through doing so it can be determined whether or not there has been a misinterpretation of the policy by the subject officer or

[21] The *Police Monthly* is the internal magazine of the NSWPF.

whether there is a lack of clarity in the policies or guidelines. One complaint investigator commented that this was important because it is 'amazing how some things fall through the cracks and are not addressed locally and corporately'. An example of this can be found at *Example of Good Practice 3* (see Appendix 4).

Look at the conduct of not only the subject officer but also that of the supervisor: One of the complaint investigators stressed the need to not only look at the conduct of the subject officer, but also that of the supervisor. In addition they said that it is important to look at whether there has been a lack of training that has resulted in the complaint.

Approaching the complaint investigation with the prevention of future incidents in mind: One of the complaint investigators compared the role of the complaint investigator to that of an aviation accident investigator. They explained that in an aviation accident investigation the emphasis is on finding out what went wrong and how to prevent it from occurring again. The complaint investigator, they explained, has a similar role. Another complaint investigator likened the role of the complaint investigator to that of a coroner in that 'you have to be impartial and step outside the brief and talk about how to improve things'.

Identify issues at the triage stage: One complaint investigator, along with representatives from the NSW Ombudsman, suggested that any systemic or organisational issues that may have contributed to a complaint could be initially identified at the triage stage. The officer in charge of Triage, it was argued, is best positioned to determine whether there have been any previous complaints of a similar nature that might suggest the complaint is related to a systemic issue or whether the complaint suggests a lack of proper procedures or compliance processes. These can then be flagged with the complaint investigator.

However other interviewees commented that the success of such a strategy would depend on the experience of the officer conducting the triage and their ability to identify relevant issues. It was also argued that it would be more appropriate for the complaint investigator to identify issues once all the evidence has been gathered. When asked at what stage issues should be identified in the complaint investigation process PSC representatives said that it was not practical to identify organisational issues at triage and that the purpose of triage is to determine the most appropriate way to manage a complaint. They further questioned whether it was possible to make any judgements about organisational or systemic issues that may have contributed to a complaint at such an early stage, given that no evidence had been collected.

6.6.2 Approaches to making recommendations for consideration

Eight complaint investigators explained that either making recommendations came 'naturally' to them and that they did not follow a particular process to make them or

that they just used their 'common sense' to do so. Some even said that, prior to being asked, they had not thought about the processes they used at all.

The remaining seven complaint investigators cited a variety of approaches to formulating recommendations. For example one complaint investigator said that when he sets about to make recommendations he asks himself two questions:

- What can the officer do to improve their conduct or performance?
- What can the agency do to assist the officer to improve their conduct or performance and / or prevent this incident / problem from happening again?

This complaint investigator also stressed that it was important to consider whether or not similar complaints had come through the command in the past – if they have, he explained, this indicates that there may be a need to identify why it is happening and to make a recommendation in the current complaint investigation report to prevent such an incident from reoccurring.

An Executive Officer consulted for the project said that one tool complaint investigators can use to determine whether or not systemic or organisational recommendations are required is to ask oneself of the issue identified: 'Is it a local issue or is it a corporate issue?' Through doing so, she explained, one can determine what type of 'action' to take, whether that is on a local scale (for instance circulating a memo) or at a corporate level (suggesting changes to policies and guidelines).

Complaint investigators were also asked to consider what factors need to be taken into consideration when formulating a recommendation. Three key considerations emerged:

Low cost or cost neutral	The recommendation should not be too costly.
Practicality	The recommendation should be likely to succeed in 'real life' circumstances.
Simplicity	The recommendation should be easy to complete.

Despite these considerations the NSWPF corporate advice received was that commanders are ultimately responsible for taking a 'helicopter perspective' and ensuring that the recommendations proposed are appropriate and of minimal cost. However one of the complaint investigators expressed concerns that complaint investigators can be too prescriptive as to the solution proposed and felt that it was preferable for the complaint investigator to identify the problem and then propose possible solutions. In other words the focus of the complaint investigator should be

on highlighting the problem rather than presenting a solution. This then leaves it open to the CMT or those with the expertise or corporate responsibility to determine the most appropriate course of action. Furthermore another complaint investigator argued that there may be some issues that need 'more heads than one' in regards to establishing possible solutions and that it is therefore not appropriate for the investigator to make a recommendation.

The Commission is of the view that highlighting and promoting different approaches used by experienced complaint investigators to identify organisational and / or systemic issues and make recommendations for change will encourage investigators to examine factors that may have contributed to the misconduct occurring, in addition to looking at the conduct of individual officers.

RECOMMENDATION 4

It is recommended the NSWPF:

Internally promote effective methods used by complaint investigators to identify organisational and / or systemic issues and develops recommendations for change.

Consults the Commission of these promotional strategies prior to implementation.

In response to recommendation 4 the NSWPF has informed the Commission that the Complaints Practice Note referred to above will be developed in such a manner as to assist police investigators in identifying systemic or organisational issues and developing solutions.

6.6.3 Suggestions for improving the identification of issues and problem solving in complaint investigation reports

Suggestions were also sought from interviewees in regards to how issue identification and solution proposing can be improved in complaint investigation reports. These suggestions fell into one of two categories: changing how complaint investigations are promoted and creating a database of complaint investigation recommendations.

Changing how complaint investigations are promoted: There is reluctance amongst officers to investigate complaints made against their peers. It was suggested that in order to encourage more officers to do so the importance of conducting a complaint investigation needs to be couched more widely. This could be done by promoting complaint investigations as an opportunity to contribute to

one's workplace through identifying issues and making suggestions as to how these issues could be minimised. It was also highlighted by one interviewee that identifying problems and developing feasible solutions would demonstrate that an officer is ready to take on more senior roles in the NSWPF.

Further to this it was suggested that it needs to be reinforced to managers that they should be encouraging current complaint investigators to identify problems and solutions in the course of conducting their complaint investigations. For instance, it was suggested that in the 'Terms of Reference' investigators should be made aware from the outset that they are required to highlight any systemic or organisational issues that may have contributed to the complaint and to make suggestions as to how these issues can be rectified. This, it was argued, may prevent investigators from having 'tunnel vision' (in terms of determining whether a complaint is sustained or not sustained) when conducting an investigation.

Database of recommendations: One interviewee suggested that it would be useful if a database existed where one could look at what issues other local area commands had dealt with and how they dealt with them. This may be a way of being informed of strategies used in other commands and may promote consistency across them.

7. Key observations

A number of observations can be offered based on the information presented in this paper. These are presented below.

7.1 Organisational and / or systemic issues should be considered in connection with *every* complaint investigated by the NSWPF

It is difficult, if not impossible, to determine the proportion of misconduct complaints investigated by the NSWPF in relation to which systemic issues *should* be identified. An analysis of this nature, as noted earlier in this paper, would be resource intensive and methodologically problematic. However, it is evident that not every misconduct investigation undertaken by the NSWPF will lead to the identification of a systemic issue or problem. Indeed, it is acknowledged that relatively few will.

This should not, however, be considered grounds for neglecting an examination of these issues in connection with complaints. Few allegations of misconduct lead to sustained findings against individual officers. Nonetheless it is essential that such allegations are thoroughly investigated, examining all relevant inculpatory and exculpatory evidence, before a finding is reached. In the same way some level of consideration of organisational and / or systemic issues should form part of the complaint assessment and investigation process, even though relatively few

investigations will result in findings that systems and / or processes need strengthening.

A further argument in support of considering organisational and / or systemic issues in each complaint may be found in a foundational aspect of the complaint investigation process. Policies, guidelines and their associated systems are the means by which the NSWPF, like other government and non-government agencies, communicate with staff about the way they discharge their duties and the conduct that is considered unacceptable. In many, if not most, cases misconduct investigations conducted within the NSWPF examine whether or not officers have breached the policies, procedures or guidelines of the NSWPF; different forms of corporate guidance are routinely used in complaint investigations as a basis for determining whether or not misconduct has occurred. They are the touchstone for arriving at misconduct findings.

Since organisational and / or systemic issues can be shown to cause or contribute to officer misconduct, it would seem reasonable that an assessment be made with regard to *each* misconduct complaint as to whether or not such issues contributed to the misconduct or whether there are other opportunities for strengthening systems or processes. Together with a consideration of whether or not the policy, guideline or associated system has been breached by an officer, it seems reasonable that investigators turn their attention to questions relating to the policy and guidelines themselves to identify causes or contributing factors.

The Commission considered making a recommendation related to this observation but decided against it as measuring the implementation of such a recommendation would not be possible. The reader is asked to refer back to recommendation 1 wherein the Commission has proposed that the benefits of identifying organisational and / or systemic issues and making recommendations for consideration be highlighted in the next version of the *Complaint Handling Guidelines* and promoted throughout the NSWPF.

7.2 The primary responsibility for identifying organisational and / or systemic problems and solutions from NSWPF misconduct investigations rests with the NSWPF

The NSW Ombudsman is responsible for oversighting the vast majority of complaint investigations conducted by the NSWPF. In addition to reviewing the quality of individual investigations, the NSW Ombudsman may also identify systemic issues in need of treatment that might not have come to attention during the course of the NSWPF's investigation. In particular the NSW Ombudsman can attend interviews during an investigation conducted by the NSWPF as an observer and has the ability to confer with the NSWPF investigator to make suggestions about lines of enquiry. Similarly, although it oversights far fewer complaint investigations than the NSW Ombudsman, the Commission may also identify

systemic issues in need of attention within the NSWPF. Oversighting provides, amongst other things, a valuable external check on the rigour and thoroughness of misconduct investigations and allows for the identification of issues and problems, including those of a systemic nature, that have not been identified through the NSWPF investigative process.

Significantly, the oversighting arrangements for the NSWPF in no way interfere with the process of police complaint investigators identifying systemic and / or organisational problems and solutions. Indeed, it is suggested that the primary responsibility for the identification of systemic problems and solutions from its own investigations should rest with the NSWPF. There are two reasons for this.

Firstly, systemic problems identified through NSWPF misconduct investigations occur in the organisational context of that agency. As such, misconduct investigators and their managers are in the position to have a more intimate understanding both of the nature and seriousness of the problem and the solutions that are likely to have the greatest chances of success.

Secondly, as the investigating agency, there are opportunities to integrate the examination of systemic issues into the fabric of the investigation, both in terms of its planning and execution that may not be available to the oversighting agency. In other words, such things as the investigation's terms of reference, the evidence collected and lines of questioning used for witness interviews could all be designed so as to identify systemic issues that may have caused or contributed to the misconduct under investigation.

7.3 The extent to which the NSWPF is able to capitalise on investigations as a means of identifying organisational and / or systemic problems and solutions may be limited

The corporate guidance provided by the NSWPF in relation to complaint management endorses the use of misconduct investigations as a means of identifying systemic issues and solutions. As noted at the outset of this paper, section 145(2) of the *Police Act 1990* (NSW) authorises officers to extend their misconduct investigations beyond the subject officer if the matter under investigation is indicative of a systemic problem. The NSWPF *Complaint Handling Guidelines* (2012d) indicate that where such issues are identified in an investigation, it is important that they be brought to the attention of the relevant commander or manager.

These corporate level statements, though brief, reflect a well-established principle that misconduct investigations can present organisations with opportunities to strengthen systems and processes, including those which seek to manage misconduct risks. The Guidelines, insofar as they indicate that it is *important* to identify organisational and systemic issues, communicate clear corporate

expectations, suitable to a large policing organisation. On the face of it, these statements create a solid foundation for the NSWPF to take full advantage of its misconduct investigations as a means of supporting ongoing organisational improvement and promoting a problem-solving mindset in complaint investigations. In other words, examining not only the conduct of the individual officer but the organisational context in which it occurred.

As noted there may be factors, however, that limit the extent to which the NSWPF is able to capitalise on its investigations as a means of identifying organisational and / or systemic problems and solutions. In turn, the NSWPF may, in practical terms, be restricted in the extent to which it is able to give effect 'on the ground' to the corporately stated position that it is important to do so. The PSC expressed reservations about encouraging investigations to identify organisational and systems issues, indicating that:

- Misguided recommendations will be made
- Complaint investigators may have insufficient time to identify organisational issues and make recommendations for change
- Complaint investigations are focused too narrowly to allow for the identification of issues and making recommendations for consideration
- Complaint investigators may not be adequately skilled to identify issues and make recommendations for consideration.

Similarly there were other indications from the Commission's research that suggested the misconduct investigations practice of the NSWPF, and the perceptions of officers, may not be aligned with its corporate position. Most investigators spoken to as part of the project did not consider that complaint investigations should focus on the identification of organisational and / or systemic issues and solutions. This was notwithstanding the fact that they themselves had identified organisational and / or systemic problems and solutions in their own complaint investigation reports.

When asked for a response to this observation, the NSWPF stated that as the report '… does not suggest that the NSWPF is failing to identify corporate and systemic issues in complaint investigations … further guidance is not required given that resource materials prompt investigators for their views'. The Commission considers that the introduction of additional guidance for investigators would be an ineffective means of responding to this observation and, for this reason, does not support their development. The factors outlined in this section that may be limiting the extent to which the NSWPF is able to capitalise on investigations to identify organisational and / or systemic problems and solutions, if they are to be tackled, would require a corporate level response.

7.4 In view of the high volume of complaints investigated by the NSWPF, the consideration of organisational and /or systemic issues should be integrated into existing complaint management and investigation processes

While there is a strong argument for complaint investigators and complaint management teams to turn their minds to organisational and systemic issues in connection with each and every complaint, there is also a critical need for them to be considered expeditiously.

While there is a strong argument for complaint investigators and complaint management teams to turn their minds to organisational and systemic issues in connection with each and every new complaint, there is also a critical need for them to be considered expeditiously. The number of complaints that the NSWPF investigates or otherwise deals with in any given year is large. For instance in 2011-12, the NSWPF received 5,135 complaints (2012a). The methods for screening new complaints for possible systemic issues need to be such that it does not cause delays to complaint investigations. Likewise, investigative methods designed to elicit information on whether or not systemic issues contributed to the misconduct, such as questions to be asked during investigations, should be integrated into existing investigative strategies so as not to create an additional layer of process in relation to complaint investigations.

In response the NSWPF stated that the guidance provided in the *Complaint Handling Guidelines* is evidence that the consideration of organisational and / or systemic issues is integrated into the existing complaint management process. The Commission does not concur with this view. Insofar as the Commission has indicated that organisational and systemic issues should be considered by the NSWPF in connection with each and every complaint, new methods – in addition to the guidance provided in the *Complaint Handling Guidelines* – may be needed to ensure the process occurs in a timely manner. The *Complaint Handling Guidelines* alone are not sufficient. They do not provide guidance in connection with screening new complaints for possible systemic issues, nor do they provide investigative methods designed to elicit information on whether or not systemic issues contributed to the misconduct under investigation.

7.5 Some of the shortcomings in the quality of proposals for organisational and systemic change from within the NSWPF may be able to be overcome by equipping complaint investigators with relevant skills and ensuing they are provided with critical feedback

As noted, the NSWPF articulated some reservations about encouraging officers towards identifying organisational and systemic issues through misconduct investigations. While acknowledging that these concerns are valid, it is unreasonable to expect that all suggestions will be well conceived and effective upon implementation. Inevitably, proposals will be brought forward which will be poor in quality or in some manner impractical. This alone seems an inadequate reason to discourage the practice. In broad terms, there are two strategies the

NSWPF can employ to improve the quality of proposals submitted in connection with misconduct investigations:

1. *Provide critical feedback to investigators who have made proposals for organisational change*. As this paper has previously highlighted, some of the complaint investigators interviewed indicated that they did not receive feedback in connection with their proposals and did not know whether the commander had supported them. Whilst there is insufficient information from this research to comment on the extent to which this occurs it does, however, underscore the importance of officers who have submitted ideas for change being informed as to whether or not their proposals have been endorsed and if not, the reasons they were shelved. It is to be expected that those officers who have made suggestions for change but have not received feedback may well feel reluctant to do so in the future. Similarly, in the event they have submitted a poor proposal but not been given feedback, it is unreasonable to expect that they will have learned how they have erred. All proposals for organisational and systemic change ought to be the subject of critical feedback, that is, proposals that have merit as well as those that are unfeasible or poorly conceived.

2. *Provide resources to assist complaint investigators to identify organisational and systemic issues*. Elsewhere in this paper, it has been noted that there would be benefit in the NSWPF providing some guidance to assist officers in *how* to identify organisational and systemic problems and develop possible solutions. This could take the form of some additional guidance within the *Complaint Handling Guidelines* (2012d) and some stand-alone resources, such as *Complaint Practice Notes*. These resources could provide guidance in relation to: initial identification (at the point of receipt); identification through the investigative process; describing the issue; and developing solutions.

7.6 The exchange of 'good ideas' generated from recommendations made in complaint investigation reports should be shared with other local area commands

This paper revealed that the NSWPF has no clear strategy for monitoring 'good ideas' from complaint investigation reports and for distributing them to other local area commands for their consideration and possible implementation. The Commission is of the belief that commands would benefit from being made aware of 'good ideas' and initiatives implemented in other commands that may assist them to address issues they themselves may be tackling with.

… the NSWPF has no clear strategy for monitoring 'good ideas' from complaint investigation reports and for distributing them to other local area commands for their consideration and possible implementation.

7.7 Complaint investigators should look beyond internal controls in developing solutions to organisational and systemic problems

For the most part, the investigator-developed solutions presented in this paper focus on changes to or the introduction of internal controls, particularly those that

are audit-based, as a means of managing misconduct risks. Clearly, internal controls are appropriate and necessary in many circumstances. The duties performed by officers, to a significant degree, have their foundation in legislation and associated internal NSWPF systems and processes. This being so, it is to be expected that internal controls aimed at assessing compliance with policy and legislation will play a significant role in the general approach of the NSWPF to managing risk, including misconduct risks. A concern acknowledged by a number of the officers interviewed for Project Cyril, however, is that the burden of the systems they are required to observe (and the checking processes to ensure they are complying) will become excessive. Adding additional layers of internal controls in response to systemic and / or organisational problems identified through investigations may not be desirable.

Project Manta, a Commission project that examined the way in which misconduct risks at command level are identified, communicated and managed, considered the merits of compliance checking as a way of both identifying and treating misconduct risks. The second of the two reports produced from this project found that the '… majority of misconduct risk treatment strategies mentioned by commands involved conducting audits, compliance checks or other forms of inspections'. The corollary of this, as observed by the PIC, is that '… Commands may miss opportunities to prevent corruption and other forms of misconduct by focussing on compliance rather than prevention' (2012d p. 131).

The Commission's report noted that there are a variety of different strategies that can be used to prevent misconduct, including:

> …reducing the opportunities for police misconduct; increasing the risks of being caught; equipping employees with the skills both to recognise the misconduct risks they might face and to respond appropriately in such circumstances; increasing condemnation of such conduct by colleagues; and focussing on the organisational culture more broadly.

As a means of assisting commands to identify other misconduct risk treatment strategies, the Commission proposed a series of prompts as part of recommendation 2 in *Project Manta Report 2*. These have broad application beyond the misconduct prevention planning context in which they were made and would be of relevance to investigators considering what type of solution would best address the problem that came to light in their investigation. These are replicated below for easy reference:

- What information is available to officers to clarify NSW Police Force expectations of their behaviour? Can this information be improved?

- Are there opportunities to improve officers' access to, familiarity with and relevance of such information?

- Is it possible to reduce opportunities for the specific form of misconduct to occur?
- Are there opportunities to detect such misconduct and hence deter such misconduct by increasing the risks of being caught for those who engage in such misconduct?
- Are there opportunities to better equip officers to respond appropriately if they are in a position where they are at risk of engaging in a particular form of misconduct?
- Are there opportunities for senior management to set a positive example in this area?
- Are there opportunities to identify and publicise the harms associated with the misconduct to increase the opposition to such conduct by colleagues?
- Are there opportunities to focus on the organisational culture so that such misconduct is seen as antithetical to the way things are done in the NSW Police Force and contrary to the types of behaviours that are rewarded?

7.8 'Near misses' identified through misconduct investigations should be considered valid opportunities for identifying systemic and organisational problems and solutions

In various publications on the management of misconduct risks in the NSWPF, the Commission has drawn an analogy between misconduct prevention and the management of workplace safety risks. Amongst other things, in both contexts learning opportunities arise from things that have gone wrong. In the Workplace Health and Safety context, an industrial accident will trigger a process of determining what went wrong and what could be done to change systems and processes to prevent or reduce the chances of it happening again. In the police misconduct prevention context, a sustained finding against a police officer resulting from a misconduct investigation provides an opportunity to determine what went wrong and whether changes to systems and processes could prevent or reduce the chances of it happening again.

In Workplace Health and Safety terminology, a 'near miss' is regarded as a workplace incident that had the potential to cause injury, illness or damage to property but did not. A 'near miss' is regarded as an important learning opportunity for the workplaces concerned to identify the cause of potentially harmful incidents and how they may be avoided in the future.

In a policing context, most misconduct investigations will not arrive at a sustained finding against an individual officer. However, in the process of collecting evidence and information during such investigations, information may come to light that exposes organisational and / or systemic problems. It is possible to view such cases as 'near misses'. Though a no sustained finding has been made against an officer, the information obtained may be of value in strengthening systems and processes.

The identification of organisational and systemic problems and solutions should not, therefore, be confined to misconduct investigations resulting in a sustained finding against a police officer. Complaint investigators and CMTs alike should consider misconduct investigations that result in no adverse findings for information that may assist in the strengthening of systems and processes.

Complaint investigators and CMTs alike should consider misconduct investigations that result in no adverse findings for information that may assist in the strengthening of systems and processes.

In the feedback on the draft of this Paper the NSWPF 'agreed with this approach in principle'. However, the NSWPF further responded that the Paper '… provides no evidence that this is not currently being practiced by NSWPF investigators. Hence it is difficult to make changes to current practices'.

In making this point the intention of the Commission was not to demonstrate that this practice is not occurring in the NSWPF, but to highlight a practice that was outlined and supported by the Commission in a previous publication (Gorta, 2009) that is applicable in this instance. The *Example of Good Practice 2* (see Appendix 3) is a prime example of a complaint adopting a 'near miss' approach to the issue and the education and training initiatives coming out of this potentially having a positive impact for the NSWPF and the community at large.

7.9 Reliance on electronic messaging as a means of communicating important information on systems and processes may have only limited success

The distribution of station-wide memos to remind officers of specific policies and procedures that have featured heavily in a recent complaint investigation was a common strategy utilised by the investigators we consulted with for this paper.

Whilst this is a means of communicating to officers what is and what is not expected of them in terms of the way in which they discharge their duties and what conduct is considered unacceptable, such emails run the risk of going unread or being deleted. Consideration should therefore be given to alternative means of communication, for instance the use of Six Minute Intensive Training (SMIT)[22] to raise awareness and understanding of a particular topic matter.

[22] The purpose of SMIT is to improve operational knowledge and confidence among police of all ranks through an alternate style of learning. It is recommended that SMIT is delivered during morning or evening parades or during scheduled training days or meetings.

When consulted about this issue, the NSWPF highlighted that a number of communication strategies are available to local area commands, including SMIT; educational presentations from subject experts; and conversations based on integrity guides and case studies. The Commission encourages the promotion of these strategies to local area commands.

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Appendix 1: Types of recommendations proposed in complaint investigation reports

Complaint Investigation 1

Allegation category and type of investigation:	Statute barred investigation - Mandatory outcome investigation
Complaint synopsis and systemic issue:	The subject officer had carriage of a motor vehicle collision investigation. A number of delays were experienced during the investigation due to factors that were both attributable to the subject officer and beyond their control. However due to these delays and information that was not correctly filed at the court consistent with the legislation the matter was subject to statute limitations at the end of a four-and-a-half month period.
Solution proposed by complaint investigator:	The complaint investigator recommended adding extra columns to a spread sheet maintained by the Traffic Unit. This would enable the inclusion of additional information that would allow the command to see what matters were potentially in danger of becoming statute barred in view of the time remaining before reaching that mark and indicating the steps that still need to be completed. The spread sheet intended to make it clear who needed to perform what action and to ensure it was taken, thereby managing the risk of an investigation going statute barred. If this was to happen there is a risk that the affected parties may experience problems in receiving insurance payments. Such matters could also lead to reputational harm to the NSWPF.

Complaint Investigation 2

Allegation category and type of investigation:	Failed prosecution - Mandatory outcome investigation
Complaint synopsis and systemic issue:	An officer arrested and charged an individual for the offence of Assault Occasioning Actual Bodily Harm. When the matter was listed for hearing some months later the prosecution failed due to the officer neglecting to attend court, along with the witness who was not notified of the hearing. This was due to the officer being on long-term sick leave and assuming that existing policies and procedures would alert their supervisor of the pending court proceedings so that they could act accordingly.

Solution proposed by complaint investigator:	The complaint investigator designed a checklist for officers on long-term sick leave that aimed to manage their workload whilst they were on leave. This was aimed at alerting managers to any pending court proceedings so that they could be managed. This initiative seeks to address the risk of the NSWPF bearing the costs of a failed prosecution and a victim not receiving 'justice'. Such matters could also lead to reputational harm for the NSWPF.

Complaint Investigation 3

Allegation category and type of investigation:	Theft of official property and personal property (the victim being a police officer) - Mandatory outcome investigation.
Complaint synopsis and systemic issue:	An officer left their kit bag containing their wallet and civilian clothing on a wooden bench in a male locker room. Upon the officer's return two hours later their kit bag was missing.
Solution proposed by complaint investigator:	The complaint investigator suggested the distribution of a station-wide memo to be disseminated to all sworn and unsworn staff reinforcing security procedures at the station. This change was designed to prevent the risk of items within the station from being stolen.

Complaint Investigation 4

Allegation category and type of investigation:	Alleged release of private information without consent - Mandatory outcome investigation
Complaint synopsis and systemic issue:	The complainant alleged that the subject officer had disclosed to an insurance company investigator their criminal history and other confidential information without their consent. The complaint investigator, in their complaint investigation report, highlighted that officers receive little training in managing an interview with a third party investigator.
Solution proposed by complaint investigator:	The complaint investigator recommended the creation of Standard Operating Procedures to guide police when dealing with third party interviews with investigators, coupled with training to make officers aware of these new procedures. This change was aimed at preventing information from being improperly divulged to a third party, which in turn could damage the reputation of the NSWPF.

Complaint Investigation 5

Allegation category and type of investigation:	Unreasonable Use of Force (including Assault) - Mandatory outcome investigation
Complaint synopsis and systemic issue:	An allegation was made that two officers applied unreasonable use of force (including assault) whilst undertaking a vehicle stop for the purpose of conducting a random breath test. The complaint investigation report determined that the complainant (who was a refugee) may have overreacted when he was approached by police due to his background as he experienced many atrocities when he lived in his home country and feared the police. It was found that this overreaction may have made him look suspicious which could have prompted the officers' overzealous actions.
Solution proposed by complaint investigator:	The complaint investigator recommended that training be undertaken so that officers respond effectively in interactions with emerging migrant and refugee communities. They also recommended that Community Awareness Initiatives be put in place so as to raise awareness about police procedures among recent arrivals. This, they suggested, could be done by working in partnership with Migrant Resource Centres. These recommendations were designed to prevent a similar incident from happening again. They also intend to prevent relations being soured between the NSWPF and the local refugee community.

Complaint Investigation 6

Allegation category and type of investigation:	Failed prosecution – Mandatory outcome investigation
Complaint synopsis and systemic issue:	This complaint related to a failed prosecution which resulted in the NSWPF paying costs of $4,000.
Solution proposed by complaint investigator:	The complaint investigator recommended the creation of a coversheet that aims to make clear the timeframe in which a matter needs to be actioned and what steps need to be taken within that timeframe. The intended purpose of this coversheet is to prevent a matter from going statute barred and the NSWPF from having to pay costs.

Complaint Investigation 7

Allegation category and type of investigation:	Driving under a suspended license - Evidence based investigation
Complaint synopsis and systemic issue:	The subject officer drove a NSWPF motor vehicle whilst his / her driver's license was suspended. This posed the risk of substantial financial costs both to the subject officer and the NSWPF should the subject officer have been involved in an accident as the insurer would have declined to honour the policy.
Solution proposed by complaint investigator:	A quarterly inspection of all officers' appointments was recommended by the complaint investigator. This may encourage more forthright information from officers with suspended / cancelled / disqualified licenses if there is an awareness that their licenses will be checked. This recommendation was aimed at mitigating the legal and financial risks associated with an officer having an accident in a work vehicle whilst driving under a suspended license and any reputational harm that may occur as a result.

Complaint Investigation 8

Allegation category and type of investigation:	Failure to comply with legislation / code of practice with the custody of minors - Evidence based investigation
Complaint synopsis and systemic issue:	Two young persons from an indigenous background came to a police station and surrendered for a crime they had committed. Because both young persons were intoxicated they were placed in a cell to 'sleep it off' overnight. The next morning charging processes for both commenced. However technical issues prevented one of the young persons from being charged and consequently both were not placed before the courts that day. According to the CRIME Guidelines once a young person has been charged they should only be held in custody for a minimum period of time and transferred to a Juvenile Justice (JJ) facility as soon as possible. Custody records indicate that JJ were contacted in the early evening and that due to the unavailability of the JJ overnight transport service they were kept for an additional night in custody. However a 2003 Memorandum of Understanding between the NSWPF and JJ indicates that the transport of juvenile detainees to the nearest Juvenile Justice facility is the responsibility of police. Consequently the two young persons were detained for a period of 35.5 hours.

Solution proposed by complaint investigator:	The complaint investigator recommended that the local area command's *Custody Management Standard Operating Procedures* be reviewed and that a section on young persons in custody be included. They also suggested that Team Leaders receive training in the detention of young persons. It was also recommended that signs be placed in the custody areas of the police station where the incident occurred reminding police of their responsibilities in regards to young persons contained in custody. These recommendations were aimed to minimise the risk of young people being detained illegally in the future.

Complaint Investigation 9

Allegation category and type of investigation:	Missing items from exhibits area - Evidence based investigation
Complaint synopsis and systemic issue:	A book-to-shelf audit of property in an exhibits area of a police station was conducted. Several jewellery items and some gemstones were missing.
Solution proposed by complaint investigator:	The complaint investigator recommended that CCTV be installed overlooking the exhibits cage. They also recommended that there be designated locked storage for small items so that smaller items do not run the risk of becoming entangled in larger items and then either destroyed or handed to a member of the public when they come to pick up their property.

Complaint Investigation 10

Allegation category and type of investigation:	Untruthful responses given during the Sergeant's Eligibility Program - Evidence based investigation
Complaint synopsis and systemic issue:	The subject officer was untruthful in his / her interview held as part of the Sergeants Eligibility Program. The subject officer claimed to have been involved in the management of an operation to a larger extent than he / she actually was.
Solution proposed by complaint investigator:	The complaint investigator recommended audio recording interview assessments in order to confirm what is said during assessments. This recommendation was designed to deter officers from lying in assessments and then being promoted.

Complaint Investigation 11

Allegation category and type of investigation:	Soliciting bribes - Evidence based investigation
Complaint synopsis and systemic issue:	Soliciting of a bribe by a Highway Patrol Officer (who worked solo) in return for non-issue of infringement notices.
Solution proposed by complaint investigator:	The complaint investigator recommended that Highway Patrol Officers leave their Traffic Infringement Notice books in their pigeon holes when not on duty so they can be checked by supervisors. They also suggested that the NSWPF introduce video surveillance cameras to all NSWPF vehicles so as to monitor their activities, especially when a Highway Patrol Officer is working solo in the daytime. The intended purpose of this is to deter officers who are working 'solo' from engaging in serious misconduct and to protect them from spurious allegations.

Complaint Investigation 12

Allegation category and type of investigation:	Mishandling of cannabis - Evidence based investigation
Complaint synopsis and systemic issue:	The subject officer placed a small quantity of cannabis leaf into the pocket of a jacket belonging to a colleague as a prank and consequently failed to forfeit a small quantity of cannabis leaf to the Crown, contrary to s.39 of *the Drugs Misuse and Trafficking Act*.
Solution proposed by complaint investigator:	The complaint investigator recommended that drug / exhibit books be counter-signed by a second officer. Such accountability puts the onus on the second seizing officer to ensure that their colleague appropriately deals with an exhibit. This minimises the risk that officers will possibly take short cuts when handling smaller drug exhibits, which is not likely to happen with larger drug exhibits as officers are more inclined to ensure that they are properly 'booked up'.

Complaint Investigation 13

Allegation category and type of investigation:	Failure to keep drug exhibit secure – Evidence based investigation
Complaint synopsis and systemic issue:	A resealable bag containing what appeared to be cocaine was located in a Search Warrant Kit belonging to a command's drug unit. No record or evidence could be located that indicated how this exhibit came to be inside the Search Warrant Kit. The complaint investigator said that the 'worst case scenario' was that the white powder was taken by an officer from another search and used for an illegal purpose, but that it was more probable that it was an oversight that led to the drugs being found in the Search Warrant Kit.
Solution proposed by complaint investigator:	The complaint investigator suggested that each Search Warrant Kit be searched by the senior investigation officer at the conclusion of any deployment whether used by that particular command or any other command. This change was designed to prevent the risk of exhibits being left in a Search Warrant Kit and going unaccounted for. The complaint investigator also suggested that prior to any external police or agency using any Search Warrant Kit from the command, the Search Warrant Kit be signed out and in by the senior investigating officer. The intended purpose of this suggestion was to prevent exhibits from being left in Search Warrant Kits and being unaccounted for.

Appendix 2: Example of Good Practice 1

Smithville Police Station stores its exhibits in a shed behind the station. Access to the exhibits area of this shed is gained through unlocking a padlock and sliding a meshed gate open. Only two officers have known keys to this padlock.

A 'book-to-shelf' audit of the contents of the exhibits area was conducted and the following property was found to be missing: 1 small resealable bag containing five opal stones; 1 gold coloured ring with three large stones and 13 small stones; 1 silver coloured ring with a blue coloured opal. The auditor noted that most of the properties on hand were larger items as opposed to the missing items that were small in nature. They also noted that there appeared to be no damage to the lock or gate and no other way to access the exhibit areas except through the gate. The shed had no CCTV camera monitoring it.

An evidence based investigation was conducted and the complaint investigator found the complaint to be sustained, even though the accountable officer could not be determined. The complaint investigator recommended that exhibit items of a small and valuable nature be placed in a locked drawer to ensure that they do not become entangled with large and bulky items and consequently either destroyed or handed to a member of the public when they pick up their property from the station. In light of a conclusion that the property was stolen the complaint investigator recommended that the padlock be changed to the gate and also suggested that CCTV be installed overlooking the exhibits cage. All of these recommendations were implemented, except for the latter due to budget limitations.

Appendix 3: Example of Good Practice 2

The incident happened just after midnight when the complainant was driving home from work. He was driving a white sedan with 'P' plates and his lights were on high-beam. A police vehicle traveling in the opposite direction flashed its lights at the driver to indicate that their lights were on high-beam and that they needed to change them to low beam.

When the complainant failed to respond police decided to conduct a breath analysis test upon the complainant. Consequently the police vehicle performed a U-turn, activated its warning lights and followed the vehicle. The complainant slowed his vehicle down, pulled to the left and came to a halt, thinking that the police car was an ambulance. The police vehicle stopped directly behind, activated the top high bar lights and put its headlights on high beam. One of the officers, a Probationary Constable, approached the driver's door of the white sedan, while the other officer, a Senior Constable with six to seven years' experience, approached the nearside rear portion of the sedan.

As the two officers approached the vehicle the complainant commenced to drive forward. The officers retreated back to their police vehicle and activated both of their warning devices – the lights and the siren. The complainant continued to drive at approximately three to four kilometres per hour for about 50 metres before pulling over again. The police vehicle then pulled up in front of the white sedan at an angle to prevent it from continuing. Consequently the complainant's vehicle came to a complete stop. Both officers alighted from the police vehicle. The Senior Constable went to the driver's door and the Probationary Constable approached the Senior Constable from behind. Whilst the Senior Constable was yelling out police directions to the complainant to exit the vehicle the Probationary Constable went around to the front passenger's door of the white sedan and entered the cabin, securing the vehicle's handbrake.

The Senior Constable then attempted to remove the complainant from the vehicle, who was in a rigid seated position with his arms clenched in front of his chest. The Senior Constable pulled the complainant from the vehicle as the Probationary Constable released the seatbelt clip from inside the vehicle.

The Senior Constable removed the complainant from the vehicle by pulling him to the ground and proceeded to yell out instructions to the complainant to lay flat on the ground as he was lying in a huddled position. The Probationary Constable then assisted by pulling the complainant's legs out straight. The complainant was soon lying on the bitumen roadway adjacent to the vehicle, with his chest to the ground, legs out straight and arms positioned to the side. The Probationary Constable then placed handcuffs on the complainant behind his back whilst the complainant yelled, 'I don't want to fight, I don't want to fight'.

The two officers then stood the complainant upright and seated him on the grass embankment. After locating the complainant's drivers licence a 'persons of interest' check was conducted as well as a breath test. Upon negative results the complainant was dismissed and he drove home in his vehicle. He later indicated that at some stage of the incident his glasses were lost, making it difficult for him to drive and park his vehicle at home, resulting in some scratches to his vehicle. In the morning the complainant returned to the scene and recovered his glasses which were broken. Four days after the incident the complainant was in pain and attended his local medical centre. A medical doctor examined the complainant and found that he had: 'marked muscle tenderness over upper arms … backs and shoulders … [and] damaged tendons in his left thumb'.

A mandatory outcome based investigation was conducted into the incident and an allegation of unreasonable use of force was found not sustained. Instead it was determined that both the subject officers and the complainant had 'misinterpreted' what had occurred. The complaint investigator determined that the complainant may have overreacted when he was approached by police due to his background – he had experienced many atrocities in his home country including the murder of his children. The Complaints Management Team stated that his overreaction may have made him look suspicious which could have prompted the officers' actions.

Due to this misinterpretation the complaint investigator determined that there was a need to roll out tailored training for officers so that they are able to respond effectively to the emerging migrant and refugee communities within their command. He also recommended that there was a need for refugees who have recently arrived to the area to become aware of police procedures in NSW and suggested that the command work in partnership with agencies such as Migrant Resource Centres to deliver a cultural awareness package. Both of these recommendations were adopted by the Complaints Management Team and are in the process of being designed and trialled.

Appendix 4: Example of Good Practice 3

An officer arrested and charged an individual for the offence of Assault Occasioning Actual Bodily Harm. When the matter was listed for hearing some months later the prosecution failed due to the officer failing to attend court, along with the witness who was not notified of the hearing. This was due to the officer being on long-term sick leave and assuming that existing policies and procedures would alert their supervisor of the pending court proceedings so that they could act accordingly.

A mandatory outcome investigation into the incident commenced. As part of the investigation the complaint investigator examined both the systems and processes within the command and corporate guidance for deficiencies which could have contributed to the prosecution failing. In his complaint investigation report the complaint investigator highlighted that 'The *NSW Police Force Handbook* as of the time of writing provides no guidance relating to work management for officers who are on long-term absences'. He also noted that 'Locally, there are no standard processes relating to officers on long-term absence'.

Identifying this gap the complaint investigator took it upon himself to design a checklist for officers on long-term leave 'which can be used as an aid to managing the workload of these officers …' This checklist was circulated attached to an email addressed to all staff in supervision roles reminding them of their 'responsibility to ensure they exercise vigilance in respect to case management' when an officer goes on long-term sick leave.

Appendix 5: Example of Good Practice 4

In the case below it was the Professional Standards Duty Officer (who reviewed the complaint investigation report) who made the following recommendations. Nevertheless this is a good example of identifying what lessons can be learnt from a complaint and putting in place recommendations. Please note that names have been changed.

During a rostered shift Probationary Constable Smith disclosed to her Team Leader, Sergeant Rowe, that she felt uneasy about what had happened during a social outing she had had the previous Sunday with Senior Constable Wilson and Probationary Constable Gawler. Smith stated that Wilson, Gawler and herself attended the local country pub where they were served alcoholic beverages either free of charge or at a dramatically reduced cost from the licensee / owner of the premises and that she had also received a free packet of chips. Upon her disclosure Smith was advised how this type of behaviour could compromise her integrity in relation to future dealings with the hotel and that what had occurred was a breach of the *Standards of Professional Conduct* (2013) as well as other NSWPF policies.

A few days later Smith, along with Sergeant Rowe, performed a high visibility foot patrol of another local hotel. At these premises Gawler, Lowe and Wilson were seen to be dining socially. Smith and Rowe stopped and spoke to them for a brief period of time. During this time Lowe went and ordered some drinks from the bar attendant, who also happened to be her housemate. Upon return to the table Lowe had two pre-mixed drinks and a handful of change. She showed the change to Gawler and appeared to laugh with her at how much the drinks had cost. During the conversation Wilson, Lowe and Smith discussed a social event planned to take place in the next fortnight. Lowe made a comment, 'Well if we go to [name of pub] and Fred Jones is working then we won't have to pay for drinks – I never pay for my drinks there'. It was alleged that the subject officers would receive these drinks due to their office as Constable of Police.

A complaint investigation was launched and it was found that Smith, Gawler, Lowe and Wilson had breached the *Standards of Professional Conduct* (2013) in that they had received free or reduced cost drinks. The complaint against all four officers was found to be sustained. The investigator's report was then reviewed by the Professional Standards Duty Officer (PSDO) who was of the view that the sustained finding against Smith in regards to the Breach of Code of Conduct should be revised as that whilst she accepted the drink; she was the only officer who had reported it to a Team Leader. The PSDO recommended that each of the subject officers be given a copy of the NSWPF Integrity Guides for *Off Duty Behaviour* and *Dealing with Licensed Premises*.

The PSDO also asserted that the LAC's Corruption Prevention Plan should be reinforced command-wide at musters and changeovers, and that the *Off Duty Behaviour* and *Standards of Professional Conduct* (2013) policies should be delivered command wide. These practical recommendations were adopted as a means to raise organisational awareness of the risks associated with such off-duty behaviour.

NSW Police Integrity Commission

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