

# Analysis of complaints made by or on behalf of Aboriginal and Torres Strait Islander people

An Observations Paper

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**June 2024**

# LECC

## Law Enforcement Conduct Commission

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ISBN 978-1-74003-065-6

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



26 June 2024

PP2220/104

The Hon Ben Franklin, MLC  
President  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

The Hon Greg Piper, MP  
Speaker  
Legislative Assembly  
Parliament House  
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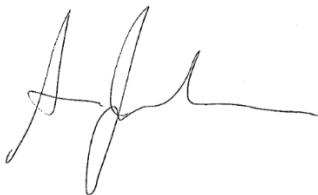
Dear Mr President and Mr Speaker,

**Analysis of complaints made by or on behalf of Aboriginal and Torres Strait Islander people: An Observations Paper**

In accordance with section 138 of the *Law Enforcement Conduct Commission Act 2016* (the Act), the Commission provides you with a copy of its report Analysis of complaints made by or on behalf of Aboriginal and Torres Strait Islander people: An Observations Paper.

Under s 142(2) of the Act, I recommend that this report be made public immediately.

Yours sincerely



**Anina Johnson**  
**Commissioner**

enc.

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**There are references throughout this report to Aboriginal people. These references include both Aboriginal and Torres Strait Islander peoples.**

# 1



What we did and why

# 1. Review Objectives

## 1.1 Why we have done this review?

In 2022, the Law Enforcement Conduct Commission (the Commission) began conducting a review of complaints recorded in our complaints system made by or on behalf of Aboriginal and Torres Strait Islander people.<sup>1</sup>

All complaints included in this analysis fell into one of the following categories:

- the complainant is an Aboriginal person
- the complainant is acting on behalf of an Aboriginal person (e.g. Aboriginal Legal Service, lawyer, parent etc)
- the complaint is about an interaction between police and an Aboriginal person.<sup>2</sup>

We reviewed these complaints to help us:

- understand the types of complaints made by Aboriginal people
- understand how these complaints are handled by both the NSW Police Force (NSWPF) and the Commission
- identify ways in which we can support Aboriginal and Torres Strait Islander communities' reach data sovereignty.<sup>3</sup>

Reviewing this sample of complaints allows us to have a benchmark to compare ourselves to and assess what works and what may need to be developed in our complaint handling processes.

We hope that by doing this, members of the public will gain insight into the variety and depth of data the Commission holds.

This paper will also give Aboriginal communities and stakeholder groups that represent Aboriginal communities the opportunity to engage with the Commission about:

- the kind of information held within the NSWPF's Misconduct Matters Information System (IAPro) and the Commission's complaint systems
- whether, and how that information should be reported

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<sup>1</sup> There are references throughout this report to Aboriginal people. These references include both Aboriginal and Torres Strait Islander peoples.

<sup>2</sup> This category includes complaints where a member of the public has witnessed an interaction between the NSW Police Force (NSWPF) and an Aboriginal person and has made a complaint and complaints/mandatory reports made by a NSWPF officer about an incident involving another officer and an Aboriginal person.

<sup>3</sup> Data sovereignty is the "right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as their right to maintain, control, protect and develop their intellectual property over these."

Tahu Kukutai and John Taylor, *Indigenous Data Sovereignty Toward an Agenda* (Australian National University Press, 2016) xxii.



- how the Commission can further support the implementation of Priority Reform 4 of the Closing the Gap National Agreement – discussed in more detail below (see Chapter 1.3).

## 1.2 Background

The purpose of this project was to:

- ascertain the number of complaints, allegations and outcomes of these complaints
- identify trends or themes from these complaints, including potential areas for improvement in the Commission and NSWPF’s complaint handling processes and data collection
- work towards implementing Close the Gap Priority Reform 4 to provide data to Aboriginal communities to inform their decision making
- give Aboriginal communities and members of the public more insight into some of the data the Commission holds about the police and their interactions with Aboriginal people.

## 1.3 Data Sovereignty

The NSW Implementation Plan for Closing the Gap (2022-2024) details the approach the NSW Government is taking to implement the ‘National Indigenous Reform Agreement.’ The NSW Implementation Plan contains 5 priority reforms. The Commission considers Priority Reform 4 as most relevant to this complaints analysis project.

Priority Reform 4 aims to increase Aboriginal people’s access to, and their capability to use available data and information to set priorities and drive their own development. The NSW Government has set several objectives to achieve Priority Reform 4, including:

- The Government when collecting, handling and reporting data will disaggregate the data as much as possible and make this available to Aboriginal communities in an accessible and timely manner.
- The Government will support Aboriginal communities and organisations to build capability and expertise in collecting, using and interpreting data.
- The Government will make data more transparent by telling Aboriginal people what data the Government holds, has access to and how this data/information can be accessed.<sup>4</sup>

This review is an important step in this process.

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<sup>4</sup> Coalition of Australian Governments, *Closing the Gap Priority Reforms* (04 September 2023) <<https://www.closingthegap.gov.au/national-agreement/priority-reforms>>

# 2



Complaints, allegations  
made and their outcomes

## 2. Complaints, allegations made and their outcomes



### 2.1 Snapshot of the number of complaints, allegations raised and their outcomes

Between 1 January 2021 and 30 June 2022, the Commission assessed 279 complaints from Aboriginal people. Of the 279 complaints, the Commission referred 245<sup>5</sup> to the NSWPF for triage.<sup>6</sup>

Across the 245 complaints, 707 allegations were made. Most of these allegations fell into the following categories:

- use of force (34%)
- improper use of police powers (26%)
- service or ethical standards (16%).<sup>7</sup>

The NSWPF investigated 66 of the 245 complaints. Fifty-nine of these 66 complaints have since been finalised.<sup>8</sup> The NSWPF investigated 147 allegations contained within the 59 complaints, of which 26 were sustained. A visual representation of this can be found in the graph below.

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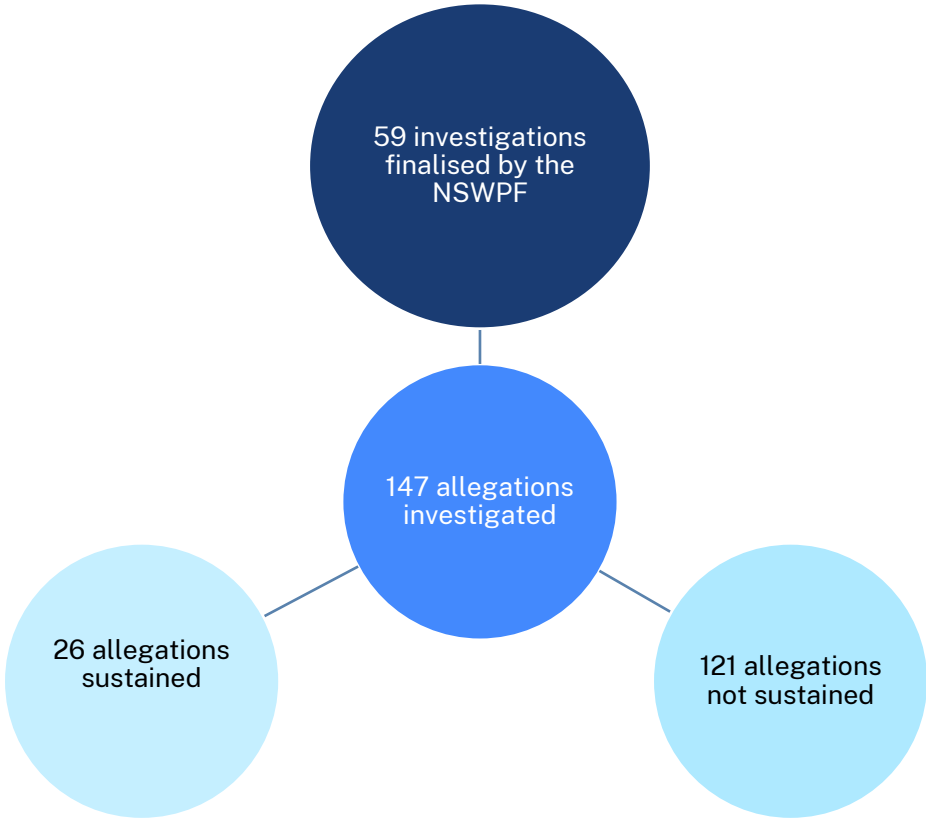
<sup>5</sup> For further detail about these complaints see section 4.1.1.

<sup>6</sup> The purpose of the NSWPF's triage process is to determine the most appropriate way for the NSWPF to manage the complaint.

<sup>7</sup> The allegation classifications have been simplified in this document. The proper allegation classification categories used by the NSWPF are 'Use of Force', 'Police Powers' and 'Service Standards/Ethical Standards or Guidelines.'

<sup>8</sup> Information correct as of November 2023.

**Graph 1: Complaints and allegations investigated by the NSWPF**





How we did our review

## 3. How we did our review

### 3.1 How did the Commission identify complaints from Aboriginal and Torres Strait Islander people?

The Commission's case management system is the 'LECC Oversight and Investigations System' (LOIS). LOIS contains all complaints, whether received directly by the Commission or made to the NSWPF and notified to the Commission. LOIS also records how the NSWPF and the Commission responds to these complaints.

Within LOIS, the Commission uses 'global categories' to flag and track complaints of interest. For example, complaints that allege excessive force during an arrest will be flagged with the 'excessive use of force' category in LOIS. A complaint can be flagged with multiple global categories. Global categories help the Commission identify systemic patterns and emerging trends.

Appendix A contains a list of our global categories.

#### 3.1.1 How we counted complaints from Aboriginal people

Complaints that are made by or on behalf of an Aboriginal person are flagged with the global category 'Aboriginal and Torres Strait Islander person'. A complaint is flagged with this global category if a Commission Assessment Officer has evidence<sup>9</sup> that the complainant or involved person in the matter is an Aboriginal person.

All complaints reviewed for this paper were received by the Commission between 1 January 2021 and 30 June 2022 and were flagged with the 'Aboriginal and Torres Strait Islander person' global category.

We relied on this category because, for the period we reviewed, the NSWPF did not routinely capture, and cannot easily report on, the number of complaints made by or on behalf of Aboriginal people.

In January 2022, the NSWPF began to ask all victims of crime, persons of interest, persons in custody and people they interact with, whether they identify as an Aboriginal and/or Torres Strait Islander person. The NSWPF introduced the change to 'improve safe custody practices, refer vulnerable people to support services and divert them from the criminal justice system.'<sup>10</sup> In early 2022, the Commission asked whether the NSWPF could also begin to ask and record the answers it had received about whether a complainant is an Aboriginal and/or Torres Strait

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<sup>9</sup> For example, a complainant may have self-identified as an Aboriginal and/or Torres Strait Islander person or stated that they are making this complaint on behalf of an Aboriginal and/or Torres Strait Islander person; a review of the complainant's police record indicates they identify as an Aboriginal and/or Torres Strait Islander person or the Aboriginal Legal Service is representing this complainant.

<sup>10</sup> NSW Police Force, *Help Us Close The Gap* (21 June 2023) [https://www.police.nsw.gov.au/safety\\_and\\_prevention/your\\_community/aboriginal\\_people\\_and\\_communities/aboriginal\\_issues/help\\_us\\_close\\_the\\_gap](https://www.police.nsw.gov.au/safety_and_prevention/your_community/aboriginal_people_and_communities/aboriginal_issues/help_us_close_the_gap).

Islander person.<sup>11</sup> We followed up on our request with NSWPF about this periodically over 2022-23.

In late 2022, the NSWPF informed us that the complaint triage form had been updated to include a field to capture whether a complainant is an Aboriginal and/or Torres Strait Islander person.<sup>12</sup> However, no changes were made to the NSWPF's online complaints form to capture this information directly from complainants. This omission made it difficult for the triage officer (typically Professional Standard Duty Officers or Managers) to ascertain whether the complainant was an Aboriginal person if they submitted a complaint online, unless the officer contacted the complainant to ask them or found other evidence in police records indicating that they were an Aboriginal person.

In June 2023, the NSWPF told us that amendments were made to IAPro so that where a complainant self-identifies as an Aboriginal person in the complaint, the information is saved on their complainant profile.<sup>13</sup>

On 23 October 2023, the NSWPF told us that it had updated its online complaint form.<sup>14</sup> The online form now include a question about whether the complainant identifies as an Aboriginal and/or Torres Strait Islander person.

The NSWPF also informed the Commission that they created business rules to guide staff on how to capture and record whether a complainant is an Aboriginal person on IAPro. The business rules were provided to triage officers, Customer Assistance Officers and other officers who may have a role/ability to capture this information.

NSWPF Commanders, Executive Officers and Professional Standard Managers/Duty Officers were given information about the updates to the complaint form and instructions on how to respond to members of the public when questioned about why this information was being collected.<sup>15</sup>

## 3.2 Complaints received by NSW Police Force Region, Police Area Commands and Police Districts

This section provides a summary of:

- the number of complaints received by each NSWPF Region and
- which Police Area Command (PAC) or Police District (PD) within these Regions received the most complaints.

Of the 279 complaints assessed by the Commission, nearly 45% were about officers attached to the Northern Region (65) and Western Region (57). Many Aboriginal people live in these regions,

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<sup>11</sup> Letter from Commissioner Johnson (LECC) to Assistant Commissioner Joe Cassar (NSWPF), 'Update on changes to the NSW Police Force complaint and triage form – Aboriginal and/or Torres Strait Islander field' (3 November 2022).

<sup>12</sup> Letter from Assistant Commissioner Cassar (NSWPF) to Commissioner Johnson (LECC), 'RE: Update on changes to NSW Police Force complaint and triage form – Aboriginal and/or Torres Strait Islander field' (24 November 2022).

<sup>13</sup> Email from Senior Project Officer (NSWPF) to Senior Project Officer (LECC) 'Outstanding questions about new Triage Form – recording of Aboriginality on IAPro' (16 June 2023).

<sup>14</sup> Email from NSWPF Project Officer to LECC Senior Project Officer 'Outstanding Information Requestion – Recording of Aboriginal Complainants' (23 October 2023).

<sup>15</sup> Ibid.

so it is not surprising that they would receive a larger number of complaints, as it reflects the density of Aboriginal communities living in there or in these locations.

Of the 65 complaints recorded against officers in the Northern Region, Richmond PD received the greatest number of complaints (12) followed by Coffs/Clarence PD, which received 8 complaints.

Graph 2 below depicts the number of complaints each NSWPF Region received from or on behalf of an Aboriginal person between 1 January 2021 and 30 June 2022.

**Graph 2: Complaints by NSWPF Region**

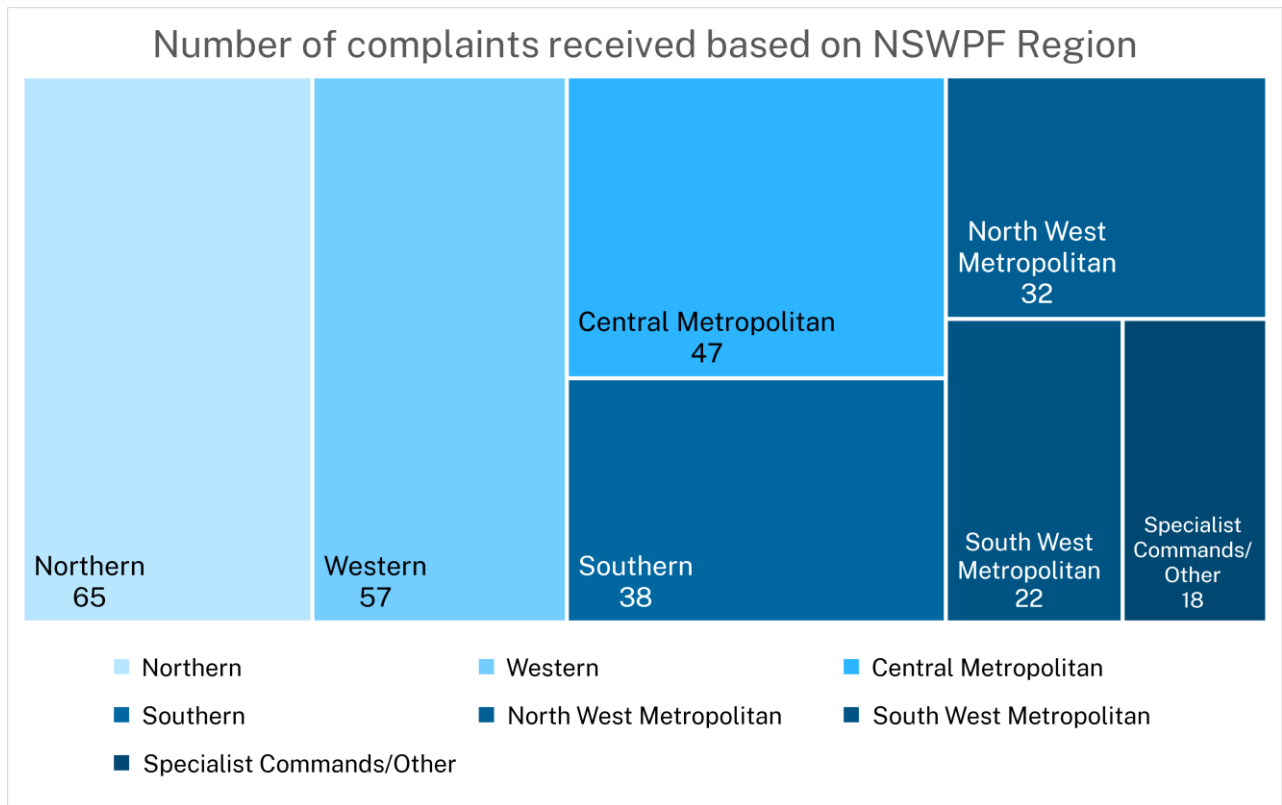


Table 1 below shows the 6 PACs/PDs that received the most complaints. Taken together, these PAC/PDs accounted for nearly 30% of the total number of complaints the Commission reviewed for this paper.

See Appendix C for how many complaints each PAC, PD, or special command received.



**Table 1: Police Area Commands and Police District Commands who received the most complaints**

<b>PAC/PD</b>	<b>Number of complaints</b>
Orana Mid-Western PD	14
Richmond PD	12
Eastern Beaches PAC	12
Mid North Coast PD	11
Murrumbidgee PD	10
Central North PD	10
<b>Total</b>	<b>69</b>

# 4



NSW Police Force  
complaint handling and  
management processes

# 4. NSW Police Force complaint handling and management workflow

## 4.1 NSW Police Force complaint handling and management workflow

In November 2017, the Commission and the NSWPF entered into an agreement pursuant to section 14 of the *Law Enforcement Conduct Commission Act 2016* (NSW) (LECC Act).

The Agreement contains guidelines (the s 14 Guidelines) which outline the categories of misconduct matters that the NSWPF must notify the Commission of. Misconduct matters include both complaints and mandatory reports that officers are required to make about another officer's misconduct.<sup>16</sup>

In November 2022, the Commission and the NSWPF updated the s 14 Guidelines. The update to the s 14 Guidelines focused primarily on removing subjective elements from the notifiable misconduct provisions to ensure that notifiable misconduct is more easily identifiable.

The Commission assesses all misconduct matters made directly to us and all notifiable misconduct matters made to the NSWPF.

While the Commission can investigate any misconduct matter alleging serious misconduct by the NSWPF or its officers, legislation places primary responsibility for investigating police misconduct with the NSWPF.<sup>17</sup>

### 4.1.1 The sample of misconduct matters we reviewed

Of the 279 misconduct matters we reviewed, 7 were mandatory reports and the remainder were complaints. For simplicity, this paper refers to these matters collectively as 'complaints'.

The NSWPF uses a triage form to assess and record whether a complaint meets the s 14 Guidelines and is therefore 'notifiable' to the Commission.

Of the 279 complaints in the dataset, the Commission was unable to assess/view the triage form completed by the NSWPF in 34 complaints. There were several reasons for this:

- the complainant did not give the Commission consent to refer the matter to the NSWPF and therefore the NSWPF did not complete a triage form
- the Commission investigated the matter directly
- the complaint fell outside Part 8A of the *Police Act 1990* (NSW) (Police Act)

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<sup>16</sup> Under s 211F of the *Police Act 1990* (NSW), members of the NSW Police Force are required to report, in writing, to a senior police officer if they reasonably suspect that another police officer has engaged in misconduct or serious maladministration.

<sup>17</sup> The *Law Enforcement Conduct Commission Act 2016* (NSW) and the *Police Act 1990* (NSW).

- there was not enough information available to the Commission to search for the complaint on IPro (e.g. the complainant was anonymous, and the subject officer/s were unidentified).

The Commission referred 245 complaints to the NSWPF. The NSWPF classified:

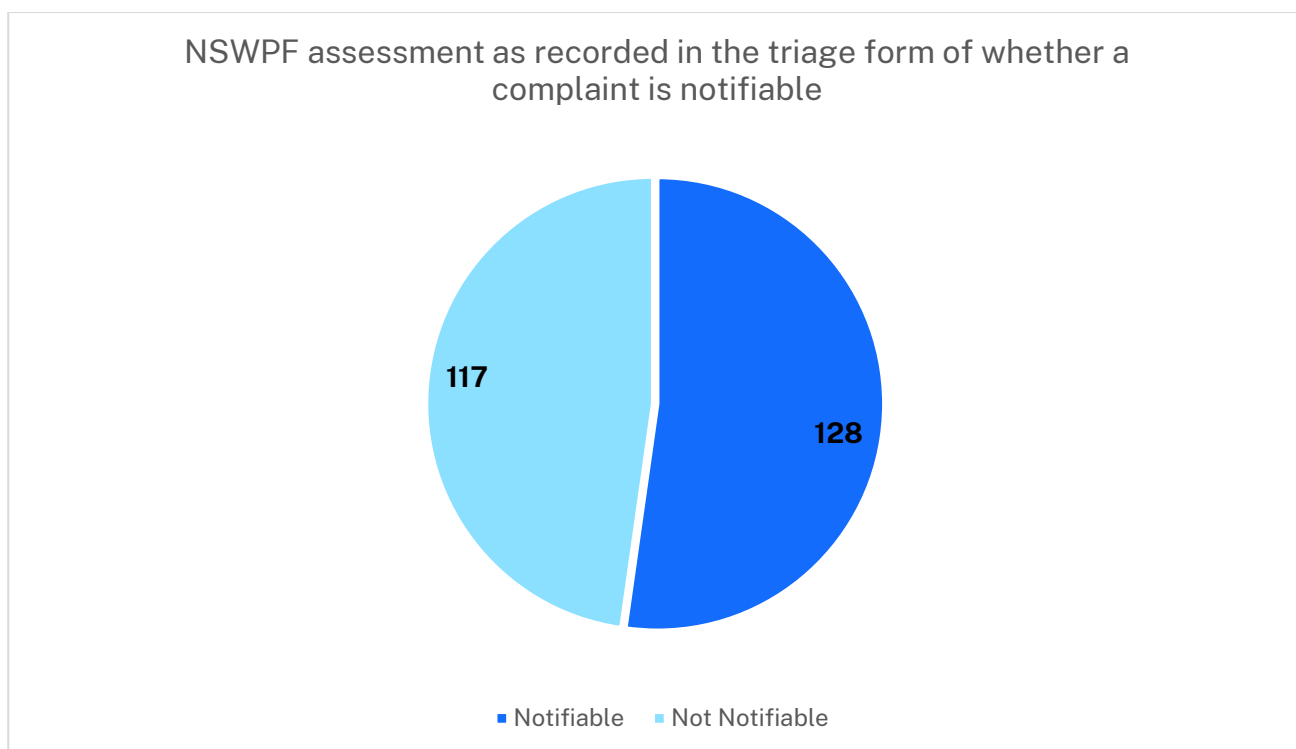
- 128 complaints as notifiable
- 117 complaints as not notifiable.

Graph 3 visually depicts the above information.

The Commission agreed with the NSWPF’s assessment of whether the complaint was notifiable in all 128 complaints but disputed the NSWPF’s assessment of 73 not notifiable complaints.

In circumstances where the Commission did not agree with the NSWPF’s assessment, we wrote to the police stating that the matter was notifiable under the s 14 Guidelines and requested the IPro matter was reflected to reflect this.

**Graph 3: Number of complaints assessed as notifiable or not notifiable according to the NSW Police Force triage form**



## 4.2 Triage process

The triage process directs the complaint investigation. The triage officer, typically a Professional Standards Manager (PSM) or Professional Standards Duty Officer (PSDO), makes a recommendation on each allegation raised in the complaint to the Commander or Manager. A triage officer can recommend that an allegation is:

- declined under s 132 of the Police Act
- settled through an informal resolution process (e.g. Alternate Dispute Resolution)

- managed under the Enhanced Resolution Process
- subjected to a resolution process
- referred to the PAC/PDs Complaint Management Team (CMT)<sup>18</sup> to consider if a criminal or non-criminal evidence-based investigation is appropriate and if so, nominate an investigating officer to investigate the matter.

The triage officer has 21 days from being assigned the complaint to complete the triage process.<sup>19</sup>

#### 4.2.1 Enhanced Resolution Process

The Enhanced Resolution Process is an alternate investigative process developed by the NSWPF to address misconduct matters in a fair, impartial and timely manner.

When a complaint is triaged, the triage officer may make a recommendation for the matter to be managed under the enhanced resolution process.

For a complaint to be eligible for management under this process, it must meet the following criteria:

- contains less than 3 allegations
- the allegations, if sustained, would result in non-reviewable management action<sup>20</sup>
- the misconduct and/or proposed management action would not result in a mandatory notification to a review panel.

If the triage officer's recommendation is accepted by the Commander, the Commander serves an 'Acknowledgement of Allegations and Non-reviewable Action' notice (AANA Notice) on the subject officer. The AANA Notice outlines the summary of the alleged misconduct and proposed non-reviewable action to be taken in response to the alleged misconduct.

For a complaint to be finalised under the Enhanced Resolution Process, the subject officer must acknowledge all the allegations made and accept the non-reviewable action proposed by the Commander. If a subject officer only partially accepts or does not acknowledge/respond to the allegations presented to them in the AANA Notice, the allegations are referred to the CMT for investigation.

#### 4.2.2 Resolution Process

Like the Enhanced Resolution Process, the Resolution Process is an alternate investigative process the NSWPF developed to address misconduct matters in a timely manner. Complaints

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<sup>18</sup> The standing members of a Complaints Management Team are Commander of the PAC/PD or Specialist Command, Crime Manager (for a PAC/PD), Executive Officer and Professional Standards Manager/Duty Officer.

<sup>19</sup> Information extracted from NSWPF intranet (22 November 2023).

<sup>20</sup> There are 2 types of non-reviewable action – remedial and corrective. The aim of remedial action is to rectify and improve the performance of the subject officer. The aim of corrective action is to correct and ensure that the subject officer acts in accordance with NSWPF policy and/or guidelines.

handled under the Resolution Process typically do not require the formality, complexity or authoritative decision making associated with evidence-based investigations.<sup>21</sup>

A PSDO/PSM must refer a matter handled under the Resolution Process to the CMT to be considered for an evidence-based investigation if they identify:

- any additional issues, subject officers, complainants, victims
- inculpatory evidence that would warrant an evidence-based investigation or recommends reviewable management action be taken.<sup>22</sup>

The NSWPF requires complaints managed under the resolution process to be finalised within 45 days of the NSWPF receiving the matter.<sup>23</sup>

### 4.2.3 Evidence based investigation – criminal

An evidence based investigation - criminal is undertaken when:

- allegations are of a criminal nature
- inculpatory evidence is identified during the triage process
- reviewable management action is likely to be taken against a NSWPF police officer, if the allegations were to be sustained.<sup>24</sup>

An evidence based investigation – criminal is dealt with like any other criminal investigation investigated by the NSWPF. The standard of proof is the allegation be proven ‘beyond a reasonable doubt.’

### 4.2.4 Evidence based investigation – non-criminal

An evidence based investigation – non-criminal is similar to that of an evidence based investigation – criminal. However, the allegations are about serious misconduct rather than allegations of a criminal nature.

The standard of proof for an evidence based investigation – non-criminal is that ‘on the balance of probabilities’ the allegation is proven.<sup>25</sup>

In both criminal and non-criminal evidence based investigations, the investigating officer has 90 days from the date the NSWPF received the complaint to finalise the investigation.<sup>26</sup> Depending on the circumstances, an investigating officer may apply to the CMT for an extension or suspension of the investigation.

Under s 137 of the Police Act, once a criminal or non-criminal evidence-based investigation report has been finalised, the Commander, if practical, must:

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<sup>21</sup> Information from the NSWPF intranet (6 September 2023).

<sup>22</sup> Ibid.

<sup>23</sup> Information from the NSWPF intranet (22 November 2023).

<sup>24</sup> Information from the NSWPF intranet (6 September 2023).

<sup>25</sup> Information from the NSWPF intranet (22 November 2023).

<sup>26</sup> Ibid.

- consult with the complainant before deciding whether any action will be taken as a result of the complaint
- provide the complainant and the Commission with advice as to any action already taken or will be taken as a result of the complaint
- confirm the outcome of the investigation and reasons for the outcome to the complainant in writing
- provide the Commission with a copy of the finalised report
- advise the Commission as to whether or not the complainant is satisfied with the action taken, or to be taken, as a result of the complaint.<sup>27</sup>

Internal NSWPF policy on evidence based investigations recommends that investigating officers contact the complainant during the investigation process.<sup>28</sup> However, the investigating officer has discretion as to how often this contact is made.

#### 4.2.5 Management action

There are two broad categories of management action available to the NSWPF under Part 9 of the Police Act:

- non-reviewable management action
- reviewable management action.<sup>29</sup>

##### 4.2.5.1 Non-reviewable management action

Non-reviewable management action can either be remedial or corrective.

The NSWPF takes remedial management action primarily when the complaint investigation identifies performance-based issues. The aim and purpose of remedial action is to rectify and improve the performance of the subject officer to the requisite standards set out by the NSWPF.<sup>30</sup>

The NSWPF may take corrective management when the issue is based on the conduct of the officer. The aim of corrective management action is to correct any action or inaction by an officer that is contrary to NSWPF policy or guidelines and bring the officer's conduct to a corporately accepted standard.<sup>31</sup>

An officer who has received non-reviewable management action cannot appeal that decision to the Industrial Relations Commission.<sup>32</sup>

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<sup>27</sup> *Police Act 1990 (NSW)* s 137.

<sup>28</sup> Information from NSWPF intranet (22 November 2023).

<sup>29</sup> *Police Act 1990 (NSW)* s 173(1).

<sup>30</sup> Information from NSWPF intranet (6 September 2023).

<sup>31</sup> Information from NSWPF intranet (July 2023).

<sup>32</sup> *Ibid.*

Under s 173 of the Police Act, the following non-reviewable management options are available to the NSWPF:

- coaching
- mentoring
- training and development
- increased supervision
- counselling
- reprimand
- warning notice<sup>33</sup>
- retraining
- personal development
- Performance Enhancement Agreements
- non-disciplinary transfer
- change of shift
- restricted duties
- recording of adverse findings.<sup>34</sup>

The NSWPF can implement the above management actions as standalone measures or in combination.

#### 4.2.5.2 Reviewable management action

Reviewable management actions are those actions that can be appealed by the subject officer in the Industrial Relations Commission on the basis that the action is harsh, unreasonable or unjust. There are 3 types of reviewable management actions:

- s 173(2) reviewable action
- s 80(3) dismissal of probationary constables
- s 181D loss of Commissioner's confidence.<sup>35</sup>

Under s 173(2) of the Police Act, the following management actions are available to the NSWPF:

- a reduction in a police officer's rank or grade

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<sup>33</sup> A warning notice has four distinct levels: Commander, Assistant Commissioner, Deputy Commissioner and Commissioner.

<sup>34</sup> *Police Act 1990 (NSW)* s 173(2)-(4).

<sup>35</sup> Information from the NSWPF intranet (July 2023).



- a reduction in a police officer's seniority
- a deferral of a police officer's salary increment
- any other action (other than dismissal or the imposition of a fine) that the Commissioner of Police considers appropriate.<sup>36</sup>

Under s 181D(1) of the Police Act, the Commissioner of Police has the legislative power to remove an officer if they have lost confidence in the officer's conduct, integrity, competence or performance.<sup>37</sup>

### 4.3 Allegations raised in the complaints

This section breaks down the allegation categories, sub-allegations and issues raised in the complaints we reviewed so that we can understand what was being complained about, and how the NSWPF dealt with these allegations at the triage stage.

The NSWPF groups allegations by category, sub-category and issue. The IAPro Allegation List has 15 allegation categories.<sup>38</sup> Each allegation category contains several sub-allegation categories and issues.

For example, within the Customer Service allegation category there are 4 sub-allegation categories, one of which is 'fail to be accessible.' Within this sub-allegation category, there are 3 allegation issues:

- customer discrimination
- fail to prioritise call for service
- fail to provide assistance.

The NSWPF identified 707 allegations at triage across the 245 complaints. Nearly 50% (119) of complaints contained only 1 allegation. The most common allegation categories identified and assessed by the NSWPF were:

- use of force (238 allegations)
- misuse of police powers (180 allegations)
- service standards/ethical standards/guidelines (111 allegations relating to breaches).

Graph 4 shows the number of allegations the NSWPF identified and triaged in the 245 complaints by IAPro allegation category.

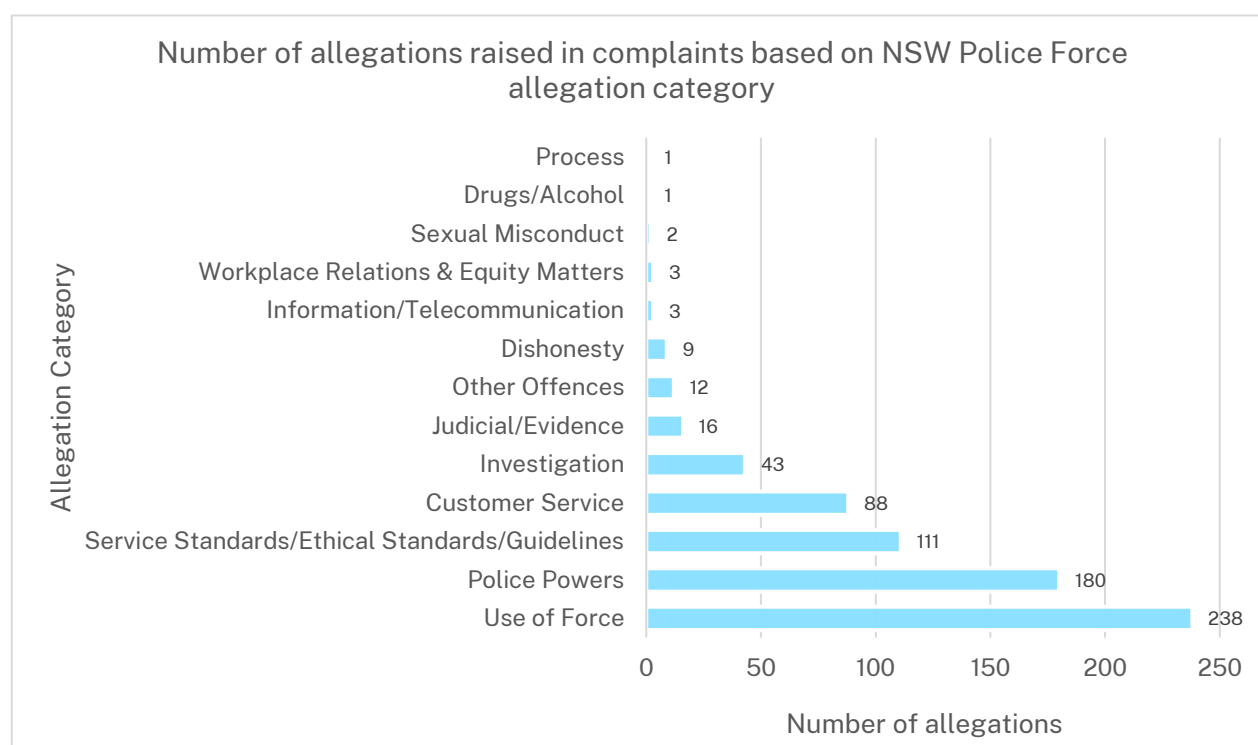
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<sup>36</sup> *Police Act 1990* (NSW) s 173(2).

<sup>37</sup> *Police Act 1990* (NSW) s 181D(1).

<sup>38</sup> The IAPro Allegation List has since been updated by the NSW Police Force. Minor changes have been made to the allegation categories, sub-allegation categories and issues. These changes do not affect the information contained in this report.

**Graph 4: Number of allegations raised in complaints based on IAPro allegation category**



### 4.3.1 Sub-allegation categories

This section provides further detail on the most common sub-allegations within the following allegation categories:

- use of force
- misuse of police powers
- failure to adhere to Service Standards, Ethical Standards and/or Guidelines.

#### Use of force allegations

Over a third (238) of the allegations triaged and assessed by the NSWPF were about an officer's use of force. Below is a breakdown of the use of force allegations by sub-allegation category. This breakdown provides more detail as to what the complaint alleges and what the recorded use of force involved.

Of the 238 use of force allegations made in the complaints, the triage officer classified:

- 178 as an 'unreasonable use of force (a use of weaponless force)'
- 23 as an 'unreasonable use of force with arms/appointments'
- 18 as 'common assault'
- 15 as 'assault resulting in actual bodily harm'
- 2 as 'unreasonable use of force using a vehicle/vessel'
- 2 as 'unreasonable use of force using a police dog'.

## Misuse of police powers

Allegations about the misuse of police powers accounted for a quarter (180) of the total number of allegations made in the data we reviewed.

The most common sub-allegation categories were:

- 85 allegations about an officer's failure to comply with the search provisions under *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) (LEPRA)*
- 30 allegations about an officer's failure to comply with LEPRA during an arrest
- 14 allegations about an officer's failure to meet the requirements of vulnerable persons whilst in custody.

See Appendix F for the complete list and number of allegations against each sub-allegation category within the Police Powers allegation category.

## Failure to adhere to Service Standards, Ethical Standards and/or Guidelines

The third most common complaint allegation category (111 allegations) related to an officer's failure to adhere to the NSWPF's Service Standards, Ethical Standards and/or Guidelines.

Sub-allegations of unreasonable/unprofessional behaviour accounted for 65 (59%) of the 111 allegations in this category.

Appendix D contains a table showing the number of allegations per complaint.

Appendix E contains the full table of allegations grouped by allegation and sub-allegation categories.

## 4.4 Outcome of allegations at triage stage

This section details how the NSWPF dealt with the allegations and by extension the complaints, at the triage stage of the complaint handling process. Table 2 groups allegations based on the NSWPF's decision and action at triage.

**Table 2: How the NSW Police Force dealt with the allegations at triage**

NSW Police Force triage decision	Number of allegations
Declined under s 132 of the Police Act	556
Enhanced Resolution Process	83
Refer matter to CMT for consideration	66
Finalised per s 131(1)(c) of the Police Act	2
<b>Total</b>	<b>707</b>

Of the 707 allegations triaged by the NSWPF, triage officers:

- declined most (79%) of the allegations made
- recommended 12% of allegations be dealt with under the Enhanced Resolution Process
- recommended that 9% allegations be further investigated.

The Commission found triage officers did not commonly explain why the allegation/s should not be investigated or what evidence was considered in making this assessment. The NSWPF has since made changes to their processes and in future, triage officers will provide more information in the triage form as to their reasons for recommending that an allegation be declined.

#### 4.4.1 NSW Police Force triage decision – allegations of use of force

The most common complaint allegation category was use of force. This section provides more detail about how the NSWPF dealt with these allegations.

We found the NSWPF:

- declined to investigate 188 of 238 allegations that an officer used excessive force during an incident
- referred 34 allegations to the CMT
- managed 16 allegations under the Enhanced Resolution Process.

##### 4.4.1.1 NSW Police Force triage decision by use of force sub-allegation category

This section provides a further break down of the use of force allegations by sub-allegation category. It also considers the NSWPF's triage decision about these allegations.

##### Unreasonable use of force whilst on duty – weaponless force

Of the total 238 use of force allegations, 178 were sub-categorised by the NSWPF as an unreasonable use weaponless force.

Of these, the NSWPF:

- managed 13 allegations under the Enhanced Resolution Process
- referred 19 allegations to the CMT
- declined 146 allegations under s 132 of the Police Act.

##### Unreasonable use of force by an officer using arms/appointments

A small subset (10%) of use of force allegations were categorised by the triage officer as relating to an unreasonable use of force by an officer using arms and/or appointments. Of these allegations, the NSWPF:

- managed 1 allegation under the Enhanced Resolution Process
- referred 6 to the CMT

- declined to investigate 16 allegations under s 132 of the Police Act.

#### 4.4.1.2 NSW Police Force's decision for allegations of a misuse of police powers

Of the 180 allegations categorised as a misuse of police powers, the NSWPF:

- managed with 14 allegations under the enhanced resolution process
- referred 10 allegations to the CMT
- declined to investigate 156 allegations.

Appendix F contains a full list of the NSWPF's decision at triage categorised by allegation type.

#### 4.4.1.2.1 NSW Police Force triage of allegations of a misuse of police powers by subtype

There were 180 allegations relating to an officer's use of police powers. This allegation category includes the following sub-allegation categories; and our sample representation of these:

- Custody (24%)
- Fail to caution, give information or communicate rights (1%)
- Fail to comply with LEPR (72%)
- Fail to comply with other statutory legislation (1%)
- Improper use of discretion (1%)
- Unreasonable use of force (2%)

#### Breach of police powers governed by the Law Enforcement (Powers and Responsibilities) Act

Of the 129 allegations in the 'fail to comply with LEPR' sub-allegation category, 85 allegations were classified by the NSWPF as 'fail to comply with LEPR – searching'. Of these allegations, the NSWPF:

- managed 2 allegations under the enhanced resolution process
- declined to investigate 83 allegations.

#### Failure to meet the requirements of vulnerable people in custody

Regulation 28 of the *Law Enforcement (Powers and Responsibilities) Regulation 2016* (NSW) (LEPR Reg) defines a vulnerable person as a person who falls under one or more of the following categories:

- child
- person who has impaired intellectual function
- persons who have impaired physical function
- persons who are Aboriginal persons or Torres Strait Islander persons
- persons who are of a non-English speaking background.

Accordingly, Custody Managers and Custody Assistants must help any vulnerable person who is detained or is a protected suspect to exercise their rights under Part 9 of LEPR.<sup>39</sup> Examples of this includes informing the person of their rights to make a phone call to a legal practitioner, and their right to request a support person.

A total of 14 allegations related to officers not following requirements for dealing with an Aboriginal person whilst in custody. The NSWPF:

- managed 2 of these allegations under the Enhanced Resolution Process
- declined to investigate 12 of these allegations.

#### 4.4.2 Contacting the complainant during the triage process



Under the NSWPF Misconduct Management Framework, the triage officer is required to speak to the complainant to clarify:

- the nature of the complaint
- allegations and details surrounding the alleged incident/s
- availability of any further information or evidence.<sup>40</sup>

To manage a complainant's expectations, the NSWPF expects triage officers to contact a complaint to:

- ask the complainant about their expected outcome
- explain the complaints process
- discuss a realistic outcome of their complaint.<sup>41</sup>

This information is typically also recorded in the triage form.

The Commission's review of IAPro records for the 245 complaints the NSWPF triaged failed to locate any evidence that the complainant had been contacted in 159 complaints (65%).

The Commission acknowledges that the NSWPF may not have been able to easily contact some complainants. Complainants are not required to provide any contact information, nor discuss their matter further with police. That said, police contact with a complainant is important because the complainant's experience of the complaint process is impacted by the quality of their experience and not just the outcome of the complaint.<sup>42</sup>

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<sup>39</sup> As required under r 29 of *Law Enforcement (Powers and Responsibilities) Regulation 2016* (NSW).

<sup>40</sup> Information extracted from NSWPF intranet (7 September 2023).

<sup>41</sup> Information extracted from NSWPF intranet (7 September 2023).

<sup>42</sup> Tom R. Tyler, 'Procedural Justice, Legitimacy, and the Effective Rule of Law' (2003) 30 *Crime and Justice* 283-357.

### 4.4.3 Aboriginal Community Liaison Officers

Aboriginal Community Liaison Officers (ACLOs) are responsible for providing advice and support to police in the management of Aboriginal issues across their PAC/PD. ACLOs are not available across all PAC/PDs.<sup>43</sup>

The responsibilities of ACLOs include assisting in the development, implementation, monitoring and reviewing of police-led programs and initiatives aimed at improving the relationship between the NSWPF and Aboriginal communities.<sup>44</sup>

The key focus areas for ACLOs are:

- establishing open lines of communication between Aboriginal people and police
- providing advice to Aboriginal communities about the functions of the NSWPF
- identifying barriers that prevent open communication and consultation between Aboriginal people and police
- fostering partnerships between Aboriginal communities and the police
- encouraging Aboriginal people to work with the NSWPF to address crime and violence in Aboriginal communities
- promoting strong partnerships between Aboriginal communities and the NSWPF to develop and implement programs to address issues of disadvantage.<sup>45</sup>

While ACLO's are not embedded in the NSWPF complaint management process, the Commission was interested to know whether any of the complaints we reviewed did include the involvement of an ACLO.

Our review of complaint files showed that an ACLO was mentioned in 8 of the 245 complaints (3.3%).

As stated above (see Chapter 3.1.1) in 2022, the NSWPF introduced a requirement for police to ask all victims of crime, persons of interest and persons in custody whether they identify as an Aboriginal and/or Torres Strait Islander person. This requirement extends to complainants.

As police now more routinely collect information about a complainant's Aboriginality, there may be an increase in the number of complaints from Aboriginal people, and also an increase in the number of complaints involving of an ACLO.

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<sup>43</sup> Aboriginal Community Liaison Officers can be found in the following Police Area/District Commands: Eastern Beaches PAC (1), Inner West PAC (1), Leichhardt PAC (1), South Sydney PAC (1), Mt Druitt PAC (2), Coffs/Clarence PD (2), Lake Macquarie PD (1), Manning/Great Lakes PD (2), Mid North Coast PD (3), Port Stephens Hunter PD (1), Richmond PD (3), Tweed/Byron PD (1), Campbelltown City PAC (3), Lake Illawarra PD (1), Murray River PD (2), Murrumbidgee PD (2), Riverina PD (1), South Coast PD (2), Barrier PD (6), Central North PD (6), Central West PD (2), Chiefly PD (1), New England PD (5), Orana Mid-Western PD (4) and Oxley PD (1).

Data extracted from the NSW Auditor-General's report on 'Police responses to domestic and family violence'. See Appendix 2: Workload and workforce numbers in 2020-21 supporting Exhibits 4, 6 and 7, 42-44.

<sup>44</sup> Information extracted from NSWPF intranet (20 July 2023).

<sup>45</sup> Information extracted from NSWPF intranet (20 July 2023).

#### 4.4.4 Subject officers and their complaint histories

Of the 279 complaints reviewed, the Commission identified 535 subject officers who were attached to 287 PACs, PDs and specialist commands. Over 85% of subject officers identified in these complaints were of the Senior Constable rank or below. This figure is not contentious as Senior Constables are the most common rank in the NSWPF and are more likely to work in the field and interact with members of the public thus increasing their chances of receiving a complaint.

Appendix G contains a breakdown of the number of complaints received by subject officer rank.

It is a requirement for the triage officer to check the subject officer's complaint history for previous complaints of a similar nature and record this in the triage form. Triage officers must assess whether the subject officer's previous complaints are relevant to the current matter and if so, list these matters in the triage form.

Of the 245 complaints triaged by the NSWPF, our review of the subject officer complaint history section of the triage form found:

- it had not been completed (was blank) in 45 complaints
- the triage officer had conducted a check, but found the subject officer's complaint history was irrelevant to the current complaint in 158 complaints
- made no indication as to whether the triage officer had conducted a review of the subject officers' complaint history in 54 complaints
- was marked 'relevant' to the current complaint in 22 complaints.

Of the 22 complaints where a triage officer indicated there was at least one relevant previous complaint, none of the forms we reviewed included any detail as to:

- which complaint was relevant
- why the complaint was relevant
- the outcome of the complaint
- whether any management action was taken.

The absence of this information on the triage form makes it difficult for the Commission to assess:

- how the NSWPF would consider a subject officer's complaint history during the triage process
- how the NSWPF would identify if a subject officer had a pattern of misconduct.

A review of a subject officer's complaint history is a mandatory part of the Commission's complaint management process.



## 4.5 Outcome of the NSW Police Force’s investigation of the allegations and complaints

This section provides an analysis of the allegations and sub-allegation categories, and outlines the management action the NSWPF said would be taken in relation to the sustained allegations.

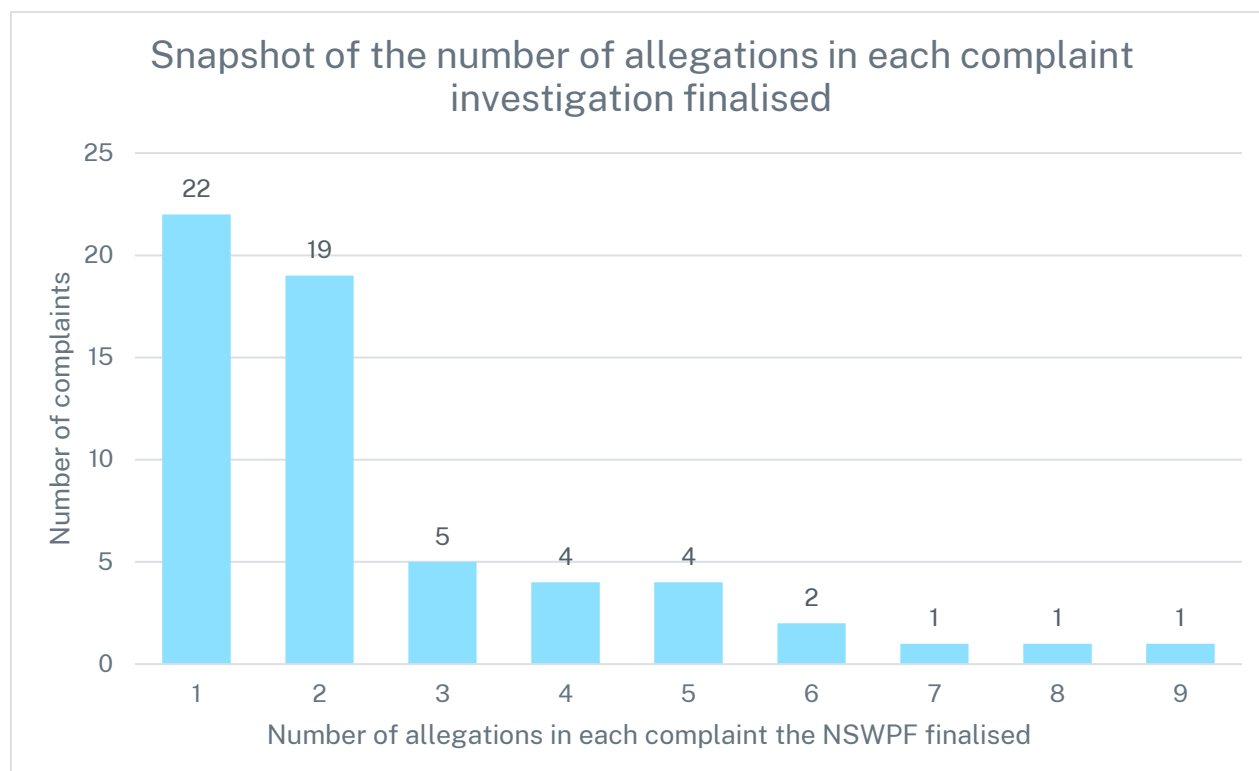
### 4.5.1 Allegations investigated by the NSW Police Force

While the NSWPF assesses and triages all complaints it receives, not all complaints are investigated. In this section we look at the complaints and types of allegations that the NSWPF investigated.

Of the 245 complaints triaged by the NSWPF, an investigation occurred for 66 matters. This investigation has been finalised for 59 complaints as of November 2023.

A total of 147 allegations<sup>46</sup> were investigated in the 59 complaints and Graph 5 shows the number of allegations for each of the 59 complaints the NSWPF finalised an investigation for.

**Graph 5: Number of allegations within each of the complaints the NSWPF finalised an investigation for**



<sup>46</sup> The total number of allegations referred to the CMT for investigation by a triage officer was 149. The CMT decided that 2 allegations (1 allegation of Judicial Evidence – Prosecution – Adverse Comment and 1 allegation of Police Powers – fail to comply with LEPRA – other) would be dealt with outside the Part 8A process.

Of the 147 allegations the NSWPF either managed under Enhanced Resolution Process, or investigated:

- 42 related to use of force
- 37 related to a breach of Service Standards, Ethical Standards and Guidelines
- 29 were about the use of police powers
- 16 related to customer service issues
- 2 related to dishonesty
- 1 related to information/telecommunication
- 8 related to issues with an investigation
- 2 were categorised under the judicial/evidence sub-category
- 1 related to sexual misconduct
- 5 related to breaching respectful workplace behaviour guidelines
- 4 related to 'other offences'.

Investigations were most commonly undertaken for allegations of unreasonable use of force (where weaponless force was used), and also for unreasonable or unprofessional behaviour.

#### 4.5.2 Allegations and sub-allegations investigated by the NSW Police Force

This section provides further detail on the allegations and sub-allegations investigated by the NSWPF.

Of the 42 use of force allegations investigated by the NSWPF:

- 26 related to the use of weaponless force
- 7 were about the use of an officer's arm and/or appointment
- 4 related to assault causing actual bodily harm
- 4 were of assault
- 1 related to using force with a vehicle/vessel.

Thirty-seven allegations made about an officer breaching the NSWPF's Service Standards, Ethical Standards and Guidelines were investigated. Of those:

- 2 related to an officer failing to create records
- 3 related to an officer failing in their duty of care
- 6 were about an officer's failure to comply with NSWPF policies and procedures
- 2 were about an officer failing to report misconduct

- 1 was about an officer neglecting their duty
- 1 was about an officer failing to, or delaying the return of property/exhibits
- 1 related to an officer tampering or destroying a property/exhibit
- 21 were about unreasonable and unprofessional behaviour displayed by the subject officers.

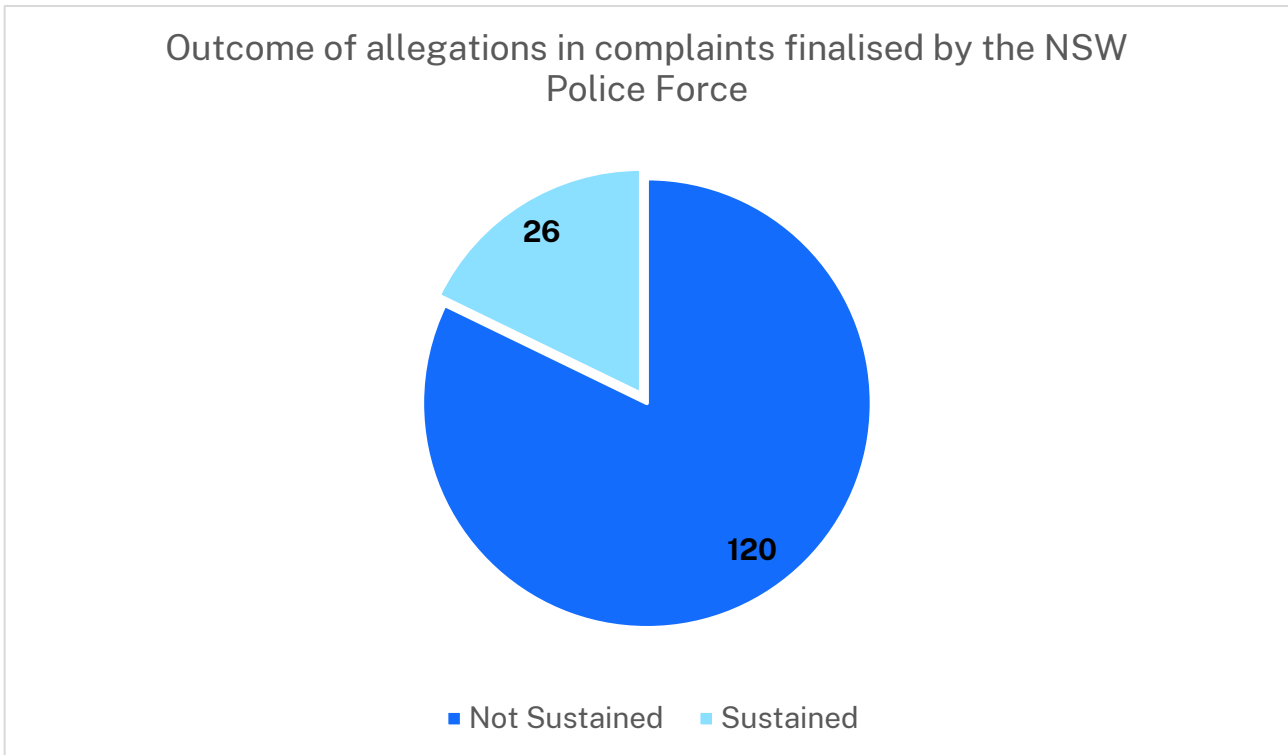
The third most investigated allegation category was the breach of police powers. Twenty-nine allegations investigated by the NSWPF fell within this category. Of these:

- 1 related to an officer failing to caution, give information or communicate a person their rights
- 2 were about an officer failing to meet the requirements of a vulnerable person whilst in custody
- 1 related to failing to provide medical treatment
- 1 was about an officer making an improper bail determination
- 3 were made about improper treatment/ failure to provide necessities for a person whilst in custody
- 1 was of unauthorised custodial detention
- 9 related to failing to comply with LEPRA during an arrest
- 6 related to failing to comply with LEPRA - Other
- 3 were of failing to comply with LEPRA during a search
- 2 were about an officer improperly using their discretion.

See Appendix H for more information on which sub-allegations were investigated by the NSWPF.

Graph 6 shows the outcomes of the allegations the NSWPF finalised the investigation for.

**Graph 6: Outcome of allegations finalised after being investigated by the NSW Police Force**



Of the 147 allegations investigated by the NSWPF:

- 120 allegations were not sustained
- 26 of the allegations were sustained.

The finding of 1 allegation remains pending as the matter is currently before the court.

In comparison to the total number of allegations made in the complaints reviewed in this paper (707), the NSWPF investigated 21% of the allegations and sustained only 4%.

#### 4.5.2.1 Allegations sustained by the NSW Police Force after investigation

This section focuses on those allegations the NSWPF sustained following the complaint investigation.

Allegations of officers breaching Service Standards, Ethical Standards and Guidelines accounted for 16% of the total number of allegations made in the 245 complaints.

Of the 26 allegations sustained by the NSWPF, most (62%) fell within the Service Standards, Ethical Standards and Guidelines allegation category.

Table 3 shows the types of allegations and sub-allegations the NSWPF sustained after investigation.

**Table 3: Sustained allegations and sub-allegation types**

<b>Allegation category</b>	<b>Allegation subtype</b>	<b>Number of allegation subtype sustained</b>
<b>Customer service</b>	Unprofessional conduct – inconsiderate/insensitive behaviour	1
	Fail to keep informed – fail to contact	1
	Unprofessional conduct – incivility/rudeness	1
<b>Investigation</b>	Deficient/inadequate investigation	2
<b>Police powers</b>	Custody – fail to caution/give information/communicate rights	1
	Custody – fail to meet requirements for vulnerable persons	1
	Custody – fail to provide medical treatment	1
	Custody – improper treatment/fail to provide necessities	2
<b>Service Standards/Ethical Standards/Guidelines</b>	Unreasonable/unprofessional behaviour	9
	Administration – fail to create records	2
	Fail to comply with policy/procedures – other	4
	Neglect of duty	1
<b>Total</b>		<b>26</b>

For these sustained matters, the investigating officer recommended a range of management actions, including:

- Counselling
- Assistant Commissioner’s Warning Notice
- Deputy Commissioner’s Warning Notice
- Disciplinary transfer
- Conduct Management Plan was extended for 3 months
- Increment reduction
- Monitoring
- Further training and development.

## 4.6 Timeliness of NSW Police Force’s complaint investigations

Under the NSWPF Misconduct Management Framework police must assess a complaint within 7 days of receipt and triage it within 21 days of receipt.<sup>47</sup>

If police deal with a complaint under the Enhanced Resolution Process, it must be finalised within 28 days of the NSWPF receiving the complaint.<sup>48</sup>

The timeframe for completing a Resolution Process investigation is within 45 days of the NSWPF receiving the complaint.<sup>49</sup>

The NSWPF must complete an evidence-based investigation within 90 days of receiving the complaint, or for more complex matters, within 150 days.<sup>50</sup>

We looked at both the timeliness of the NSWPF and Commission’s complaint handling process. We have included this detail to ensure transparency in our reporting about the time a complainant may have had to wait before an outcome can be provided to them about their matter.

Chapter 5 below details the time the Commission takes to respond to complaints.

The Commission notes that CASE20212640 took the NSWPF 445 days to finalise because the Commission had taken over the complaint from the NSWPF and investigated the matter under the investigation name ‘Operation Kimbla’.

In Operation Kimbla, the Commission held private examinations to investigate whether officers were involved in serious misconduct in their treatment of a young Aboriginal person whilst in police custody.

As a result of the hearings and other evidence, the Commission made 2 recommendations to the NSWPF:

- non-reviewable management action against one of the subject officer
- counselling and further training for the 4 other subject officers.<sup>51</sup>

### 4.6.1 Timeliness of documents uploaded to IAPRO

Of the 59 complaint investigations finalised by the NSWPF, 27 were first made to the Commission before being referred to the NSWPF for assessment and triage. Of these complaints, the NSWPF took an average of 7.5 days to upload the complaint onto the relevant IAPro matter after receiving the referral from the Commission.<sup>52</sup>

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<sup>47</sup> Information from NSWPF intranet (7 September 2023).

<sup>48</sup> Information from NSWPF intranet (22 November 2023).

<sup>49</sup> Information extracted from NSWPF policy (22 November 2023).

<sup>50</sup> Information extracted from NSWPF policy (22 November 2023).

<sup>51</sup> The Law Enforcement Conduct Commission, *Operation Kimbla Report to Parliament pursuant to section 132 Law Enforcement Conduct Commission Act 2016* (April 2022) 46.

<sup>52</sup> In 1 complaint, the complainant simultaneously sent the complaint to the NSWPF and the Commission and as such the LECC referral date was after the date the complaint was uploaded onto the relevant IAPro matter. This complaint was removed from the calculation.

When the Commission refers a complaint to the NSWPF, a field in IAPro called the 'received date' typically reflects the date the referral was made. There were 3 exceptions to this:

- 2 complaints were recorded as being received 4 and 6 days after the referral date
- 1 complaint was recorded as having been received by the NSWPF 123 days after the initial date the referral to the NSWPF was made.

On average, it took 4.9 days between the Commander's endorsement of the investigation report and their proposed management action before the NSWPF uploaded the police complaint investigation report onto IAPro.<sup>53</sup>

#### 4.6.2 Timeliness of NSW Police Force investigation

Of the 59 investigations finalise by the NSWPF:

- 3 were managed under the Enhanced Resolution Process
- 30 were managed under the Resolution Process
- 22 were subject to an evidence based investigation
- 4 complaints were 'otherwise dealt with.'<sup>54</sup>

On average the NSWPF took 25 days between receiving a complaint and finalising it under the Enhanced Resolution Process.

Complaints dealt with under the Resolution Process were typically finalised within 75 days of the NSWPF receiving the complaint.

For matters the NSWPF investigated, it took on average 109 days between the police receiving the complaint and for the investigating officer to finalise their investigation report. It took on average a further 11 days for the commanding officer to endorse the report and the investigator's recommendations.

We excluded 6 complaints when calculating this average time because it would have affected the capacity to calculate an average. The reasons for exclusion included:

- the Commander's endorsement of the investigating report did not contain a signature date
- the Commander's signature pre-dated the IAPro complaint received date
- the Commission took over the complaint investigation.

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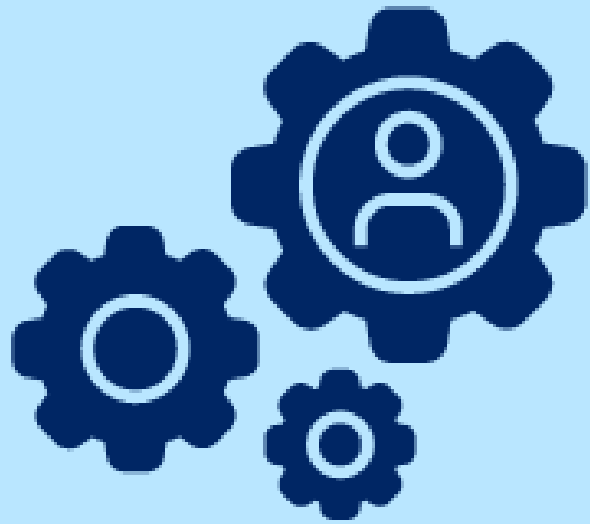
<sup>53</sup> 6 complaints were disregarded in this calculation. The reasons for this included: the NSWPF declining to investigate the matter, the Commander not including a date of when they signed off on the report, the report being uploaded prior to the date the Commander stated they signed the document.

<sup>54</sup> One complaint was recommended by the triage officer to be investigated but this was declined by the CMT. One complaint was handled under rule 45 of the *Government Sector Employment (NSW Police Force) Rules 2017*. One complaint was assessed as not a Part 8A complaint – it however, related to adverse comments made by a Magistrate. One complaint was created following a Commission investigation. Data correct as of 3 November 2023.

For further information on the different types of NSWPF investigations see Chapter 4.2 above.



# 5



The Commission's  
complaint handling  
process

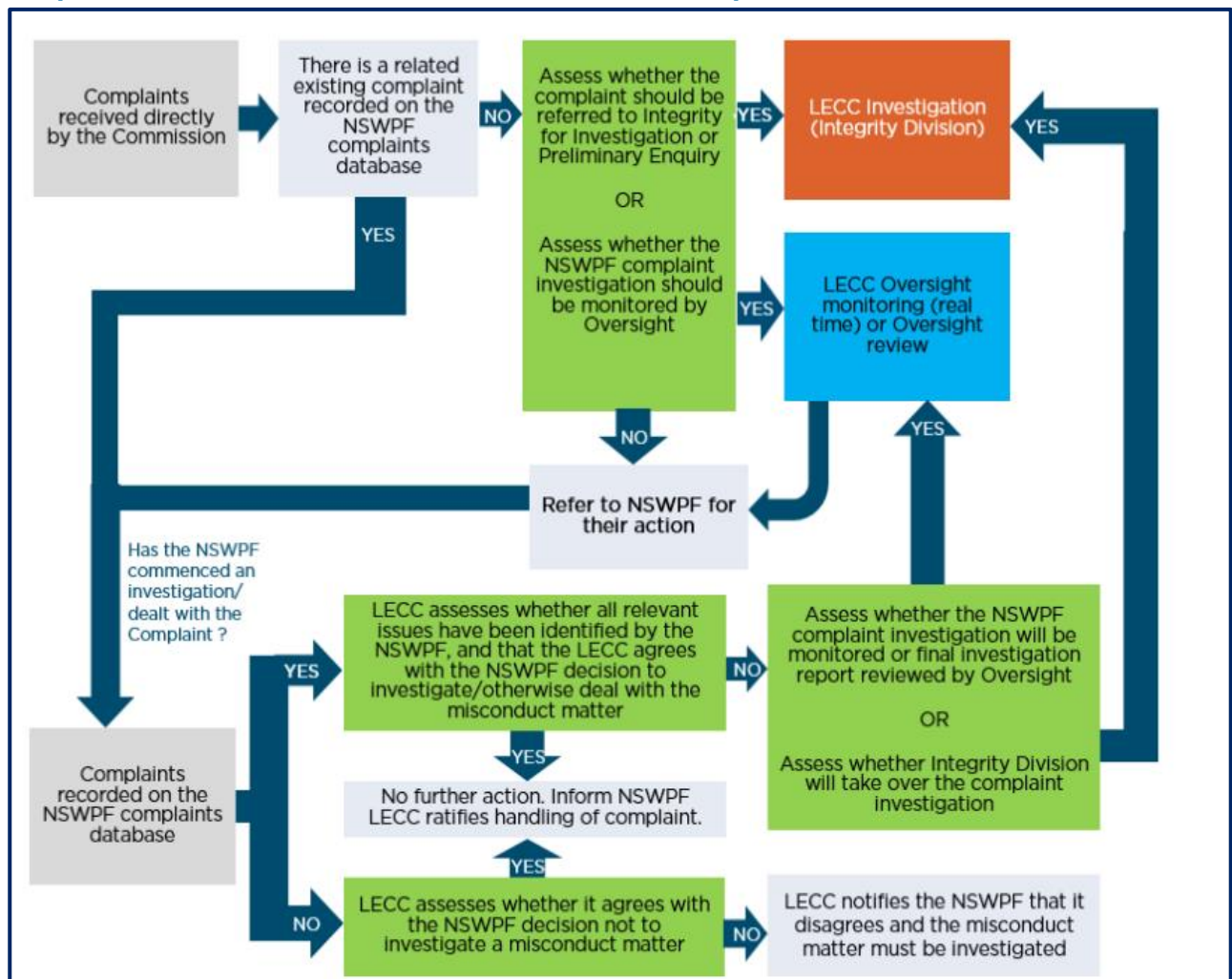
# 5. The Commission’s complaint handling process

## 5.1 The Commission’s complaint handling/management process

This section of the report discusses the Commission’s complaint handling process and how we dealt with the complaints we have reviewed for this paper.

The Commission’s complaint assessment process is shown below at Graph 10.

**Graph 10: Law Enforcement Conduct Commission Complaint Assessment Process**



### 5.1.1 The Assessment Process

The assessment of complaints is a core function of the Commission. Complaints come to the Commission in several ways, including from:

- members of the public
- the NSW Police Force misconduct matters information system (IAPro)

- NSW Crime Commission
- Public Interest Disclosures.

The Assessments team assesses all complaints made directly to the Commission to identify whether to exercise our investigative functions or refer the complaint to the NSWPF to action.

The Assessments team also assesses all complaints made to the NSWPF that are classified as notifiable misconduct matters to determine to exercise our statutory functions, or if we agree with the NSWPF’s decision to investigate (or decline to investigate) the misconduct matter.

In addition to assessing complaints made directly to the Commission, we also assess any notifiable complaints that we have referred to the NSWPF. This second assessment allows the Commission to determine whether the NSWPF has dealt with the complaint appropriately and provides an opportunity to decide whether the Commission will monitor that NSWPF investigation. Before the implementation of LOIS, we could not report on this second assessment.

The Commission assesses all notifiable and non-notifiable complaints made directly to the Commission about the NSWPF. Our Assessments team assesses all complaints, and then refers the complaints with a recommendation for action to the internal Complaint Action Panel (CAP) for consideration.

The Commission does not regularly review the NSWPF handling of non-notifiable complaints that we either referred to the NSWPF or are notified of by the NSWPF. We may occasionally review non-notifiable complaints and if we do not agree with the NSWPF’s determination, we may write to the NSWPF to require the complaint be made notifiable.

If the Commission considers that the NSWPF incorrectly declined to investigate a matter, we can:

- require the NSWPF to investigate the complaint
- ask the NSWPF to include further allegations in their triage and/or investigation
- require further information be provided to us
- investigate the matter directly.

Table 4 displays the decisions the Commission made about how complaints made by or on behalf of Aboriginal people, should be managed.

**Table 4: Number of complaints by Aboriginal people categorised by assessment decision**

Assessment decision	Number of complaints
Critical Incident Investigation	1
Refer complaint to NSWPF for information only (s43)	14
Disagree with NSWPF decision not to investigate (s99(3))	4
Refer for LECC investigation	7

Assessment decision	Number of complaints
Recommendation action to NSWPF for consideration (s 131(4)) <sup>55</sup>	1
No Further Action	247
Refer to Oversight Team to monitor NSWPF investigation (if investigated)	5
<b>Total</b>	<b>279</b>

As Table 4 shows, the Commission took no further action for 247 complaints. This was because:

- in 234 complaints, we considered there was no need to take further steps after reviewing and ratifying the NSWPF's triage of the complaint<sup>56</sup> and
- in 13 complaints, the complainant did not give consent for us to refer the complaint to the NSWPF for investigation and the complaint did not meet the Commission's threshold to be investigated.

The Commission disagreed with the NSWPF's decision not to investigate a complaint and/or an allegation on 4 occasions. When this occurs, the Commission writes to the NSWPF Professional Standards Command under s 99(3) of the LECC Act. This section gives the Commission the power to direct the NSWPF to investigate the matter.

The Commission wrote to the NSWPF in 14 matters under s 43 of the LECC Act. Complaints referred to the NSWPF under this section are for information only. The NSWPF is not required to investigate these matters.

The Commission also:

- investigated 7 complaints directly
- monitored the NSWPF's investigation of 3 complaints.

The Commission only monitored the NSWPF's investigation into 3 of the 5 matters referred by the Assessment Team as the NSWPF declined to investigate the other 2 complaints.

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<sup>55</sup> s 131(4) of the *Police Act 1900* states "the Commissioner is to take into account any misconduct matters management guidelines or recommendations of the LECC in deciding how to investigate or deal with the misconduct matter."

An example of when the Assessment Team may send a s 132(4) letter to the NSWPF is when the Commission recommends that the NSWPF consider additional allegations as part of their investigation into the misconduct matter. The NSWPF may choose to accept the Commission's recommendation or not. If the NSWPF decide to go against the Commission's recommendation, an explanation as to why is required.

<sup>56</sup> This means we were satisfied with the way the NSWPF proposed to manage the complaint, or had already managed it, and we considered that no further action was required.

The Commission received one complaint about an active critical incident investigation it was monitoring under our Critical Incident Monitoring functions contained in Part 8 of the LECC Act.<sup>57</sup>

#### 5.1.1.1 Timeliness of our assessment process

After assessing a complaint, an Assessment Officer will refer a complaint to the CAP with recommendations on how the complaint should be handled by the Commission.

The CAP meets weekly, and consists of the Chief Commissioner, the Commissioner and other senior Commission staff.

The CAP may decide that the Commission ought to investigate a complaint independently of the NSWPF if the complaint indicates that a NSWPF or NSW Crime Commission officer has engaged in serious misconduct or serious maladministration.

On average it takes the Commission 28 days from receipt of the complaint to:

- assess the complaint
- recommend a course of action to the CAP
- endorsement of the recommendation at CAP.

#### 5.1.2 The Oversight process

The NSWPF has the primary responsibility for investigating complaints and allegations of misconduct by their officers. The NSWPF sends us a finalised police complaint investigation report, also known as a s 137 report, along with the information they relied upon in the investigation.<sup>58</sup>

We review s 137 reports to ensure that the allegations raised were appropriately dealt with and the conclusions made by the investigating officer were sound.

The Commission's Oversight Investigations team reviews finalised police complaint investigations. These reviews ensure that the NSWPF conducted those investigations reasonably and satisfactorily, with appropriate outcomes.

The team also supports the Commission's objective of 'identifying opportunities to address systemic issues in complaint handling by the NSWPF and in the exercise of police powers.'<sup>59</sup>

##### 5.1.2.1 Oversight Investigation review decision

Of the 245 complaints in this cohort, the NSWPF investigated 66. Of these 66 matters, 56 were reviewed by the Commission's Oversight team.

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<sup>57</sup> Under Part 8 of the *Law Enforcement Conduct Commission Act* the Commission has the power to oversight and monitor the NSW Police Force investigation of critical incidents if the Commission decides that it is in the public interest to do so. It is the Commission's role to ensure that NSW Police Force critical incident investigations are conducted in a competent, thorough, and objective manner, and properly address factors under s 113 of the LECC Act.

<sup>58</sup> *Police Act 1990* (NSW) s 137.

<sup>59</sup> Law Enforcement Conduct Commission, *Annual Report 2022-23* (October 2023) 52.

At the time of writing, the remaining 6 complaints had not yet been reviewed by the Oversight team because:

- 2 complaints are still being investigated by the NSWPF and are being actively monitored by the Commission’s Oversight team
- 1 complaint that is being monitored by the Commission’s Oversight team has been suspended by the NSWPF<sup>60</sup> and
- the investigation of a further 3 complaints have been suspended by the NSWPF.<sup>61</sup>

In addition to the 56 police investigations, the Oversight Investigation team reviewed the NSWPF’s handling of one additional complaint. This included reviewing all the documents located on the IPro record and a request to review the body-worn video footage. This complaint has been excluded in the analysis below.

When reviewing the NSWPF’s investigation of a complaint, the Commission may decide to:

- close the matter after triage because the findings and management action are adequate, or the police have broadly handled the matter appropriately
- conduct a review of the police investigation of the complaint
- issue a s 101, s 102, s 103, s 104 or s 105 letter (discussed below)
- escalate the matter to the NSWPF Professional Standards Command
- undertake a Part 6 investigation<sup>62</sup>
- prepare a report under s 134 and s 138 of the LECC Act.<sup>63</sup>

**Table 5: Section of the LECC Act and the powers it affords the Commission**

LECC Act Section	Function
s 101	The Commission can monitor the police investigation of a misconduct matter if we believe it is in the public interest to do so.  We can also request the NSWPF provide reports on the progress of their investigation.
s 102	The Commission can request further information from the police to determine if the investigation is being, or has been, dealt with properly.  Section 102 places an obligation on the NSWPF to provide the following to the Commission upon request:

<sup>60</sup> Complaint investigations may be suspended for several reasons including but not limited to if the subject officer is unable to be interviewed by the Investigating Officer, if criminal charges have been laid against the subject officer and the matter is before the court.

<sup>61</sup> Information correct as of 22 November 2023.

<sup>62</sup> *Law Enforcement Conduct Commission Act 2016* (NSW) Part 6.

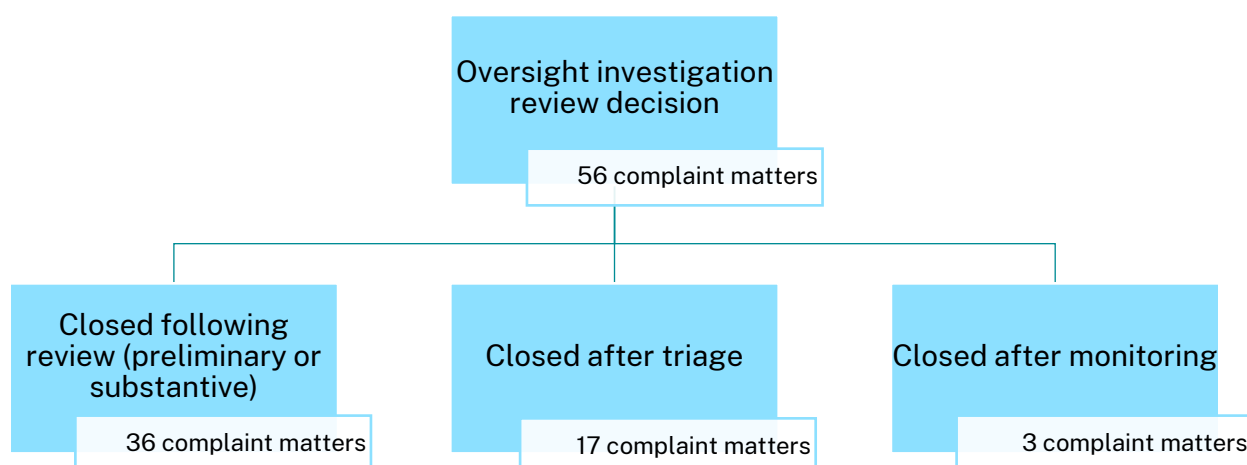
<sup>63</sup> Internal LECC policy.

LECC Act Section	Function
	(a) an explanation of the policies, procedures and practices of the NSWPF relevant to the matter (b) documentation and/or other information (c) any explanation, comment or information sought by the Commission.
s 103	The Commission can request information about the police’s misconduct investigation if we believe it is not being conducted in a timely manner.
s 104	The Commission can task the NSWPF to conduct a further investigation into the complaint matter if we are not satisfied that it has been properly investigated.
s 105	The Commission can request the Commissioner of Police to review a finding or management action taken or not taken as a result of the complaint investigation.

In 12 of the 56 complaint investigations reviewed by the Commission, we wrote to the NSWPF seeking further information under s 102. We sent 1 letter under s 104, requesting the NSWPF to further investigate a matter.

Table 7 summarises the actions taken by the Commission after assessing the NSWPF’s investigation of the complaint.

**Table 7: Number of complaints categorised by Oversight investigation review decision**



### 5.1.2.2 Triage

The Commission has finite resources and undertakes varying levels of oversight of NSWPF and NSW Crime Commission misconduct investigations. To determine the level of oversight

required, all notifiable misconduct matters are triaged to assess by the Commission to the level of risk and priority. This risk assessment determines whether:

- the matter is closed
- workflowed for preliminary review where further assessment is undertaken
- assigned for full review.

The Commission's triage process<sup>64</sup> is intended to be an appraisal of the risks, priorities and systemic issues involved in a matter. The key issues we consider when triaging finalised NSWPF complaint investigations include:

- whether the NSWPF has considered all complaint issues
- whether the matter is a current Commission strategic priority<sup>65</sup>
- whether the CAP, or a Commissioner, has determined the matter should be monitored by the Oversight Investigations team
- whether the matter relates to an officer that is currently of interest to the Commission
- whether the matter involves issues of interest to the wider Commission.

When the finalised NSWPF complaint investigation is received by the Commission an initial review and risk assessment is completed. After this, we may close the matter, or undertake further review.

We review every notifiable investigation report received from the NSWPF, even those we might decide to close after the initial review and risk assessment.

When deciding whether a matter should be closed at triage or requires further review, we consider a range of issues including those listed above and,

- whether the matter has substantially been handled appropriately, including whether the findings and management action are appropriate
- the time elapsed since the investigation was completed and the Commission being notified of the matter.<sup>66</sup>

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<sup>64</sup> At the time of writing, the Commission is reviewing its processes and policies.

<sup>65</sup> At the time of the complaints being made, the Commission's strategic priorities were to:

- Build trust with the NSW Police Force and Crime Commission
- Improve efficiency and effectiveness
- Increase the impact of and awareness of the Commission's work.

The Commission has since released a new Strategic Plan. Our new strategic priorities are:

- Striving for systemic change
- Demonstrating our value
- Connecting through our culture.

See the Commission's 2023-2026 Strategic Plan [here](#).

<sup>66</sup> The age of a matter impacts the level of effectiveness any Oversight review. Generally, if a matter has been received by the Commission 4 months prior to triage there is an expectation the matter will be finalised by Oversight with minimal or no further review, unless there are significant reasons why the Manager considers further review is required.



We closed 17 of the 56 complaint investigations we reviewed after triage.

On average, it took us 2 days from receiving a NSWPF notification that they had completed their investigation to closing the matter after triage.

On average, it took 103 days between the NSWPF receiving and investigating the complaint to the date the Commission closed our corresponding Oversight Investigation matter after triage.

In 1 complaint matter, the NSWPF took 152 days to investigate the complaint but did not notify the Commission that it had finalised the matter for a further 276 days. The matter was initially suspended by the NSWPF pending the complainant's court matter being finalised. The NSWPF concluded their investigation of the complaint matter after this but did not 'un-suspend' the matter on IAPro. As a result, the automatic exchange of information between the NSWPF and the LECC did not occur and the Commission was not notified in a timely manner.

### 5.1.2.3 Preliminary review

A preliminary review is a high-level review of the NSWPF's complaint investigation that is conducted by a senior investigator of the Commission to determine what action is required. The preliminary review involves:

- reviewing key investigative documents including information about the findings and management action taken by the NSWPF
- assessing whether the police complaint investigation was sufficient based on the seriousness of the allegations raised
- considering the Oversight Investigation team's operational concerns.

A matter is closed following a preliminary review when we consider that no further investigation or review is required. Factors which influence this decision include:

- whether the NSWPF has made appropriate findings
- whether the NSWPF has taken appropriate steps to remediate the subject officer/s misconduct and mitigated against future misconduct risks of a similar nature
- whether further information from, or further investigation by, the NSWPF may be required
- whether any further lines of enquiry could reasonably be followed in the matter
- whether the matter was sufficiently investigated and finalised
- the operational capacity of the Oversight Investigations team and resources involved in conducting a further review of the matter
- whether the matter is of priority based on the Commission's strategic priorities.<sup>67</sup>

Of the 56 finalised investigations, the Commission conducted a preliminary review into 18 of the police's investigation of the matter. The average time taken between the NSWPF receiving the complaint, investigating the matter and the completion of our preliminary review was 156 days. Focusing on the Commission's timeliness, it took on average 63 days between the Commission

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<sup>67</sup> Law Enforcement Conduct Commission, *15.3 Oversight Investigations Prioritisation and Case Management: Policy and Procedure* 11.

receiving a copy of the NSWPF's s 137 report to closing the matter following a preliminary review.

#### 5.1.2.4 Substantive review

We will do a 'substantive review' or 'full review' of a police complaint investigation (s 137 report) when the NSWPF's investigation of the complaint matter appears to be deficient.<sup>68</sup>

A substantive review is conducted by an oversight investigator and involves a thorough consideration of all NSWPF complaint documents we can decide to:

- close the matter without further action
- request further information from the NSWPF<sup>69</sup>
- request the NSWPF investigate the matter further<sup>70</sup>
- request that the NSWPF review the management action/decision taken.<sup>71</sup>

In making this decision, we consider:

- the quality of the NSWPF's investigation (scope, investigative strategy, evidence gathering, management of witnesses)
- whether all reasonable and relevant lines of enquiry were pursued
- the quality of the NSWPF Commander's reasoning and decision making (findings of fact, weighting of evidence, application of standard of evidence and burden of proof, management/disciplinary outcome).

For complaints made between 1 January 2021 and 30 June 2022, the Commission completed a substantive review of 18 police misconduct matter investigations.

The average time taken between the NSWPF receiving the complaint, investigating the matter and the Commission undertaking a substantive review of the matter was 191 days.

On average, it took the Commission 109 days between receiving a copy of the NSWPF's s 137 report to closing the matter after a substantive review.

#### 5.1.2.5 Monitoring

The Oversight Investigations team also monitors ongoing investigations conducted by the NSWPF or the NSW Crime Commission under s 101 of the LECC Act. This may include the investigation of new complaints, or where the Commission considers an investigation to be deficient, a request that further investigation is conducted by the NSWPF.

When monitoring an investigation, we can:

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<sup>68</sup> For example, the NSWPF's did not address or investigate all the allegations raised in the complaint, the type of investigation was not appropriate based on the seriousness of the allegations or lines of enquiries were not taken.

<sup>69</sup> *Law Enforcement Conduct Commission Act 2016* (NSW) s 102.

<sup>70</sup> *Law Enforcement Conduct Commission Act 2016* (NSW) s 104.

<sup>71</sup> *Law Enforcement Conduct Commission Act 2016* (NSW) s 105.

- observe interviews
- talk to the NSWPF investigation officer about the conduct of the investigation
- request updates and further information about the progress of the investigation.

Between 1 July 2021 and 30 June 2022, the Commission monitored 3 complaint investigations by the NSWPF.

It took the Commission an average of 29 days from receiving the s 137 report of a monitor matter before reviewing and closing the matter.

For monitoring matters overall, the average time taken between the NSWPF receiving the complaint to the Commission closing the matter was 216 days.

When the Commission's CAP decides that a complaint investigation should be monitored, the time we take to oversight the matter is dependent on the duration of the NSWPF complaint investigation. We can only oversight and finalise our review of the matter once the NSWPF complaint investigation is complete.

### 5.1.2.6 Timeliness explained

The time taken for the Commission to oversight a NSWPF complaint investigation is influenced by several factors, including:

- resourcing
- staff movement
- complexity of the NSWPF's investigation
- NSWPF response time to information requests
- the time taken for the NSWPF to re-investigate a matter when required.

Sometimes, when information is first transferred from IAPro into the Commission's LOIS database, some investigative documents are not available to the Commission.

For example, sometimes the s 137 investigation report of the NSWPF investigation is not available. When this happens the Commission's oversight manager is unable to triage the matter.

Prior to September 2023, the Commission was not automatically granted access to NSWPF body-worn video footage or other electronic material. To access this material, the Oversight investigator had to issue the NSWPF a s 102 notice. In complex matters, it is not uncommon for an Oversight Investigator to issue multiple notices to access all required information.

All notices sent to the NSWPF require a response from the NSWPF within a specified time frame. When the Commission issues a notice requesting information about a finalised NSWPF complaint investigation, we usually ask for it to be provided within 7-28 days (depending on the quantity or complexity of the information). We may extend that timeframe if appropriate. If NSWPF need more time to provide the information an extension can be requested.

In September 2023, the Commission and the NSWPF agreed on a new process for the provision of electronic material (including body-worn video footage, CCTV and footage) to the Commission, without the need for us to make individual requests or issue a notice.

In 2022-23, the Commission sent the NSWPF 263 requests for further information.<sup>72</sup>

On average, the Commission receives 170-180 finalised NSWPF complaint investigations each month.

In 2022-23, the Oversight Investigations team received 2,104 final police complaint investigations. In the same period, the Commission finalised the review of 2,129 NSWPF complaint investigations – this included Oversight matters brought forward from the previous year.

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<sup>72</sup> *Law Enforcement Conduct Commission Act 2016* (NSW) s 102.

6



What others have  
seen

# 6. Analysis of complaints made about police – what others have found

Both the Victoria Police and Department of Justice and Victoria's Independent Broad-based Anti-corruption Commission have reviewed complaints specifically made by Aboriginal and Torres Strait Islander people.

Several other Australian integrity bodies have analysed police complaints more broadly. While the scope and methodology of each report is not directly comparable to our analysis, we have included a summary of what other Australian integrity bodies have observed.

## 6.1 Analysis of complaints by Aboriginal and Torres Strait Islander people

### Koori Complaints Project

The Koori Complaints Project was a joint project between the Victoria Department of Justice and Victoria Police. The aim of the project was to:

- improve reporting of incidents of inappropriate treatment by police
- provide useful data on complaints from the Indigenous community
- improve the complaint process
- improve police integrity and ethical health and
- return confidence in the complaint system to the community, particularly the Indigenous community.<sup>73</sup>

The joint project reviewed complaints made by Koori people between 1991 and 2006. It made the following findings in relation to the Koori experience of the police complaint system:

- the most common allegation made (40%) related to assault by police during arrest<sup>74</sup>
- allegations of racist language and abuse accounted for 17% of the 181 allegations identified in the Koori Complaints Project<sup>75</sup>
- Koori people are 6 times more likely to come into contact with Victoria Police than non-Koori people<sup>76</sup>
- the discrepancy between the level of contact Koori people had with police and the number of complaints made by Koori people suggested that Koori people were significantly under-reporting their negative experiences with police<sup>77</sup>

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<sup>73</sup> Victoria Police and Department of Justice, *Koori Complaints Project Final Report (2006-2008)* 5.

<sup>74</sup> Ibid 17.

<sup>75</sup> Ibid 19.

<sup>76</sup> Ibid 17.

<sup>77</sup> Ibid 17.

- many Koori people believed that making a complaint about police behaviour was futile<sup>78</sup>
- Koori people derived greater satisfaction and outcomes from litigation and involvement of independent arbiters, than through the complaints process<sup>79</sup>
- the number of Koori people aware of the complaints process and who were confident about navigating it was almost zero<sup>80</sup> and
- without assistance from community and advocates in lodging complaints there would be virtually no Koori complaints.<sup>81</sup>

The Koori Complaints Project made the following recommendation about the interaction between Koori people and the Victoria Police's complaint system:

### **Ancillary Recommendation 1**

That Victoria Police give consideration to undertaking a reform of the complaints system arising from the identification of a number of systemic issues which are creating disproportionately poor outcomes for Kooris. Consideration of issues such as the appropriate role of the system, the most effective use of management intervention, clear guidelines on handling different types of complaints, guidelines for classifications and the proper role of the review process should be considered.<sup>82</sup>

### **Victoria Police handling of complaints made by Aboriginal people**

In 2022, the Victoria Independent Broad-based Anti-corruption Commission (VIC IBAC) released a report considering how Victoria Police handled complaints made by Aboriginal people. This involved examining Victoria Police's handling of 41 complaints and VIC IBAC's oversight of 13 serious incidents involving an Aboriginal person.

The report found:

- the most common allegation made was about police use of force (46%)
- very few complaints were substantiated (11%)
- a substantial number of complaints and serious incidents involved Aboriginal children (41%)
- Aboriginal status was poorly recorded in 57% of the 41 complaint files audited
- in 73% of complaint files where a contactable complainant was identified, there was no indication Victoria Police updated complainants on the progress of their complaints
- dedicated Victoria Police resources (Aboriginal Community Liaison Officers and Police Aboriginal Liaison Officers) were rarely used
- 22% of reviewed complaint files contained indications of bias or a lack of impartiality on the part of subject officers – this included subject officer's dismissing the complainant's

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<sup>78</sup> Victoria Police and Department of Justice, *Koori Complaints Project Final Report (2006-2008)* 23-26.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid 4.

concerns, implying the complainant was not truthful and commenting on previous irrelevant interactions between the complainant and police

- 41% of complaint files contained indicators of bias on the part of the complaint investigator – this included minimising the seriousness of allegations, downplaying the subject officers conduct, making inappropriate comments about civilian witnesses and scrutinising the complainant’s background or criminal history.<sup>83</sup>

As a result of these findings, VIC IBAC made 10 recommendations to Victoria Police to improve their handling of complaints made by Aboriginal people.

The recommendations below may be of interest to the NSWPF, as they directly relate to changes in the Victoria Police complaint handling system to improve the outcome and experiences of Aboriginal complainants:

### **Recommendation 5**

IBAC recommends that Victoria Police establish a dedicated process for handling complaints made by Aboriginal people to enable timely and culturally appropriate compliant handling, including the creation of a specialised role to advise on classification and investigation of complaints from Aboriginal people, and to link Aboriginal complainants to available services to support them during the complaints process. This specialised role would benefit from being staffed by Aboriginal prioritised or designated positions and should be developed in partnership with relevant Aboriginal community-controlled organisations.

### **Recommendation 6**

IBAC recommends that Victoria Police ensure that officers investigating complaints or overseeing serious incidents involving Aboriginal people seek advice from the new specialised role (see Recommendation 5) at the commencement of the investigation or oversight, and document that advice on the file.

### **Recommendation 7**

IBAC recommends that Victoria Police strengthen its complaint-handling processes and training to ensure that investigators keep complainants regularly updated on the progress of an investigation, and provide detailed, accurate, clear and consistent outcome information to complainants and their nominated representatives.

### **Recommendation 10**

IBAC recommends that Victoria Police take urgent action to ensure that the Aboriginal status of complainants and people involved in serious incidents is accurately and consistently recorded in the Victoria Police complaints database and other Victoria Police systems. This should include amending the complaints database to ensure that Aboriginal status is recorded as a response to the Standard Indigenous Question rather than as an observation of ‘ethnic appearance’, updating inconsistent records where necessary, and establishing processes for regular monitoring of data quality.<sup>84</sup>

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<sup>83</sup> Victoria Independent Broad-based Anti-corruption Commission, *Victoria Police handling of complaints made by Aboriginal people: Audit Report* (May 2022) 8-11.

<sup>84</sup> Ibid 13-14.



## 6.1.1 Analysis of police complaints

Below are summaries of the work other integrity agencies have completed in the police complaints space. Whilst the reports do not specifically examine complaints made by or on behalf of Aboriginal and Torres Strait Islander people, some of the observations and recommendations made are relevant.

### Report on the management of misconduct by Western Australia Police

In September 2011, the Western Australia Corruption and Crime Commission (WA CCC) released a report which considered the capacity of the Western Australia Police's (WAPOL) misconduct management system to prevent, identify and deal with misconduct.<sup>85</sup>

This review involved:

- investigating 3 cases that had previously been the subject of inadequate WAPOL internal investigations
- conducting in-depth reviews of the adequacy of 165 high-risk allegations against WAPOL<sup>86</sup>
- reviewing 267 medium-risk allegations against WAPOL<sup>87</sup>
- analysing the way WAPOL handled and categorised 587 low-risk allegations<sup>88</sup>
- visiting 14 WAPOL districts and 3 organisational units and evaluating their misconduct management systems.

While WA CCC's analysis found that more than 96% of misconduct allegations were adequately dealt with by WAPOL, a small number of complaints with high-risk allegations were not. The WA CCC identified several inadequacies in WAPOL's internal investigations of complaints containing high-risk allegations, including:

- conflicts of interest

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<sup>85</sup> Western Australia Corruption and Crime Commission, *Report on the Management of Misconduct by Western Australia Police* (2 September 2011) v.

<sup>86</sup> The Western Australia Corruption and Crime Commission defines high-risk allegations as – allegation which, if not properly dealt with, embody major potentially adverse consequences for the reputation and business processes and systems of WAPOL. Allegations falling into this category typically involve serious misconduct and/or complicating issues. Failing to deal with these allegations is likely to adversely affect WAPOL's reputation, and in turn undermine community confidence in policing.

<sup>87</sup> The Western Australia Corruption and Crime Commission defines medium-risk allegations as – allegations which, if not properly dealt with, embody minor or moderate potentially adverse consequences for the reputation and business processes and systems of WAPOL. Allegations falling into this category do not typically involve serious misconduct and/or complicating issues. However, failing to deal with trends evidence in these allegations is likely to adversely affect WAPOL's reputation, and in turn undermine community confidence in policing.

<sup>88</sup> The Western Australia Corruption and Crime Commission defines low-risk allegations as – allegations which, if not properly dealt with, embody relatively insignificant potentially adverse consequences for the reputation and business processes and systems of WAPOL. Allegations falling into this category typically involves issues relating to service delivery, policy or procedure, or a misunderstanding of the law. Failing to deal with these allegations, or trends evident in them, is unlikely to significantly adversely affect WAPOL's reputation or community confidence in policing.

- a lack of objectivity by investigating officers
- matters relating to domestic disputes involving families of WAPOL officers
- alleged unauthorised computer access cases and
- decisions not to provide an apology in circumstances where one was warranted.<sup>89</sup>

WA CCC made 7 recommendations to WAPOL. None of these recommendations were relevant to the issues explored in this paper.

### **An audit of Tasmania Police complaints finalised in 2015**

The Tasmania Integrity Commission conducted an audit of complaints made against the Tasmania Police between 2013 and 2016. The report, released in 2016, is the most recent and is summarised below.

The aim of the audit was to:

- identify the nature of misconduct complaints
- examine the way the Commissioner of Police has dealt with complaints generally
- collect more in-depth data on issues of particular relevance
- assess progress in the implementation of previous Integrity Commission recommendations.<sup>90</sup>

The audit involved the Tasmania Integrity Commission obtaining hard copy complaint files from Tasmania Police, and reviewing and responding to a set of 30 questions about each file. In 2015, 123 complaints were made against Tasmania Police and its officers. Of these complaints, 101 were Class 1<sup>91</sup> complaints and 22 were Class 2<sup>92</sup> complaints. The Integrity Commission audited all 123 complaints.

Breach of Code of Conduct allegations made up 96% of the 398 allegations made in the 123 complaints audited. Only 9% of the total number of allegations made were sustained. Tasmania Police sustained 37 allegations against 19 officers in 19 complaints.<sup>93</sup>

Combining the data of their previous audits, the Tasmania Integrity Commission found that the most common allegation category was Code of Conduct breaches. Between 2013-2015 the most common breach of Code of Conduct allegations were:

- a failure to act with care and diligence (314 allegations)

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<sup>89</sup> Western Australia Corruption and Crime Commission, 'Report on the Management of Misconduct by Western Australia Police' (2 September 2011) xviii.

<sup>90</sup> Tasmania Integrity Commission, *An audit of Tasmania Police Complaints finalised in 2015* (November 2016) 2.

<sup>91</sup> Class 1 complaints are complaints of a less serious nature and are usually handled at a regional police level.

<sup>92</sup> Class 2 complaints are more serious complaints and usually handled by Tasmania Police's Professional Standards command.

<sup>93</sup> Tasmania Integrity Commission, 'An audit of Tasmania Police Complaints finalised in 2015' (November 2016) 7.

- bring discredit on the service (301 allegations)
- failure to comply with an order in the Tasmania Police Manual (183 allegations).

The Tasmania Integrity Commission did not make any recommendations in its 2016 audit report, but did note that Tasmania Police could further improve its record keeping practices, timeliness of investigations and acceptance of complaints.

### **Pathways to Justice – Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander Peoples**

In 2018, the Australian Law Reform Commission (ALRC) released their report ‘Pathways to Justice – Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander Peoples’. The Pathways to Justice report focused on the over-representation of Aboriginal people in the criminal justice system.

As part of the Inquiry, the ALRC looked at the police complaint handling processes of each State and Territory and made the following recommendation:

#### **Recommendation 14-2**

To provide Aboriginal and Torres Strait Islander people and communities with greater confidence in the integrity of police complaint handling processes, Commonwealth, state and territory governments should review their police complaints handling mechanisms to ensure greater practical independence, accountability and transparency of investigations.<sup>94</sup>

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<sup>94</sup> Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (11 January 2018) [14.51]

# 7



## Appendices

# Appendix A: List of global categories

Global categories are used as a flag by the Commission to highlight complaints of interest. The types of global categories available in LOIS, the Commission's complaints database, are listed below.

<b>Global categories - LOIS</b>
Aboriginal and/or Torres Strait Islander Person
Body Worn Video
Children's Guardian
Complaints with video footage
Consorting
Court misconduct
Crime Commission complaints
Criminal history/warnings
Culturally and linguistically diverse communities
Custody Management Misconduct
Death
Disability
Domestic violence
Domestic violence (police assailant/direct involvement)
Drug or alcohol related
Enhanced Resolution
Evidence issues
Excessive use of force

<b>Global categories - LOIS</b>
Fail prosecutions (costs against Police)
Firearms
Fraud
High profile complainant
Human source management
Illicit drugs (use, possession, supply by police)
Illicit drugs (use, possession, supply)
Judicial complaint
Management of intoxicated persons
Media/political/community interest
Mental Health
Money laundering
OMCGs/OCGs
Parole/bail/court issues
Person Under 18
Perverting the course of justice (falsification of records/dishonesty)
Procedural issues
Release of information
S 308H offence
Secondary Employment
Serious breach of LEPRA

<b>Global categories - LOIS</b>
Serious injury
Sexual offences
Sexual offences (police assailant/direct involvement)
Significant media attention
Statement of Claim
STMP
Strip searches
Theft
Unlawful/unauthorised access
Unsworn officer conduct <sup>95</sup>
Use of firearm
Use of force resulting in serious injury (hospitalisation)
Use of other appointments
Use of Taser
Violence
Workplace bullying/harassment
Young Person

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<sup>95</sup> Unsworn officers are NSW Police Force Administrative Employees.

# Appendix B: Number of complaints flagged by global category

The table below shows how many complaints were flagged by the Commission with each global category. Noting that a complaint may be flagged with multiple global categories.

Global categories - LOIS	Number of complaints
Complaints with video footage	4
Corruption	4
Court Misconduct	2
Disability	21
Domestic Violence	30
Enhanced Resolution	3
Evidence Issues	1
Excessive Use of Force	97
Illicit Drugs (use, possession, supply)	3
Management of intoxicated persons	1
OMCGs/OCGs	3
Person Under 18/Young Person	69
Procedural Issues	6
Release of Information	1
Serious Breach of LEPR	47
Sexual Offences	5
Sexual Offences (police assailant/direct involvement)	1
Significant Media Attention	1
Statement of Claim	23
STMP	8
Strip Searches	3
Theft	1



<b>Global categories - LOIS</b>	<b>Number of complaints</b>
Unsworn Officer Conduct	1
Use of Force resulting in serious injury (hospitalisation)	12
Violence	1
Workplace bullying/harassment	3
<b>Total</b>	<b>351</b>

# Appendix C: Complaints by NSWPF Police Area Command, Police District or Specialist Command

The table below shows the number of complaints considered in this dataset that each NSWPF Police Area Command (PAC), Police District (PD) or Specialist Command received between 1 January 2021 and 30 June 2022.

Police Area Command, Police District or Specialist Command	Number of complaints
Auburn PAC	1
Bankstown PAC	1
Barrier PD	5
Blacktown PAC	4
Blue Mountains PAC	2
Brisbane Water PD	5
Burwood PAC	3
Camden PAC	2
Campbelltown City PAC	5
Campsie PAC	1
Capability Performance & Youth Command	4
Central North PD	10
Central West PD	4
Chifley PD	6
Coffs/Clarence PD	8
Counter Terrorism & Special Tactics Command	3
Cumberland PAC	4
Dog and Mounted Unit	1
South West Region	1
Eastern Beaches PAC	12

<b>Police Area Command, Police District or Specialist Command</b>	<b>Number of complaints</b>
Eastern Suburbs PAC	1
Fairfield City PAC	2
Firearms Registry	1
Hawkesbury PAC	1
Hunter Valley PD	6
Inner West PAC	5
Kings Cross PAC	4
Kuring Gai PAC	1
Lake Illawarra PD	8
Lake Macquarie PD	4
Leichhardt PAC	1
Liverpool City PAC	1
Manning Great Lakes PD	3
Marine Area Command	1
Mid North Coast PD	11
Monaro PD	2
Mt Druitt PAC	4
Murray River PD	1
Murrumbidgee PD	10
Nepean PAC	8
New England PD	6
Newcastle City PD	4
North Shore PAC	1
North West Region	1
Northern Beaches PAC	2
Orana Mid-Western PD	14

<b>Police Area Command, Police District or Specialist Command</b>	<b>Number of complaints</b>
Public Order & Riot Squad	1
Oxley PD	9
Parramatta PAC	1
Police Prosecutions Command	1
Police Transport and Public Safety	5
Port Stephens -Hunter PD	5
Professional Standards Command	1
Quakers Hill PAC	1
Richmond PD	12
Riverina PD	4
Riverstone PAC	2
Ryde PAC	1
Security Management Unit	1
South Coast PD	7
South Sydney PAC	5
St George PAC	1
State Crime Command	4
Surry Hills PAC	7
Sutherland Shire PAC	2
Sydney City PAC	4
The Hume PD	3
Traffic and Highway Patrol Command	9
Tuggerah Lakes PD	5
Unknown/Other	5
Western Region	3
Wollongong PD	3

<b>Police Area Command, Police District or Specialist Command</b>	<b>Number of complaints</b>
<b>Total</b>	<b>287</b>

# Appendix D: Allegations per complaint

The table below shows how many allegations each complaint in this dataset contained.

Number of allegations	Number of complaints
1	119
2	61
3	28
4	19
5	7
6	6
7	6
8	2
9	1
11	1
16	1
68*	1
72*	1
<b>Total</b>	<b>253</b>

\*The large number of allegations was due to the multiple subject officers listed in the complaint.

# Appendix E: Allegations categorised by allegation category and sub-allegation category

The table below shows the number of allegations made in the 245 complaints in this dataset categorised by allegation and sub-allegation category.

<b>Allegation &amp; sub-allegation type</b>	<b>Number of allegations</b>
Customer Service – Fail to be accessible – Customer Discrimination	1
Customer Service – Fail to be accessible – Fail to prioritise call for service	2
Customer Service – Fail to be accessible – Fail to provide assistance	6
Customer Service – Fail to keep informed – Fail to contact	3
Customer Service – Fail to keep informed – Fail to provide a reference number and contact details	1
Customer Service – Fail to keep informed – Victim/Witness/Colleague Follow-up	1
Customer Service – Fail to take appropriate action – Fail to provide process	1
Customer Service – Unprofessional Conduct – Disrespectful Behaviour	10
Customer Service – Unprofessional Conduct – Inappropriate Behaviour	18
Customer Service – Unprofessional Conduct – Incivility/Rudeness	14
Customer Service – Unprofessional Conduct – Inconsiderate/Insensitive Behaviour	8
Customer Service – Unprofessional Conduct – Unfair Treatment	23

<b>Allegation &amp; sub-allegation type</b>	<b>Number of allegations</b>
Dishonesty – Corruption - Bribery	3
Dishonesty – Corruption – Misuse of Authority	1
Dishonesty – Corruption – Protection of Person involved in Criminal Activity	1
Dishonesty – Falsifying – Falsify Official Records	2
Dishonesty – Untruthfulness – Other	2
Drugs/Alcohol – Supply – Prohibited Drug	1
Information/Telecommunications – Provide incorrect or misleading information	1
Information/Telecommunications – Unauthorised/improper disclosure of information – Other NSWPF information	1
Information/Telecommunications – Unauthorised/unlawful access – for personal gain/use	1
Investigation – Custody – Detention in excess of authorised/reasonable time	1
Investigation – Outcome – Deficient/inadequate investigation – domestic and family violence related	4
Investigation – Outcome – Deficient/inadequate investigation	18
Investigation – Outcome – Investigation not initiated	3
Investigation – Outcome/Deficient/Inadequate Investigation - Other	1
Investigation – Process – Fail to Investigate	9
Investigation – Process – Improper interference in an investigation by another police officer	1
Investigation – Process – Inadequate administration of an investigation/case management/e@gle.i	2
Investigation – Process – Lack of Impartiality	2



<b>Allegation &amp; sub-allegation type</b>	<b>Number of allegations</b>
Investigation – Timeliness – Delay Investigation	2
Judicial/Evidence – Custody – Unauthorised Detention	2
Judicial/Evidence – Evidence – Fabricate Evidence (other than perjury)	1
Judicial Evidence – Prosecution – Adverse Comment	1
Judicial Evidence – Prosecution – False/improper/malicious proceedings	12
Other Offences – Assault (On/Off Duty) – Common	1
Other Offences – Indictable Offences	4
Other Offences – Other	5
Other Offences – Stealing and Property – Other	2
Other Offences – Stealing and Property – Stealing	2
Other Offences – Summary Offences	1
Other Offences – Unprofessional Conduct – Unfair Treatment	2
Police Powers – Custody – Detention in excess of authorised/reasonable time	5
Police Powers – Custody – Fail to caution/give information/communicate rights	2
Power Powers – Custody – Fail to meet requirements for vulnerable persons	14
Police Powers – Custody – Fail to provide Medical Treatment	4
Police Powers – Custody – Improper Bail Determination	1
Police Powers – Custody – Improper treatment/failure to provide necessities	9

<b>Allegation &amp; sub-allegation type</b>	<b>Number of allegations</b>
Police Powers – Custody – Inadequate monitoring/inspection	1
Police Powers – Custody – Unauthorised Detention	7
Police Powers – Fail to caution/give information/communication rights	1
Police Powers – Fail to comply with LEPR – Arrest	30
Police Powers – Fail to comply with LEPR – Searching	85
Police Powers – Fail to comply with LEPR – Strip Searching	3
Police Polices – Fail to comply with other statutory legislation	2
Police Powers – Fail to comply with LEPR – Other	11
Police Powers – Improper use of discretion	1
Police Powers – Unreasonable Use of Force (On Duty) - ~with arms/appointments	1
Police Powers – Unreasonable Use of Force (On Duty) – Weaponless Force	3
Process – Fail to Investigate	1
Service Standards/Ethical Standards/Guidelines – Custody – Fail to provide medical treatment	1
Service Standards/Ethical Standards/Guidelines – Custody – Improper treatment/failure to provide necessities	1
Service Standards/Ethical Standards/Guidelines – Duty of care – Fail to provide	6
Service Standards/Ethical Standards/Guidelines – Fail to comply with policy/procedures – Other	13
Service Standards/Ethical Standards/Guidelines – Fail to comply with policy/procedures – Declarable Associations Policy	1

<b>Allegation &amp; sub-allegation type</b>	<b>Number of allegations</b>
Service Standards/Ethical Standards/Guidelines – Fail to comply with policy/procedures – Personal use of Social Media Policy and Guidelines	1
Service Standards/Ethical Standards/Guidelines – Fail to report misconduct	1
Service Standards/Ethical Standards/Guidelines – Improper use of discretion	1
Service Standards/Ethical Standards/Guidelines – Maladministration (as described in the LECC Act) – Unreasonable, unjust, oppressive or improperly discriminatory	1
Service Standards/Ethical Standards/Guidelines – Neglect of Duty	4
Service Standards/Ethical Standards/Guidelines – Outcome – Deficient/inadequate investigation – Other	1
Service Standards/Ethical Standards/Guidelines – Police Appointments – Unauthorised use/misuse	2
Service Standards/Ethical Standards/Guidelines – Property Exhibits – Fail or delay in return	4
Service Standards/Ethical Standards/Guidelines – Property Exhibits – Tamper or destroy	1
Service Standards/Ethical Standards/Guidelines – Property Exhibits – Unauthorised removal	2
Service Standards/Ethical Standards/Guidelines – Property Exhibits – Damage	1
Service Standards/Ethical Standards/Guidelines – Unprofessional Conduct – Incivility/Rudeness	1
Service Standards/Ethical Standards/Guidelines – Unprofessional Conduct – Inconsiderate/insensitive behaviour	1
Service Standards/Ethical Standards/Guidelines – Unprofessional Conduct – Unfair Treatment	3

<b>Allegation &amp; sub-allegation type</b>	<b>Number of allegations</b>
Service Standards/Ethical Standards/Guidelines – Unreasonable/unprofessional behaviour (not customer service related)	65
Use of Force – Assault – Common	1
Use of Force – Assault (on/off duty) – Actual Bodily Harm	15
Use of Force – Assault (on/off duty) – Common	17
Use of Force – Unreasonable Use of Force (On Duty) - ~with arms/appointments	23
Use of Force – Unreasonable Use of Force (On Duty) – with vehicle/vessel	2
Use of Force – Unreasonable Use of Force (On Duty) – Weaponless Force	178
Use of Force – Unreasonable Use of Force (On Duty) – with police dog	2
<b>Total</b>	<b>707</b>

# Appendix F: Number of allegations under each allegation category grouped by NSW Police Force triage decision

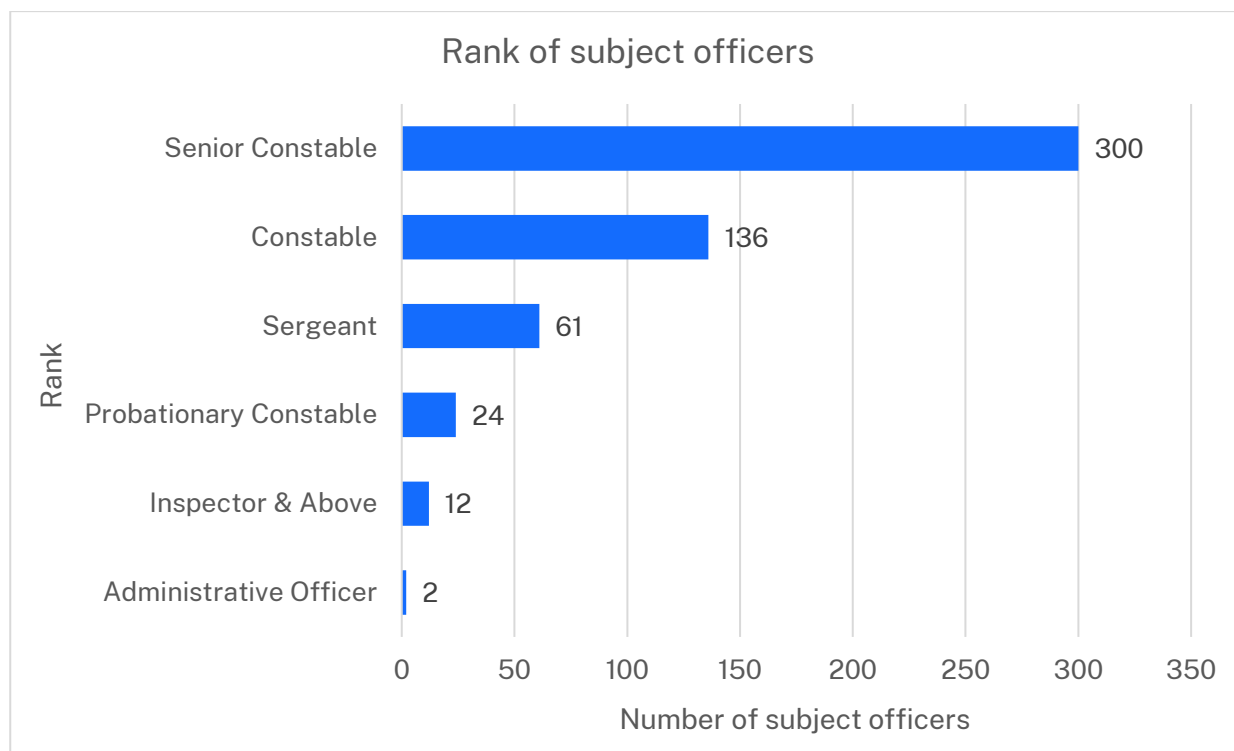
The table below shows, for the complaints in this dataset, the number of allegations made under each allegation category and the NSWPF's triage decision in relation to these allegations.

<b>Allegation category and triage decision</b>	<b>Number of allegations</b>
<b>Customer Service</b>	<b>88</b>
Declined	62
Enhanced Resolution	23
Refer to CMT for consideration	3
<b>Dishonesty</b>	<b>9</b>
Declined	7
Enhanced Resolution	2
<b>Drugs/Alcohol</b>	<b>1</b>
Declined	1
<b>Information / Telecommunication</b>	<b>3</b>
Declined	2
Enhanced Resolution	1
<b>Investigation</b>	<b>43</b>
Declined	37
Enhanced Resolution	5
Refer to CMT for consideration	1
<b>Judicial / Evidence</b>	<b>16</b>
Declined	12
Enhanced Resolution	3

<b>Allegation category and triage decision</b>	<b>Number of allegations</b>
Refer to CMT for consideration	1
<b>Other Offences</b>	<b>17</b>
Declined	11
Enhanced Resolution	1
Refer to CMT for consideration	4
The matter can be finalised per s131(1)(c) Part 8A of the <i>Police Act 1990</i> . To be resolved locally.	1
<b>Police Powers</b>	<b>180</b>
Declined	156
Enhanced Resolution	14
Refer to CMT for consideration	10
<b>Process</b>	<b>1</b>
Declined	1
<b>Service Standards / Ethical Standards / Guidelines</b>	<b>111</b>
Declined	79
Enhanced Resolution	19
Refer to CMT for consideration	12
The matter can be finalised per s131(1)(c) Part 8A of the <i>Police Act 1990</i> (NSW). To be resolved locally.	1
<b>Use of Force</b>	<b>238</b>
Declined	188
Enhanced Resolution	16
Refer to CMT for consideration	34
<b>Total</b>	<b>707</b>

# Appendix G: Rank of subject officer

The graph below shows the rank of 535 subject officers identified in the 279 complaints reviewed in this paper.



# Appendix H: Number of allegations under each allegation category that was investigated by the NSW Police Force

This table shows, by allegation category and sub-allegation category, the number of sub-allegations the NSWPF investigated for the dataset.

<b>Allegation</b>	<b>Number of allegations</b>
<b>Customer Service</b>	<b>16</b>
Unprofessional Conduct - Inappropriate Behaviour	1
Unprofessional Conduct – Disrespectful behaviour	1
Fail to keep informed – Fail to Contact	1
Unprofessional Conduct – Incivility/Rudeness	2
Unprofessional Conduct – Inconsiderate/Insensitive Behaviour	5
Unprofessional Conduct – Unfair Treatment	6
<b>Dishonesty</b>	<b>2</b>
Corruption – Protection of persons involved in criminal activity	1
Falsifying – Falsifying Official Records	1
<b>Information/Telecommunication</b>	<b>1</b>
Unauthorised/Unlawful Access – For personal gain/use	1
<b>Investigation</b>	<b>8</b>
Process – Inadequate administration of an investigation/case management/e@gle.i	2
Process – Fail to Investigate	1
Outcome – Deficient/inadequate investigation	5
<b>Judicial Evidence</b>	<b>3</b>



<b>Allegation</b>	<b>Number of allegations</b>
Prosecution – Adverse Comment	1
Prosecution – False/improper/malicious proceedings	2
<b>Other Offences (not elsewhere specified)</b>	<b>10</b>
Indictable Offence	2
Stealing and Property - Other	2
Other	6
<b>Police Powers</b>	<b>30</b>
Custody – Fail to caution/give information/communicate rights	1
Custody – Fail to meet requirements for vulnerable persons	2
Custody – Fail to provide medical treatment	1
Custody – Improper bail determination	1
Custody – Improper treatment/failure to provide necessities	3
Custody – Unauthorised detention	1
Fail to comply with LEPRA – Arrest	10
Fail to comply with LEPRA - Other	6
Fail to comply with LEPRA - Searching	3
Improper use of discretion	2
<b>Service Standards/Ethical Standards/Guidelines</b>	<b>37</b>
Administration – Fail to create records	2
Duty of Care – Fail to provide	3
Fail to comply with policy/procedures – Other	6
Fail to report misconduct	2
Neglect of duty	1
Property/exhibits – Fail or delay in return	1
Property/exhibits – Tamper or destroy	1

<b>Allegation</b>	<b>Number of allegations</b>
Unreasonable/unprofessional behaviour (not customer service related)	21
<b>Use of Force</b>	<b>42</b>
Unreasonable use of force (on duty) – with arms and appointments	7
Unreasonable use of force (on duty) – weaponless force	26
Unreasonable use of force (on duty) – with vehicle/vessel	1
Assault (on/off duty) – Actual bodily harm	4
Assault (on/off duty) - Common	4
<b>Total</b>	<b>149</b>

# Glossary

Law Enforcement Conduct Commission Terms	
Glossary	Description
<b>Aboriginal People</b>	Aboriginal and/or Torres Strait Islander people
<b>Assessment Team</b>	The Assessment Team assess all notifiable complaints that are made directly to the NSWPF and the NSW Crime Commission. The Assessment Team assesses the way in which the NSWPF or Crime Commission are handling the complaint.
<b>CAP</b>	Complaint Action Panel
<b>LECC</b>	Law Enforcement Conduct Commission
<b>LOIS</b>	Oversight and Investigations System
<b>Notifiable Complaints</b>	<p>In November 2017, the Commission and the NSWPF entered into an agreement pursuant to section 14 of the <i>Law Enforcement Conduct Commission Act 2016</i> (NSW) (LECC Act). This agreement was superseded and replaced in 2022.</p> <p>The 2022 Agreement contains guidelines (the s 14 Guidelines) which outline the categories of misconduct matters that the NSWPF must notify to the Commission. These complaints are known as notifiable misconduct matters and the Commission is required to assess the NSWPF decision to investigate or otherwise deal with those complaints.</p>
<b>Not-notifiable Complaints</b>	Not-notifiable complaints are those that fall outside the s 14 Guidelines. The NSWPF are not required to notify the Commission of these complaints.
<b>Oversight Critical Incident Monitoring Team</b>	The NSWPF are responsible for the investigation of critical incidents. The Oversight Critical Incident Monitoring Team monitor the NSWPF's investigation of all critical incidents.
<b>Oversight Investigations Team</b>	<p>The Oversight Investigations Team reviews the finalised misconduct investigations that have been completed by the NSWPF or the Crime Commission.</p> <p>The Oversight Investigations Team also undertakes real-time monitoring of ongoing misconduct investigations conducted by the NSWPF or the NSW Crime Commission.</p>

<b>NSW Police Force Terms</b>	
<b>Glossary</b>	<b>Description</b>
<b>AANA Notice</b>	Acknowledgement of Allegations and Non-reviewable Action notice
<b>ADR</b>	Alternative Dispute Resolution
<b>CMT</b>	Complaints Management Team
<b>IAPro</b>	NSW Police Force Misconduct Matters Information System
<b>IRP</b>	Internal Review Panel
<b>MARA A</b>	Misconduct Matter Allocation Risk Appraisal
<b>NSWPF</b>	New South Wales Police Force
<b>P1191 notice/form</b>	Acknowledgement of Allegations and Non-reviewable Action Notice/Form
<b>PAC</b>	Police Area Command
<b>PD</b>	Police District
<b>PSC</b>	Professional Standards Command
<b>PSDO</b>	Professional Standards Duty Officer
<b>PSM</b>	Professional Standards Manager
<b>QR</b>	Quality Review
<b>S 137 report</b>	Finalised NSWPF misconduct matter investigation report

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