

LECC

Law Enforcement
Conduct Commission

Review of the NSW Police Force's use of Advice and Guidance as a form of management action

December 2024

LECC

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



Office of Commissioner

11 December 2024

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

The Hon Greg Piper, MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

Review of the NSW Police Force's use of Advice and Guidance as a form of management action

In accordance with s 138 of the *Law Enforcement Conduct Commission Act 2016* (the Act), the Commission provides you with a copy of its report *Review of the NSW Police Force's use of Advice and Guidance as a form of management action*.

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

Yours sincerely



Anina Johnson
Commissioner

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Foreword

The NSW Police Force can deal with employee misconduct and unsatisfactory performance in various ways. Often performance management, or ‘management action’ is the appropriate response. If so, it needs to be:

- consistent with the relevant legislative and policy frameworks,
- proportionate to the gravity of the conduct or performance issue, and
- appropriate in the circumstances.

This helps ensure that the management action encourages improved performance, prevents future misconduct, maintains proper standards within the organisation, and enhances the public’s trust in the integrity of law enforcement.

One of the core functions of the Law Enforcement Conduct Commission (the Commission) is to review the NSW Police Force’s handling of misconduct matters. The outcome of a misconduct matter is frequently that the officer will be given ‘Advice and Guidance’. But when we started our review, there was limited information to explain when and how it should be used by police.

Our review looked at legislation, policies and procedures, and complaint data. We saw the NSW Police Force use Advice and Guidance in response to a wide range of allegation types, ranging from minor to more serious. We saw that Advice and Guidance was used both in matters where police declined to investigate as well as matters where an investigation resulted in a sustained finding.

We found that Advice and Guidance, while commonly used, did not fit neatly within the legislative scheme for managing NSW Police Force employees’ misconduct or unsatisfactory performance. We also found that the policies and guidelines for misconduct management did not include information about Advice and Guidance.

We also found an overall poor record keeping of the Advice and Guidance provided to employees. This was a concern for us. Proper record keeping is important because it allows police to measure the effectiveness of the management action, decide on appropriate management action for any future misconduct, and demonstrate accountability.

We engaged with the NSW Police Force throughout the project to achieve outcomes that were fit for purpose and impactful. In response to the Commission’s review, the NSW Police Force revised its policies, developed a record keeping form, and updated its Misconduct Matters Information System.

The Commission would like to thank the NSW Police Force for its collaborative approach and willingness to participate in ongoing productive dialogue to progress change. We look forward to continuing our engagement with the NSW Police Force to evaluate the impact of these policy and process changes.

1. About our review

1.1 Background to the review

The NSW Police Force regularly uses Advice and Guidance as a form of management action to remediate or correct its employees' conduct and unsatisfactory performance. An employee may receive Advice and Guidance as management action following a sustained finding of misconduct, or when the NSW Police Force determines to decline to investigate an allegation under s 132(a) of the *Police Act 1990* (NSW) (Police Act) on the basis that Advice and Guidance has been, is being, or will be given.¹

Between 1 January 2022 to 30 June 2022 there were 924 allegations of misconduct that resulted in a sustained finding. Of these:

- 181 (20%) resulted in the management action of Advice and Guidance.²

Between 1 January 2022 to 30 June 2022 there were 507 allegations of misconduct that the NSW Police Force declined to investigate under s 132(a) of the Police Act, 'action has been, is being or will be taken to remedy the subject-matter of the misconduct matter without the need for an investigation'.³ Of these:

- 222 (44%) resulted in the action of Advice and Guidance.⁴

In total, there were 403 allegations of misconduct that resulted in the action of Advice and Guidance during this 6-month period. Figure 1 shows a breakdown of the allegations that resulted in Advice and Guidance compared to other forms of management action between 1 January 2022 to 30 June 2022.

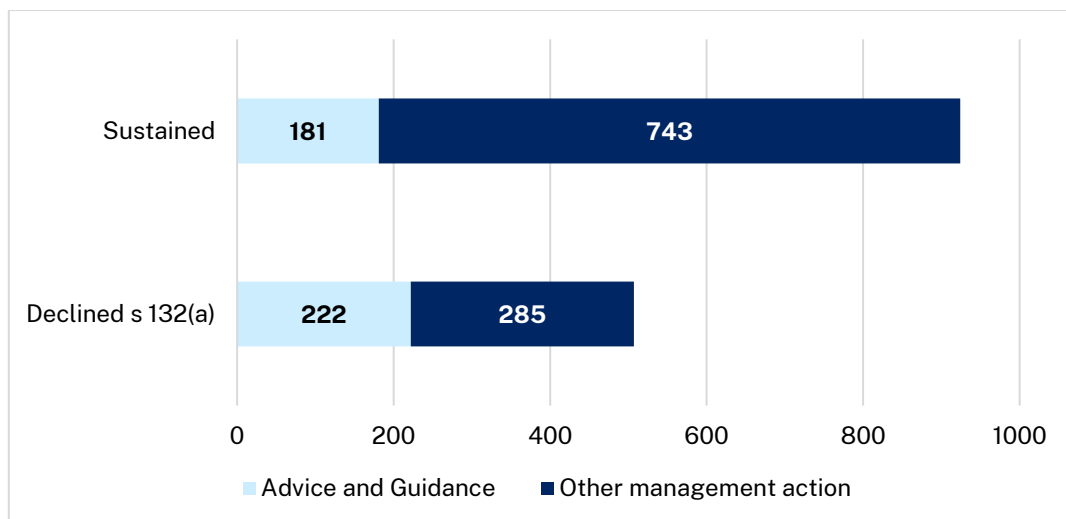


Figure 1: Proportion of allegations between 1 January 2022 to 30 June 2022 resulting in action of Advice and Guidance

¹ *Police Act 1990* (NSW) s 132(a).

² Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner, Law Enforcement Conduct Commission, 6 February 2024, Tab 2.

³ *Police Act 1990* (NSW) s 132(a).

⁴ Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner, Law Enforcement Conduct Commission, 6 February 2024, Tab 2.

In conducting our Oversight function,⁵ the Law Enforcement Conduct Commission (the Commission) often reviews the NSW Police Force's handling of misconduct matters where an employee has received Advice and Guidance as an outcome of the misconduct management process. However, before commencing this project, we found there was limited information about when Advice and Guidance should be used and what it should involve. The Commission was concerned about this because:

1. guidelines and instructions help senior officers make decisions about and implement management action that is consistent, proportionate, and transparent⁶
2. the effective implementation of appropriate management action helps the NSW Police Force 'to protect the public, to maintain proper standards of conduct and to protect the reputation of the organisation'.⁷

1.2 Purpose of our review

This review sought to understand how Advice and Guidance fits within the NSW Police Force's *Misconduct Management Framework*, and how it is used as a form of management action in practice.

On the following page, table 1 presents our research framework and lists the sections where our report presents our discussion, analysis, and findings for each issue.

⁵ *Law Enforcement Conduct Commission Act 2016* (NSW) Part 7.

⁶ Reference to senior officers in this report includes any NSW Police Force employee that is responsible for identifying misconduct issues, addressing allegations of misconduct, making decisions about management action and/or providing management action. This is usually the Commander, Professional Standards Manager, Professional Standard Duty Officer, or Professional Standard Duty Inspector.

⁷ NSW Police Force, *Management Action Guidelines for Police Officers* (October 2024) 2, quoting *Hardcastle v Commissioner of Police* (1984) 53 ALR 593, 597, quoted in Justice James Wood, *Royal Commission into the NSW Police Service* (Final Report, May 1997) vol 2, 310.

Table 1: Research framework

Research issue	Questions we answered	Report section
<p>1. How does Advice and Guidance fit within the relevant legislative and policy frameworks?</p>	<p>Does the Police Act and <i>Government Sector Employment Act 2013</i> (NSW) prescribe Advice and Guidance as a type of action the NSW Police Force may take with respect to employees' conduct or performance issues?</p>	<p><u>Section 3.1</u></p>
	<p>Do NSW Police Force policies, guidelines, and procedures for managing employee misconduct provide information or instructions about Advice and Guidance as a form of management action?</p>	
<p>2. How and when does the NSW Police Force give Advice and Guidance as a form of management action to its employees?</p>	<p>In what circumstances does the NSW Police Force decide to give Advice and Guidance to an employee and what does it involve?</p>	<p><u>Section 3.2</u></p>
	<p>What are the types of allegations that result in a NSW Police Force employee receiving Advice and Guidance?</p>	<p><u>Section 3.3</u></p>
	<p>Does the decision maker consider the employee's misconduct history when deciding to give Advice and Guidance?</p>	<p><u>Section 3.5</u></p>
<p>3. How does the NSW Police Force record the Advice and Guidance given?</p>	<p>What type of records are kept about the Advice and Guidance given to an employee? Where are records stored?</p>	<p><u>Section 3.4</u></p>
	<p>Do records include sufficient information about the nature of the Advice and Guidance that the employee received?</p>	
<p>4. Is Advice and Guidance an effective form of management action?</p>	<p>How many of the employees that received Advice and Guidance between 1 January 2022 to 30 June 2022 had previously received Advice and Guidance for a similar type of misconduct?</p>	<p><u>Section 3.5</u></p>
	<p>How many of the employees engaged in a similar type of misconduct after receiving Advice and Guidance between 1 January 2022 to 30 June 2022?</p>	

1.3 Summary of our findings and the NSW Police Force's response

1.3.1 Results of our review

We reviewed the relevant legislative and policy frameworks and analysed 403 misconduct allegations resulting in 'Advice and Guidance' as the 'Action taken' between 1 January 2022 to 30 June 2022.

Table 2 summarises the findings of our review and lists the sections where our report discusses these results.

Table 2: Summary of review results

Key finding	Results	Report section
Advice and Guidance did not fit within the legislative or policy frameworks	Advice and Guidance is not included in the exhaustive list of non-reviewable action in the Police Act. Yet, it is often given to officers as non-reviewable management action for a sustained finding of misconduct.	<u>Section 3.1</u>
	NSW Police Force policies and guidelines related to misconduct management did not include instructions or information about Advice and Guidance as a form of management action.	
Most allegations that resulted in Advice and Guidance were declined under s 132(a) of the Police Act	The NSW Police Force declined to investigate 222 of the 403 allegations (55%) under s 132(a) of the Police Act, 'action has been, is being or will be taken to remedy the subject-matter of the misconduct matter without the need for an investigation.'	<u>Section 3.2</u>
	Of the 222 declined allegations, 35% either had no record or a record with insufficient information about the Advice and Guidance given to the employee.	<u>Section 3.4</u>
There was poor record keeping of the Advice and Guidance for over half of the sustained allegations	The NSW Police Force sustained 181 of the 403 allegations (45%) following an Enhanced Resolution, Resolution, or evidence-based misconduct investigation.	<u>Section 3.2</u>
	Of the 181 sustained allegations, 53% either had no record or a record with insufficient information about the Advice and Guidance given to the employee.	<u>Section 3.4</u>

Key finding	Results	Report section
<p>Advice and Guidance was used as management action for a wide range of allegation types</p>	<p>Advice and Guidance was provided as management action for a wide range of allegation types, spanning from low level misconduct (such as customer service related issues) to those that could be considered as more serious (such as unreasonable use of force and unlawful arrest).</p>	<p><u>Section 3.3</u></p>
	<p>The most common allegation types resulting in Advice and Guidance were 'Fail to comply with policy/procedures' and 'Unreasonable/unprofessional behaviour (not customer service related)'.</p>	
<p>Of the 361 employees that received Advice and Guidance, 55 (15%) previously and/or subsequently engaged in similar misconduct</p>	<p>Of the 361 employees in our dataset, 37 had allegations of similar types of misconduct that were sustained or declined under s 132(a) of the Police Act in the 5 years prior to the dataset time period. Of these employees, 10 had received Advice and Guidance for the previous misconduct.</p>	<p><u>Section 3.5</u></p>
	<p>Of the 361 employees in our dataset, 23 had allegations of similar types of misconduct that were sustained or declined under s 132(a) of the Police Act between July 2022 to December 2023. Of these employees, 13 received Advice and Guidance for the subsequent misconduct.</p>	

1.3.2 NSW Police Force response

The NSW Police Force acknowledged that while Advice and Guidance is not listed in Schedule 1 of the Police Act,⁸ Advice and Guidance is often provided as a form of management action for a wide range of conduct issues.⁹ The NSW Police Force also agreed there are no instructions for decision makers and senior officers responsible for implementing management action (for example, Commanders, Professional Standards Managers, and Professional Standards Duty Officers or Inspectors) on how and when to use Advice and Guidance.¹⁰

As a result of our review, in October 2024 the NSW Police Force made a number of changes to its misconduct management policies and processes. This has included amending the *Management Action Guidelines for Police Officers* (Management Action Guidelines) and updating the NSW Police Force's Misconduct Matters Information System, IAPro.¹¹

The revised Management Action Guidelines includes information about Advice and Guidance, instructions about record keeping, and directions on consideration of prior misconduct.

On 11 October 2024, the NSW Police Force published the revised Management Action Guidelines on the NSW Police Force intranet and communicated the revised policy position and updates to IAPro to all commands.¹² Additionally, the Professional Standards Manager Forum held on 24 October 2024 included a presentation about the newly developed policy position.¹³

The NSW Police Force is drafting amendments to the *Guidelines for Managing Administrative Employee Misconduct*. The NSW Police Force has committed to finalising and disseminating these Guidelines at a future date.¹⁴

The Commission considers the NSW Police Force's response to our review is adequate and reasonable. The NSW Police Force is in the process of taking steps to address the issues we identified in a way that is operationally appropriate and practical.

We will continue to monitor how the changes are implemented and work in practice, and will work with the NSW Police Force to undertake an evaluation of these changes within 12 months of their implementation to ensure they are achieving the intended goals.

⁸ Schedule 1 of the *Police Act 1990* (NSW) outlines an exhaustive list of the types of non-reviewable management action the NSW Police Force may take against officers (see Appendix A).

⁹ Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner, Law Enforcement Conduct Commission, 29 July 2024.

¹⁰ Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner, Law Enforcement Conduct Commission, 6 February 2024.

¹¹ IAPro is the NSW Police Force's Misconduct Matters Information System. It is the system used for recording allegations of employees' misconduct and the response to such misconduct.

¹² Email from A/Business Manager, Professional Standards Command, NSW Police Force, to Prevention and Engagement, Law Enforcement Conduct Commission, 11 October 2024; Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner, Law Enforcement Conduct Commission, 6 November 2024.

¹³ Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner, Law Enforcement Conduct Commission, 6 November 2024.

¹⁴ Law Enforcement Conduct Commission consultation with Professional Standards Command, NSW Police Force, 19 September 2024.

2. How we did our review

The Commission's review drew from a range of sources to understand how the NSW Police Force uses Advice and Guidance as a form of management action. This included:

- a) Consultation with the NSW Police Force.
- b) A review of relevant legislation and NSW Police Force policies.
- c) An analysis of complaint records and misconduct information about NSW Police Force employees.

2.1 A collaborative approach

The Commission and the NSW Police Force have a statutory function to work collaboratively to support and promote NSW Police Force initiatives directed at preventing and eliminating misconduct and maladministration.¹⁵ The consistent implementation of appropriate management action is one way the NSW Police Force can help prevent repeat misconduct and the escalation of conduct or unsatisfactory performance issues.

The Commission engaged with the NSW Police Force's Professional Standards Command (PSC) at various stages of the project, including:

- initial consultation: we agreed on parameters of the dataset and datapoints to inform the analysis.
- presentation of analysis findings: we discussed issues identified and raised questions to further inform the results of the review.
- discussion of solutions: we deliberated on how to address the issues and gaps identified.

A collaborative approach from the onset was integral to ensure the project's outcome would be fit for purpose, applicable in practice, and improve misconduct management policies and procedures. We will continue to engage with PSC to understand how the NSW Police Force has implemented the policy changes and evaluate their effectiveness.

2.2 Legislative and policy frameworks

Two statutes govern the action the NSW Police Force may take with respect to misconduct or unsatisfactory performance of police officers and administrative employees:

- Part 9 of the Police Act deals with the management of police officers' misconduct and unsatisfactory performance.
- Sections 68 and 69 of the *Government Sector Employment Act 2013* (NSW) (GSE Act) deal with the management of administrative employees' misconduct and unsatisfactory performance.

¹⁵ *Law Enforcement Conduct Commission Act 2016* (NSW) s 27(2); *Police Act 1990* (NSW) s 6A.

We reviewed these provisions to understand how Advice and Guidance fits within the misconduct management legislative framework (discussed at 3.1). Appendices A and B provide excerpts of the relevant provisions under the Police Act and GSE Act, respectively.

The NSW Police Force has various policies, guidelines, and procedures related to misconduct management. These include:

- *Management Action Framework*
- *Management Action Guidelines*
- *Guidelines for Managing Administrative Employee Misconduct Policy Statement*
- *Guidelines for Managing Administrative Employee Misconduct.*

We reviewed these documents to identify what instructions are provided to senior officers in deciding when and how to use Advice and Guidance as management action (discussed at 3.1).

2.3 NSW Police Force records

To understand how Advice and Guidance is used in practice, we analysed records related to misconduct matters which resulted in the management action of Advice and Guidance.

Dataset

Following the initial consultation, PSC provided the Commission with a 6-month period dataset obtained from IAPro.

The dataset included all allegations with a finding of ‘sustained’ or ‘declined under s 132(a) of the Police Act’ that resulted in the action taken of ‘Advice and Guidance’ between 1 January 2022 and 30 June 2022. The dataset included both police officers and administrative employees. This report refers to all the NSW Police Force employees (police officers and administrative employees) who are the subject of a misconduct matter in the dataset as an ‘involved employee’.

The dataset included 313 misconduct matters,¹⁶ which consisted of 403 allegations of misconduct. The parameters of the dataset are summarised in figure 2 below.

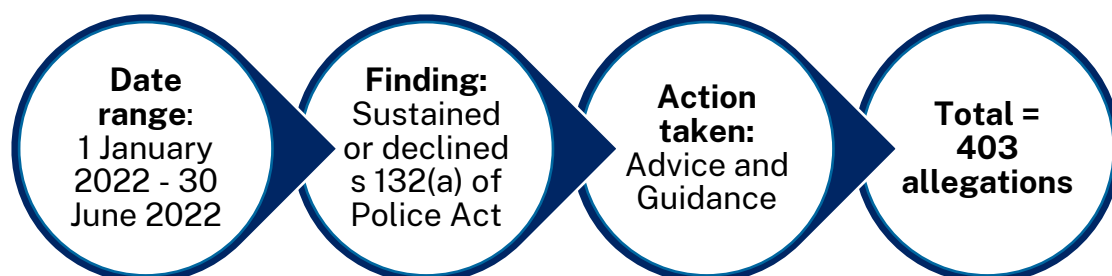


Figure 2: Parameters of the dataset

¹⁶ Section 121 of the *Police Act 1990* (NSW) defines a misconduct matter as a complaint against a NSW Police Force employee or misconduct information about a NSW Police Force employee.

Data tool and definitions

To ensure transparent and consistent data collection and analysis, we entered all misconduct matter information into a data tool. The Commission and PSC agreed on the type of information, referred to as datapoints, that would inform our analysis. The datapoints included in the data tool are outlined in Appendix C.

For each misconduct matter in the dataset, we first checked if there was a record of the Advice and Guidance provided to the employee on IAPro. If we could not find a document or field on IAPro that showed the Advice and Guidance had been given, we considered there to be no record. This included if a document or field on IAPro recorded that 'Advice and Guidance will be given'.

If we found a record, we assessed it as either 'sufficient' or 'insufficient'.

A sufficient record included information about the nature of the Advice and Guidance given to the involved employee and how it related to the alleged misconduct.

An insufficient record did not include this information. Examples of insufficient records included:

- 'Advice and guidance has been given to the officer'.
- 'The officer has been spoken to about this incident'.
- 'Received advice and guidance from supervisor on duty at time officer reported the matter'.

Appendix D provides a summary of these definitions and examples of what the Commission assessed as sufficient or insufficient records of Advice and Guidance.

The scope of our review did not include an assessment of the appropriateness or adequacy of the Advice and Guidance, because this project focussed on looking at the way the process for issuing Advice and Guidance worked, rather than reviewing the merits of the outcome of each incident.

3. Results of our review

3.1 The legislative and policy frameworks

Relevant legislation

While Part 8A of the Police Act provides the legislative framework for complaints about the conduct of police officers and administrative employees, there is different legislation governing the provision of management action to police officers and to administrative employees.

Part 9 of the Police Act sets out the management action the NSW Police Force may take with respect to police officers' misconduct or unsatisfactory performance. It provides 2 broad categories of management action: non-reviewable management action and reviewable management action.¹⁷ Schedule 1 of the Police Act outlines an exhaustive list of the types of non-reviewable management action the NSW Police Force may take against officers (see Appendix A). Advice and Guidance is not included in this list.

Sections 68 and 69 of the GSE Act provide the management action the NSW Police Force may take in relation to administrative employees' unsatisfactory performance or misconduct, respectively. Neither section prescribe Advice and Guidance (see Appendix B).

Notwithstanding that the legislation does not elect Advice and Guidance as one of the actions available to the NSW Police Force following a finding of unsatisfactory performance or misconduct, it is regularly used. Between 1 January 2022 and 30 June 2022, 20% of allegations with a sustained finding resulted in the management action of Advice and Guidance.

NSW Police Force policies and procedures

The NSW Police Force's Management Action Guidelines provide information to senior officers on implementing reviewable and non-reviewable management action with respect to police officers. It outlines and explains all the non-reviewable management action available, as listed in Schedule 1 of the Police Act. Prior to our review, the Management Action Guidelines did not make any reference to 'Advice and Guidance'.

The NSW Police Force's *Guidelines for Managing Administrative Employee Misconduct* detail the action that the Delegate (usually the Commander of PSC Investigations)¹⁸ can take in response to misconduct allegations related to administrative employees. Advice and Guidance is classified as 'remedial action',¹⁹ which is defined as 'non-disciplinary action which may be imposed by the Delegate upon a finding of misconduct'.²⁰ Remedial action is used when the administrative employee may have engaged in misconduct, but such misconduct would not warrant disciplinary action. The Delegate will refer

¹⁷ *Police Act 1990* (NSW) s 173(1).

¹⁸ The Delegate is the person to whom the Commissioner has delegated his/her powers and responsibilities to manage administrative employee misconduct under the GSE Act.

¹⁹ NSW Police Force, *Guidelines for Managing Administrative Employee Misconduct* (January 2021) 23.

²⁰ NSW Police Force, *Guidelines for Managing Administrative Employee Misconduct* (January 2021) 7.

the matter to the administrative employee's commander or manager to deal with at the local level.²¹

NSW Police Force response

Following our review, the NSW Police Force acknowledged that while Advice and Guidance is a favoured form of management action and used in a wide range of supervisory or managerial responses to remediate conduct, it is not listed under Schedule 1 of the Police Act.²² It also agreed there are no instructions for senior officers on when and how to use Advice and Guidance as a form of management action.²³

To address these concerns, the NSW Police Force revised its Management Action Guidelines to include information about Advice and Guidance. These amendments define Advice and Guidance as a supervisory or managerial response to address performance issues and to correct behaviour following a sustained finding in a misconduct matter.²⁴ The revised Management Action Guidelines instruct senior officers to only use the terminology listed in Schedule 1 of the Police Act for sustained findings, noting that some of the actions listed include elements of Advice and Guidance.²⁵ The NSW Police Force has implemented system updates in IAPro to ensure only actions listed in Schedule 1 can be selected as 'Action taken' for an allegation with a sustained finding. The NSW Police Force has communicated these policy and system changes to police across the State.²⁶

In relation to administrative employees, the NSW Police Force is in the process of drafting revised *Guidelines for Managing Administrative Employee Misconduct*.²⁷ The NSW Police Force has agreed that the Commission will be given the opportunity to review the revised Guidelines before they are published and disseminated to staff.

3.2 How the NSW Police Force uses Advice and Guidance

There are 2 circumstances where the NSW Police Force provides an involved employee Advice and Guidance as an outcome of the misconduct process:

1. At the triage stage, where the Commander decides to decline to investigate an allegation under s 132(a) of the Police Act on the basis that Advice and Guidance has, is, or will be taken to remedy the subject-matter.
2. Following an Enhanced Resolution, Resolution, or evidence-based misconduct investigation that results in a sustained allegation, where the Commander determines to give the management action of Advice and Guidance.

²¹ NSW Police Force, *Guidelines for Managing Administrative Employee Misconduct* (January 2021) 10.

²² Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner, Law Enforcement Conduct Commission, 29 July 2024.

²³ Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner, Law Enforcement Conduct Commission, 29 July 2024.

²⁴ NSW Police Force, *Management Action Guidelines for Police Officers* (October 2024) 17.

²⁵ Non-reviewable actions that have elements of Advice and Guidance include counselling, mentoring, coaching, and training and development.

²⁶ Email from A/Business Manager, Professional Standards Command, NSW Police Force, to Prevention and Engagement, Law Enforcement Conduct Commission, 11 October 2024.

²⁷ Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner, Law Enforcement Conduct Commission, 29 July 2024.

In the data we reviewed, the NSW Police Force declined to investigate the majority of allegations (55%) under s 132(a) of the Police Act.²⁸ The remaining 45% of allegations were sustained following an Enhanced Resolution,²⁹ Resolution,³⁰ or misconduct investigation.³¹

Figure 3 shows a breakdown of allegations by finding, and a categorisation of sustained allegations by the type of investigative process the NSW Police Force conducted.

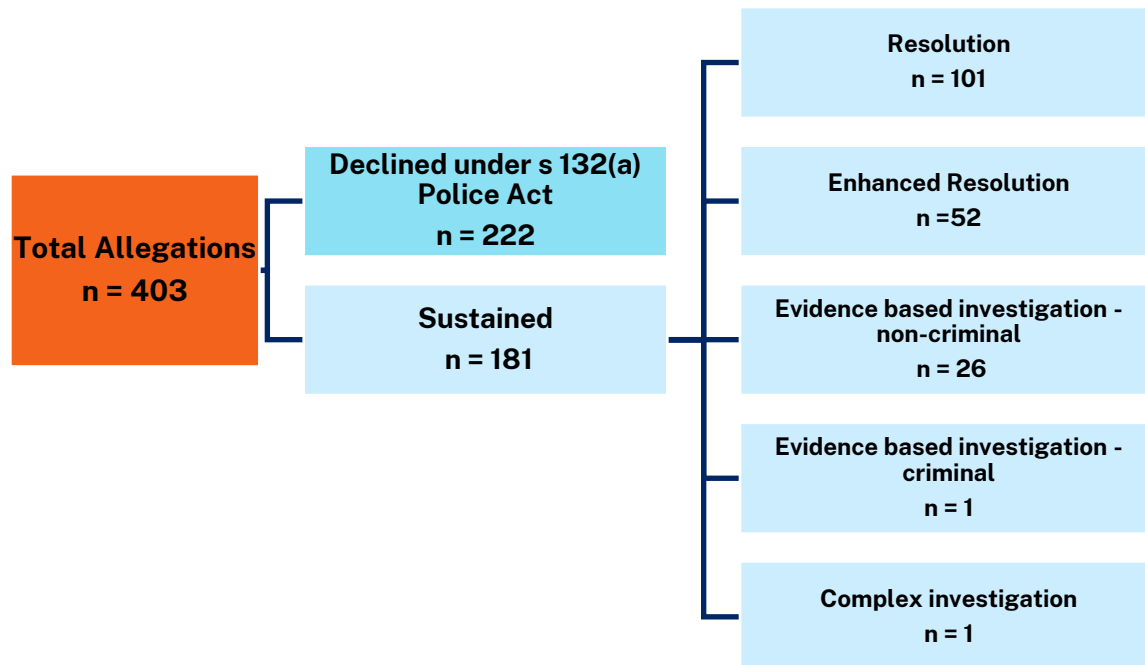


Figure 3: Breakdown of allegations by finding and investigative process

²⁸ Section 132 of the *Police Act 1990* (NSW) lists factors the Commissioner may consider in their decision to investigate or otherwise deal with police misconduct. Subsection 132(a) provides the Commissioner may decide not to investigate a matter on the basis that ‘action has been, is being or will be taken to remedy the subject-matter of the misconduct matter without the need for an investigation’.

²⁹ The Enhanced Resolution Process is an alternate investigative process to address misconduct matters in a fair, impartial and timely manner. For an allegation to be managed under this process, it must be of the type that if sustained would result in non-reviewable management action. The involved employee must acknowledge the allegation and accept the non-reviewable action proposed by the Commander. Information obtained from the NSW Police Force *Misconduct Management Framework*, NSW Police Force intranet.

³⁰ The Resolution process is another alternate investigative process to address misconduct matters in a swift, fair and impartial manner. Information obtained from the NSW Police Force *Misconduct Management Framework*, NSW Police Force intranet.

³¹ There are various types of investigations available for criminal or more serious misconduct allegations including evidence-based criminal, evidence-based non-criminal, and complex investigation. These involve different processes and standards of proof. Information obtained from the NSW Police Force *Misconduct Management Framework*, NSW Police Force intranet.

3.3 Types of allegations resulting in Advice and Guidance

Our review found that Advice and Guidance is used as management action for a wide range of allegation types, spanning from lower-level misconduct matters (for example customer service related issues) to those that could be considered as more serious, such as:

- unreasonable use of force
- deficient investigation of domestic violence matters, resulting in a failed prosecution and costs being awarded against police
- improper access and release of NSW Police Force information
- unlawful arrest of a young person
- escape from custody.

Appendix E provides a breakdown of the dataset by allegation group and type.

The most common allegations were:

- fail to comply with policy/procedures (n = 39)
- unreasonable/unprofessional behaviour (not customer service related) (n= 33)
- unprofessional conduct – Incivility/rudeness (n = 28)
- deficient/inadequate investigation (n = 23).

The wide range of allegation types highlight the need for information about when it is appropriate to use Advice and Guidance. As discussed in 3.1, the revised Management Action Guidelines clarify that Advice and Guidance is to be used as a supervisory or managerial response to address performance issues and to correct behaviour.³²

3.4 Record keeping

The NSW Police Force does not provide instructions on how to record Advice and Guidance provided to involved employees. The NSW Police Force's Management Action Guidelines state:

A copy of a formal counselling notice, warning notice and CMP (including progress reports) arising from a misconduct matter are recorded on IPro.³³

While this reporting requirement pertains to specific documents, the Management Action Guidelines recognise the importance of record keeping to 'ensure accountability and transparency' and note that 'this documentation can be used to assist when considering management action if similar issues occur'.³⁴

³² NSW Police Force, *Management Action Guidelines for Police Officers* (October 2024) 17.

³³ NSW Police Force, *Management Action Guidelines* (July 2023) 23.

³⁴ NSW Police Force, *Management Action Guidelines* (July 2023) 23.

We found that where there was a record, Advice and Guidance was documented in several different types of records including emails, 'Action taken' field on IAPro,³⁵ various types of forms,³⁶ misconduct matter related documents,³⁷ and file notes.

Allegations declined under s 132(a) of the Police Act

The NSW Police Force declined to investigate over half of the allegations (n = 222) under s 132(a) of the Police Act, 'action has been, is being or will be taken to remedy the subject-matter of the misconduct matter without need for an investigation', that action being Advice and Guidance.

Our review found:

- 144 declined allegations had a record that provided sufficient information about the Advice and Guidance that the NSW Police Force gave to the involved employees
- 38 declined allegations had a record, but the record did not have sufficient information about the Advice and Guidance that the NSW Police Force gave to the involved employees
- 40 declined allegations did not have a record of the Advice and Guidance that the NSW Police Force gave to the involved employees.

As shown in figure 4 below, there was poor record keeping, namely no record or insufficient information about the Advice and Guidance given, for over a third of declined allegations (n = 78).

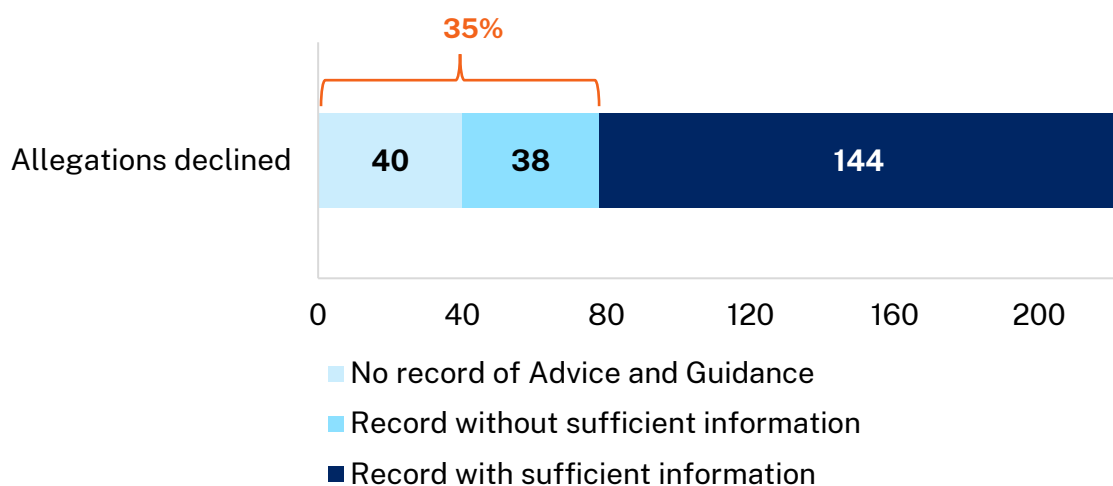


Figure 4: Record keeping of Advice and Guidance for declined allegations

³⁵ Misconduct matters stored in IAPro include various fields to capture relevant information, including the 'Action Taken' field. This field has a drop-down menu to select the appropriate management action and a narrative section to record details about the management action including, who provided it, when it was provided and what it entailed.

³⁶ These included the Advice and Guidance Notification Form, Formal Advice and Guidance Form, Formal Counselling Session Outcome, Informal Counselling Session Outcome, and Record of Management Actions and Outcomes.

³⁷ This includes Triage Form, Acknowledgement of Allegations and Non-reviewable Action notice (used for Enhanced Resolutions), Resolution Outcome Report, Misconduct Investigation Report, Complaints Management Team meeting minutes, and outcome letter to the subject officer.

Sustained allegations

The NSW Police Force made sustained findings for 181 of the 403 allegations.

Our review found:

- 85 allegations had a record that provided sufficient information about the nature of the Advice and Guidance that the NSW Police Force gave to the involved employees
- 61 allegations had a record, but the record did not have sufficient information about the Advice and Guidance that the NSW Police Force gave to the involved employees
- 35 allegations did not have a record of the Advice and Guidance that the NSW Police Force gave to the involved employees.

As shown in figure 5 below, there was poor record keeping, namely no records or insufficient information, of Advice and Guidance for over half of sustained allegations (n = 96).

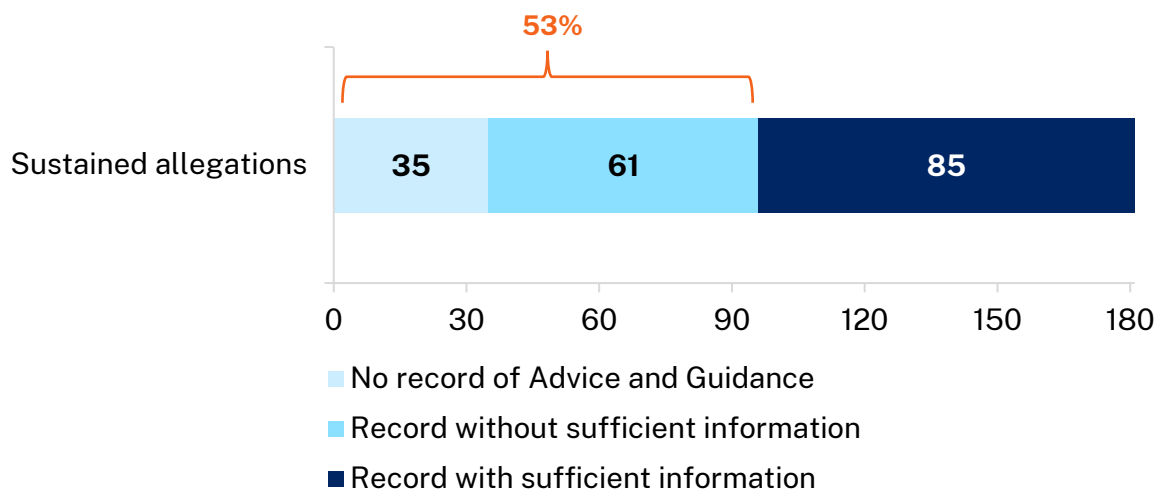


Figure 5: Record keeping of Advice and Guidance for sustained allegations

Importance of records

Overall, we found there was poor record keeping of the Advice and Guidance for both sustained and declined allegations. The Commission expected that the NSW Police Force would have made a record about the nature of the Advice and Guidance given and uploaded that record to the relevant misconduct matter file on IPro.

A record that includes information about the nature of the Advice and Guidance given and how it relates to the alleged misconduct allows the NSW Police Force to:

- measure the effectiveness of Advice and Guidance
- decide on the appropriate management action for any future misconduct
- demonstrate accountability and transparency of management action given.

Furthermore, sufficient records are important for the Commission's assessment of whether the management action is commensurate to the seriousness of the misconduct. If the NSW Police Force does not upload these records onto IPro, the Commission must issue a request for further information to be satisfied that the management action

has been given.³⁸ This creates additional work for both the NSW Police Force and the Commission.

Also, these records are important for the NSW Police Force's handling of subsequent allegations of misconduct, including when:

- triage officers review an involved employee's complaint history to consider how to appropriately deal with a complaint
- investigators review all relevant information to help form a reasoned analysis and recommend an appropriate finding for each allegation
- commanders decide what management action is appropriate (for example, by considering if there is a pattern of behaviour and if there was a lack of knowledge or a conscious disregard for appropriate standards).³⁹

NSW Police Force response

In response to our review, the NSW Police Force clarified what types of records about Advice and Guidance are appropriate, and what information should be included in the record.

In relation to allegations declined under s 132(a) of the Police Act, the revised Management Action Guidelines require that where matters are declined for investigation as Advice and Guidance has been or will be provided, comprehensive details of the Advice and Guidance given to the involved officer must be recorded in the free text field under 'Action Taken' in the relevant misconduct matter in IPro.⁴⁰ The NSW Police Force has updated the free text field to include prompts for recording 'what action was taken, why it was taken, how it was delivered, when it was delivered and who delivered it.'⁴¹

In relation to allegations with a sustained finding, the NSW Police Force updated IPro so that only non-reviewable management actions listed in Schedule 1 can be selected.⁴²

The revised Management Action Guidelines provide 2 options for recording the management action for sustained findings:

1. In the free text field under 'Action Taken' in the relevant misconduct matter in IPro. This includes prompts to record details of what action was taken, why it was taken, how it was delivered, when it was delivered and who delivered it.
2. Using 'form P1262', which the NSW Police Force developed in response to our review for recording the outcomes of non-reviewable management action. This form provides guidance on the type of information required to ensure an adequate record is made. Once completed, the form is uploaded to the relevant

³⁸ Under s 102 of the *Law Enforcement Conduct Commission Act 2016* (NSW), the NSW Police Force must, at the request of the Commission, provide the Commission with documentary or other information for the purpose of determining whether a misconduct matter is being or has been properly dealt with.

³⁹ NSW Police Force, *Management Action Framework* (September 2021) 1.

⁴⁰ NSW Police Force, *Management Action Guidelines for Police Officers* (October 2024) 17.

⁴¹ Email from A/Business Manager, Professional Standards Command, NSW Police Force, to Prevention and Engagement, Law Enforcement Conduct Commission, 11 October 2024.

⁴² Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner, Law Enforcement Conduct Commission, 29 July 2024; NSW Police Force, *Management Action Guidelines for Police Officers* (October 2024) 17.

misconduct matter in IPro.⁴³ This form is provided as an annexure to the revised Guidelines, and is available on the 'Forms' webpage of the Professional Standards Command intranet site.⁴⁴

The revised Management Action Guidelines also recognise the importance of record keeping, including that detailed records:⁴⁵

- help decision makers determine the appropriate action to take against the involved employee for any subsequent allegations of a similar nature or patterns of behaviour
- promote accountability and transparency.

3.5 Involved employees with repeat misconduct

Our review looked at involved employees' complaint history to find out if they had been the subject of similar allegations of misconduct within the last 5 years.⁴⁶ We looked at past misconduct allegations to understand when Advice and Guidance has been used for an involved employee with a complaint history that suggested ongoing issues or a pattern of behaviour.

We also looked at involved employees' misconduct matters that were received after the allegation in our dataset to understand if previous Advice and Guidance was considered when deciding the type of management action to take for the next occurrence.

In analysing involved employees' repeat misconduct, we only included similar allegations that the NSW Police Force sustained or declined under s 132(a) of the Police Act.

Given the IPro allegation types are often amended, and some misconduct can be classified under various allegation types, we did not limit this analysis to the same IPro allegation type. Appendix F provides examples of where we considered allegations as similar even though the allegation types were different on IPro.

We found that 55 out of the 361 involved employees in the dataset had previously and/or subsequently engaged in similar types of misconduct.

On the following page, figure 6 shows the number of involved employees who engaged in similar misconduct in the past 5 years or since their respective allegation in our dataset. Five involved employees had both previously and subsequently engaged in similar types of misconduct. Appendix G provides further details of the misconduct matters for these 5 involved employees.

⁴³ NSW Police Force, *Management Action Guidelines for Police Officers* (October 2024) 17, 27-28.

⁴⁴ Email from A/Business Manager, Professional Standards Command, NSW Police Force, to Prevention and Engagement, Law Enforcement Conduct Commission, 11 October 2024.

⁴⁵ NSW Police Force, *Management Action Guidelines for Police Officers* (October 2024) 17, 27-28.

⁴⁶ The 5-year period for the Commission's review of prior allegations of similar misconduct was 2017 to 2022.

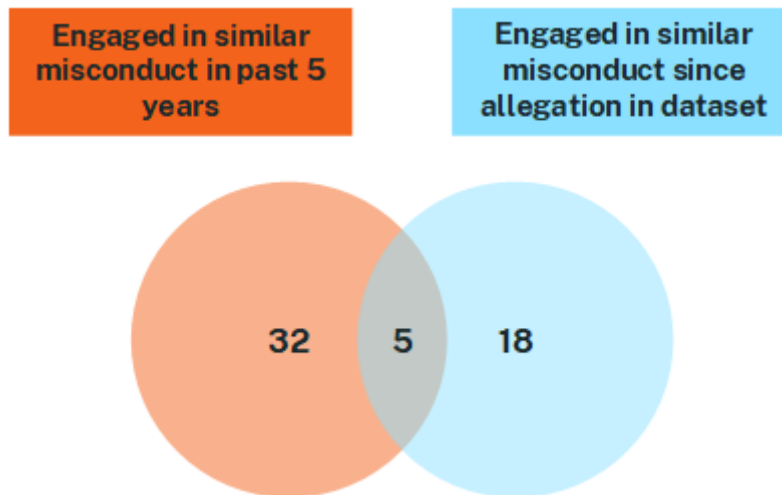


Figure 6: Number of employees that engaged in similar misconduct prior to and/or after allegation in dataset

Case study 1 provides details about an involved employee who engaged in similar misconduct before and after the allegation in our dataset.

Case study 1: Repeat customer service issues

In February 2022, a senior constable (involved employee) received Advice and Guidance following a complaint about aggressive and uncivil behaviour during a stationary roadside breath test. There are no details about the Advice and Guidance given. The only record about this action was an inspector’s email that recorded ‘Conversation completed 8/2/2022.’

Misconduct issues before February 2022

In December 2018, the Traffic and Highway Patrol Command served the involved employee with a Commander’s Warning Notice and 3-month Conduct Management Plan after sustaining 2 complaint matters related to uncivil and unprofessional conduct. The Conduct Management Plan included mentoring, professional conduct and policy awareness, and conduct monitoring.

In 2019, the involved employee received mentoring on 2 separate occasions for rude and threatening behaviour during traffic stops.

Misconduct issues after February 2022

In August 2022, the involved employee was allegedly abrupt and disrespectful during a traffic stop. Following an Enhanced Resolution, an inspector gave the involved employee Advice and Guidance about customer service and compliance with point 4 of the NSW Police Force Code of Conduct and Ethics.

Less than a month later, it was alleged that the involved employee acted unprofessionally during a stop at a stationary testing site. The Traffic and Highway Patrol Command declined to investigate the allegation of ‘unprofessional conduct – unfair treatment’ under s 132(a), ‘action will be taken’. However, there is no record that the supervising sergeant provided Advice and Guidance to the involved employee.

Prior misconduct

We found that 37 involved employees engaged in similar type of misconduct in the 5 years prior to the dataset we reviewed.

Over a quarter (n = 10) of these involved employees previously received Advice and Guidance for similar types of misconduct. Our review found:

- for 4 involved employees, there were records with sufficient information on IAPro about the prior Advice and Guidance that the NSW Police Force gave to the involved employees
- for 2 involved employees, the records did not include sufficient information about the prior Advice and Guidance that the NSW Police Force gave to the involved employees
- for 4 involved employees, there were no records of the prior Advice and Guidance on IAPro.

Due to the absence of sufficient records about the nature of the Advice and Guidance previously provided, it is difficult to evaluate the effectiveness of the Advice and Guidance as a form of management action to address misconduct issues.

Case study 2 describes a Commander's concerns about the involved employee's misconduct history. The Commander decided the involved employee would receive Advice and Guidance, but there is no record on IAPro to confirm that this occurred.

Case study 2: Repeat improper use of police powers

A senior constable (involved employee) allegedly conducted a deficient investigation and later charged a person for an offence of knowingly giving false or misleading information to another person (s 307B of the *Crimes Act 1900* (NSW)), although he had no legislative power to do so. The NSW Police Force investigated the allegation of 'deficient/inadequate investigation', which resulted in a sustained finding against the involved employee.

The investigation report noted that the involved employee 'has now come under notice on 2 occasions, with criminal charges being withdrawn on 2 occasions for incorrect application of legislation and powers'. Less than a month prior to the incident, the involved employee received counselling for failure to comply with police powers under the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW).

The Commander commented that the involved employee 'makes the decision to arrest based on his understanding of his powers or his own interpretation of legislation'. The Commander raised concerns that the involved employee 'then applies his knowledge of (or subsequent research of) legislation to justify the use of the power, the arrest and subsequent charge' which is a pattern identified in 2 complaints and presents risk of civil liability.

The Commander proposed Advice and Guidance, including 'a review of this incident with [the] prosecutor to gain a full understanding of the incorrect application of legislation relied upon'.

There is no record on IAPro that the NSW Police Force gave Advice and Guidance to the involved employee.

Subsequent misconduct

We found that 23 involved employees subsequently engaged in similar type of misconduct. For these later misconduct allegations, the NSW Police Force gave 13 out of the 23 (57%) involved employees Advice and Guidance. Our review found:

- for 9 involved employees, there was a sufficient record of the subsequent Advice and Guidance given — the Advice and Guidance these 9 involved employees subsequently received was the same or very similar to the Advice and Guidance the NSW Police Force gave previously
- for 3 involved employees, the records did not include sufficient information about the subsequent Advice and Guidance that the NSW Police Force gave to the involved employees
- for one involved employee, there was no record of the subsequent Advice and Guidance on IApr.

The remaining 10 involved employees received the following types of management action:

- Commander's Warning Notice.
- Conduct Management Plan.
- Training and Development.
- Counselling.
- Monitoring.

We looked at involved employees' subsequent misconduct to understand if prior Advice and Guidance is considered when deciding on the management action to take for later occurrences. Based on the available records (including investigation reports and records of management action for the subsequent misconduct), it appears that the previous Advice and Guidance provided was not considered in determining what management action to take. However, as not all subsequent matters had sufficient records of the management action, we cannot draw firm conclusions about this.

NSW Police Force response

In response to our review, the NSW Police Force updated its Management Action Guidelines to include instructions for the 'consideration of prior misconduct and performance history'.

Under the revised Management Action Guidelines, decision makers are instructed to consider the effectiveness of any management action previously 'implemented to modify or adjust' an involved employee's behaviour when determining what management action to take. The revised Guidelines note 'a more interventionist level of management action may be required if previous action taken has failed to remediate the conduct of the subject officer.'⁴⁷

⁴⁷ NSW Police Force, *Management Action Guidelines for Police Officers* (October 2024) 17.

4. Conclusion

The NSW Police Force frequently uses Advice and Guidance as a form of management action to remediate and correct misconduct and unsatisfactory performance of its employees. The effective implementation of appropriate management action helps the NSW Police Force uphold proper standards of conduct, prevent the escalation of behaviour issues or unsatisfactory performance, and maintain the public's trust in the integrity of the organisation.

The Commission's review examined how Advice and Guidance fits within the legislative and policy frameworks for managing the misconduct and unsatisfactory performance of NSW Police Force employees. It also sought to understand how and when Advice and Guidance is used, and how it is recorded in the NSW Police Force's misconduct matter information system.

In response to the issues we identified over the course of this project, the NSW Police Force has taken appropriate steps to address the concerns our review raised. This includes:

- updating the Management Action Guidelines to:
 - clarify when Advice and Guidance can be used to respond to performance or misconduct issues
 - provide clear directions about record keeping requirements and the type of information to include about any Advice and Guidance issued to an involved employee
 - ensure prior misconduct and performance history is considered before choosing to respond to an issue with Advice and Guidance
- creating a form to record details about any non-reviewable management action given to an involved employee
- updating the *Guidelines for Managing Administrative Employee Misconduct*
- updating IAPro to improve record keeping capabilities and reflect the revised Management Action Guidelines.

The Commission is satisfied with the policy and process changes the NSW Police Force has made as a result of our review.

This project highlights the benefits of a collaborative approach. Within 12 months of the implementation of these changes, we will engage with the NSW Police Force to evaluate how these changes are working in practice and to determine whether they are achieving the intended outcomes. The Commission looks forward to working with the NSW Police Force on the proposed evaluation.

Appendix A: Relevant excerpts from the *Police Act 1990* (NSW)

Part 8A Complaints about conduct of police officers, administrative employees and the NSW Police Force

...

Division 4 Dealing with misconduct matters

131 Dealing with misconduct matters

- (1) As soon as practicable after the Commissioner receives (or becomes aware of) a misconduct matter, and at any time during a police investigation of a misconduct matter, the Commissioner may (except as provided by subsection (3)) decide as follows —
- (a) to investigate or otherwise deal with the misconduct matter under this Part,
 - (b) to refer the misconduct matter to the LECC for consideration of whether or not it is to be investigated by the LECC or otherwise dealt with under the Law Enforcement Conduct Commission Act 2016,
 - (c) to take no further action under this Part with respect to the misconduct matter.

...

132 Factors affecting decision about investigation of or other dealing with police or agency misconduct matter

In deciding whether any misconduct matter concerning a police officer or the NSW Police Force should be, or does not need to be, investigated or dealt with, the Commissioner may have regard to such matters as the Commissioner thinks fit, including whether, in the Commissioner's opinion —

- (a) action has been, is being or will be taken to remedy the subject-matter of the misconduct matter without the need for an investigation, or
- (b) the misconduct matter is frivolous, vexatious or not made in good faith, or
- (c) the subject-matter of the misconduct matter is trivial, or
- (d) the relevant conduct occurred too long ago to justify investigation, or
- (e) there is or was available an alternative and satisfactory means of redress in relation to the relevant conduct, or
- (f) the complainant does not or could not have an interest, or a sufficient interest, in the conduct complained of, or
- (g) civil, criminal or disciplinary proceedings, or a coroner's inquest, relating to the subject-matter of the misconduct matter are pending or reasonably in contemplation.

Part 9 Management of conduct within NSW Police Force

Division 1 Misconduct and unsatisfactory performance

173 Commissioner may take action with respect to police officer's misconduct or unsatisfactory performance

(1) In this section —

non-reviewable action means action referred to in Schedule 1.

reviewable action means action referred to in subsection (2), other than non-reviewable action.

(2) The Commissioner may order that the following action be taken with respect to a police officer who engages in misconduct —

- (a) a reduction of the police officer's rank or grade,
- (b) a reduction of the police officer's seniority,
- (c) a deferral of the police officer's salary increment,
- (d) any other action (other than dismissal or the imposition of a fine) that the Commissioner considers appropriate.

...

Schedule 1 Non-reviewable action

coaching

mentoring

training and development

increased professional, administrative or educational supervision

counselling

reprimand

warning

retraining

personal development

performance enhancement agreements

non-disciplinary transfer

change of shift (but only if the change results in no financial loss and is imposed for a limited period and is subject to review)

restricted duties

recording of adverse findings

Appendix B: Relevant excerpts from the *Government Sector Employment Act 2013 (NSW)*

Part 5 Government sector employees

...

68 Unsatisfactory performance of government sector employees

- (1) The government sector employment rules may deal with the procedural requirements for dealing with unsatisfactory performance (consistently with procedural fairness).
- (2) If the performance of an employee of a government sector agency is determined to be unsatisfactory in accordance with those rules, the person who exercises employer functions in relation to the employee may (without limitation on relevant action) take any of the following actions —
 - (a) terminate the employment of the employee (after giving the employee an opportunity to resign),
 - (b) reduce the remuneration payable to the employee,
 - (c) reduce the classification or grade of the employee,
 - (d) assign the employee to a different role.
- (3) This section does not apply to that part of the NSW Police Force comprising police officers or to any employees of a government sector agency excluded from this section by the regulations.
- (4) Without limiting the action that may be taken under this section by the person who exercises employer functions in relation to a NSW Health Service senior executive, the Secretary of the Ministry of Health may, if the Secretary is not the employer of the executive, terminate the executive's employment under this section.

69 Misconduct — Public Service and other prescribed government sector employees

- (1) In this section —

detrimental action has the same meaning as in the *Public Interest Disclosures Act 2022*.

detrimental action offence has the same meaning as in the *Public Interest Disclosures Act 2022*.

government sector agency means —

...

- (a1) that part of the NSW Police Force comprising administrative employees under the Police Act 1990, and

...

misconduct extends to the following —

- (a) a contravention of this Act or an instrument made under this Act,

- (b) taking action that constitutes a detrimental action offence,
- (c) taking detrimental action against another person in circumstances where —
 - (i) the person taking the detrimental action suspects, believes or is aware, when taking the action, that any person has made, may have made, may make or proposes to make a disclosure about alleged misconduct by an employee of a government sector agency, and
 - (ii) the suspicion, belief or awareness, whether correct or incorrect, is a contributing factor to the taking of the detrimental action,
- (d) a conviction or finding of guilt for a serious offence.

The subject matter of any misconduct by an employee may relate to an incident or conduct that happened while the employee was not on duty or before his or her employment.

serious offence means an offence punishable by imprisonment for life or for 12 months or more (including an offence committed outside New South Wales that would be an offence so punishable if committed in New South Wales).

- (2) The person who exercises employer functions in relation to an employee of a government sector agency is responsible for dealing with any misconduct by that employee in accordance with this section.
- (3) The government sector employment rules may deal with the following —
 - (a) misconduct by employees of government sector agencies,
 - (b) the procedural requirements for dealing with allegations of misconduct by employees of government sector agencies (consistently with procedural fairness).
- (4) If, in accordance with those rules, there is a finding of misconduct by an employee of a government sector agency, the person who exercises employer functions in relation to the employee may take any of the following actions —
 - (a) terminate the employment of the employee (without giving the employee an opportunity to resign),
 - (b) terminate the employment of the employee (after giving the employee an opportunity to resign),
 - (c) impose a fine on the employee (which may be deducted from the remuneration payable to the employee),
 - (d) reduce the remuneration payable to the employee,
 - (e) reduce the classification or grade of the employee,
 - (f) assign the employee to a different role,
 - (g) caution or reprimand the employee.
- (5) Proceedings and actions under this section may be taken or continued despite the employee resigning or otherwise ceasing to be an employee of the agency concerned. Any such action may be expressed to be a termination of employment even if the person has ceased to be an employee.
- (6) This section does not apply to that part of the NSW Police Force comprising police officers or to any employees of a government sector agency excluded from this section by the regulations.

Appendix C: Datapoints

Datapoints

Complaint and allegation	IAPro reference
	Complaint summary
	Involved employee (name and rank)
	Command and Region
	IAPro allegation type
	Outcome - decision to decline at triage per s 132(a) of <i>Police Act 1990</i> or sustained finding following investigation: Enhanced Resolution, Resolution, Evidence - Non-Criminal or Evidence – Criminal.
Record keeping	Is there a record of the Advice and Guidance provided? If yes, what type of record?
	Does the record include information about the Advice and Guidance provided? If yes, what was the information?
	Is there a record of the date the Advice and Guidance was given?
	Is there a record of who provided the Advice and Guidance? If yes, what is the rank of the officer who gave the Advice and Guidance?
Complaint history of involved employee	Did the triage officer check 'officer misconduct information history' as part of the triage process?
	Has the involved employee engaged in the same type of misconduct in the last 5 years? If yes, what management action did the involved employee receive?
	Has the involved employee engaged in the same type of misconduct since their respective allegation in the dataset? If yes, what management action did the involved employee receive?

Appendix D: Definitions

Definitions of records and sufficiency

	Definition	Examples
Record	Any holding or field on IAPro that indicated the Advice and Guidance occurred.	<ul style="list-style-type: none"> • IAPro 'action taken' field • Emails • Form • Triage form • Misconduct investigation report • File note
No record	No holdings or fields on IAPro indicated the Advice and Guidance had been completed.	<ul style="list-style-type: none"> • 'Advice and Guidance will be given.' • 'Will be spoken to regarding...'
Sufficient record	The record included information about the nature of the Advice and Guidance given and how it related to the alleged conduct.	<ul style="list-style-type: none"> • 'Reminded of required expectations when interacting with motorists.' • Reminded to 'keep victims up to date with case investigation and record those contacts in the case. Contact needs to be made at least every 28 days as per the case management SOPs.' • 'Discussed with officer DV SOPs and definition of relationship. DV SOPs emailed as well to officer to review.'
Insufficient record	The record did not include information about the nature of the Advice and Guidance given and how it related to the alleged conduct.	<ul style="list-style-type: none"> • 'Advice and guidance given to the officer.' • 'Has been spoken to about this incident.' • 'Received advice and guidance from supervisor on duty at time officer reported the matter.'

Appendix E: Allegation types

Misconduct matter allegations by type and NSW Police Force outcome (declined or sustained)

Allegation Group	Allegation Type	Declined s 132(a)	Sustained	Total allegations
Service Standards/ Ethical Standards/ Guidelines	Fail to comply with policy / procedures - Other	14	25	39
	Unreasonable / Unprofessional behaviour (not customer service related)	20	13	33
	Administration - Fail to create records	3	9	12
	Fail to report misconduct - No Sub Issue	4	6	10
	Supervisory issues - Fail to adequately supervise	5	5	10
	Fail to comply with policy / procedures - Domestic and Family Violence SOPs	4	1	5
	Duty of care - Fail to provide	2	2	4
	Fail to comply with policy / procedures - Arms and Appointments	2	2	4
	Fail to comply with policy / procedures - Email and Internet Policy (refer to the Information Security Manual)	2	2	4
	Police Appointments - Loss	1	3	4
	Property / Exhibits - Fail / Improper receipting of	3	1	4
	Property / Exhibits - Fail or Delay in return	4	0	4
	Unauthorised absence	3	1	4
	Service Resources - Loss of equipment	3	1	4
	Fail to comply with policy / procedures - Personal use of Social Media Policy and Guidelines	3	0	3
	Fail to comply with policy / procedures - Sick Leave Management (non-work related)	0	2	2
	Property / Exhibits - Insufficient inquiries	2	0	2
	Disobey reasonable direction - No Sub Issue	0	1	1
	Fail to comply with policy / procedures - Conflicts of Interest Policy and Procedure	0	1	1
	Fail to comply with policy / procedures - Official use of Social Media Policy	1	0	1
Fail to comply with policy / procedures - Secondary Employment Policy	0	1	1	
Neglect of duty	0	1	1	
Service Resources - Unauthorised use / misuse of official vehicle	1	0	1	
Customer Service	Unprofessional conduct - Incivility / Rudeness	23	5	28
	Unprofessional conduct - Inconsiderate / Insensitive behaviour	14	2	16
	Fail to be accessible - Fail to provide assistance	7	4	11

Allegation Group	Allegation Type	Declined s 132(a)	Sustained	Total allegations
Total: 102 Declined: 77 Sustained: 25	Fail to keep informed - Fail to provide outcome	6	3	9
	Fail to keep informed - Victim / Witness / Colleague follow-up	5	2	7
	Unprofessional conduct - Inappropriate behaviour	4	3	7
	Unprofessional conduct - Unfair treatment	6	1	7
	Fail to take appropriate action - Fail to provide progress	3	2	5
	Unprofessional conduct - Disrespectful behaviour	3	1	4
	Fail to keep informed - Fail to contact	4	0	4
	Unprofessional conduct - Uncooperative behaviour	1	2	3
	Fail to keep informed - Fail to provide a reference number and contact details	1	0	1
Investigation Total: 61 Declined: 29 Sustained: 32	Outcome - Deficient / inadequate investigation - Other	11	12	23
	Timeliness - Statute barred	4	8	12
	Process - Fail to investigate - Other	2	6	8
	Process - Inadequate administration of an investigation / case management / e@gle.i	5	0	5
	Timeliness - Delay investigation	3	1	4
	Outcome - Deficient / inadequate investigation - Domestic and family violence related	1	2	3
	Outcome - Investigation not initiated - Other	2	1	3
	Outcome - Investigation not initiated - Domestic and family violence related	0	1	1
	Process - Fail to investigate - Domestic and family violence related	0	1	1
Judicial / Evidence Total: 30 Declined: 10 Sustained: 20	Process - Lack of impartiality	1	0	1
	Prosecution - Fail to attend Court	2	8	10
	Prosecution - Fail to subpoena Witness	1	5	6
	Prosecution - Adverse Comment	1	2	3
	Evidence - Fail to serve brief of evidence	1	1	2
	Evidence - Inadequate brief preparation / fail to check brief	0	2	2
	Prosecution - Fail to charge / prosecute / initiate proceedings	1	1	2
	Prosecution - False / improper / malicious proceedings	2	0	2
	Evidence - False statement / Perjury	0	1	1
Police Powers Total: 22	Witness / Victim - Fail to notify	1	0	1
	Witness / Victim - Intimidate / threaten	1	0	1
	Fail to comply with LEPRA - Arrest	2	4	6
	Fail to comply with LEPRA - Searching	4	1	5
	Fail to comply with LEPRA - Other	1	2	3
Custody - Unauthorised detention	2	0	2	
Custody - Escape from custody	0	2	2	

Allegation Group	Allegation Type	Declined s 132(a)	Sustained	Total allegations
Declined: 11	Custody - Fail to provide medical treatment	0	1	1
	Custody - Improper treatment / failure to provide necessities	1	0	1
Sustained: 11	Custody - Inadequate monitoring / inspection	1	0	1
	Fail to comply with other statutory legislation	0	1	1
Traffic	Failure to follow operational procedures - Safe Driving Policy	4	5	9
	Driving offences - Unnecessary speeding	3	0	3
Total: 12				
Declined: 7				
Sustained: 5				
Information/ Telecommunication	Unauthorised / Improper disclosure of information - Other NSWPF information	3	0	3
	Provide incorrect or misleading information	2	0	2
	Unauthorised / Improper disclosure of information - COPS	0	2	2
	Unauthorised / Unlawful access - For personal gain / use	1	1	2
Total: 9				
Declined: 6				
Sustained: 3				
Use of Force	Unreasonable Use of Force (On Duty) - Weaponless Force	1	5	6
Total: 6				
Declined: 1				
Sustained: 5				
Misuse of social media	Interacting on an offensive social post including posting, sharing, tagging, reacting, or commenting	0	2	2
	Circulate material created by self / an individual / group contrary to the interests of the NSWPF	1	0	1
Total: 3				
Declined: 1				
Sustained: 2				

Allegation Group	Allegation Type	Declined s 132(a)	Sustained	Total allegations
Dishonesty Total: 3 Declined: 2 Sustained: 1	Falsifying - Falsify official records	1	0	1
	Untruthfulness - Other	0	1	1
	Falsifying - Forgery	1	0	1
Other Offences Total: 1 Declined: 1 Sustained: 0	Summary Offence	1	0	1
Total		222	181	403

Appendix F: Examples of repeat misconduct

Examples of similar allegations

Issue	Allegation in dataset	Prior or subsequent allegation
Disrespectful behaviour towards colleagues	Allegation of 'unreasonable / unprofessional behaviour' for making disparaging comments about an Acting Commander.	The prior misconduct was classified as a bullying matter for belittling and humiliating comments towards a report.
Fail to comply with court procedures	Allegation of 'investigation: timelessness – statute barred' for failure to file a Future Court Attendance Notice, resulting in the matter becoming statute barred.	The subsequent misconduct of 'fail to serve brief of evidence' resulted in the court matter being dismissed and costs awarded against police.
	Allegation of 'fail to serve brief of evidence' resulting in costs awarded against police.	The subsequent misconduct pertained to an inadequate investigation resulting in the matter becoming statute barred.
Customer service issues related to victims	Allegation of 'inconsiderate / insensitive behaviour' towards a victim of domestic violence.	The subsequent misconduct issue related to the failure to keep a victim of domestic violence informed.

Appendix G: Involved employees with repeat allegations of similar nature

Involved employee's rank	Allegation type	Prior management action	Subsequent management action	Record of Advice and Guidance?
Constable	Customer Service: Unprofessional conduct - Incivility / Rudeness	Alternative Dispute Resolution – Informal Resolution	Advice and Guidance	Record of Management Actions and Outcomes
Senior constable	Customer Service: Unprofessional conduct - Unfair treatment	Mentoring; Commander's Warning Notice and Conduct Management Plan	Advice and Guidance	Email but insufficient details
Senior constable	Other Offences: Summary Offence (offensive language)	Advice and Guidance	'Other appropriate management action - Existing management processes in place and continue to be monitored with no further incidents expected with one party moving residence.'	Email but insufficient details
Constable	Investigation: Timeliness - Statute barred	Other (spoken to)	Training and Development; Counselling	Triage Form
Senior Constable	Service Standards / Ethical Standards / Guidelines: Unreasonable / Unprofessional behaviour (not customer service related)	Alternative Dispute Resolution – Conciliation	Counselling; Advice and Guidance	Record of Management Actions and Outcomes

Glossary

Glossary	Description
Administrative employee	Any member of the NSW Police Force other than a police officer.
Allegation	An allegation of misconduct or performance issues against a NSW Police Force employee.
Commission	Law Enforcement Conduct Commission
Declined under s 132(a)	During the triage stage of a misconduct matter, a commander may decline to investigate an allegation under s 132(a) of the Police Act on the basis that action has, is or will be taken to remedy the subject matter.
Enhanced Resolution	An alternative investigative process used to address misconduct matters in a swift, fair, impartial, equitable and proportionate manner.
Evidence-based investigation	An evidence-based investigation is conducted to a standard that ensures admissibility of information in criminal court proceedings or other tribunals. It is used where reviewable action is likely to be taken if the allegation against the involved employee is sustained. A criminal investigation requires that the standard of proof is beyond a reasonable doubt. A non-criminal investigation requires that the allegation is proven on the balance of possibilities.
GSE Act	<i>Government Sector Employment Act 2013 (NSW)</i>
Guidelines for Managing Administrative Employee Misconduct	The NSW Police Force policy document that outlines the process to manage allegations of misconduct against its administrative employees in accordance with the GSE Act.
IAPro	NSW Police Force Misconduct Matters Information System. IAPro is the NSW Police Force's system for recording allegations of NSW Police Force employee misconduct. This includes all complaints about NSW Police Force employees and misconduct information.
Involved employee	A NSW Police Force employee who is the subject of a misconduct matter.
Management action	The supervisory or managerial responses available to the NSW Police Force to manage issues affecting its employees in the workplace arising from misconduct and from unsatisfactory performance.
Management Action Guidelines for Police Officers	The NSW Police Force policy document that provides instructions for implementing reviewable and non-reviewable management action for police officers to help support police officers to meet required standards.
Misconduct Management Framework	The NSW Police Force policy framework that provides information and guidance on handling misconduct matters.
Misconduct matter	A complaint against a NSW Police Force employee or misconduct information about a NSW Police Force employee. Misconduct information is a mandatory or other report or information contained in a document that indicates or suggests conduct is or could be officer misconduct.

Glossary	Description
Non-reviewable management action	Section 173 of the Police Act defines non-reviewable action as action referred to in Schedule 1 of that Act.
Not sustained	Allegations of misconduct found not substantiated following an internal (NSW Police Force) misconduct investigation.
Police Act	<i>Police Act 1990 (NSW)</i>
Police officer	A member of the NSW Police Force holding a position that is designated under the Police Act as a position to be held by a police officer.
PSC	The NSW Police Force's Professional Standards Command
PSC Delegate	The person/s to whom the Commissioner of Police has delegated his/her powers and responsibilities to manage administrative employee misconduct under the GSE Act.
Resolution	An alternative investigative process used to address misconduct matters in a manner that allows swift, fair, impartial, equitable and discreet resolutions. It is less formal and complex than an evidence-based investigation.
Reviewable management action	Under s 173(2) of the Police Act, reviewable action includes a reduction of the police officer's rank or grade, a reduction of the police officer's seniority, a deferral of the police officer's salary increment, and any other action (other than dismissal or the imposition of a fine) that the Commissioner of Police considers appropriate.
Schedule 1	Schedule 1 of the Police Act outlines an exhaustive list of the types of non-reviewable management action the NSW Police Force may take against police officers.
SOPs	NSW Police Force Standard Operating Procedures
Sustained	Allegations of misconduct found substantiated following an internal (NSW Police Force) misconduct investigation.
Triage	If misconduct matter information is assessed as a Part 8A complaint, the NSW Police Force must triage the allegations to determine the most appropriate way to deal with the matter.

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