

**Professional Standards Command**

# **NSW Police Force Complaint Handling Guidelines**

**Date: March 2012**



**NSW Police Force**

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## Message

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Effective complaint handling is the key to an ethical police force. Any police force that is accountable for the conduct of its police officers must be prepared to deal with complaints openly, efficiently and fairly.

Police complaint handling is a highly complex function governed by statutes, regulation and agreements and those involved in the process need guidance on how to work within the complaints handling regime.

These guidelines provide an up to date guide for complaint handling managers to help them manage complaints in a timely and effective manner. They are reflective of the governing legislation and form the basis for the NSW Police Force complaint handling policy.

The guidelines are designed to support the practical application of Part 8A of the *Police Act 1990* and provide guidance on the statutory administrative requirements governed by the Act.

Complaint handling managers are expected to adhere to the guidelines at all times.

Paul A Carey APM  
Assistant Commissioner  
Professional Standards Command



## Introduction

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These guidelines provide instructions for managing a complaint made under Part 8A of the *Police Act* about the conduct of a NSW Police Force sworn officer. Complaints about administrative officers, temporary employees, ministerial employees and contractors are not covered by these guidelines.

### Statutory basis of complaint handling

The police complaints system is governed by the *Police Act*, which sets out how complaints are to be addressed and managed by the Commissioner of Police.

### Commissioner of the NSW Police Force

Under Part 8A of the *Police Act*, the role of the Commissioner is to:

- (a) receive and assess complaints
- (b) take appropriate action on complaints in a timely and effective manner
- (c) provide information to complainants, police officers the subject of complaint and the Ombudsman.

The Commissioner has delegated his powers and responsibilities under the provisions of Part 8A of the *Act* to commanders and managers to enable the localised management and administration of complaints. Refer to the '*Instrument of Delegation – Police Act 1990 & Police Regulation 2008 - Various Functions – 9 Dec 2010*', available on the LAW intranet site.

The following agencies also have a role in police complaint management:

### NSW Ombudsman

The role of the Ombudsman is to:

- (a) receive and assess complaints
- (b) monitor the handling of certain complaints
- (c) determine whether complaints have been properly dealt with
- (d) investigate certain complaints and related issues
- (e) provide reports to complainants, the Commissioner and the Minister when appropriate
- (f) inspect NSW Police Force records with respect to the handling of complaints
- (g) keep under scrutiny the systems established within the NSW Police for dealing with complaints.

## Police Integrity Commission

The role of the Police Integrity Commission (PIC) is to:

- (a) receive complaints
- (b) refer complaints to the Commissioner of Police and the NSW Ombudsman
- (c) manage and oversee the investigation of certain complaints by the NSW Police Force
- (d) investigate or take over the investigation of certain complaints where it considers it appropriate to do so.

### PIC take over of complaints

If the PIC decides to take over the investigation of a Part 8A complaint, the matter is no longer considered to be a Part 8A complaint unless otherwise directed by PIC.

Where the PIC have decided to assume responsibility for the investigation of a police complaint, the Police Commissioner's reporting obligations under the *Police Act* (Information to be sent to complainant and Ombudsman) no longer apply.

See CPN 11/10 - *Suspending complaints where the PIC take over a Part 8A investigation.*

### PIC monitored matters

On occasions, the PIC may notify Professional Standards Command (PSC) that the Commission is monitoring a NSW Police Force complaint investigation and will acquit its oversighting function based on a review of the final Investigators Report completed by the NSW Police Force.

If requested by the PIC, PSC will advise the Commission when the complaint investigation is complete and will facilitate the provision of the final report to the Commission. The reporting obligations under section 150 of the *Police Act* (information to be sent to complainant and Ombudsman) do not apply.

For further information on this issue contact the PSC External Liaison Unit via the PSC Help Desk on eagle net 48370 or email #PSCELU.

## General Information

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This document provides advice and guidance for complaint handling managers in relation to the requirements of the legislation. The document has been written to assist complaint handling managers with complaint administration. It outlines the action that must be taken when assessing and investigating complaints about police conduct.

The guidelines are divided into five parts reflecting the stages of the complaints management process.

### **Part I - Complaint Assessment**

Part 1 provides information to assist in determining whether a document should be received and managed as a complaint under Part 8A of the *Police Act*.

### **Part II - Triage**

Part II details the action to be taken during the triage process. This includes consideration of information readily available to the NSW Police Force to best determine the most appropriate way to respond to the issues raised within the complaint.

The triage process includes a decision point where a determination can be made to decline the investigation of the complaint or refer the matter for investigation.

Responsibility for the completion of the triage process can be delegated to professional standards duty officers (PSDOs). However, commanders/managers retain the Commissioner's delegated authority under the *Act*.

### **Part III - Resolution (non CMT managed investigations)**

This section provides advice for resolution managers on the process to be followed when conducting a resolution investigation.

The resolution process is an alternative investigative process developed to allow for a less formal investigation of complaints about police conduct. Matters referred for resolution do not typically warrant the formality, complexity and authoritative decision making associated with evidence based investigations and as such do not require the involvement of the complaint management team (CMT).

### **Part IV - Evidence Based Investigation**

The purpose of conducting an evidence based investigation is to ensure admissibility of information in criminal court proceedings or other tribunals where reviewable action is likely to be taken against a NSW Police officer. These investigations are subject to instruction and guidance from the command's complaint management team.

Part IV of the guidelines provides separate information for complaint management teams and investigators on the legislative and policy requirements associated with evidence based investigations into complaints against police officers under Part 8A of the *Police Act*.

**Part V - Investigative Issues**

Part V contains information specific to investigative issues which regularly arise when dealing with Part 8A complaints.

**Part VI - Appendices**

Part VI contains appendices which provide links to associated documents such as Complaint Practice Notes (CPNs), which provide guidance on managing specific types of complaints or specific procedures that are outside of the *general* complaint handling process. These documents are available on the PSC Intranet site.

## Key Considerations for Complaint Handlers

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Regardless of how a complaint is managed you must give careful consideration to:

- your role in the management of the complaint e.g. commander, executive officer, PSDO, investigator, resolution manager or member of a CMT. Information specific to each of these roles is provided within the Roles and Responsibilities section in the Triage, Resolution and Evidence Based Investigation (CMT managed investigations) chapters.
- identifying and avoiding conflicts of interest
- maintaining confidentiality
- taking interim risk management action
- internal police complainants (IPCs)
- affording procedural fairness with respect to disclosing information to relevant parties
- managing the expectations of the complainant
- management of registered sources in complaint investigations.

### Identifying and avoiding conflicts of interest

All complaints must be managed impartially. As a member of the CMT, the triage officer, investigator or resolution manager must declare any conflict of interest they may have or be reasonably perceived to have, in relation to the complaint or people that are involved in the complaint (i.e. the subject officer /complainant).

It is not always easy to identify a conflict of interest, particularly where the conflict is such that it may produce bias. For example, acquaintance with a person involved in the complaint or the fact that you have worked with that person, whether in a supervisory or other capacity, would not in itself result in an unmanageable conflict of interest. However, these factors may give rise to a perception of a conflict which is just as damaging to the complaint management process.

When considering whether you have a conflict that should be declared, ask yourself:

- Do I have a personal or financial relationship with the person who made the complaint, the person who is the subject of the complaint or anyone identified in the allegations?
- Would I or anyone associated with me benefit unfairly or suffer from any findings made against the person who is the subject of investigation?
- Do I hold any personal or professional biases that may lead others to conclude that I am not an appropriate person to be involved in this matter?
- Am I potentially a witness or otherwise involved in the subject matter of the complaint?

If you are in doubt about whether a conflict exists, you should seek advice from your PSDO/triage officer/equivalent or commander and ensure that the process is documented.

### Complaint Allocation Risk Appraisal (CARA)

The CARA process assists complaint handling managers determine whether complaints based on a risk appraisal process, should be managed locally or transferred to another location for investigation or other action. The CARA process involves two steps and contains mandatory requirements for documentation to be included within the complaint records. Refer to the *Complaint Allocation Risk Appraisal (CARA) Guidelines* contained on the PSC intranet site under *Policy and Guidelines*.

- CARA Part A relates to conflicts of interest within the command which may require the complaint to be managed externally or through an amended process (i.e. extraordinary CMTs). Cara A is **mandatory** for all CMT managed investigations.
- CARA Part B is for use by resolution managers and investigators. The completion of the CARA B form is **mandatory** for both resolution investigations and CMT managed investigations.

## Maintaining confidentiality

Complaint information must be managed so that its physical security is protected at all times. This includes officers treating all information which comes to them in an official capacity as strictly confidential.

Complaint information should be secured. Triage officers should ensure information is provided to resolution managers securely. PSDOs should also monitor security of information handled by resolution managers.

Legislative requirements govern the disclosure of the identity of a complainant (section 169A *Police Act* and *Commissioners guidelines*). This is supported by an additional legal requirement that officers treat all information which comes to them in an official capacity as strictly confidential and not divulge it to anyone without proper authority (clause 75 of the *Police Regulation 2008*).

Commanders / managers are to ensure that systems and procedures for the safe management and storage of complaint information are established and maintained. This may include:

- ensuring that all hard copy complaint related information is stored in a secure area that is only accessible by staff who have a right to access that material. This includes files, folders, computer spreadsheets, information contained on whiteboards or any other complaint related material
- ensuring that investigators securely store any complaint related material in either locked cabinets or other secure areas
- holding CMT meetings or other meetings where complaints are discussed in locations where conversations cannot be overheard
- using appropriate methods to deliver confidential correspondence e.g. handed personally by the commander or executive officer or using secure mail
- not using computers that are accessible to all staff without taking precautions
- ensuring that only authorised officers are placed on the access list for complaints on c@ts.i that have a caveat.

For information on local storage, sentencing and disposal of c@ts.i files refer to *NSW Police Force c@ts.i file disposal Standard Operating Procedures*.

## Confidentiality of complainant's identity

The *Police Act* and the *Police Regulation* provide specific statutory protection for people who make a written or oral allegation of police misconduct. The identity of the complainant must not be disclosed unless in accordance with section 169A of the *Police Act*.

Detailed information in relation to the requirements of section 169A is contained within the *Section 169A Guidelines and Clause 53 authority (Feb 2010)* available on the PSC intranet site.

## Taking interim risk management action

The taking of interim risk management action is authorised under section 171(2) of the *Police Act*. While triage officers and resolution managers may make recommendations on interim risk management, interim risk management action is determined and approved by the commander/manager.

Interim risk management action can be taken at any time in relation to a complaint matter until final management action is determined and implemented. It is critical that any action taken is clearly recorded as 'interim risk management action' to differentiate between this action and final management action. Taking interim risk management action does not prevent a commander from taking final management action. The interim management action is taken in response to an identified risk while managing the complaint allegation and is not necessarily reflective of the final outcome.

Risk management action may include:

- a change of duties
- additional supervision
- rostering with more experienced staff
- securing or restricting access to firearms
- rectifying systemic or procedural practices
- referring recommendations on organisational issues to responsible commands
- suspension
- any other management action that appropriately alters relevant risks.

In all these instances the CMT must monitor any change of circumstances during the investigation of the complaint and amend the interim risk management action where required.

The Management Support Unit, PSC is responsible for the provision of and support to local area and specialist commands regarding conduct and performance management. The unit advises on approaches and strategies for addressing issues affecting workplace culture. This unit provides advice and support to commands by assisting with conduct and performance plans, including structuring interim risk management plans.

Consult the *Interim Risk Management Guidelines for Police* for further instruction.



## Internal Police Complainants

All police officers or non sworn employees who make a complaint about the conduct of a NSW Police Force police officer are automatically referred to as IPCs. IPCs involved in evidence based and resolution investigations are referred to the Internal Witness Support Unit (IWSU).

One of the ways in which a healthy and ethical organisation can be identified is the degree by which its members feel confident to report corrupt and unethical behaviour. Commanders and managers should be proactive in building this confidence by clearly demonstrating that victimisation and harassment of IPCs is unacceptable, and that appropriate action will be taken against those responsible for these acts. Increased confidence in both the organisation and in the commander or manager will consequently follow.

Commanders and managers should make it very clear to their employees that any form of detrimental action against an IPC is unacceptable and will not be tolerated. Immediate action should be taken should a commander or manager be aware that an IPC has been or is being victimised, harassed or ostracised.

Consult the *Internal Witness Support Guidelines* for further instruction.

## Procedural fairness

Where a police officer is the subject of a complaint and reviewable action under section 173(3), 80(3) and 181D is being considered by the commander, certain procedural fairness requirements must be met.

This means that:

- the allegations (evidence adverse to the officer) and substance of any proposed adverse comment or finding must be disclosed to the subject officer before a final decision is made
- the subject officer is given the opportunity to respond to and comment on allegations (evidence adverse to the officer) and any proposed adverse comment or finding
- decisions adverse to the subject officer may only be made on the basis of relevant and logically probative evidence.

Consult the *Guidelines on procedural fairness and Part 8A evidence based investigations*, located on the PSC intranet site for further instruction.

## Managing the expectations of the complainant

During the initial stages of the complaint management process opportunity exists to assess and manage the expectations of the complainant. If a complainant develops unrealistically high expectations, dissatisfaction invariably results. An explanation about how the complaint process works and discussion with the complainant about their expectations concerning the outcome of the complaint may assist in a more timely resolution of the matter. If these expectations seem unrealistic, discussion about the likely outcome may assist in a more satisfactory outcome for the complainant.

The complainant should be provided information about the complaint process at the outset including the requirement under the legislation for consultation prior to finalisation of the complaint (section 150 (a) and (b)).

## Registered sources and role in complaints

Difficulties have arisen, in the past, in relation to complaints when registered sources have become either witnesses or complainants in complaint investigations. In order to adhere to the best practice principles during a complaint investigation, see CPN 07/10 - *Protection of Registered Sources when involved as either complainants or witnesses in complaint investigations*. This CPN provides guidance on the handling of source details in documents and when forwarding documents (section 150 reports) to oversight agencies.

## Part I: Complaint assessment

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When a complaint document is received by the NSW Police Force, the first step is to consider if the document constitutes a Part 8A complaint. A complaint is to be assessed in accordance with Part 8A of the *Police Act* and the Memorandum of Understanding made under section 128(2) of the *Police Act*.

Generally the PSDO will conduct the assessment. However, this can be assigned to the executive officer. The assessment **must** determine if:

1. the complaint document meets the criteria set out in Part 8A of the *Police Act*
2. the document is a duplicate complaint
3. the complaint document is to be recorded on the c@tsi in line with the Memorandum of Understanding made under section 128(2) of the *Police Act*, between the PIC, NSW Ombudsman and NSW Police Force (refer pg 13).

### Is the document a Part 8A complaint?

A Part 8A complaint must<sup>1</sup>:

- **be made in writing**
- **be made** to an investigative authority (NSW Police Force, PIC or NSW Ombudsman)
  - *It is made to the Commissioner of Police if:*
    - *it is delivered to a police officer personally, or*
    - *it is received by any member of the NSW Police Force by post, facsimile or electronic mail or*
    - *it is addressed to the Commissioner and lodged at the Local Court, or*
    - *it is referred to the Commissioner by the Minister, by the Independent Commission Against Corruption or by the New South Wales Crime Commission.*

Complaints can also be received by the NSW Ombudsman or the PIC. Under the *Police Act*, those agencies are required to refer the complaint to the Commissioner of Police. These matters are usually received and assessed as complaints by the PSC. It must also allege or indicate:

- conduct of a NSW police officer
- conduct occurring on or off duty
- conduct occurring anywhere.

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<sup>1</sup> Section 127(1) of the *Police Act* 1990

**Conduct** is defined in the *Act*<sup>2</sup> as actions or inactions

- (a) that constitute an offence,
- (b) that constitute corrupt conduct (including, but not limited to, corrupt conduct within the meaning of the Independent Commission Against Corruption Act 1988 ),
- (c) that constitute unlawful conduct (not being an offence or corrupt conduct),
- (d) that, although not unlawful:
  - (i) are unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
  - (ii) arise, wholly or in part, from improper motives, or
  - (iii) arise, wholly or in part, from a decision that has taken irrelevant matters into consideration, or
  - (iv) arise, wholly or in part, from a mistake of law or fact, or
  - (v) that are of a kind for which reasons should have (but have not) been given,
- (e) that is engaged in, in accordance with a law or established practice, being a law or practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect.



**Documents which do not fall within the criteria set out in Part 8A are not considered Part 8A complaints and do not fall within the scope of these guidelines.**

Documents assessed as not meeting Part 8A of the *Police Act* are to be trimmed as a document, appropriately dealt with and filed. Contact should be made with the author and relevant issues dealt with.

All documents that meet the above criteria are **complaints** and **must** be dealt with in accordance with the provisions of Part 8A of the *Police Act*. In completing the assessment of a document, you must not take into consideration anything other than the information contained in the complaint.

Section 129(1) of the Act requires that a record of all complaints must be kept by the NSW Police Force, and as such, unless the complaint is a duplicate or a matter exempted by agreement (see below) the matter **MUST** be receipted within c@ts.i.

**At this point the complaint should be receipted in c@ts.i (where appropriate).**

**The NSW Police Force time frame for receipting matters onto c@ts.i is 7 days**

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<sup>2</sup> S122(1) of the *Police Act* 1990

## Duplicate complaints

Duplicate complaints should not be registered separately on c@ts.i. They occur when a complainant or their representative lodges a complaint at multiple locations or sends copies of their complaint to more than one agency (eg NSW Police Force, PIC and Ombudsman) or there is a data entry error.

Duplicates can be identified by using the '*search for related and duplicates*' hyperlink or '*search*' hyperlink in c@ts.i. You can also conduct a search on the complainant's name, subject officer's name or the complaint issues. This function is required in order to ascertain if the complaint you are dealing with has already been registered.

If a letter is identified as a duplicate, the correspondence should be scanned and loaded onto the original c@ts.i record and appropriate notes made within the TRIM record indicating that the correspondence is a duplicate record. No further action is required in relation to the duplicate complaint.

**Related complaints:** A related complaint occurs when it is related in some way to a complaint already on the system. The PSDO may want to link a complaint as related to make reference to the other complaint. Examples of related complaints may be that a complaint was lodged about the same incident/event but may cite different individual issues. Refer to the *c@ts.i CMT Stream User Guide* - April 2008.

**Additional Papers:** Where documentation is received which provides additional information in respect to an existing complaint, the documents should not be assessed as a separate complaint. However, a copy of the information should be loaded onto the existing c@ts.i record.

## Complaints that do not need to be recorded on c@ts.i

Under the Memorandum of Understanding between the Commissioner of the PIC and the NSW Ombudsman made under section 128 (2) of the *Police Act*, certain types of complaints do not need to be registered on c@ts.i. These include:

- reports by NSW Police employees that concern performance management issues that do not allege or indicate conduct that is otherwise notifiable to the Ombudsman such as reports of unsatisfactory work diligence and output or unsatisfactory completion of a performance agreement. The line between conduct and performance is often a fine one. The real difference is the extent to which an officer deliberately failed to do what he or she knew was expected. If so, the failure maybe characterised as a conduct issue. However, where an officer's actions arise out of incompetence, mistake, poor judgement or lack of understanding of proper procedures, the matter is really a performance issue.
- complaints about the issuing of traffic and parking infringement notices that do not raise any additional allegations (for example, rudeness or a specific allegation of a lack of integrity)
- legal representations for review of criminal charges that do not allege or indicate conduct that is otherwise notifiable to the Ombudsman
- allegations of embellishments in police promotions applications.

## Administration

The following information provides guidance on administrative actions which support the assessment process.

### c@ts.i receipt timeframes/date received

From the received date:

- seven days to receipt on c@ts.i
- three days for receipt on c@ts.i where an investigation has commenced prior to a complaint being receipted on c@ts.i (e.g. PCA).

The date received is the date on which NSW Police Force received the correspondence i.e. at the command, Commissioner's Office etc.

Documents must be date stamped at the time of their receipt. As a general rule, if the complainant has recorded a date on the complaint letter, but there is no way of establishing the received date through phone calls or other means, allow two working days for delivery and record that date.

If the complaint is an internal report, the received date would be the date the report was received by a supervisor or other person to whom the report is submitted.

Part 8A requires that a copy of all complaints **MUST** be registered on c@ts.i and a copy of notifiable complaints must be provided to the NSW Ombudsman. It is important that the complaint is registered at the earliest available opportunity. This action allows:

- PSC to commence monitoring the complaint and provide advice and direction if required
- timeliness measures to commence which ensure that commands manage the time taken to complete a complaint investigation
- the oversight agencies to monitor the progress of the complaint.

Do not wait until the end of the resolution / investigation to register the complaint on c@ts.i and load the documents, as this affects the oversight agency's ability to appropriately monitor the complaint's progress.

In most cases the executive officer will create, update and manage entry of c@ts.i data. If another person is tasked with entering this data, that person must be suitably trained and have appropriate access.

## Correspondence management & TRIM

All complaint letters received are to be date stamped and recorded in TRIM.

Correspondence determined to be a complaint under Part 8A should be receipted through the “non CMT managed stream – LMI.” Once the complaint is receipted a TRIM file must be created as follows:

- Title – **Professional Standards – Complaint Management**
- Title (free text) – **relevant reference number if available e.g. complaint ID no. and PIC/Ombo ref no. if applicable**
- Classification – **PROFESSIONAL STANDARDS – COMPLAINTS MANAGEMENT – Police Officers – Complaints and Investigations – Matters Not Resulting in Disciplinary/Remedial Action**
- Access / Security level – **Protected.**

### **IMPORTANT**

**At no time is the identity of the complainant, subject officer or any other person associated with the complaint to be included in any TRIM file or document title.**

The physical file should remain at the command responsible for managing the complaint. The c@ts.i system is to be updated with the TRIM file number.

## Part II: Triage

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**The NSW Police Force time frame for completing triage is 21 days from the date received by NSW Police Force**

### Purpose

The purpose of triage is to determine the most appropriate way to manage the complaint.

During triage a decision will be made as to whether:

- the complaint is referred to resolution for completion or for additional inquiries to be conducted
- the complaint is referred to the CMT for the purpose of considering conducting an evidence based investigation
- the investigation of the complaint should be declined
- the complaint is notified to the Ombudsman, Workplace Relations and Equity Unit or IWSU.

Refer to *Triage Form – Mandatory - P1001*.

### Roles and responsibilities

#### Commander / manager

Commanders / managers should be mindful that all decisions regarding NSW Police Force complaints rests with them. The process of triaging a complaint may be delegated to an appropriately qualified senior officer such as a PSDO, Crime Manager or equivalent.

The role of the commander / manager includes:

- endorsing decisions made regarding the triaging of complaints
- determining, approving and monitoring applicable interim risk management strategies.

For advice and guidance on interim risk management contact PSC Helpdesk on E/N 48370.



## Triage officer (PSDO or equivalent)

The triage process can be performed by a suitably qualified senior officer such as the PSDO, crime manager or equivalent.

The triage officer will need to consider whether they have any conflicts of interest that may affect their ability to complete the triage of the complaint in an effective and objective manner. The triage officer must disclose any actual or perceived conflicts so that these matters can be appropriately managed. In some circumstances, the matter may need to be reassigned. For guidance on the types of matters you must disclose, refer to the *Complaint Allocation Risk Assessment Guidelines*.

The role of the triage officer is to:

- identify the subject officers
- identify the issues raised within the complaint document
- determine if the matter requires notification to the NSW Ombudsman's office, Workplace Relations and Equity Unit, IWSU
- determine if the matter involves an allegation of reportable conduct or an act of violence occurred against, with or in the presence of a child as defined by the *Commission for Children and Young People (CCYP) Act 1998* (Refer to CPN 08/01)
- determine if the matter involves potential risks to children, identify and document whether an appropriate risk of harm report was or could have been made (see CPN 11/06)
- collect and evaluate holdings and readily available information before making a decision regarding the management of the complaint
- determine if the matter involves domestic violence and whether a risk of harm report was, or should be made to Community Services or the Police Child Wellbeing Unit
- make recommendations about how the matter should be addressed, including whether :
  - the investigation of the complaint can be declined in accordance with section 141 of the *Police Act 1990*
  - the matter should be referred to the CMT for consideration of an evidence based investigation
  - the matter be referred for resolution or further inquiry.

The process of identifying and determining the above points will require the triage officer to:

- carefully read the complaint document
- speak to the complainant
- examine existing holdings and consider information readily available, and
- identify lines of enquiry.

Although the triage officer is responsible for completing the *Triage Form – Mandatory - P1001*, the ultimate decision regarding NSW Police Force complaints rests with the responsible commander/manager.

### Executive officer

This position provides executive support to the local area, region or specialist commander. This includes managing the administrative procedures relating to police complaint / disciplinary matters from assessment to completion while maintaining confidentiality and security.

#### **The role of the executive officer is to:**

- monitor, analyse and review complaint files
- ensure that matters referred to the CMT are placed on the CMT agenda
- coordinate the operations of c@ts.i - create, update and manage entry of c@ts.i data and manage TRIM system
- prepare responses to the complainant and Ombudsman, together with various submissions and memorandums in respect of the complaint
- liaise with appropriate internal and external agencies as required e.g. NSW Ombudsman, PSC
- ensure complaints assessed as notifiable to the Ombudsman are notified via c@ts.i as soon as practical.

**Executive officers must not be delegated the responsibility of conducting the triage.**

## How to triage a complaint

The following steps should be followed with reference to the *Triage Form – Mandatory - P1001*.

1. Identify the issues raised in the complaint document.
2. Determine if the complaint document requires notification to the NSW Ombudsman in accordance with the Class and Kind Agreement.
3. Identify the subject officer(s) and examine complaint history.
4. Speak to the complainant/victim, if required.
5. Examine existing holdings and consider information that is readily available.
6. Identify lines of enquiry, consider instructions from oversight agencies.
7. Make a triage recommendation; Evidence Based Investigation, Resolution, Decline.

### 1. Identify the issues raised in the complaint document

The complaint document should be examined on face value with all issues identified and ranked in order of seriousness for each subject officer separately. The overall management of the complaint should be governed by the issues raised in the most serious allegation, but must also consider other less serious issues. For example, allegations of criminal conduct suggested in the complaint document should be identified, considered and ranked above an issue of rudeness. This provides the triage officer with a basis to commence evaluating police holdings with a focus on the most serious issue and will assist triage officers in deciding on a referral to the CMT for the purpose of conducting an evidence based investigation.

Reviewing the material contained within a complaint letter may provide the triage officer with enough information to determine an appropriate course of action.

### 2. Determine if the matter requires notification to the NSW Ombudsman

Notifiable issues are listed in the current **Class and Kind Agreement**. If the issues meet the criteria set out in the Class or Kind Agreement, the complaint is notifiable to the NSW Ombudsman and the matter must be notified through c@ts.i. This electronic notification is usually completed by the executive officer within the command through c@ts.i and is an administrative step only. This action **must** occur at the conclusion of triage in compliance with the *Act*.

Although this requirement is bound by legislation<sup>3</sup>, it has no effect on the management of the complaint. Notification is based on the contents of the original complaint document. If a triage officer is unsure whether the complaint is notifiable to the Ombudsman, the triage officer should proceed to notify the matter to the Ombudsman. Refer to the Class and Kind Agreement. This document can be located on the PSC intranet site.

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<sup>3</sup> Section 130(2) *Police Act 1990*

## **Disagreement with NSW Ombudsman assessment about whether a complaint is notifiable**

Triage officers may receive a complaint from the NSW Ombudsman that has been forwarded by the PSC which the Ombudsman has assessed as a notifiable complaint. If the triage officer questions that assessment, the command must liaise with the nominated NSW Ombudsman contact and discuss the situation.

Triage officers may receive correspondence from the NSW Ombudsman advising that a complaint notified by the NSW Police Force is no longer notifiable. Ensure that this advice is loaded onto c@ts.i. No further correspondence with the Ombudsman is required unless new evidence comes to light that would require this matter to be renotified to the Ombudsman.

### **3. Identify the subject officer(s) involved and examine complaint history**

Identify the subject officer(s) referred to within the complaint document. A subject officer's complaint history should be examined at triage and considered during a Part 8A investigation (resolution or evidence based investigation). Complaint histories may reveal patterns of behaviour, circumstances surrounding current or previous complaints, complaints of similar conduct (sustained or not sustained), investigative methods used during previous complaints and assist in determining the most appropriate manner in which to manage a current complaint or subject officer.

For example if a triage officer identifies a sustained complaint for a subject officer where reviewable action has been taken or a warning notice served on the officer within the previous five years, the triage officer **must** refer the matter to the CMT to consider an evidence based investigation.

If a triage officer identifies a pattern of domestic violence related complaints for a subject officer, the triage officer should consider recommending interim risk management action (see CPN 11/06).

If the triage officer does not have the required c@ts.i access to review a complaint history (due to matters being under caveat) assistance should be sought from the command's executive officer or region PSM.

Checking complaint histories of an IPC should also be undertaken for the purpose of assessing whether a complaint is a reprisal (payback) complaint. The responsibility as to whether 'detrimental action' is investigated rests with the relevant CMT. For further information on detrimental action and payback complaints refer to *Detrimental Action/Payback Complaint Policy and Guidelines* located on the PSC intranet site.

The outcome of the examination of the officer's complaint history should be clearly documented in the *Triage Form – Mandatory - P1001*.

#### 4. Speak with the complainant/victim

The purpose of speaking to the complainant/victim during triage is to clarify the nature of the complaint, allegations and details surrounding the alleged incident/s, and to determine what further information or evidence they may have to support the complaint. It is important to consult with the complainant about their complaint document at the earliest opportunity.

Where the complainant is also a victim consider *The Charter of Victims Rights*, appearing in the *Victims Rights Act 1996* which sets standards for the appropriate treatment of victims of crime.

Triage is also an opportunity to assess and manage the expectations of the complainant. If a complainant develops unrealistically high expectations, dissatisfaction invariably results. The triage officer should explain how the complaint process works and ask the complainant about their expectations concerning the outcome of the complaint. If these expectations seem unrealistic, discussion about the likely outcome may assist in a more satisfactory outcome for the complainant.

The manner in which the complainant is consulted is dependant upon the triage officer. It can be done formally or informally with consideration to the issues identified. Depending on the circumstances, it may be possible for the triage officer to recommend the investigation of certain issues be declined during triage. For example, when speaking with the complainant/victim it may become apparent that the issues can be addressed by explaining the law, policy or practice. If this is the case, the investigation of the complaint should be declined in accordance with section 141(1) (a) of the *Police Act*.

When speaking to a complainant, if it becomes apparent that inculpatory evidence is available for criminal or non criminal issues that could warrant reviewable action if sustained, the matter **must** be referred to the CMT to consider the progression of the complaint.

#### **When a complainant cannot be contacted**

If the complainant / victim is not able to be contacted in person or by telephone, it may be necessary to contact them via email or by posting a complaint form to them. This may also be useful where their original correspondence contains large amounts of unstructured information and it is unclear what their concerns are or how they relate to the NSW Police Force.

Your correspondence should seek specific information to assist you in assessing and progressing any concerns the complainant may have raised. For example, if a complaint alleges police unlawfully released confidential information, you may ask clarifying questions such as the type of information that has allegedly been released and any information the complainant may have about the identity of the police involved.

The correspondence should also ask that contact details be provided. The correspondence should state that a response must be provided within **21 days** or the complaint will not progress. (A draft template letter is provided on the PSC website.)

## Complaints from anonymous sources

There is no legislative requirement for a complainant to provide their identity, and often complaints from anonymous sources contain sufficient information for inquiries to be conducted. Investigations into allegations raised in anonymous complaints should proceed in accordance with normal complaint management practice, including notification to the relevant oversight agencies.

In many cases it will not be necessary to identify a complainant to examine the allegations. However, in circumstances where you believe action should be taken in an attempt to identify the complainant, authority to commence those inquiries needs to be obtained from the Assistant Commissioner, PSC. Refer to CPN 11/04 - *Identifying anonymous complainants* for further information.

### 5. Examine holdings and consider information readily available

#### IMPORTANT

Information considered at triage must be **existing** and **readily available**. You are not permitted to speak to witnesses or subject officers during triage.

Holdings checked during triage and the information obtained from readily available sources and from the complainant must be clearly documented in the *Triage Form – Mandatory - P1001*.

Examples of existing and readily available information/holdings include the following:

- **Closed Circuit Television (CCTV) footage** – this includes police station holdings such as charge room and reception area footage, as well as footage from external sources such as licensed premises. When approaching external sources for CCTV footage, a triage officer should be careful not to engage in conversation or request information which may amount to obtaining information from a witness regarding the complaint matter. This may be considered an investigative process outside the triage stage.
- **In Car Video (ICV) footage** – is useful to assess the veracity of the alleged conduct e.g. allegations of rudeness, unlawful searches and breaches of the Safe Driving Policy etc.
- **COPS/ Charge/Custody records** – COPS events may confirm that police did take action or provide an explanation for not taking a particular action where the allegation is one of inaction. Similarly, events and charge records may provide sufficient information to allow the investigation of a complaint to be declined and left to the determination of a court where criminal proceedings have commenced.
- **Notebooks/Duty books** – these holdings may provide evidence of actions taken and the decision making processes of police involved in the complaint.
- **Rosters** – can be used to confirm if certain police were working when the incident subject of a complaint occurred.

- **Vehicle diaries** – can be used to confirm police attendance at incidents and people who have been conveyed in police vehicles etc.
- **Workplace correspondence** - exhibits, CAD records, tasking sheets, work returns and other information may also be useful
- **Call Charge Records (CCRs)** – call charge records can be used to assess the validity of allegations, however it should be noted that CCRs cannot be requested or used as part of the triage process unless they are already in the possession of the NSW Police Force. See CPN 07/08 - *Using information from carriage service providers in complaint investigations under Part 8A of the Police Act 1990*
- **Court transcripts** – can be used to clarify evidence presented at court, e.g. clarify magistrate's comments etc. Use of audio tapes of court transcripts should be considered in the first instance as they are more readily available
- **Offender/victim history** – information holdings about the offender/victim history (e.g. domestic violence matters) can be used to assess whether there is any previous history of violence, threats or intimidation. These holdings can give context to the circumstances surrounding the incident and can assist in the assessment of any potential ongoing risks.

## 6. Determine the need for interim risk management action

Triage officers should determine whether recommendations for interim risk management should be made. It should be noted that interim risk management action must be approved by the subject officer's commander/manager.

Interim risk management actions may include:

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

Consult the *Interim Risk Management Guidelines for Police* for further instruction on the PSC intranet site.



## 7. Triage recommendation

Following the completion of the checks outlined above, the triage officer is required to make one of the following three recommendations:

### **Refer to CMT for consideration**

If the complaint requires an evidence based investigation it must be managed by the CMT. As a practical guide, a matter that if sustained would warrant mandatory referral to the NSW Police Force Internal Review Panel (IRP) or Commissioner's Advisory Panel (CAP), would be a matter that would warrant an evidence based investigation.

An evidence based investigation involves gathering and documenting sufficient evidence that may later be considered in formal proceedings (in accordance with the rules of evidence of the various forums in which the proceedings are to be heard). Formal proceedings include matters destined for hearings before courts or tribunals. More formal documentation including statements, records of interview and directive memorandums are used during evidence based investigations.

### **The following matters MUST be referred to the CMT for consideration of an evidence based investigation:**

- Allegations of criminal conduct where triage has identified information, in addition to the complaint letter, that may support the allegation (inculpatory evidence)
- Complaints concerning the safe keeping of NSW Police Force firearms including accidental discharge matters
- Complaints about officers who have been served with a warning notice in the past 5 years
- Complaints arising from officers being charged with a criminal offence
- Complaints involving allegations that if sustained, would result in mandatory referral to the IRP or CAP.

The following types of matters are highly recommended for management by the CMT, but are not mandatory. These factors alone may NOT warrant conducting an evidence based investigation and are for consideration by the CMT.

- Matters with known Police Integrity Commission (PIC) involvement
- Matters with issues of a media / corporate significance
- Matters considered to be a payback complaint as per the *Police Act*
- Matters that have substantial investigative resource implications for the command
- Matters requiring referral outside of the triaging command.



It should be noted that a commander always has the discretion to refer any complaint for management by the CMT, even where there is no inculpatory evidence identified at triage, if the commander feels that the circumstances of the matter warrant an evidence based investigation.

### **Refer for resolution**

A complaint may be referred for resolution where the triage process did not reveal inculpatory evidence or information that would require referral to the CMT.

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

If a complaint document outlines issues of criminal conduct and no inculpatory evidence has been identified during triage, the matter should initially be referred for resolution.

**IMPORTANT**

**While resolution provides for flexibility in managing complaints, it is expected that the PSDO or commander/ manager will be consulted where information is identified which may support a more formal investigative approach.**

Complaint issues **can not** be resolved in the triage process.

For matters dealt with in the resolution process, the triage officer will need to consider the principles of the Complaint Allocation Risk Appraisal (CARA) when nominating a resolution manager. A *CARA B – Disclosure of conflict by investigator/ resolution manager – Mandatory – P960* must be completed and returned to the triage officer.



**If a matter is referred to a resolution manager, the PSDO must complete the Resolution Instructions Form which must be loaded onto c@ts.i**

## Decline to investigate

Determine if the investigation of the complaint may be declined in accordance with section 141 of the *Police Act*

In deciding whether a complaint should be, or does not need to be investigated, the Commissioner or Ombudsman may have regard to such matters as he or she thinks fit, including whether, in his or her opinion:

- a) action has been, is being or will be taken to remedy the subject-matter of the complaint without the need for an investigation, or
- b) the complaint is **frivolous**, **vexatious** or not made in **good faith**, or
- c) the subject matter of the complaint is trivial, or
- d) the conduct complained of occurred too long ago to justify investigation, or
- e) there is or was available to the complainant an alternative and satisfactory means of redress in relation to the conduct complained of, or
- f) the complainant does not or could not have an interest, or a sufficient interest, in the conduct complained of.

### Frivolous

Not serious or sensible in content, attitude, or behaviour, unworthy of serious or sensible treatment

### Vexatious

Instituted without sufficient grounds or for the purpose of causing trouble or annoyance to the other party.

### Good Faith

An action is taken in good faith if it is done honestly, even if it is done negligently or ignorantly. A complaint made with knowledge of the deception and with intent to defraud/deceive or to achieve a biased outcome is not made in good faith.

Approval from commander / manager is required to decline to investigate issue/s in accordance with section 141 of the *Police Act*. CMT approval is NOT required.

## Note

- If declining to investigate a matter on the basis that the issues will be explored in criminal court proceedings e.g. section 141 (i)(e) of the *Police Act*, alternative redress, commands must have a reasonable belief that the issues **will** be explored in that jurisdiction. For example, allegations of racist language by police during an arrest may be noted during proceedings but may not be explored to the extent necessary to satisfy Part 8A complaint obligations.
- If the Ombudsman requires an investigation under the provisions of section 139(5) or section 140 of the Act, the complaint cannot be declined for investigation; the NSW Police Force must cause the complaint to be investigated. The PSDO may discuss with the Ombudsman's case officer a proposal to a decline to investigate these types of matters, however the invocation of this section of the Act is binding on the NSW Police Force.
- Where a complaint is made concerning police conduct in connection with a critical incident, the complaint should not be declined in c@ts.i on the basis of an 'alternative and satisfactory means of redress.' The complaint should be suspended on the system pending the outcome of the critical incident investigation. The final outcome of the critical incident investigation should be considered when determining the outcome of the complaint. Where relevant, the critical incident investigation findings should be referred to the relevant CMT to consider appropriate management action.

- If a complaint is declined as being vexatious, false or not made in good faith, the triage officer can make an application to PSC Complaint Services via #pschelp (E/N 48370) in accordance with section 128(2) for the removal of the subject officer's name from the c@ts.i complaint file.

If a complaint is declined as being vexatious, false or not made in good faith, the triage officer can make an application to PSC Complaint Services via #pschelp (E/N 48370) in accordance with section 128(2) for the removal of the subject officer's name from the c@ts.i complaint file.

The following can be accessed on the PSC intranet site:

- Section 128 Application – consideration to remove a subject officer's name from c@ts.i when complaint denied – P1039
- Current Memorandum of Understanding between the Commissioner of Police, the Police Integrity Commission and the NSW Ombudsman – Section 128(2) if the *Police Act*.

### **Reject as a Part 8A complaint**

Rejecting a complaint is to remove a c@ts.i record that during triage was found to have been created in error as the matter is not a complaint under Part 8A *Police Act*. If the triage process identifies information that affects the status of a matter, the PSDO may choose to reject the matter as a complaint. For example, where triage identifies that the subject officer was not a sworn police officer.

Only the PSM or PSDO can reject a complaint on c@ts.i

### **Professional Standards Command assistance**

For further information on the complaint triage process or c@ts.i assistance contact PSC Complaint Services via PSC Help Desk E/N 48370 or #pschelp.

## Administration

The following information provides guidance on administrative actions which support the triage process.

### Triage Form – Mandatory - P1001

The triage officer must complete the mandatory triage form. This document must be scanned onto the c@ts.i file.

### c@ts.i receipt timeframes / date received

From the received date - 21 days for the completion of the triage process.

### Notifications to the NSW Ombudsman

Notifiable complaints to the NSW Ombudsman must be sent electronically through c@ts.i in line with the requirements of section 130(2) of the Police Act. Notifications must be completed within 21 days of receipt of the complaint.

### Declined matters

All documentation relied on to make the decision to decline must be uploaded/ scanned into the c@ts.i system. **Where a command has relied upon media footage (CCTV, ICV) to decline a matter, a copy of the media footage must be sent to the NSW Ombudsman.**

The command must also send correspondence to the complainant outlining the reasons for declining the complaint and upload/scan this document onto c@ts.i. Advice may also be given by phone or in person. This should be recorded.

Refer to *c@ts.i CMT Stream User Guide* - April 2008 for further information on the administration of declining matters.

### Referral to CMT

If a matter is referred to the CMT as a result of triage, the executive officer is to be advised. The executive officer will ensure the complaint is included on the CMT agenda. If accepted, the complaint is to be managed as an evidence based investigation. The c@ts.i record is to be updated to a CMT managed investigation 'P stream'.

## Referral for resolution

If a matter is referred to a resolution manager, the PSDO must complete the *Resolution Instructions Form – p1002* which must be scanned onto c@ts.i.

## Multiple c@ts.i referencing for complex investigations - cross commands / regions with multiple subject officers

The following criteria should be used to guide decisions as to whether investigations require multiple c@ts.i references.

1. Multiple c@ts.i references should not be used for a complaint unless exceptional circumstances exist that would significantly affect the timeliness of a resolution or investigation.
2. Involvement of a large number of officers (at least 20) from more than one command/region.
3. The investigation involves officers who can be dealt with promptly by non reviewable means as well as other officers facing serious misconduct allegations, court proceedings or reviewable sanctions expected to exceed 12 months. Each group of officers can be dealt with under separate c@ts.i references.
4. The investigation must be able to be separated into manageable components.

When multiple c@ts.i references are used they must be linked on the c@ts.i system.

If a complaint originates at a temporary, special or major event such as the Royal Easter Show the investigation will be conducted for logistical reasons at the command where the subject officer is permanently attached. The only exceptions are where special organisational arrangements are made to cover the event or where for other reasons all involved commanders agree on another course of action.

## Rejecting a complaint on c@ts.i

Rejecting a complaint is to remove a c@ts.i record that was created in error as the matter is not a complaint under Part 8A *Police Act*.

- The resolution can be rejected up until the status of Quality Review in Progress.
- Only the PSM or PSDO can reject a resolution.
- Once the resolution is rejected, it will stay in the status of LMI Rejected.
- If the NSW Ombudsman was notified, the c@ts.i system will send a notification to the NSW Ombudsman that the resolution is now rejected.

For further information refer to *c@ts.i Resolution User Guide*, located on the NSW PSC intranet site.

## Forms

*Access Form – c@ts.i - P833*

*Triage Form – Mandatory - P1001*

*Resolution Instructions Form - P1002*

*NSW Police Force Complaint Form - P964*

*S128(2) Application - consideration to remove subject officers name from c@ts.i when complaint declined - P1039.*

## Part III: Resolution

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**The NSW Police Force time frame for completing matters subject to the resolution process is 45 days from the date received by the NSW Police Force. Refer to section titled 'administration'.**

### Purpose

The resolution process is an alternative investigative process developed to address complaints in a manner that allows swift, fair, impartial, equitable and discrete resolutions of complaints about police conduct. Matters referred for resolution do not typically warrant the formality, complexity and authoritative decision making associated with evidence based investigations. Consequently, such matters do not require the resources of a CMT or the application of evidence based techniques such as sworn statements, records of interview and directive memorandums.

Some matters referred for resolution may be complaints about criminal conduct. These have been referred to the resolution manager because the triage process did not reveal any inculpatory material indicating that the allegations may have some substance. It is expected that the PSDO or commander/manager will be consulted where information is identified which may support a more formal investigative approach.

### Roles and responsibilities

#### Resolution manager

Resolution managers should focus on quickly gathering material that will enable speedy establishment of what occurred and to swiftly and effectively remedy the issues raised in the complaint. A resolution manager should:

- manage the resolution in a manner that allows swift, fair, impartial, equitable and discrete resolution of complaints
- establish the facts about the complaint and make recommendations on the outcome of the complaint
- seek advice as to whether the complainant is satisfied with the action taken to address their complaint.

## Professional standards duty officer

The PSDO must provide support and clear written instructions to the resolution manager using *Resolution Instructions Form - P1002*. The PSDO should consider the skill and suitability of the resolution manager in conducting the resolution.

Following the completion of the resolution investigation the PSDO is required to quality review the *Resolution Outcome Report – Mandatory - P1046* to ensure:

- the source of the complaint is not identified (see 169A guidelines)
- all complaint issues are addressed
- information prepared within the *Resolution Outcome Report – Mandatory - P1046* is factual and does not include personal opinion or speculation
- information within the *Resolution Outcome Report – Mandatory - P1046* is referenced to any source data relied upon
- where multiple subject officers exist, information for each officer is segmented as far as possible
- the conclusions reached are sound, e.g. linked to specific evidence or information and are clearly articulated.

Details of the completed quality review are required to be recorded onto the *Resolution Outcome Report – Mandatory - P1046*. PSDOs may also be required to instruct resolution managers of a suitable course of action where circumstances of the resolution process change or where the commander has decided on appropriate non reviewable management action.

## Commander / manager

Commanders / managers must ratify all resolution findings and determine management outcomes. In addition, the commander/manager should ensure that appropriate action has been taken to advise the complainant of any action proposed in response to the complaint and ensure that the *Resolution Outcome Report – Mandatory – P1046* contains information in relation to complainant satisfaction.



## Practical guide to the resolution process

While resolution managers are allowed flexibility in managing the resolution of the complaint, it is expected that the PSDO or commander/manager will be consulted where information is identified which may support a more formal investigative approach.

A resolution manager should notify their PSDO (or equivalent) or commander/manager when:

- inculpatory evidence is identified which would warrant conducting an evidence based investigation
- information is obtained which would warrant reviewable management action should the issue be sustained and mandatory referral to the IRP
- additional issues are identified resulting in the existence of further lines of enquiry
- additional subject officers, victims/complaints are identified.

If any evidence is identified, the PSDO or CMT will decide whether the matter should be upgraded to an evidence based investigation.

### Recording information

As a general rule, evidence based techniques such as sworn statements, records of interviews or directive memorandums need not be used when conducting a resolution investigation. Generally, less formal recording methods such as making notes in notebooks or duty books should be used to record resolution actions and outcomes.

Notes in a notebook or duty book would suffice as records of conversations and other actions undertaken during resolution. Notes may include:

- time
- date
- who is being spoken to
- why they are being spoken to
- summary of the information they offer.

## Investigating a complaint in resolution

The following steps provide guidance on completing a resolution process for a Part 8A complaint.

1. Understand the background of the matter
2. Disclose any conflict of interest
3. Check current holdings / information gathered during triage
4. Identify a strategy to manage the matter
5. Speak with the complainant / victim
6. Speak with potential witnesses
7. Speak with subject officer(s)
8. Complete the *Resolution Outcome Report – Mandatory - P1046*
9. Submit the *Resolution Outcome Report – Mandatory – P1046* to PSDO for quality review
10. Submit *Resolution Outcome Report - Mandatory – P1046* to commander for endorsement.

### 1. Understand the background of the matter

The first step in the resolution process is to understand the background of the matter and why it has been referred for resolution. Reviewing current holdings will assist in developing a strategy to manage the matter and should always be done before consideration is given to speaking to a complainant, witnesses or a subject officer.

The resolution manager should fully understand the instructions provided by the triage officer as outlined in *Resolution Instructions form - P1002*. The resolution manager should initially review the complaint document understanding the issues raised by the triage officer.

### 2. Disclose any conflicts of Interest

The resolution manager **MUST** complete *CARA Part B – Disclosure of conflict of interest by investigator / resolution manager – Mandatory – P960*. When completing this form the resolution manager will need to consider whether they have any conflicts of interest that may affect their ability to complete the resolution of the complaint in an effective and objective manner. The resolution manager must disclose any actual or perceived conflicts so that these matters can be appropriately managed. The resolution manager must also record if there are NO conflicts.

In some circumstances the matter may need to be reassigned. For guidance on the types of matters you must disclose, refer to the *Complaint Allocation Risk Appraisal (CARA) Guidelines*.

### 3. Check the current holdings/information gathered during triage

As the resolution manager, when you receive a file, a number of inquiries will probably have already been conducted during triage and records of those inquiries should be on the file.

The file you receive should include:

- a *Triage Form – Mandatory - P1001* outlining; the c@ts.i number, complainant's name, date of triage, date received at NSW Police Force, subject officer(s) details and issues identified from the complaint document relevant to each subject officer, a brief description of the incident, triage enquiries undertaken including notifications and a triage decision which should indicate the complaint is one for 'referral for resolution'
- documents identified during triage including; complaint document, copies of holdings (still photographs, CCTV media, COPS events, custody records etc)
- a *Resolution Instructions Form – P1002* communicating specific instructions to the resolution manager.

If you are unsure about the action you need to take in response to the complaint, you should discuss your concerns with the triage officer or PSDO.

### 4. Identify a strategy to manage the matter and discuss this with the PSDO / triage officer or equivalent

Following a review of the complaint file, the resolution manager should discuss with the PSDO/triage officer the instructions provided to them in the *Resolution Instructions Form – P1002*. A proposed strategy for dealing with the complaint should be discussed (Eg Who, when, what order /what manner should they be spoken to)

### 5. Speak with the complainant/victim

Although the triage officer may have already spoken to or otherwise contacted the complainant, the resolution manager may need to further clarify matters with the complainant as the resolution process progresses.

In communicating with the complainant, resolution managers should aim to:

- give the complainant the opportunity to tell their story
- understand what outcome the complainant is seeking
- give clear advice about how the process works
- identify and manage the complainant's expectations.

Many complainants / victims simply want some acknowledgement of their complaint and the opportunity to be heard by the NSW Police Force. Some complainants may not wish to be active participants in the resolution process, however the process should be explained to them and their participation encouraged. Where the complainant is also a victim consider *The Charter of Victims Rights*, appearing in the *Victims Rights Act 1996* which sets standards for the appropriate treatment of victims of crime.

When considering whether an apology is suitable in the circumstances, discuss this with the PSDO or equivalent. An apology may be offered on behalf of the NSW Police Force, but not on behalf of individual officers (unless the officer has given their consent). Offering an apology, if warranted, should be considered after having gathered all the facts and exhausted lines of enquiry.

IPCs should be instructed not to discuss the matter beyond the purpose of resolving the complaint, to liaise with the PSC IWSU or to address related welfare concerns. The resolution manager should actively discuss issues relating to the IPC with their PSDO or a member of the CMT.

At the conclusion of the resolution process, the complainant/victim should be updated with the outcome. Their response must be recorded by the resolution manager onto the *Resolution Outcome Report – Mandatory - P1046*.

It is a legislative requirement that the complainant is consulted about the action taken or proposed to be taken in response to the complaint. The resolution manager will fulfil this function and must seek advice and record information about whether the complainant is satisfied.<sup>4</sup>

Victim follow up issues should be considered and addressed even when the victim is not the complainant. In matters involving potential risks to children, immediate action should be taken to ensure a risk of harm report is made (refer to CPN 11/06).

## 6. Speak with potential witnesses

A potential witness is a person who may have useful information to offer. Efficient, effective and appropriate outcomes based on satisfactory enquiries should drive the resolution. Resolution managers need only speak to the number of witnesses that reasonably serve to satisfy the resolution

Potential witnesses similar to complainants should be approached with an emphasis on problem solving. They may have concerns and emotions that are similar to complainants and should be dealt with as sensitively as possible.

Resolution managers should instruct NSW Police Force employees who are witnesses not to discuss the matter with any person other than for welfare related support. The resolution manager should advise potential witnesses to discuss any concerns with them initially, before speaking with others.

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<sup>4</sup> Section 150 (a) and (b) of the *Police Act 1990*

## 7. Speak with subject officer(s)

### **IMPORTANT**

Unless circumstances do not allow, it is recommended all lines of enquiry are exhausted before speaking to the subject officer. This includes speaking with the complainant and witnesses prior to the subject officer to ensure all the facts are gathered and reviewed.

Subject officers are entitled to have complaints made against them dealt with in a swift, fair, impartial and equitable manner and are entitled to have the complaint handled discreetly. Matters referred for resolution should be of a kind that present little problem in satisfying these concerns.

Prior to speaking with subject officer(s), review and identify the issues raised in the complaint document and all information you have gathered from witnesses, NSW Police Force holdings and external holdings to date. Ensure you have exhausted all lines of enquiry prior to speaking with the subject officer(s). Consider what information you need to discuss with the subject officer(s) based on the information gathered.

Where a resolution manager speaks to the subject officer(s) the aim of the discussion should be to speak openly about the allegations, with a view to understanding what has occurred. This should include resolving the complainant's issues and where appropriate, identifying whether there are any management solutions that would assist in modifying the subject officer's behaviour. This may include asking the subject officer(s) whether they are prepared to offer an apology to the complainant. The aim is to involve the subject officer(s) in finding a solution to the problem and being accountable for their actions.

The management, care and welfare of the subject officer(s) remain the responsibility of the subject officer's commander / manager. The triage officer should provide instruction to the resolution manager in instances when the resolution manager should not speak to the subject officer.

### **Instructions on speaking with subject officer(s)**

- Explain the resolution process to the officer.
- Provide the officer with appropriate support.
- Inform the subject officer of the allegation with sufficient information to be able to properly respond.
- Give a direction to the subject officer(s) not to discuss the matter with any person, except to address related welfare or other concerns in consultation with you as the resolution manager.
- If possible have the subject officer sign relevant entry as to content and accuracy.



**In the event the subject officer makes admissions in relation to a criminal offence whether related or unrelated to the current issues within your resolution, cease all conversations and administer the official caution to ensure admissibility of evidence in accordance with section 139 of the *Evidence Act 1995*.**

Contact your PSDO or equivalent and advise them of the admission made and the caution administered. Consideration of treating this resolution as an evidence based investigation is now required. The matter should be referred to CMT as soon as practical.

### **Speaking with officers on sick report**

In the event a subject officer or police witness is on sick leave and the resolution manager is required to speak with the subject officer or police witness, the resolution manager should consult with their PSDO. Refer to CPN 11/11.

## **8. Complete Resolution Outcome Report - Mandatory - P1046**

Review all information gathered including the details of the complaint, holdings examined and any other information taken into account during the resolution process. This information will form the basis for your *Resolution Outcome Report – Mandatory – P1046*. This report is used to satisfy the requirements under section 150 of the *Police Act* and will be provided to the NSW Ombudsman if the matter is a notifiable complaint.

Part of your report includes recommendations for findings in respect of the issues within the complaint. There are two possible findings within the resolution process:

- Sustained
- Not sustained.

### **Sustained**

If the resolution manager **is** satisfied on the balance of probabilities that the complaint issue or matters arising occurred, a 'sustained' finding must be recorded.

### **Not Sustained**

If the resolution manager **is not** satisfied on the balance of probabilities that the complaint issue or matters arising occurred, a 'not sustained' finding must be recorded.

Note : the finding of 'resolved' is no longer available.

**IMPORTANT**

**The resolution manager is not to recommend or implement management action in respect of the subject officer(s) unless authorised to do so by the commander.**

### **Further Advice**

Assistance with determining the most appropriate outcome should be sought from your PSDO.

### **Organisational outcomes**

Where supervisory, managerial or organisational issues, which may have contributed to poor performance are identified, it is important that these matters are brought to the attention of the commander/manager or organisational representative. Any comment included should be based on facts and not include personal opinion.

Organisational outcomes include but are not limited to the following.

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

Your report should include information on whether these issues contributed to the poor performance of the subject officer and actions you would recommend to prevent a recurrence.

## **9. Quality review**

Following completion of the *Resolution Outcome Report - Mandatory - P1046* submit this to the PSDO or equivalent.

On completion of the resolution report, the PSDO has a number of functions to perform as part of the quality review process. As a guide the following should be considered.

- All complaint issues have been addressed
- Information should be factual and not include personal opinion or speculation
- Ensure conclusions reached are sound
- Requirements of section 150(a) and (b) have been met.

If the PSDO is unavailable, a similarly experienced and appropriate officer should be selected by the command to perform the review function.

## 10. Commander's endorsement

The commander is to satisfy themselves that the resolution investigation has been conducted appropriately and the recommended outcome is supported by the information obtained by the resolution manager.

The commander is to make a determination on any management action to be implemented as a result of the investigation and should include the decision within the commander's section of the *Resolution Outcome Report – Mandatory – P1046*.

The commander should satisfy themselves that action is or has been taken to inform the complainant of the outcome of the matter and that advice in relation to the complainant's satisfaction with the action taken (or proposed to be taken) is recorded within the outcome report.

The commander should also ensure that the subject officer is advised of the outcome of the complaint and the details of any management action proposed as a result of the matter.

The signed report should be provided to the executive officer for inclusion in c@ts.i and provision to the NSW Ombudsman's Office where required.

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

The corporate submission can be referred to within the investigation report but the complaint file should not be held open pending the outcome of any recommendations made.

### **Subject officer entitled to review of action taken**

Where a subject officer does not agree with the decision to implement management action, the officer may seek a review of the decision from the next line of command. The decision should be reviewed with regard to the validity of the findings of the investigation and the reasonableness of the non reviewable action.

Refer to *Resolution Outcome Report – Mandatory - P1046*



## Administration

The following information provides guidance on administrative actions which support the resolution process.

### Updating c@ts.i

All complaints are to be receipted on c@ts.i in the LMI stream - Non CMT Managed Complaint. In most cases the executive officer or PSDO will create and update the c@ts.i record. If c@ts.i assistance is required refer to the c@ts.i user guides, the executive officer or c@ts.i User Support at PSC on en 48361.

### Timeframes

From the date the complaint was received - 45 days to complete a resolution investigation. Resolution timeliness stops once the resolution is complete **within c@ts.i**.

### Referral to CMT

If at any time during resolution a matter requires referral to the CMT, the PSDO should advise the executive officer to include the complaint on the next CMT agenda. If the matter is urgent, an extraordinary CMT should be convened. The resolution manager should cease action on the matter until instructions are received from the CMT.

### Documents to be recorded on c@ts.i

#### Non notifiable matters

If a matter is non notifiable only upload / scan the resolution report onto c@ts.i.

#### Notifiable matters

If a matter is notifiable, upload copies of all material relied upon and referred to in the resolution report. The command is required to provide a copy of all media footage (CCTV, ICV) relied upon during the resolution as soon as practicable to the NSW Ombudsman. The NSW Ombudsman conducts a full review of these types of matters and requires the source data for the purposes of that review.

The completed CARA B form, signed by the resolution manager must be loaded onto c@ts.i at the earliest opportunity and in any case, prior to the end of the resolution investigation. If any conflicts are identified, details of the strategies adopted to manage the conflict must be included on the record.

Where a conduct management plan is implemented or a warning notice is issued, these documents should be included as an attachment onto the relevant c@tsi record.

## Record investigation findings

Investigation findings are reported in the *Resolution Outcome Report - Mandatory - P1046* and recorded on c@ts.i before electronic quality review is completed. All action taken by commands in response to a complaint must be recorded on c@ts.i. This includes all management action, criminal proceedings and related action and no action (see c@ts.i user guides).

Mandatory notification forms to the IRP and other administrative advice is available on the PSC intranet site.

## PSDO quality review in c@ts.i

Once resolution is complete, the resolution manager will forward the completed outcome report to the PSDO for quality review.

## Managing section 150 reports

Non notifiable matters do not require a section 150 report to the NSW Ombudsman.

Matters dealt with through resolution that are **notifiable** to the NSW Ombudsman require an investigation report to be provided to the Ombudsman. The *Resolution Outcome Report - Mandatory - P1046* is the corporate template and satisfies the requirements of the Act. There is a template provided on the PSC intranet site.

Electronic notification to the Ombudsman via c@ts.i **is** required.

## Responding to transfer of resolution manager and/or subject officer(s)

If a resolution manager or subject officer transfers to another location, ownership of the complaint file remains with the officer's former command. If the resolution manager is the transferring officer, the investigation will be reassigned to another resolution manager agreed to by the commander/manager. If an officer is seconded from one command (LAC A) to another command (LAC B), LAC A is responsible for administration/investigation of the complaint. This is the case where the alleged conduct occurred prior to the secondment.

## Suspending a resolution matter on c@tsi

There is capacity to suspend investigations within c@ts.i. Suspension will only be considered where an investigation has reached a point where no further investigation can be conducted. The criterion for suspending is detailed in CPN 11/12 - *Procedure to suspend a Part 8A complaint investigation within the c@ts.i system*.

## Ombudsman request for further investigation

The Ombudsman may also request further investigation into a complaint by the NSW Police Force. If the Ombudsman makes such a request, the Commissioner may, but is not obliged to, cause a further investigation to be conducted. In either case, the Commissioner must notify the Ombudsman of the Commissioner's decision on the request and reasons for the decision.

## Forms

*Access form – Complaints Information System (CIS) - P834*

*Access form – c@ts.i - P833*

*CCYP – Employee Advisory Letter template*

*CCYP – Relevant Employee Proceedings Summary - P986*

*CCYP – Relevant Employee Proceedings Notification - P987*

*Delayed investigation - Advice to NSW Ombudsman - P1012*

*Resolution Instruction Form – P1002*

*Resolution Outcome Report – Mandatory - P1046*

*Section 150 letter to NSW Ombudsman*

*NSW Police Force Authority to Institute Proceedings Section 148, Police Act 1990  
No. 47 – P812*

## Professional Standards Command assistance

For further information on the complaint resolution process or c@ts.i assistance contact PSC Complaint Services Help Desk E/N 48370 #pschelp.

## Part IV: Evidence based investigation (CMT managed investigation)

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**The NSW Police Force time frame for completing matters subject to an evidence based investigation is 90 days from the date received by the NSW Police Force.**

### Purpose

The purpose of conducting an evidence based investigation is to ensure admissibility of information in criminal court proceedings or other tribunals where reviewable action is likely to be taken against a NSW police officer.

All Part 8A evidence based investigations are managed by a CMT to ensure compliance with related legal and policy requirements and assist the commander / manager in exercising their delegation in complaint management. This is achieved through monitoring, guiding, reviewing and endorsing evidence based investigations as they progress and then making a determination on management action to be implemented.

### Roles and responsibilities

#### Commander / manager

Part 8A of the Police Act outlines specific requirements placed on the Commissioner in relation the administration of complaints about police conduct. The Commissioner has delegated that responsibility to commander/managers.

While the members of the CMT will assist the commander / manager in management of a complaint investigation, the ultimate responsibility for the outcome and the reporting requirements rests with the commander. These guidelines provide information about the required administrative actions for complaint management.

Commanders / managers must instruct investigation supervisors and investigators at the commencement of the investigation, throughout the investigation and ratify all CMT decisions.

Commanders / managers also have the sole responsibility in deciding on and implementing management action and interim risk management. For information on determining and implementing management action refer to the *NSW Police Force Management Action Guidelines* on the PSC Intranet site.

## Complaint Management Team (CMT)

CMTs are mandatory for any command with police officers attached. The core members of the CMT are the:

- commander / manager
- crime manager (or equivalent such as the PSM for specialist commands)
- executive officer (or equivalent)
- PSDO (or equivalent).

CMTs may also invite local and specialist personnel as required.

The CMT must meet regularly and as often necessary to satisfy CMT functions and the exercise of the commander's complaint delegations. CMTs monitoring ongoing evidence based investigations should meet at least fortnightly.

Minutes of each meeting are to be recorded using the *Agenda - CMT - P1011* form and *Minutes Continuation Form*. These documents are located on the PSC intranet site. Any decision made outside a CMT meeting should be recorded and validated at the next CMT meeting.

The delegated officer must be present at CMT meetings rather than ratifying the recommendations of the remaining CMT members at a later time.

CMTs are responsible for ensuring conflicts of interest are effectively managed when an investigation commences and throughout the course of the investigation. The CARA process assists CMTs to determine whether the complaint should be managed locally or transferred to another location for investigation or other action.

This process also ensures CMT decision making processes in relation to risk identification and management are documented. CMTs are required to complete *Minutes – CMT assessment - CARA Part A – Mandatory - P1088*. Once the investigation is allocated, the CMT is to ensure the *CARA Part B - Disclosure of conflict of interest by investigator – Mandatory - P960 form* is completed and any identified conflicts of interest are suitably addressed.

*Refer to the NSW Police Force Complaint Allocation Risk Appraisal (CARA) Guidelines* for more information on conducting complaint allocation risk appraisals for all Part 8A evidence based investigations.

## Investigator

The role of the investigator is to:

- find all relevant information relating to a complaint
- analyse and reach valid conclusions about the veracity of the allegation(s)
- recommend investigation finding and rationale (sustained/not sustained)
- prepare and forward an *Investigators report - evidence based – template - P1047* to the CMT.

Obligations of the investigator include:

- declaring any conflict of interest by completing the *CARA Part B - Disclosure of conflict of interest by investigator – Mandatory - P960*
- conducting the investigation impartially in a timely and effective manner, in accordance with the *Terms of Reference - Investigation – Mandatory - P1013*
- complying with confidentiality requirements
- complying with instructions from the investigation supervisor, commander/ manager or CMT (consistent with local instructions)
- consultation with the complainant about the outcome of the investigation and any action proposed as a result.<sup>5</sup>

## Investigation supervisor

The CMT may appoint an investigation supervisor to assist in the management and investigation of a complaint. This decision may be influenced by issues including the complexity of the matter and experience of the investigator.

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<sup>5</sup> Section 150 (a) and (b) of the Police Act 1990

The role of the investigation supervisor in complaint management is to:

- offer advice and guidance to the investigator throughout the investigation, in line with the terms of reference
- assist the investigator to develop an *Investigation Plan - P1053*
- assist the investigator to conduct the investigation in an impartial and effective manner, consistent with the terms of reference and investigation plan
- ensure variations to the investigation are approved by the CMT
- assist in the use of c@ts.i and e@gle.i, (consider assistance from LAC executive officer, region PSM and PSC c@ts.i User Support – E/N: 48361)
- comply with written advice from the commander regarding the completion date and ensure the investigation is completed by the due date
- monitor and check the progress of the investigation
- ensure status reports (*Status report – Investigation - P1003*) and extension reports (*Extension request - Investigation Timeframe - P1009*) are prepared and submitted on time
- review the *Investigators Report – Evidence Based – Template - P1047* completed by the investigator prior to its submission to the CMT or PSDO for quality review.

Supervisors could be crime managers, PSDO or experienced investigators. Completion of CARA B by supervisors is not mandatory. However, it is an expectation of the NSW Police Force that staff involved in complaint management and investigation activities identify, declare and participate in the management of any conflicts of interest. This includes investigation supervisors.

*Terms of reference – Investigation – Mandatory - P1013, Investigators Report – Evidence Based – Template - P1047, Status report – Investigation - P1003, Extension request - Investigation Timeframe - P1009* and all other complaint management forms can be found on the PSC intranet site under Forms.

## Practical steps for the CMT in managing a Part 8A evidence based investigation

1. Appraisal
2. Complete *Minutes - CMT assessment– CARA Part A – Mandatory – P1088*.
3. Prepare the *Terms of reference – Investigation – Mandatory - P1013*
4. Allocate investigator and supervisor, where required
5. Provide investigator complaint file including *CARA Part B – Disclosure of conflict of interest by investigator – Mandatory - P960*
6. Monitor investigation and review progress, conduct fortnightly CMT meetings
7. Supervisor / PSDO or equivalent to conduct quality review
8. Commander / manager to certify investigation and decide on appropriate action
9. Provide finalised investigation report to the NSW Ombudsman

### 1. Appraisal

The appraisal includes:

- confirming issues to be addressed with reference to the *Triage Form – Mandatory - P1001* and the original complaint document
- confirming an evidence based investigation is the most appropriate way to manage the response to the allegations with reference to the *Triage Form – Mandatory - P1001*
- confirming legislative administrative requirements have been / will be satisfied (*Police Act 1990* obligations, if applicable notifications to NSW Ombudsman, Workplace Equity Unit, IWSU PSC, *Commission for Children & Young People Act 1998* etc)
- considering whether interim risk management strategies need to be implemented.

### **Downgrading from an Evidence Based Investigation (P stream) to Resolution (LMI stream) (This is only possible if AQR has not been completed)**

If the CMT determine that a complaint does not require an evidence based investigation, the CMT can advise the triage officer of the decision and appoint a resolution manager.

The original triage officer or CMT are to instruct the resolution manager to conduct informal enquiry consistent with Part 2 Resolution. The 45 day completion timeframe will apply. The matter will be receipted onto c@ts.i as a resolution investigation (LMI stream) if not already on c@ts.i. If an evidence based investigation (P stream) record exists, downgrade to a resolution investigation (LMI). The CMT has no further role in the matter.



### **Consider interim risk management strategies for involved officer(s)**

Interim risk management action can be taken at any time in relation to a complaint matter until final management action is determined and implemented. It is critical that any action taken is clearly recorded as 'interim risk management action' to differentiate between this action and final management action. Taking interim risk management action does not prevent a commander from taking final management action.

The interim risk management action is taken in response to an identified risk while managing the complaint investigation. Risk management action may include: a change of duties, additional supervision, rostering with more experienced staff, securing or restricting access to firearms, rectifying systemic or procedural practices, referring recommendations on organisational issues to responsible commands, suspension and any other management action that appropriately alters relevant risks.

In all these instances the CMT must monitor any change of circumstances during the investigation of the complaint and amend interim risk management action where required.

Guidelines on when interim risk management action should be taken, developing appropriate strategies and implementing an Interim Management Plan can be found in the *NSW Police Force Interim Risk Management Guidelines for Police*, located on the PSC Intranet Site.

## **2. Complete Minutes – CMT assessment – CARA Part A – Mandatory – P1088**

Upon receipt of a complaint, the CMT must initiate the CARA process and complete the mandatory CARA Part A document (P1088). If an investigation is transferred to another command, CARA Part A must be applied again by the new command.

If there are no impediments for the local management of the complaint investigation, the CMT should complete the assessment of the complaint and determine whether a criminal or non criminal investigation should be conducted.

### **Consider the need for Professional Standards Command assistance.**

All CMTs and related complaint handling areas need to ensure they are aware of the acceptance criteria for complaint investigations conducted by PSC before they submit a request for assistance. Criteria for acceptance vary. Refer to *Professional Standards Command Request for Assistance* form - P968, located on the PSC intranet site.

### 3. Prepare the *Terms of reference – Investigation – Mandatory - P1013*

The terms of reference provide a means of communicating instructions to investigators from the CMT concerning the objective of the investigation, and the scope of activities, including the priority of issues to be investigated (criminal vs non criminal).

The CMT is to prepare the document and provide it to the commander to sign the associated direction. The investigator and supervisor are then required to sign the document acknowledging they have read the terms of reference and fully understand the contents and their obligations and responsibilities as investigator / supervisor.

### 4. Allocate investigator

When selecting an investigator the CMT must consider the investigator's:

- rank to ensure the investigator's rank is above that of the subject officer and likely police witnesses
- skill, capability and training undertaken e.g. completion of the Internal Investigators Training Course
- workload, leave and other commitments
- actual or perceived risks or any conflicts of interest which may impact on their ability to conduct an investigation (as identified by the investigator in completing *CARA B - Disclosure of conflict of interest by investigator/resolution manager – Mandatory - P960*). Refer to the *NSW Police Force CARA Guidelines*.

#### **Allocate supervisor if appropriate**

The CMT may appoint an investigation supervisor to assist in the management of the investigation. This decision may be influenced by issues including the complexity of the matter and experience of the investigator.

Where an investigation supervisor has been appointed, instruction should be provided to that officer detailing the expectations of the CMT and the action required by the officer during the course of the investigation. These instructions should be recorded in the *complaint assessment Minutes*.

Supervisors could be crime managers, PSDO or experienced investigators. In some cases the commander may appoint themselves as the supervisor.

## **5. Provide investigator complaint file including *CARA Part B – Disclosure of conflict of interest by investigator / resolution manager - Mandatory - P960*.**

The CMT should provide the investigator with a copy of the complete complaint file including the CMT investigation mandatory terms of reference and a blank *CARA Part B – Disclosure of conflict of interest by investigator/resolution manager – Mandatory - P960* to complete and immediately return to the CMT.

In the event that an investigator or investigation supervisor declares a conflict of interest, the CMT is responsible for deciding (based on the risk factors identified) if the investigation should be reassigned.

Where a conflict of interest is declared by the investigator and the CMT do not believe that conflict precludes the investigator from conducting the investigation, details of any strategies to manage the conflict must be recorded on the *CARA B* form.

## **6. Monitor investigation and review progress, conduct fortnightly CMT meetings.**

The CMT should consider the status of the investigation to ensure that appropriate action is being taken to progress the complaint investigation. The CMT's consideration should be recorded using the CMT Minutes Continuation Form and included in the relevant c@ts.i file.

As part of the terms of reference, the CMT should ensure the investigator is required to provide regular status reports on the progress of the investigation. The CMT should consider these reports to ensure that appropriate action is being taken to complete the investigation.

Part of the CMTs responsibilities includes monitoring the timeliness of the investigation. Should an evidence based investigation approach the 90 day requirement for completion and it is considered the timeliness standard will not be met, the CMT should consider the reason for the delay and determine whether an extension should be granted. Advice of any delays will need to be provided to the relevant oversight agency. Use the *Delayed investigation – Advice to NSW Ombudsman – P1012* form.

Should an evidence based investigation approach the 90 day requirement for completion, the investigator should complete an *Extension request - Investigation Timeframe - P1009* for the consideration of the CMT.

On receipt of this document a member of the CMT should complete the *Delayed investigation – Advice to NSW Ombudsman – P1012* and forward this information to the NSW Ombudsman.

The forms mentioned above are available on the PSC intranet site.

## **Maintaining contact with the complainant and subject officer at an appropriate time**

The CMT or commander / manager must ensure as far as possible that the investigation has a minimal impact (both professionally and personally) on the subject officer and complainant in the workplace, if the complainant is a NSW Police Force employee. It is also appropriate at the end of an investigation that the CMT or commander / manager advise the subject officer of the timeliness of the investigation, the findings and recommendations made as a result of the investigation.

The subject officer can expect to be made aware that they are the subject of a complaint unless there are valid reasons for withholding this information.

Where the complainant is also a victim consider *The Charter of Victims Rights*, appearing in the *Victims Rights Act 1996* which sets standards for the appropriate treatment of victims of crime.

## **7. Investigation quality review**

Once the investigator has provided a final Investigator's Report - *Evidence Based – Template - P1047*, a quality review should be conducted before the report is provided to the commander for consideration. As a guide consider the following points when conducting the quality review.

- The source of the complaint should not be identified (see section 169A guidelines, PSC intranet site).
- All complaint issues should be addressed including issues arising during the investigation.
- Information should be factual and not include personal opinion or speculation.
- Information within the report should be referenced (as a footnote) to any source data relied upon.
- The evidence against each subject officer should be segmented as far as possible. This will allow for clear and concise information concerning their alleged misconduct to be provided without the need for extensive editing. It will also assist the NSW Police Force in drafting a show cause notice if or where required.
- Ensure that the conclusions reached are sound e.g. linked to specific evidence or information and clearly articulated.
- Ensure the complainant has been consulted in accordance with section 150 of the *Police Act*.

The reviewing officer should complete the required section of the *Evidence Based Investigation Report P1047 (pg 4)* and provide the report to the CMT for finalisation.

Feedback on this quality review should be provided to the investigator and the CMT as soon as practical. The *Investigation Report - Evidence Based - P1047* can be found on the PSC intranet site.

## **8. Commander / manager to certify *Investigator's Report – Evidence Based P1047* and decide on appropriate action.**

The commander has overall responsibility for the management and investigation of complaints. Once an investigation has concluded and the investigator's report has been subject to quality review the commander should satisfy themselves that the findings are sound and have been objectively determined. Page 5 of *Investigation Report - Evidence Based P1047* requires the commander provide comment on the investigation and endorse the final report.

### **Commanders Management Action Decision**

In addition to assuming responsibility for the outcome of the investigations, the commander / manager must make any determination in relation to management action to be taken against the subject officer/s.

If the commander / manager is considering **reviewable** action as an outcome the commander / manager should provide Part 1 of the *Investigators Report - Evidence Based - P1047* to the subject officer. Refer to *PSC Information Sheet 10/03 - Releasing Part 8A information where reviewable action is considered following the completion of a CMT managed evidenced based investigation*.

**PRIOR to serving Part 1 of the Investigation Report - Evidence Based and associated documents PSC MUST be notified via e-mail #PSCMAWSLEGAL outlining c@ts.i reference and documents to be served.**

Notify all witnesses through serving *Investigation – notice to witness – P1051 form Investigator's report and supporting evidence for service on a subject officer - P1048, Investigators Report - Response - P1049 and Investigation – Notice to witness – P1051 forms* can be found on the PSC intranet site under *Forms*.

*PSC Information Sheet 10/03 - Releasing Part 8A information where reviewable action is considered following the completion of a CMT managed evidenced based investigation* can be found on the PSC intranet site under *Policy & Guidelines* then *Information Sheets*.

For further details on implementing the NSW Police Force managerial model as well as instructions for implementing reviewable and non reviewable management action, refer to *NSW Police Force Management Action Guidelines 2010*, which can be found on the PSC intranet site under *Policy & Guidelines* then *Workplace Management Resources*.

Where an investigation leads to a not sustained finding, the commander should ensure that the subject officer is advised of the outcome of the complaint.

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

The corporate submission can be referred to within the investigation report but the complaint file should not be held open pending the outcome of any recommendations made.

### **Commission for Children and Young People notification**

A sustained finding triggers notification of certain complaints to the Commission for Children and Young People (CCYP) under the *CCYP Act*. This includes complaints where children are complainants, victims or are substantially involved in the situation about which the complaint is made. CMTs must consider CPN 08/01 - *Notification of certain complaints against police officers to the Commission for Children and Young People* in this situation.

### **S163 – Non Publication of information**

The commander must also consider any recommendations made by the investigator in respect of information identified as **critical police information** contained in the investigation.

Refer to CPN 11/13 - *Management of Information under section 163 of the Police Act 1990*, available on the PSC Intranet site.

## **9. Provide finalised investigation report to NSW Ombudsman**

As soon as the investigation report is ratified by the CMT, a copy of the report should be provided to the NSW Ombudsman. The report must consist of a covering letter and supporting materials.

The NSW Ombudsman should be notified of any actual and intended action and any intention to change action already reported. The NSW Police Force has committed to meeting section 150 reporting obligations before notifying matter to the IRP. Advising the NSW Ombudsman that reviewable action is being considered meets the section 150 reporting obligations. Do not wait for IRP or related outcomes before forwarding the section 150 report to the NSW Ombudsman.

The corporately preferred template for section 150 report covering letters for CMT matters is available on the PSC intranet site. Refer to Administration Section on submitting a PDF section 150 report using c@ts.i.

#### **IMPORTANT**

Where a matter has been investigated criminally and charges have been preferred, this is not the outcome of the Part 8A investigation.

A Part 8A investigation can only be finalised where a final determination has been made that the subject officer engaged in the conduct alleged. This determination may not be able to be reached while a matter is the subject of criminal proceedings as the subject officer may not have provided a version or sought to rebut the evidence gathered during the criminal investigation.

It is important that the Part 8A file is complete record of the departmental outcome in order that the record is not misleading or incorrect.



## Investigator

### Practical steps for the investigator when conducting a Part 8A Evidence Based Investigation

1. Appraisal
2. Complete *CARA Part B – Disclosure of conflict of interest by investigator/resolution manager – Mandatory - P960* form
3. Complete *Investigation Plan - P1053*
4. Conduct investigation in consultation with supervisor (PSDO or equivalent) maintaining regular contact with complainant and subject officer
5. Complete *Investigators Report - Evidence Based- Template - P1047*
6. Submit the *Investigators Report – Evidence Based – Template – P1047* to your supervisor/PSDO or equivalent for quality review.

#### 1. Appraisal

As the investigator you must review the complaint file received from the CMT, ensuring the complaint has been registered on c@ts.i and you have access to the c@ts.i file. When you receive the file, a number of inquiries will probably have already been conducted. Review all the documents.

Understand why the matter has been referred to you to conduct an evidence based investigation. Read the *Terms of reference – Investigation – Mandatory - P1013* form completed by your CMT and be aware of the instructions provided, objective of the investigation and the scope of activities you have been asked to investigate. If you agree with the details sign the document and provide back to your CMT.

#### **IMPORTANT**

**Identify the criminal and non criminal issues within the complaint investigation. Refer to Part V: Investigative Issues for information on how to deal with a combination of criminal and non criminal issues.**

#### 2. Complete *CARA Part B – Disclosure of conflict of interest by investigator/resolution manager – Mandatory - P960* form

The purpose of this document is to provide you with an opportunity to disclose any conflicts of interest or other risks, which may affect your ability to undertake an impartial investigation.

You must acknowledge that if at any time during the investigation you believe a conflict may arise, you will immediately bring it to the attention of the commander or a member of the CMT. The *CARA Part B – Disclosure of conflict of interest by investigator/resolution manager – Mandatory - P960* form must be signed by you and also by your commander/ manager.

For further information on CARA Part B refer to the *Complaint Allocation Risk Appraisal (CARA) Guidelines*.

### 3. Complete investigation plan P1053

The CMT may direct the completion of an investigation plan within the *Terms of Reference – Investigation - Mandatory - P1013*. An investigation plan is recommended for all complex investigations and should be submitted to the CMT for approval if required.

The plan may be as simple as a list of proposed tasks or activities taking into account such variables as; the nature and complexity of the complaint, resources required, any anticipated costs and constraints that may impact on that investigation. Deviations from the initial investigation plan must be submitted to the CMT for approval.

The CMT **must** review the plan as submitted and only accept it when:

- the time frame for task completion can be met
- all available evidence will be gathered
- all reasonable avenues of investigation will be undertaken
- the proposed interview style is appropriate to the allegation
- due consideration of all risks has been made.

### 4. Conduct investigation in consultation with supervisor (PSDO or equivalent).

Throughout the investigation consider the following.

- **Use of the Chronology - Investigation**

A chronology is recommended for all CMT managed investigations. The CMT does not need to review or endorse the chronology.

A chronology also assists in the preparation of the final investigation report. The corporately preferred chronology format is available on the PSC intranet site.

- **Use of the Status report – Investigation - P1003**

Investigators are to submit status reports at a frequency determined by the CMT. These reports advise the CMT of the progress of the investigation and the tasks which have been and are proposed to be completed. Status reports should also be used to report the reasons for any delay in completing the investigation, allowing the CMT to amend the projected completion timeframe if required.



- **Identification of additional issues or matters arising from the investigation**

During the course of the investigation, if additional issues are identified that were outside the scope of the terms of reference, you should consult the CMT and seek guidance on the action required in response to those matters. For example, if your investigation relates to an allegation of off duty assault and you identify an additional subject officer or a further allegation of misconduct, you should seek advice as to whether the CMT wants to expand the terms of your investigation or refer the additional matters for separate investigation.

- **Extension request – Investigation timeframe - P1009**

Commands are frequently called upon to account for failures to achieve corporate standards, especially concerning timeliness of complaint investigations. The 90 day requirement for completion of CMT matters may be extended by the CMT. The investigator must report any circumstance that is likely to impact on the investigation not concluding within the timeframes set.

Approval for an extension must be sought from the CMT before the expiration of the investigation deadline. The report must include the period of extension requested, the reason for the request, a list the outstanding activities and the new proposed completion dates. Investigators should expect their reasons for extensions to be scrutinised. Where notifiable matters are concerned, the CMT is expected to notify the NSW Ombudsman of extensions and reasons given by investigators.

*Chronology - Investigation, Status Report – Investigation - P1003 and Extension Request - Investigation Time frame - P1009 forms can be located on the PSC intranet site.*

- **Whether sufficient evidence exists to warrant the prosecution of any person for an offence**

Where an investigation finds sufficient evidence to warrant a person being charged with a criminal offence, the investigating officer **must** cause appropriate proceedings to be instituted against that person. Approval **must** be sought from the Commissioner to institute criminal proceedings against a police officer.

Refer to CPN 03/03 - *Section 148 Approval to Institute Proceedings against a police officer*. In addition information is contained within Part V: Commencing criminal proceedings (section 148 *Police Act*).

## 5. Complete Evidence Based Investigators Report P1047

Refer to the *Investigator's Report – Evidence Based – Guide to completing - P1047* located on PSC intranet site for specific details on completing the report.

The investigator is required to complete:

- Part 1 of the *Investigator's Report – Evidence Based – Template - P1047* detailing: subject officer details, issues investigated, evidence, findings recommended (sustained /not sustained), other issues for each subject officer, and
- Part 2 of the *Investigator's Report – Evidence Based – Template - P1047* providing recommendation to the delegate on invoking/not invoking section 163 of the *Police Act* and certifying the information contained in the investigation report.

### Findings

In order to make a sustained / not sustained finding, a reasoned analysis of all available inculpatory and exculpatory evidence must be undertaken. Reasoned analysis requires related conclusions to be reached only after or as a result of a logical sequence of argument or discussion. Both the evidence and processes used must be capable of withstanding scrutiny; internally and before the Industrial Relations Commission.

In completing an investigator's report, an investigator will be required to make a recommended finding of either **sustained** or **not sustained**. Each finding will need to be determined on the balance of probabilities (civil standard of proof). This means that the finder of the facts must be reasonably satisfied that something is more likely than not to have happened.

The investigator must base their decision on cogent evidence and avoid reliance on inexact proofs, indefinite testimony or indirect inferences.

The reasons that form the basis for a recommendation that a sustained finding should be made should logically flow from the evidence that supports the facts on which findings are based. The investigator should be sure that the subject officer has been given the opportunity to respond to the substance of the allegations and any adverse comment about them. The investigators report should not contain adverse comments to which the subject officer has not had the opportunity to respond. For example, you should not include an adverse comment that you believe a person has been untruthful, or may have a drinking problem, without allowing the officer to refute the allegation. When making a finding, outline the issue, the finding and the rationale for each issue.

### Organisational and managerial outcomes

Where supervisory, managerial or organisational issues which may have contributed to poor performance are identified, it is important that these matters are brought to the attention of the commander / manager or organisational representative. Any comment included should be based on facts and not include personal opinion.

Organisational outcomes include but are not limited to:

- supervisory/managerial issues
- training and development within or across commands relating to a particular issue
- improvements to policies and standard operating procedures
- amendments to legislation.

Your report should include information on whether these issues contributed to the poor performance of the subject officer and actions recommended to prevent a recurrence.

#### **6. Submit the completed Investigator's Report – Evidence Based – Template - P1047 to your supervisor / PSDO or equivalent for quality review.**

As the investigator you should maintain contact with the PSDO or equivalent regarding the outcome of the quality review and commander's management action decision. The investigator should seek approval from the PSDO or member of the CMT before speaking to the complainant / subject officer regarding the outcome of the investigation.

#### **7. Maintaining contact with the complainant at an appropriate time**

The investigator should provide regular status updates to the complainant about the progress of the investigation.

Where the complainant is also a victim, consider *The Charter of Victims Rights*, appearing in the *Victims Rights Act 1996* which sets standards for the appropriate treatment of victims of crime.

It is a requirement under the legislation that once the investigation report has been finalised, the commander (or delegate) **if practical**, must consult with the complainant **before** making a decision concerning any action to be taken as a result of the complaint.

In addition, the commander (or delegate) must provide the complainant with advice as to any action already taken or to be taken as a result of the complaint. These actions are the responsibility of the commander and can be delegated as required.

Remember that under the principles of procedural fairness, a complaint is not considered to be finalised until the subject officer has an opportunity to respond to the *Investigators Report and Supporting Evidence for Service on the Subject Officer - P1048* and supporting evidence which has been served on them by the commander when considering a reviewable action as an outcome of a complaint.

The commander should also confirm the outcome of the investigation and the reasons for the outcome to the complainant in writing.

## Administration

The following information provides guidance on administrative actions which support the evidence based investigative process.

### Timeframes

From the received date - 90 days for the completion of evidence based investigations managed by the CMT. Timeliness stops once an evidence based investigation is complete within c@ts.i.

### Upgrading of c@ts.i stream

Complaints referred for evidence based investigation are to be upgraded from LMI matters to a CMT managed complaint (P stream prefix in c@ts.i). Complaints can be upgraded and downgraded within the CMT managed complaint (P stream).

NOTE: If a matter is receipted on c@ts.i as a P stream investigation and the assessment quality review (AQR) on c@ts.i has been completed the matter can NOT be downgraded to a resolution investigation (LMI prefix in c@ts.i). The protocols for the 'P stream' must be adhered to through to the completion of the complaint. See *c@ts.i CMT Stream User Guide* or contact PSC help desk on 48370.

### Assessment Quality Review

PSC complete the Assessment Quality Review within c@ts.i for all P stream matters. This facilitates the notification of the complaint to the NSW Ombudsman. PSC's quality review includes confirmation that the c@ts.i record contains:

- The complaint document
- *Triage Form – Mandatory – P1001*
- *Minutes - CMT assessment - CARA Part A – Mandatory –1088*
- *CARA Part B – Disclosure of conflict of interest by investigator/resolution manager- Mandatory – P960*
- *Terms of Reference – Investigation – Mandatory - 1013.*

## Documents to be recorded on c@ts.i

### **IMPORTANT**

**Documentation should be attached to c@ts.i as the investigation progresses e.g. status reports, records of interview, investigation report etc. It is not appropriate for this to be left until after the investigation is complete.**

All complaint documentation is to be recorded on c@ts.i as it is obtained or received or at the earliest opportunity.

All PIC and NSW Ombudsman correspondence is to be entered on c@ts.i.

In the context of evidence based investigations, any document that is not available in its original electronic form or is modified from that original form through the addition of notations, signatures or other means must be scanned and uploaded to c@ts.i.

Where a conduct management plan is implemented or a warning notice is issued, these documents should be included as an attachment onto the relevant c@tsi record.

### **CMT declined matters**

Where a CMT has decided to decline to investigate a complaint or an issue within a complaint, a copy of all documents relied on must be attached to the c@ts.i record.

### **Record investigation findings**

Investigation findings are recorded on c@ts.i before the Investigation Quality Review is completed.

## Suspending an evidence based investigation on c@tsi

There is capacity to suspend investigations within c@ts.i. Suspension will only be considered where an investigation has reached a point where no further investigation can be conducted. The criteria for suspending a matter are provided in CPN 11/12.

An application for suspension can be made by Godfrey report or email. It must be authorised by the commander and forwarded to the c@ts.i User Support SMAC Box #catsi.

The application must contain reasons for seeking suspension and include details of when the suspension is to commence. This date can not be prior to completion of 'Assessment Quality Review' for P stream matters or the progression of resolution matters to 'Resolution in Progress'

### Points to note

- If a complaint is suspended due to the officer being criminally charged you must advise the Ombudsman and include a copy of the fact sheet.
- The suspension process applies to both resolution (non CMT managed) or evidence based investigations (managed by the CMT).
- Advise #catsi when it can be reopened by stating the date it is to be re opened.

### IMPORTANT

**To ensure suspended matters are monitored, all region PSMs should monitor complaints and prompt commands about the status of suspended complaints. PSC Complaints Support Unit also monitor suspended complaints and will liaise with commands to ensure matters remain on the suspension list appropriately.**

## Outcomes and management action

All action taken by commands in response to a complaint is to be recorded on c@ts.i. This includes all management action, criminal proceedings and related action and no action. See c@ts.i user guides.

Mandatory notification forms to the IRP and other administrative advice is available on the *Workplace Management Resources* page of the PSC intranet site.

## Section 150 report pdfs to be sent to the NSW Ombudsman

As soon as a CMT has ratified the investigation report, the report can be provided to the NSW Ombudsman in line with the requirements of section 150. The section 150 report for CMT managed notifiable matters must consist of a covering letter and supporting materials. Include the following documents in the report.

- Commander's covering letter detailing satisfaction of section 150 obligations
- Complaint document
- Investigator's reports and Investigation Plan
- Investigation documents
- CMT Minutes and Terms of Reference (mandatory)
- CARA A and CARA B forms (mandatory).

The NSW Ombudsman should be notified of any actual and intended action and any intention to change action already reported. Do not wait for IRP or related outcomes before forwarding the section 150 report to the NSW Ombudsman. The NSW Police Force has committed to meeting section 150 reporting obligations before notifying the matter to the IRP. Advising the NSW Ombudsman that the reviewable action is being considered meets the section 150 reporting obligations.

**IMPORTANT**

**Ensure the 'Complete Investigation Outcome' button on c@ts.i is selected to activate electronic notification of the s150 report to the Ombudsman.**

The corporately preferred template for section 150 report covering letters for CMT matters is available on the PSC intranet site.

## Commission for Children and Young People (CCYP) notification

CMT minutes for all matters subject to notification to CCYP must record decisions made to notify, or not notify the CCYP, including the reasons for the decision. These decisions must form part of the section 150 notification to the Ombudsman.

## Forms

### **Triage**

*Triage Form – Mandatory - P1001*

### **Resolution**

*Resolution Instruction Form - P1002*

*Resolution Outcome Report - Mandatory - P1046*

*Status Report - Investigation - P1003*

### **Evidence based investigations (CMT managed)**

*Agenda - CMT - P1011*

*Minutes - CMT assessment - CARA Part A – Mandatory – P1088*

*CARA Part B - Disclosure of conflict of interest by investigator/resolution manager – Mandatory - P960*

*Directive memorandum - P1004*

*Chronology - Investigation*

*Interview - Notice to interview*

*Interview - Question Template - P1005*

*Interview - Directed - Direction to senior officer - P1010 [CPN 04/02]*

*Investigation - Notice to witness - P1051*

*Investigation Plan - P1053*

*Investigators Report - Evidence Based - Case Study/Example – P1047*

*Investigators Report - Evidence Based - Guide to Completing – P1047*

*Investigators Report - Evidence Based - Template - P1047*

*Investigators Report and supporting evidence for service on a subject officer - P1048*

*Investigators Report - Response - P1049*

*Minutes - Additional Issues – CMT - P1008*

*Minutes - Continuation Form*

*Section 148 Police authority to institute proceedings against a NSW police officer - P812*

*Section 150 Letter to NSW Ombudsman*

*Status Report - Investigation - P1003*

*Terms of Reference - Investigation – Mandatory - P1013*

### **Administration**

*Access form – Complaints Information System (CIS) - P834*

*Access form - c@ts.i - P833*

*Delayed investigation - Advice to NSW Ombudsman - P1012*

*Extension request - Investigation Timeframe - P1009*

*Section 128 Application - Consideration to remove subject officer's name from c@ts.i when complaint denied - P1039*

*NSW Police Force Complaint Form - P964*

*CCYP - Employee Advisory Letter template*

*CCYP - Relevant Employee Proceedings Notification - P987*

*CCYP - Relevant Employee Proceedings Summary - P986*



### **Professional Standards Command assistance**

For further information on the process of conducting an evidence based investigation managed by the CMT or c@ts.i assistance contact PSC Complaint Services Help Desk E/N 48370 #pschelp.

## Part V: Investigative issues

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### Investigations involving criminal and non criminal allegations

When an investigation includes allegations that are both criminal and non criminal the initial enquiries **must** focus on the criminal allegations.

Once the investigation into the criminal allegations is complete, any existing or new non criminal issues should be addressed. This will be dependant upon the outcome of any criminal proceedings and/or the findings of the criminal investigation itself.

### Conducting a criminal investigation

The investigation of allegations of criminal conduct by a NSW police officer should not differ to any investigation into alleged criminal behaviour. Action should be taken to gather evidence in accordance with normal legislative requirements and NSW Police Force practice.

However there are additional requirements that apply to criminal investigations into police conduct, including:

- initiation of interim risk management strategies within the workplace
- compliance with section 148 of the *Police Act 1990* in relation to the prosecution of a NSW Police Force officer
- administrative obligations under Part 8A.

Generally, any allegation(s) of criminal conduct against a police officer should be investigated by the command where the incident is alleged to have occurred. The complaint should be managed by that command, including oversight by the command's CMT until the criminal investigation is complete. This excludes those allegations that are being (or are to be) investigated by the PSC or the PIC.

Any subsequent legal proceedings should be managed by the investigating command as with any other legal proceedings arising from an investigation by that command.

In accordance with Commissioner's Instruction 11/18, when an officer under their command has been charged with an offence, all commanders must ensure the officer in charge, investigator, professional standards duty officer or other suitably qualified person attend the court proceedings when such matters are being heard. For further information refer to Commissioner's Instruction 11/18 located on the PSC Intranet Site under *Policy & Guidelines – Workplace Management*.

## Arrest and custody issues that may arise from a criminal investigation involving a police officer

Police, administrative officers or other employees of the NSW Police Force who become the subject of some inquiry within a criminal investigation should be processed the same as members of the public.

Section 99(3) of the *Law Enforcement (Powers And Responsibilities) Act 2002 (LEPRA)* states that police **must not arrest** a person for the purpose of commencing proceedings unless arrest is necessary to achieve one or more of the following, to:

- ensure the appearance at court
- prevent repetition or continuation of the offence or commission of another offence
- prevent the concealment, loss or destruction of evidence relating to the offence
- prevent harassment or interference with witnesses relating to the offence
- prevent fabrication of evidence in relation to the offence
- preserve the safety and welfare of the person.

### IMPORTANT

**You are not permitted to arrest a person for the purpose of conducting an interview.**

### People under arrest

If it is necessary to arrest a police employee, the detained person must be introduced to the custody manager in accordance with the provisions of *LEPRA* and NSW Police Force policy.

Section 123 of *LEPRA* requires custody managers to inform detained people of their right to communicate with support people who are independent of the investigation or legal practitioners and to provide facilities to enable contact. Detained people must be informed that investigative procedures can be deferred for up to two hours so such a person can attend the place of detention and facilities can be provided so the detained person can consult with their support person or legal practitioner.

*Section 131 of LEPRA* requires the custody manager to create a record of relevant information regarding any person presented to them by investigating police.

### Voluntary attendance

The *Crime Code of Practice* provides that people who attend police stations voluntarily (i.e. not under arrest) (volunteers) are to be treated with no less consideration than those in custody e.g. offer refreshments at appropriate times. They are entitled to obtain legal advice, communicate with anyone outside the station or leave at any time.

Investigators should present volunteers to the custody manager who will create an appropriate record. The custody manager is required to inform the volunteer:

- why they are at the station and they **are not under arrest and they are free to leave**
- that they may seek legal assistance and can notify someone else they are at the station
- that if the investigating police decide the person is no longer free to leave, the investigating police are required to take the person back to the custody manager and advise that officer of the situation.

The custody manager is also required to record the name of the volunteer, the names of investigating police, the time the volunteer arrived at the station and ensure the correct time of release is entered into the custody record once the volunteer is released.

Where the volunteer's status changes to that of a person under arrest and investigating police present the person to the custody manager again, it will be prudent for the custody manager to process the person as a fresh detained person, fulfilling all requirements under Part 9 of *LEPRA*.

One example of when this situation may arise is where an officer presents as a volunteer but during questioning, investigating police decide they will be seeking permission under section 148 of the *Police Act* to proceed against the volunteer for an offence. In such a case, on forming such a view, investigating police should immediately terminate that interview and present the person to the custody manager again.

### Interviewing the subject officer

As with any suspect in a criminal investigation, a police suspect may exercise their right to silence and should not be directed to provide a statement or participate in an interview.

#### **IMPORTANT**

**Section 281 of the *Criminal Procedure Act 1986* requires that any admission during official questioning in regard to any indictable offence must be electronically recorded. (This does not apply to indictable matters that can be dealt with summarily.)**

**An admission that is not recorded electronically is not admissible unless it can be established that there was a reasonable excuse, e.g. the ERISP machine was broken or the interviewee did not consent to the interview being electronically recorded.**

## Police witness obligations during criminal investigations

The NSW Police Force and the community have an expectation that police officers will provide statements when they are witnesses to criminal offences. Providing statements and subsequently giving evidence in court is a key function of being a police officer regardless of whether or not the accused/suspect is a civilian or a police officer. In all circumstances, police should execute their duties impartially in accordance with the functions outlined in section 6 of the *Police Act* and which they have sworn or affirmed to uphold in their oath of office.

Where the investigation involves police officer conduct, police who are witnesses may be reluctant to provide a formal statement to investigators. Advice sought from the Crown Solicitor confirms that it is lawful for a senior officer to direct an officer who has **witnessed** a criminal offence to provide a formal statement in relation to the matter.

### IMPORTANT

**If an officer is reluctant to provide a statement because it might incriminate them, the officer should not be directed to provide a statement. A direction in this circumstance may not be lawful. Advice should be sought from the CMT concerning the most appropriate course of action in this instance.**

The investigator should consider the following process where a police officer, who is not the subject officer in the investigation, refuses to provide a statement during a criminal investigation.

1. If the police officer refuses to provide a statement the investigator should remind them of their responsibilities as a police officer under sections 6 and 7 of the *Police Act*, the *Code of Conduct and Ethics* and *Statement of Values*.
2. Advise the officer that if they will not voluntarily provide a statement they can be given a lawful direction to provide a statement under clause 8(1) of the *Police Regulation*.

## Support person

It is recommended that investigators, on request, permit the presence of a support person during a criminal interview provided that they do not interfere with the process.

### IMPORTANT

**It is preferable that a police officer involved in an investigation in some way does not act as welfare officer for the subject officer in the same investigation.**

## Interim risk management

Where a criminal allegation is being investigated, it is essential that commanders / managers consider the identification and application of interim risk management strategies. Interim risk management strategies are used to address the impact of the allegations on those involved in the complaint investigation and the work environment. They are not disciplinary actions. Their determination is a matter for the commander/CMT but investigators may recommend such strategies as required. Refer to the information contained on page 8 - *Taking interim risk management action*.

## Commencing criminal proceedings (section 148 Police Act 1990)

At times, complaint investigations will disclose that sufficient evidence exists to warrant prosecution for a criminal offence. In the case of a police officer, approval is required from the Commissioner (or delegate) before proceedings can be instituted against a police officer.

CPN 03/03 provides details of the relevant legislative and policy requirements in relation to this process.

In brief, if there is sufficient evidence to initiate criminal proceedings against a police officer, the investigating officer must recommend that proceedings be commenced and must seek authority to do so from the Commissioner (or delegate).

In all cases where approval to institute proceedings has been granted by a delegated officer, the PSM is required to send a copy of the written authorisation to PSC, Management Action and Workplace Services.

In addition to the requirements of section 148 of the *Police Act*, the requirements of the Protocol between the NSW Police Force, Policy Integrity Commission and the Office of the Director Public Prosecutions (ODPP) must be adhered to. A copy of the Protocol is available on both the LAW and PSC Intranet Sites.

In accordance with the terms of the protocol, where there is sufficient evidence to prefer a charge but there may be good reasons for the Commissioner's approval not to be given, advice may first be sought from NSW Police Force legal advisers.

If, as a result, it is considered that the Commissioner's **approval should be withheld**, the matter **is to be referred to the ODPP** for advice. The ODPP will provide advice as to whether there are discretionary grounds (in accordance with the ODPP policy guidelines) for the matter not to proceed.

*Section 148 Police Act Authority to Institute Proceedings against a NSW Police officer P812* form can be located on the PSC intranet site.

Note: The Commissioner's power, in respect to section 148(3) has been delegated to members occupying positions of the NSW Police Force Senior Executive Service and each Assistant Commissioner in a specialist support command (see *NSW Police Force Instrument of Delegation – Police Act 1990 and Regulation 2008*).

The role of the CMT in commencing criminal proceedings under section 148 is to:

- monitor and assist related processes
- monitor legislated and corporate timeframes (including progress towards statutes of limitation)
- continue managing staff involved
- confirm the NSW Ombudsman is notified by the delegated officer when criminal proceedings are authorised and commenced, and
- ensure c@ts.i is updated with this action.

**IMPORTANT**

**Where a matter has been investigated criminally and charges have been preferred, this is not the outcome of the Part 8A investigation.**

**A Part 8A investigation can only be finalised where a final determination has been made that the subject officer engaged in the alleged conduct. This determination may not be able to be reached while a matter is the subject of criminal proceedings as the subject officer may not have provided a version or sought to rebut the evidence gathered during the criminal investigation.**

At the conclusion of the criminal proceedings the commander / manager will need to determine whether the matter can be finalised without further departmental investigation. This may be the case when the subject officer has resigned or their employment has been terminated as a result of the criminal matter.

When criminal matters are finalised at court, the matter is to be reviewed by the CMT to determine what management action or further investigation should take place. If a conviction is recorded or the matter is proved but dismissed (section 10) the LAC should consider sustaining the criminal matter.

If the matter is dismissed or dealt with under Section 32 of the *Mental Health (Forensic Provisions) Act*, the LAC needs to determine if the issues can be sustained and/or whether further departmental investigation is necessary.

### **Suspending the c@ts.i complaint**

Where criminal charges have been preferred, the CMT will need to determine whether the complaint investigation should be suspended awaiting the outcome of the criminal proceedings. **Refer to CPN 11/12 - Procedure to suspend a Part 8A complaint investigation within the c@ts.i system.**

## Conducting a CMT managed non criminal investigation

The investigation will be managed by the command's CMT to ensure that it is conducted fairly, impartially, transparently and thoroughly. It will be subject to independent oversight and a report detailing the findings and recommendations will be provided to the NSW Ombudsman in line with the requirements of Part 8A of the *Police Act*.

Although the rules of evidence do not apply, there remains a requirement on the investigator to ensure that procedural fairness is afforded to the officer subject of the investigation. Procedural fairness, among other things requires that a person has a reasonable opportunity to respond to an allegation made against them.

## Moving between criminal and non criminal evidence based investigations

Where a criminal investigation fails to identify sufficient evidence to support the charging of an officer, a determination can be made to finalise the matter by way of a non criminal investigation.

If an investigator anticipates that it will be necessary to cease a criminal investigation during the subject officer interview, he or she should ensure that the decision to cease the criminal investigation has been approved by the CMT.

Refer to CPN 10/04 - *Admissibility of directed interviews with police officers in criminal proceedings*.

## Interviews conducted during a non criminal investigation

Interviews conducted during a non criminal investigation may be audio and/or video recorded. Audio and video recordings must have the consent of all people engaged otherwise the recording is a breach of surveillance devices legislation.

In the event an involved officer refuses to be electronically recorded, the interview should be typed or handwritten.

A NSW police officer may be directed by a senior officer to obey a lawful order. The direction may include the officer participating in an interview, answering questions or demonstrating an action that is reasonably necessary during questioning.

Investigating officers must consider the welfare of the subject officer prior to commencing any non criminal interview. Where appropriate, make allowances for fatigue or other extenuating factors that may impact negatively on the officer being interviewed. The subject officer should be provided a copy of the *Support Package for police officers interviewed in relation to a complaint*. This document can be located on the PSC intranet site under *Policy and Guidelines*.



When the investigating officer is junior in rank to the officer to be interviewed the CMT should attempt to make alternate arrangements. When this is not possible a direction signed by an officer more senior in rank may be served on the interviewee at the beginning of the process. See CPN 04/02 - *Directed interviews with Senior Officers under clause 8(1) of the Police Regulation 2008* for more detail.

### Direction given to subject officers

The direction given to police officers pursuant to clause 8(1) of the Police Regulation for an officer to comply with the departmental interview is:

*“As this is a police complaint investigation you are directed, pursuant to Clause 8(1) of the Police Regulation 2008, to answer the questions I ask you. Do you understand that?”*



**In the event the subject officer makes admissions in relation to a criminal offence whether related or unrelated to the current issues within your resolution, cease all conversations and administer the official caution to ensure admissibility of evidence in accordance with section 139 of the *Evidence Act 1995*.**

Contact your PSDO or equivalent and advise them of the admission made and the caution administered. Consideration to treating this resolution as an evidence based investigation is now required. The matter should be referred to CMT as soon as practical.

Seek advice from your PSDO or equivalent and consider:

- custody issues pertaining to the subject officer, Part 9, Division 3 *Law Enforcement Police (Powers and Responsibilities) Act 2002*
- conducting an electronically recorded interview with the subject officer in line with section 281 of the *Criminal Procedure Act 1986* requiring any admissions made to be electronically recorded.

The direction given at the conclusion of a departmental interview in regard to disclosure of information is:

*“You are directed not to disclose any information in respect of this interview to any person that you known or have reasonable cause to suspect is a witness or is otherwise involved in this investigation without my authority or a member of the CMT until the completion of this investigation. Do you understand that?”*

*I would like to advise you of the services of the Workforce Safety Command which includes the Psychology section. The police chaplaincy and external services such as the Employee Assistance Program are also available if you feel that you may require any advice or assistance. Do you understand that?”*<sup>6</sup>

<sup>6</sup> Support Package for police officers interviewed in relation to a complaint, May 2008, 12.

## Directive memorandum

A common practice for non criminal investigations is the use of directive memorandum or calling for reports from officers. Inevitably this process necessitates clarification of the response by the officer, requiring further questioning by the investigator. In these instances it is more practical to commence an interview that is handwritten, typed or audio recorded.

The memorandum outlines the allegation issue being investigated and directs the officer, pursuant to clause 8(1) of the *Police Regulation* to provide information about the issue.

If the investigator can justify the use of this tool, it is only to be used for non criminal matters according to the following guidelines.

- Multiple issues may be addressed as long as there is sufficient information to identify the incidents surrounding the complaint.
- The identity of the complainant must not be divulged, pursuant to section 169A unless authorised to do so by the Commissioner.
- The directive memorandum should be in writing with the date and time of service recorded.
- The service of directives should, as far as possible be contemporary and the police officers should be separated until each has completed their report.
- The investigating officer should properly supervise all police who are served directive memorandum to ensure there is no collaboration between them.

Any response to a directive memorandum should be accepted in the form presented, regardless of whether it contains irrelevant information or spelling and grammatical errors.

The template for a directive memorandum is available on the PSC intranet site under Forms.

## Appendix 1: Associated documents (CPNs)

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### Complaint Practice Notes (CPNs)

- 11/13 Management of information under section 163 of the *Police Act* 1990
- 11/12 Procedure to suspend a Part 8A complaint investigation within the c@ts.i system
- 11/11 Interviewing police officers when on sick leave
- 11/10 Suspending complaints where the Police Integrity Commission (PIC) take over a Part 8A investigation
- 11/09 Reviewing findings made in complaint investigation based on adverse judicial comments or findings
- 11/07 CARA Part B – disclosure of conflicts by the investigator/ resolution manager.
- 11/06 Handling complaints concerning police responses to domestic violence
- 11/05 Section 160 audits by the NSW Ombudsman and record keeping
- 11/04 Identifying anonymous complaints
- 11/03 Assessment and investigation of the safe keeping of firearms
- 11/02 Management of complaints of academic misconduct against police officers
- 11/01 Searching lockers or other receptacles within NSW Police Force premises
- 10/04 Admissibility of directed interviews with police officers in criminal proceedings
- 10/01 Managing complaints involving misuse of the NSW Police Force email system
- 08/01 Notification of certain complaints to the Commission for Children and Young People (CCYP)
- 07/10 Protection of registered sources when involved as either complainants or witnesses in complaint investigations
- 07/08 Using information from carriage service providers in complaint investigations under Part 8A of the *Police Act* 1990.
- 07/07 Advice on the dissemination of telecommunication intercept material to the NSW Ombudsman and PIC (updated 12/03/08)
- 06/01 Untruthfulness by subject officers during Part 8A investigations
- 05/05 Role of senior executive officers in Part 8A complaint interviews (please refer to CPN 04/02)
- 04/05 Conduct of internal investigations whilst court proceedings are in progress

- 04/04 Complaints made to police officers in the course of unrelated dealings
- 04/02 Directed interviews with senior officers, compliance with clause 8(1) of the Police Regulation 2008
- 03/03 Approval to institute proceedings against a police officer (updated 22/08/11)