

**REPORT  
of the  
INQUIRY  
into  
SEXUAL HARASSMENT  
and  
SEX DISCRIMINATION  
in the  
NSW POLICE**

**CHRIS RONALDS SC**  
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# 1.

## APPROACH TO THE INQUIRY

### TERMS OF REFERENCE

1.1 On 7 August 2006, I was requested by the Commissioner of Police to undertake an inquiry into certain matters.

1.2 The terms of reference are:

To review the current systems and processes applicable to:

- the management, investigation and resolution of sexual harassment and discrimination complaints;
- the support services for complainants and witnesses, and the adequacy of those services;
- the reporting process of sex-based harassment and discrimination complaints to senior management;
- the frameworks for the management and resolution of complaints including the referral of matters to external bodies;
- the management of the disciplinary proceedings in situations where criminal proceedings may be instituted;
- the provision of expert advice to the field to assist the management and investigation of the complaint;
- the timeframes for the appropriate management and resolution of complaints; and,
- provide a preliminary overview within four weeks, followed by a more comprehensive report in due course.

1.3 This report presents the methodology, the findings and the recommendations for the way forward.

## **TERMINOLOGY**

1.4 The principal descriptor used in this report is "inappropriate workplace conduct". A detailed explanation of the term and its legal context is set out in Annexure A to this report.

1.5 A shorthand version of the complex legal definitions that makes the term more immediate and accessible is:

- Inappropriate workplace conduct means any act of harassment, discrimination or victimisation.
- Such acts can be on any grounds including sex, race or disability.
- The conduct includes any physical or verbal act or non-verbal act.

## **COLLECTING INFORMATION**

1.6 It was determined that a variety of processes would be used to collect relevant information. These included:

- (a) face to face and telephone interviews,
- (b) email submissions,

- (c) document review,
- (d) case file review,
- (e) meetings with relevant senior officers.

1.7 Each of these is discussed further in the following sections.

1.8 It was decided that the interviews with sworn and unsworn officers would not be based on random selection but rather result from a specific public invitation made to all staff of the NSW Police seeking participation, including a memorandum of support from the Commissioner. It was considered inappropriate to conduct random interviews as the subject matter covered by the terms of reference raised sensitive professional and personal issues about which some people may prefer not to speak.

1.9 It is acknowledged that one possible limitation of the inquiry was the lack of randomness of the interviewees. However, the structure of the approach adopted removed any potential for invalidity. In order to overcome this potential limitation, a number of specific strategies were put in place.

1.10 Interviews were conducted with many persons within senior management, including the Commissioner, all Region Commanders and some Local Area Commanders.

- 1.11 A State Wide Message from the Commissioner and Chris Ronalds SC was sent out in September 2006. A copy of that Message is Annexure B.
- 1.12 An external confidential email system was set up for staff to contact the investigators to request an interview or send a submission.
- 1.13 In order to encourage participation by the widest possible range of sworn and unsworn employees, participants could elect to be interviewed by telephone or in person.
- 1.14 Where interviewees referred to specific incidents which had been the subject of an internal or external investigation or review, those files were later reviewed in order to ensure the veracity of the account given. Where interviewees referred to specific policies or practices within the NSW Police, research and further inquiries were made.
- 1.15 Additional statistical data was obtained from the NSW Police on the incidence of sexual harassment and sex discrimination complaints to external agencies.
- 1.16 A literature review of previous reports commissioned by the NSW Police relating to the incidence sex discrimination and harassment was undertaken. A wider review of research undertaken by the Australasian Centre for Policing Research (ACPR) concerning either specifically or tangentially sex discrimination and/or sexual harassment was undertaken. The

data underpinning these reports provided a wider representative pool to compare with the data collated as a result of this inquiry.

- 1.17 This comprehensive range of data was carefully analysed and reviewed. The results of this process form the factual foundation to the findings and recommendations in this report.

### **Interviews – Face to Face and Telephone**

- 1.18 A program of personal interviews was structured to provide staff in all Regions with an opportunity to meet with Chris Ronalds SC and to discuss matters relating to this inquiry on a confidential basis. Almost half of the interviews were conducted by telephone at the request of participants.

- 1.19 There are various reasons for employing this strategy. One is that telephone interviews are less personally engaging and sometimes when such personal matters as experiences of harassment and discrimination are being discussed, that extra level of removal between subject and interviewer provides a safety zone for the participant. Also, it is often more efficient and productive to spend an hour on the telephone than add travel time to the interview process. Some interviewees had child care responsibilities that limited their opportunity to attend for a personal interview.

- 1.20 A direct request was made to all Region Commanders for their assistance in setting up the interviews at a venue away from and not visible to the local police stations. All regions and specialist



commands located an independent interview forum such as a PCYC, a TAFE college or other government department area. The staff in all Regions who worked with the inquiry were consistently helpful and encouraged as many staff as possible to come forward for interviews.

1.21 A structured interview format was developed and administered to ensure consistency in the information collected. A copy is Annexure C to this report.

1.22 This interview format was used for both telephone and face-to-face interviews. A total of 84 interviews were conducted. 44 of the 84 interviews were done face-to-face, 40 were done at the request of the participant by telephone. A breakdown of these statistics is set out in the table below:

**TABLE 1.1: INTERVIEW PROCESS**

<b>Interview format</b>	<b>Female Sworn/ (Unsworn)</b>	<b>Male Sworn/ (Unsworn)</b>	<b>Total</b>
Face to face	25 (6)	10 (3)	44
Telephone	25 (4)	10 (1)	40
Total	60	24	84

1.23 All staff, not only sworn officers, was encouraged to participate in the inquiry. As is illustrated in Table 1.1, 14 of the 84 participants were unsworn staff.

1.24 An analysis of the demographics of the interviewees showed that the pool of interviewees was largely representational.

1.25 There are currently 3736 female sworn officers in the NSW Police. They represent 26% of sworn officers. Whilst this representation may seem small compared with other organisations, this proportion has almost doubled since 1995, when women were only 13.2% of NSW police officers.<sup>1</sup>

1.26 The majority of female sworn officers are constables or senior constables, being 82% of the total of all female sworn officers. Few of them are represented in the more senior ranks.

**TABLE 1.2: REPRESENTATION OF WOMEN POLICE OFFICERS BY RANK IN 2005<sup>2</sup>**

Rank	Women	Female % of Total	Total
Senior Executive Officer	2	11%	19
Chief Superintendent/Superintendents	11	9%	120
Chief Inspector/Inspectors	59	9%	645
Senior Sergeants/Sergeants	396	15%	2701
Senior Constables/Constables	3059	30%	10356
Probationary Constables	209	27%	787
<b>Total:</b>	<b>3736</b>	<b>26%</b>	<b>14628</b>

1.27 There has been a slow increase in the proportion of women in senior ranks. By way of comparison, Table 1.3 sets out the number of women by rank in 1995<sup>3</sup>.

<sup>1</sup> Sutton, J., 'Women in Policing - A Study of New South Wales Police' at page 4, which makes reference to Tynan, M., 'Police unions and women police: The perfect couple?', in Collins, A M., *Women in Policing* (Brisbane: Griffith University).

<sup>2</sup> Source: *Human Resource Strategy and Equity, Annual Report Information 2005-2006*.

<sup>3</sup> Sutton, note 1, at page 8.

**TABLE 1.3: REPRESENTATION OF WOMEN POLICE OFFICERS BY RANK IN 1995**

Rank	Women	Total
Commissioner		1
Deputy Commissioner		1
Senior Asst. Commissioner		1
Assistant Commissioner	1	9
Chief Superintendent	2	35
Superintendent	-	57
Chief Inspector	-	94
Inspector	4	298
Senior Sergeants	6	479
Sergeant	59	2156
Senior Constables	1016	7191
Constable	401	1841
Probationary Constables	225	855
<b>Total:</b>	<b>1714</b>	<b>13018</b>

1.28 Consistent with the 2005 overall representation of women, the majority of females interviewed in the inquiry were at probationary constable level (11), constable level (10) and senior constable level (23). A statistical analysis of the interviewees, by rank, is set out in Table 1.4.

**TABLE 1.4: GENDER AND RANK OF POLICE OFFICERS INTERVIEWED**

Gender	PC <sup>4</sup>	C	SC	S	I	Total
M - I <sup>5</sup>	4		3	3		10
M - T <sup>6</sup>		2	3	3	2	10
F - I <sup>7</sup>	5	4	11	4	1	25
F - T <sup>8</sup>	2	4	12	5	2	25
<b>Totals</b>	<b>11</b>	<b>10</b>	<b>29</b>	<b>15</b>	<b>5</b>	<b>70</b>

<sup>4</sup> PC - probationary constable, C - constable, SC - senior constable, S - sergeant, I - inspector.

<sup>5</sup> M - I denotes number of men who attended face-to-face interviews.

<sup>6</sup> M - T denotes number of men who participated in telephone interviews.

<sup>7</sup> F - I denotes number of women who attended face-to-face interviews

<sup>8</sup> F - T denotes number of women who participated in telephone interviews.

1.29 The interview process, whether personal or by telephone, produced a wide range of information across the terms of reference. Interviewees were consistently frank about their experiences, whether as a victim or a respondent or with some other involvement in the process. Their candour greatly assisted the inquiry to ascertain the real issues and barriers to a safe and efficient working environment for all staff in the NSW Police.

1.30 The willingness of the interviewees and those participating by email to come forward and share their experiences in this inquiry greatly contributed to the rigour of the report and the methodology provided a unique opportunity to ascertain the various complex issues that need addressing and to determine where the system was operating at a level considered to be appropriate to meet all legal requirements and staff needs.

### **Email submissions**

1.31 A confidential email address was established at [policeinquiry@counsel.net.au](mailto:policeinquiry@counsel.net.au). The invitation to send a confidential email to the inquiry was a successful avenue for reaching staff.

1.32 In total, 118 emails were received. Some of these emails requested telephone interviews.

1.33 The profile of those sending emails was:

- (a) employees, both sworn and unsworn, making a written submission only, often attaching secondary documentation in support, and
- (b) employees, both sworn and unsworn, making a written submission and having a telephone interview also. The majority of these employees were interviewed and their numbers are included in the interview statistics.

1.34 Of the 118 emails received, there were numerous emails from management responding to our requests for files, statistics and other documentation. Accordingly, after removing these management emails and other general comments, there were approximately 40 emails, received from 20 women and 20 men, who made substantive submissions and who did not participate in the interview process and were not acting in any management capacity.

1.35 All of those submissions have been reviewed and included in the data which forms the basis of this report.

1.36 Interviews were conducted at four Sydney venues and at Goulburn, Nowra, Wollongong, Narrandera, Newcastle and Dubbo. Proposed visits to Bateman's Bay, Coffs Harbour and Armidale were cancelled due to a lack of possible interviewees.

1.37 In total 47 police officers and civilians, who work in the metropolitan area were interviewed. A total of 31 interviewees

work in country areas and 6 in regional areas. Table 1.5 sets out these statistics.

**TABLE 1.5: LOCATION OF INTERVIEWEES**

Gender	Sworn/Unsworn	City	Country	Region	Total no of interviews
F	Sworn	30	15	5	50
F	Unsworn	6	4		10
M	Sworn	9	11		20
M	Unsworn	2	1	1	4
<b>Total</b>		<b>47</b>	<b>31</b>	<b>6</b>	<b>84</b>

### **Document review**

1.38 A wide range of Police policies and manuals were perused and these are referred to at relevant points in the report.

1.39 In broad categories, this review included:

- (a) a consideration of the current and previous discrimination and sexual harassment policies,
- (b) the Annual Report information for 2005-2006 and 2004-2005,
- (c) previous reports concerning sex discrimination and sexual harassment in New South Wales Police,<sup>9</sup>
- (d) relevant policies relating to the internal witness support program, the complaints management processes, internal

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<sup>9</sup> See Annexure D for Bibliography.

## **Case file reviews**

- 1.41 A close review was conducted of the case files of some sexual harassment cases which have been investigated by the NSW Police.
- 1.42 Numerous files, relating to complaints which interviewees had made, were reviewed in order to test the veracity of the complaints made.
- 1.43 As a result of interviews with Region Commanders, they provided copies of relevant case files in their areas which related to complaints of sexual harassment and discrimination.
- 1.44 In addition, the NSW Ombudsman's office provided numerous case files which illustrated the general treatment of sex discrimination and sexual harassment.
- 1.45 These file reviews enabled a more comprehensive understanding to be gained about the way complaints of sex discrimination and sexual harassment are handled by the NSW Police and to gain a greater insight into the outcomes of these complaint handling procedures.

## **Meetings**

- 1.46 A number of meetings was held with relevant senior officers and with middle level managers involved in the operation of the NSW

grievance procedures and the Internal Review Panel procedures,

- (e) documentation from the New South Wales Ombudsman's office containing statistical data about relevant complaints received, case files, relevant policies of the Ombudsman's procedures concerning police complaints, and
- (f) documentation from relevant committees within the NSW Police concerning EEO, staffing and complaint handling reviews.

1.40 There are a number of previously published comprehensive reports which examine the incidence of discrimination and/or harassment in the NSW Police and elsewhere in Australia.<sup>10</sup> Those reports were prepared by:

- (a) external consultants who have been specifically commissioned by the NSW Police,
- (b) the Australasian Centre for Policing Research, or
- (c) academics with an interest in policing.

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<sup>10</sup> See Annexure D for Bibliography.



Police, including in the Professional Standard Command and the Human Resources areas across NSW.

1.47 These meetings were conducted in order to provide managers with a complete understanding of the parameters of the inquiry and to enlist their support in communicating the projects to their staff. As part of these interviews, managers and senior ranking officers were given an opportunity to provide any information, data or documentation which they considered would assist the inquiry. The majority of these interviewees provided extensive statistical information, relevant case files, anecdotal evidence and advice. When issues were raised by other participants in the inquiry, relevant managers were asked to comment and provide information where it was considered useful and relevant.

## **RECENT DEVELOPMENTS**

1.48 On 5 September 2006, the Commissioner announced some changes to the Commissioner's Advisory Panel and the Internal Review Panel. A Mandatory Referral Policy was instituted that requires the Commissioner to review all panel recommendations for confirmed police officers. There are nine categories of conduct, including "professional distance issues" and "sexual harassment and sexual misconduct issues". This will ensure that there is consistency in decision making and that the Commissioner is aware of all such matters and the facts and circumstances of each one and the penalty to be imposed. This represents an important change in monitoring and controlling the outcomes of sexual harassment matters. It should eliminate

the difficulties from one of the findings as to the variations in outcomes and the perceptions that such variations can create within the organisation.

- 1.49 In a letter dated 20 November 2006, the Assistant Ombudsman wrote to the Commissioner of Police in relation to their monitoring of trends in complaint handling by local commands. The letter relevantly stated:

In the 12 months to 30 September 2006, 20 local commands demonstrated a high quality to their investigations, with at least 95% of matters completed to a satisfactory standard. 14 commands completed matters with no investigative or management deficiencies identified.

Overall, 90.2% of all complaint investigations conducted were found to be satisfactory by our office, some 1,993 of 2,208 completed investigations. 16% of category 1 matters (56/350) were not assessed as satisfactory on first review by the Ombudsman. However it is pleasing that 90% of investigative deficiencies identified by the Ombudsman were remedied by relevant commands.

## **CONCLUSION**

- 1.50 Current research and reports relating to the incidence of sex discrimination and sexual harassment in the NSW Police can be placed in two broad categories (a) empirical research from the late 1990s and (b) broader organisational and behavioural studies which consider tangentially the issues of this inquiry. Prior to this inquiry, no empirical research has been undertaken

since the implementation of the *Gender Based and Sexual Harassment Policy* and the *Internal Grievance Procedures*. Further, there has been no specific research or analysis undertaken with respect to the compliance of the NSW Police with discrimination law. There has been no large scale review of the internal complaints process and its compliance with and achievement of the NSW Police's obligations under discrimination law. Also, there has been no research undertaken in relation to the management of formal or informal complaints and their referral to external agencies.

1.51 This inquiry has traversed a range of key issues that are vital to the health and wellbeing of the NSW Police, its members and the community in general. Senior management recognised the need to comprehensively review these fundamental issues to ensure that best practice policies and procedures are in place and operating effectively at every level of the organisation, in the interests of providing a safe and productive working environment for all staff.

1.52 Chapter 2 sets out the key findings of this inquiry. Chapter 3 sets out a series of recommendations that provide a way forward. These recommendations are designed to build upon previous developments and ensure that a sound organisational structure is in place to allow the full and proper implementation of all harassment and discrimination laws supported by an internal complaint system with the highest integrity.

## **2.**

### **INQUIRY FINDINGS**

- 2.1 The analysis and review processes of the inquiry permitted some major findings to be made and these are set out below.

#### **SAFE WORKING ENVIRONMENT**

- 2.2 The NSW Police has an obligation to provide a safe working environment and conform with discrimination and harassment laws and occupational health and safety laws. To fail to do so can be a breach of either or both laws.
- 2.3 Inappropriate workplace conduct within the NSW Police can provide a poor working environment. This environment can be a hostile one for some staff, especially for victims.
- 2.4 Inappropriate workplace conduct in the form of discrimination, harassment and bullying is occurring within pockets of the NSW Police.
- 2.5 There is a lack of recognition by some police officers and other staff that they have a duty to provide a safe working environment for themselves and others.
- 2.6 In some areas, errant officers are being protected rather than being reported. There is a necessity to communicate throughout

the whole organisation that errant officers must not be protected and that victims must be supported.

2.7 The current organisational culture is not facilitating a working environment which is consistently safe and which fully conforms with discrimination and harassment laws and occupational health and safety law. A significant and comprehensive change to this culture must occur. The principle features needing to be addressed to achieve the necessary change include:

- (a) developing the organisational capacity to identify and address conduct that is unlawful under discrimination and harassment laws in a timely and effective manner,
- (b) sexual harassers in particular must be identified and brought to account and the prevailing culture in some locations that serves to protect them must be eliminated,
- (c) the culture of silence and refusing to "dob in a mate" must be eliminated,
- (d) the willingness of some officers to ignore the inappropriate conduct of one person or a small group of people must be shown to be unacceptable,
- (e) the difficulties experienced by probationary and junior constables to speak out against inappropriate treatment they may be afforded by more senior officers must be resolved,

- (f) the refusal to categorise conduct as unlawful or inappropriate and to mislabel it as "workplace conflict" or a "personality clash" without reference to any relevant policy framework or direction must be resolved and not cast the responsibility on the victim to resolve it rather than requiring the perpetrator to cease the conduct,
- (g) the pervasive but misguided view that it is not possible to make any findings of misconduct or serious misconduct where there is only the word of the complainant and the denial of the perpetrator must be corrected,
- (h) the perception by some police officers that senior management is not interested in these issues and that there has been a failure to implement effective strategies and support mechanisms must be altered,
- (i) strong leadership from all senior managers that demonstrates an understanding of the obligations and a commitment to the elimination of any inappropriate conduct within the workplace must occur.

2.8 There is an absence of a co-ordinated, comprehensive and ongoing training program on discrimination and harassment laws and their impact in the workplace.

- 2.9 There is an inadequate level of knowledge and understanding by a significant number of officers of the conduct which constitutes sex discrimination and sexual harassment.
- 2.10 There is an absence of clearly defined, objective standards on the components of acceptable workplace conduct.
- 2.11 There is an absence of specialist advice and assistance available to all levels within the organisation, particularly for management and victims. There is no central point to contact for speedy, accurate and reliable advice or assistance. There is a paucity of experienced investigators with knowledge of the specific issues relating to discrimination and harassment inquiries.
- 2.12 There is a notable inconsistency in the decision making processes across the organisation which permits known perpetrators to avoid the consequences of their serious misconduct. The absence of a central resource denies victims and managers access to professional and prompt advice and assistance and permits a lack of appropriate management response to complaints and for victimisation to occur.
- 2.13 While NSW police officers receive training focussed on criminal law, they receive little or no training on the civil law system and their own rights and responsibilities. This lack of information in turn leads to some negative attitudes in relation to discrimination, harassment, victimisation and other inappropriate work conduct.

## **SEXUAL HARASSMENT**

- 2.14 It is beyond dispute that there are serious incidents of sexual harassment still occurring with the NSW Police. Within the Force, there exist some serial sexual harassers. Each sexual harasser creates a hostile work environment that has a negative impact beyond the victim or victims.
- 2.15 The incidence of sexual harassment within the NSW Police appears to be no more pervasive than other large public sector para-military organisations which operate within an hierarchical command structure.
- 2.16 The prime cause of complaint of sexual harassment is from women police officers against male police officers and to a lesser extent, female unsworn staff against sworn and unsworn males.
- 2.17 The most common circumstance giving rise to individual acts of sexual harassment is in isolated workplaces which are out of external and supervisory control, for example, a male and a female officer in the truck or a lone woman in a police station or specialist command.
- 2.18 Pornographic images and graphic sexual banter are inappropriately viewed by some officers as acceptable conduct, particularly male constables. The leadership against such conduct needs to be strengthened. Sexually explicit videos and photographs are stored on mobile phones and inappropriately shown around within the workplace. This reflects changing



technology and also an attempt to avoid monitoring and bars on work computers to access pornography.

2.19 There are a number of identified acts of sexual harassment that are condoned by management and colleagues. Failure to act on information related to sexual harassment and known harassers occurs too often, with a range of excuses offered to protect the harasser. As a consequence, the harasser is not stopped. This is unacceptable at every level.

2.20 Gaps in the knowledge and understanding of discrimination and harassment laws and the related legal requirements by officers and managers result in failures to meet the employer's obligations under that law and OH&S law.

2.21 The outcomes of some disciplinary actions for proven acts of sexual harassment were lower than the accepted standard and dismissal did not occur when it was the most appropriate penalty.

## **SEX DISCRIMINATION**

2.22 Sex discrimination was revealed most commonly in the form of:

- (a) opposition to women working part-time following maternity leave,
- (b) attitudes towards women generally,

- (c) derogatory and negative attitudes to police women creating substantial barriers to the promotion of women and access to relief positions.

2.23 Despite the existence of numerous policies relating to pregnancy and part-time work, carer's guidelines and flexible work options, there is insufficient information readily available and easily accessible in these policies to make them practical and useful.

2.24 The allocation of part-time work and the shift arrangements for parents with child care responsibilities continues to be controversial due to the limitations of filling positions and some perceptions of difficulties with job sharing arrangements. A refusal or reluctance to offer effective job sharing reduces the employment opportunities for the part-time officers and may create limitations on the shift allocations to meet full roster needs. Often, fixed shifts are refused but they may be essential for a police officer to continue working part-time for a period and then return to full-time work.

2.25 The strong negative views held by some officers towards part-time officers, most of whom are women, sustain discriminatory views about women generally and is seen as a reason that women are not effective police officers. As the majority of women recruited are under age 30, this is a problem that needs urgent attention to resolve the various tensions competing between reasonable requests for part-time work and roster demands. Women quitting because there are inadequate part-

time work opportunities are a loss of trained personnel and deny those women the career they have chosen.

- 2.26 It is curious that there is such a persistent negative view about women police officers working part-time given the relatively small number of women working part-time. There are currently 796 women working part-time in the NSW Police, as at 14 November 2006. Similarly, despite repeated complaints about accommodating maternity leave and pregnant police officers, there are currently only 193 police officers on maternity leave.
- 2.27 Negative attitudes towards women arise where women are not seen as "real" or "equal" police officers as they are not strong enough, tough enough, fit enough or tall enough and so are viewed as unreliable backup.
- 2.28 There is a regular use of derogatory and sexually explicit terms by some male officers when referring to women both in the community and as co-workers. This creates an alienating environment for female co-workers who are estranged from such officers as they find the language offensive and feel belittled by it.
- 2.29 These negative attitudes stultify the paths to promotion, including access to mentoring, supervisory and relief positions and training opportunities. Women report having to prove themselves more often and more rigorously than their less experienced male colleagues before being offered such opportunities.

2.30 All senior women advised that they had had a male mentor at critical parts of their career who encouraged and supported them and gave them important career advice. The absence of such support seems to have a negative impact on a female officer's career prospects.

### **PREGNANCY DISCRIMINATION**

2.31 There is a lack of proper risk assessment and risk management for pregnant women leading to their early and unnecessary removal from a full range of duties immediately after the advice to their supervisor of their pregnancy.

2.32 There is a lack of clarity among senior managers about the employer's obligations to an employee under the occupational health and safety law and the discrimination law and the way to manage them.

### **OTHER DISCRIMINATION**

2.33 Some incidences of discrimination on the ground of race, homosexuality, marital status and disability were reported. No comprehensive findings on these grounds can be recorded as the primary focus of this inquiry was on sexual harassment and sex discrimination.

## **VICTIMISATION**

2.34 Victimisation is a prevailing behaviour in some pockets of the NSW Police that arises from the accepted culture of discrimination and harassment.

2.35 Complainants suffer from ostracism, bullying, stalking, verbal abuse and intimidation by their colleagues who support the perpetrator. Importantly, they report that these events have a more severe impact on their professional and personal lives than the incident giving rise to the complaint. These acts of victimisation are carried out by a range of people within the workplace, not just the original perpetrator.

2.36 Where a complainant is transferred and another officer calls ahead to "warn" the new station about her, then the act of victimisation takes the form of organisational detriment. The complainant is unable to prevent this occurring and frequently does not know it has occurred until some time later. It leads to a frosty reception at the new station and a continuation of the intimidation and stigmatisation that occurred initially.

2.37 Fear of victimisation is the major deterrent to victims lodging a formal complaint of sexual harassment and to a lesser extent of sex discrimination. This fear of victimisation is an accurate perception of the reaction which occurs when a complaint is made.

## **BULLYING**

2.38 There is a culture of bullying within parts of the NSW Police and a failure of management in some areas to deal with the underlying causes and issues. Women complain of bullying often associated with gender issues of discrimination or harassment. Men complain of undue work scrutiny, verbal abuse, inappropriate comments, aggressive behaviour, intimidating conduct and physical interference.

2.39 Bullying should not be confused with the lawful directions given within the hierarchical, para-military system of command operating within the NSW Police. Whilst unquestioning compliance with lawfully given directions is an integral part of the command structure, this is not an excuse for inappropriate actions of humiliation or unwarranted criticism of work performance.

## **COMPLAINT PROCESSES**

2.40 There is a widespread lack of knowledge and understanding of the formal complaints system and the role of the NSW Ombudsman and the Police Integrity Commission. Little training is directed to those issues and there is a lack of focus within individual workplaces on the issues.

2.41 Some genuine complaints are not raised formally or informally due to fears of victimisation. Some are raised informally with a colleague, supervisor or duty officers. Some are lodged as formal

complaints and then came within the operation of the statutory complaint system. The formal complaint mechanism is the least used option with only a small minority of complaints going down that path.

2.42 Using the informal complaint process means that there is no recording of the issue being raised and can permit a retaliatory complaint to be made against the victim by the harasser as a pre-emptive move. A retaliatory complaint is commonly a false work performance complaint against the victim. This places unfair scrutiny on the victim and relieves all focus from the harasser and is a mechanism to avoid the consequences of a complaint of sexual harassment. There is a culture of retaliatory complaints and an inability on the part of management to recognise their status or the motivating factors that led to them being made.

2.43 There is a persistent failure to maintain confidentiality of the contents of a complaint, especially a sexual harassment one, and the identity of the complainant and the perpetrator. Breaches of confidentiality occur at all levels. Such breaches of a formal or informal complaint sometimes result in the victim being subjected to derogatory and negative responses from colleagues and management.

2.44 There is an obligation to report offences by a police officer under regulation 20 of the *Police Regulation*. When a junior police officer does report to someone more senior but without any management status, then repeating the complaint up the chain

of command sometimes results in a reinterpretation or downgrading of the complaint and its impact on the victim. Breaches of confidentiality were identified at each step of the way.

2.45 Where there is a formal investigation, then the complainant is often not advised of the outcome at all or where the process has reached or when it is considered to be completed. There is a lack of suitably trained and experienced investigators, particularly with an understanding of the subtleties of sexual harassment. On appointment, there is a failure to ensure impartiality when selecting an investigator. Investigators with past close working or personal relationships with the harasser have been selected when this was plainly an unsuitable choice.

2.46 There are significant delays in the whole complaint process including the undertaking and then completing the investigation and any management decisions on disciplinary outcomes. Any involvement of discrimination or industrial relations external review agencies can add further delay.

2.47 In many cases where there is a disciplinary outcome imposed on a perpetrator, this outcome is not an appropriate sanction for the serious misconduct established. Knowledge of the inadequacy of outcomes is a deterrent to making a formal complaint but is not a deterrent to committing such acts.



## DISCIPLINARY PROCESSES

- 2.46 Under Part 9 of the *Police Act*, the Industrial Court of NSW and the NSW Industrial Relations Commission exercises power pursuant to section 181F. Section 181F(3) requires the applicant's interests and the public interest including maintaining the integrity of the NSW Police to be taken into account when reviewing the Commissioner's decision to dismiss an officer.
- 2.47 There are clear discrepancies between decisions made by the NSW Industrial Relations Commission regarding the dismissal of police officers and the Police Commissioner's view of those same matters. On some occasions, where the Commissioner has formed the view that he does not have confidence in an officer's suitability having regard to that officer's "competence, integrity, performance or conduct", this decision has been overruled by the NSW Commission.<sup>11</sup> On other occasions, NSW Commission decisions involving different employers who dismissed an employee for acts of sexual harassment or possession of pornography on work computers have been set aside also.<sup>12</sup>
- 2.48 These controversial decisions have had an impact on decision making within the NSW Police. They have led to cautious decisions being made, where dismissal should have been the penalty but a less serious sanction was imposed. Compromises

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<sup>11</sup> See, for example, *Commissioner of Police v Evans* [2006] 153 IR 144, [2006] NSWIRComm 170; *Harrison v Commissioner of Police* [2006] NSWIRComm 319.

<sup>12</sup> See, for example, *Budlong v NCR Australia Pty Limited* [2006] NSWIRComm 288, *Miller v NSW Attorney-General's Department* [2006] NSWIRComm 322 (now under appeal), *Lane v Northern Sydney Central Coast Area Health Service* [2006] NSWIRComm 380.

are made and deals are negotiated when a clear statement of disapprobium of the conduct is needed to reinforce a clear message throughout the workforce that such conduct is not acceptable and will lead to dismissal. This approach has led to a view amongst some police that senior management do not consider that acts of serious and repeated sexual harassment or viewing and distributing graphic pornography as warranting dismissal.

- 2.49 This general perception needs to be corrected with consistent and appropriate penalties applied when the circumstances warrant them, including dismissals for serious misconduct. A perceived lack of support for the Commissioner's decisions by an external agency should not provide the rationale for not making such decisions. Rather, it should lead to a careful review of the conduct of such proceedings to ensure all relevant evidence is properly presented and tested during the conduct of a hearing.
- 2.50 One factor taken into account by the NSW Industrial Relations Commission when weighing the various issues is references from senior managers supporting the reinstatement of the police officer. These references are in direct and obvious contradiction to the Commissioner's position on the dismissal of that officer. This leads to different standards being exposed and permits obfuscation and invalid arguments about inconsistency to be presented.
- 2.51 Currently there is potential for a police officer to argue that she or he was unaware that their serious misconduct could result in

dismissal. There must be clear and unequivocal leadership demonstrating that this is not a valid argument. There needs to be a clear "line in the sand" drawn by the Commissioner and publicly supported by all senior managers that there is zero tolerance of all forms discrimination, harassment, bullying or victimisation.

- 2.52 Precise and clear wording of Codes and policies consistent with a zero tolerance statement is needed to ensure that no contentions can be successfully raised in any Commission proceedings that the terms of the Codes and policies were equivocal or did not obviously or precisely cover the conduct in question. This prevents any external agency reviewing any employment decision from discounting the terms and intentions of the Codes and policies.

## **SUPPORT SERVICES**

- 2.53 A small number of interviewees reported regular and close contact with staff from the Internal Witness Support Unit over lengthy periods. Most found this service to be a useful method of discussing their problems with a person detached from both their personal and professional lives.

- 2.54 The Employee Assistance Program is another mechanism available to support victims and was used effectively by some.

2.55 The Peer Support Officers are available to provide assistance and advice. Interviewees did not report any substantial use and did not identify any advantage to this system.

## **CODES AND POLICIES**

2.56 There are a range of Codes and policies covering the areas of discrimination, harassment, complaints and grievances. The distinction between policies and codes appears to be that the policies are more detailed and the codes provide a short and accessible summary of the obligations.

2.57 The *Gender Based and Sexual Harassment Policy* is a misnomer. The title is confusing and misleading. The primary focus of the policy is sexual harassment. The reason for the lead title being "gender based" is unknown and mystifying. It means that any person seeking information on sexual harassment on the intranet cannot locate the policy and this absence of a readily available policy occasioned many critical comments during this inquiry. Hiding it under the letter "G" has not assisted in its dissemination. The reference to sexual harassment being criminal conduct feeds into a misperception about sexual harassment being limited to criminal conduct. A significant omission is the failure to state sanctions arising from a breach of the policy.

2.58 Curiously, there is no discrimination policy. This is indeed curious as compliance with discrimination law is a fundamental legal responsibility for the organisation as an employer and the

provider of services but in an area replete with many words, none are devoted to this important issue.

2.59 There exists an equal opportunity policy and it tangentially covers the discrimination grounds.

### **Education Services Codes**

2.60 As well as existing policies, there are three Codes of Conduct that apply to educational services only.

2.61 The three Codes are:

- (i) Code of Conduct for CEP students (pre-attestation),
- (ii) Code of Conduct for Course Participants,
- (iii) Code of Conduct for Education Services Staff.

2.62 The history of the Codes reflects the difficulties that have been encountered over the years at the Police College at Goulburn with maintaining the appropriate relationships between students and teachers.

2.63 Use of the term "professional distance" has created a smoke screen that has permitted errant police officers to contend that they did not understand the reach of the Code. They argued that the term did not apply to course participants post-attestation or to students for whom they no longer had assessment

responsibilities. Some argued that a student who was in their class but whom they did not assess was not covered by the Code requirements. This is obviously an untenable proposition.

## **TRAINING**

2.64 There is no central planning and delivery of training on discrimination and harassment laws and related complaint mechanisms. Training decisions are made at the local level based on the perceptions of need at that location. The lack of understanding of these laws throughout the NSW Police reflects this lack of a co-ordinated approach within the organisation to ensure relevant and practical information is delivered regularly across all regions and specialist commands.

2.65 There is a great variation in the amount, duration and content of training conducted with respect to discrimination and harassment. At one end of the spectrum, there are a significant number of Commands who have conducted no discrimination or harassment training of any kind in the last five years. At the other end, there are Commands which have conducted specific training, relating solely to discrimination and harassment, lasting between one hour and one day.

2.66 The majority of Commands have conducted short training sessions (in a Six Minute question and answer sessions) relating to sexual harassment or have covered some issues relating to sexual harassment and discrimination in other mandatory sessions. Some Commands referred to covering issues relating

to sexual harassment and discrimination as part of induction courses. The advanced diploma and specialised courses for sergeants, detectives, investigators and field training officers contain some aspects of this subject, conducted either at the Command itself or at the Westmead campus.

2.67 To the extent that there is training, there is much more sexual harassment training than discrimination training. The training relating to the complaints process does not necessarily include specific training in relation to complaints in a discrimination or harassment context.

## **EDUCATIONAL SERVICES**

2.68 There were incidents of sexual harassment by teaching staff of students and co-workers at the Police College at Goulburn. Previous investigations were inadequately conducted and disciplinary outcomes, if any, were at the lower end of the acceptable scale.

2.69 At the Police College at Goulburn there are specific issues relating to harassment and discrimination which need to be addressed urgently, and these include:

- (a) a failure to properly educate policing students about discrimination and harassment laws and complaint procedures,

- (b) inadequacy of the existing Codes of Conduct for police educators, administrators and students,
- (c) a failure to provide continuing education to serving police officers about discrimination and harassment,
- (d) a prevailing attitude of acceptance of sexual harassment and discrimination towards police officers and women in particular,
- (e) a failure to discipline and adequately sanction unlawful or inappropriate conduct,
- (f) an erroneous and incorrect belief that students and teachers can engage in sexual relationships at some appropriate level because they are consenting adults,
- (g) the potential for exploitation and opportunism by teachers with students at the College,
- (h) a failure to adequately train students in their obligations to adhere to the requirements of lawful conduct to comply with discrimination and harassment laws.

2.70 There have been some sexual relationships between lecturers and students. There needs to be a complete bar on such relationships until the period of studentship is complete. Given the continuing assessment in the police station during the period that an officer is a probationary constable, this complete bar



must extend to any officer involved in working with, supervising or assessing the work of a probationary constable.

- 2.71 There is a misplaced perception that lecturing is a low status job for a police officer. This leads to recruitment difficulties for high calibre and experienced staff. One mechanism to address this problem would be to elevate the status of these positions, by increasing the opportunity for one year contracts which enhance promotional opportunities.

## **CONCLUSION**

- 2.72 The findings in this chapter form the basis of the recommendations set out in Chapter 3.

## **3.**

### **THE WAY FORWARD**

- 3.1 This chapter sets out a series of recommendations to address the main issues and areas of deficiencies identified during this inquiry.
- 3.2 The term "inappropriate workplace conduct" is used in the same manner as proposed in chapter 1.

#### **LEADERSHIP**

- 3.3 An essential element to the recommendations set out below is the vital component of leadership. This must come from the top echelons of the organisation and be consistent throughout all levels of senior management, centrally and in all regions and specialist commands.
- 3.4 It is vital that the Commissioner continues to demonstrate his commitment to the elimination of all forms of harassment, discrimination and victimisation within the NSW Police. He must be actively and publicly supported by all other commissioned officers.
- 3.5 There is a need for consistency across the organisation in the manner in which the issues are dealt with and in the approach

taken in disciplinary matters arising from complaints and the outcomes. Where there are approaches that vary in action and outcome, then there is an organisational failure to address the issues comprehensively and soundly.

- 3.6 The leadership needs to demonstrate that there is an effective complaints system in operation that operates ethically and with integrity. It needs to demonstrate that complainants can have confidence in the manner in which their issues will be resolved, including the provision of a confidential process that is maintained properly, an independent and rigorous investigation process and an appropriate outcome.
- 3.7 The existing culture of demonising and ostracising the victim while protecting the harasser needs to be clearly shown as not the acceptable workplace conduct for any person employed by the NSW Police. Reforming this culture is critical to maintaining a high integrity complaints system in which all sworn and unsworn staff and the general community can have confidence.
- 3.8 **Recommendation #1:** All officers having rank of Superintendent and above should have a key performance indicator relating to the promotion and enforcement of the Code of Conduct and Ethics and appropriate workplace conduct. There should be active measures within each workplace and a requirement for demonstrated activities, not just reliance on organisational documents. The achievement of this key performance indicator should have an impact on promotion decisions and incremental levels and salary reviews.

- 3.9 **Recommendation #2:** There should be a system of public acknowledgement for those police officers and civilian staff who lead by example in demonstrating the most productive ways to make the Code of Conduct and Ethics work effectively and who provide and maintain a safe working environment. This could include a system of award(s) for "Champions of the Code" or some similar campaign. A particular insignia or colour band or ribbon may be an appropriate symbol.

### **SAFE WORKING ENVIRONMENT**

- 3.10 Many police officers work in difficult and demanding areas and are required to deal with violent scenes and tragic outcomes, including deaths and horrific injuries. Such events cause distress for many officers and present personal and professional challenges in coping with their own reactions and those of others working with them.
- 3.11 In such a demanding environment, it is essential that their own workplace is a safe one where there are no issues arising from difficult or compromised work relationships.

### **SETTING UP A SPECIALIST UNIT**

- 3.12 In order to provide an effective resource within the organisation with a dedicated focus and a high level of expertise and resources, a new specialist Unit needs to be established. The various facets of this proposal are set out below.

3.13 **Recommendation #3:** A major recommendation of this inquiry is that a specialist unit be established. While the location of this specialist Unit within the bureaucratic structure of the NSW Police is a matter for the Commissioner, it is essential that the Unit handle all the issues addressed below and these responsibilities are not divided between different areas of the organisation. The leadership, skills and talents needed for a successful Unit must be located together both organisationally and geographically. This Unit will deal with all matters relating to discrimination and harassment, as set out below. Wherever it is placed within the organisation, the Unit's head will need the capacity to work closely with the senior management of all other areas in a co-operative partnership.

3.14 The Unit will not deal with unrelated matters such as corruption or performance management.

3.15 **Recommendation #4:** This Unit should have the following functions:

- (a) to provide specialist advice and assistance to the Commands and to individual staff about inappropriate workplace conduct and avenues for complaint resolution and redress,
- (b) to conduct specialist investigations for all complaints of inappropriate workplace conduct,

- (c) to develop and conduct all training of the NSW Police staff in discrimination and harassment law.

3.16 **Recommendation #5:** This Unit needs to be headed by a person at an appropriate senior level. If the head is a police officer then she or he should be no less than the rank of a Senior Commissioned Officer. If a civilian, then she or he should be no less than the equivalent position in the public sector equivalent. The person needs to have substantial expertise in the areas of discrimination and harassment law, investigations and training.

3.17 **Recommendation #6:** It is essential that this specialist Unit be properly resourced. This will require additional resources above those currently available for these areas. These resources cover staffing levels and support levels such as an allocation of funds sufficient to produce high quality training material and travel costs and external advice when required.

3.18 **Recommendation #7:** All the staff of this Unit will need to have the necessary specialist expertise for the relevant position. Each of the three arms will require adequate staffing to properly perform its distinct function. Staff will need to be fulltime in the Unit. If seconded from elsewhere, then the secondment needs to be for a specified period of a minimum of two or three years. This will ensure independence from Commands.

- 3.19 The creation and role of the specialist Unit needs to be promoted publicly and prominently within the NSW Police, with the full support of the Commissioner.
- 3.20 In making these recommendations, it is recognised that this will require some functions currently performed in other areas to be moved to the specialist Unit. Training is currently a function of Education Services. Investigations are currently a function of Professional Standards. Advice and assistance is available through Employee Management, Professional Standards although this function is little known. Discrimination matters with external agencies are handled by Legal Services.
- 3.21 It is critical that when these functions are moved across to the specialist Unit, all allocated resources are brought with the function and not left in the area previously handling the function to be diverted to other unrelated activities.
- 3.22 During the set up phase for the initial 12 to 18 months, there may be greater staffing and resources demands to ensure that best practices are established in each arm of the Unit and that all Codes and policies are consistent, relevant and clear as to their coverage and impact.

#### **SPECIALIST ADVICE FUNCTION**

- 3.23 There is a lack of internal specialist advice and assistance to potential complainants, potential respondents and to supervisors and managers as well as senior officers.

- 3.24 Specialist advice requires knowledge of the wider operation and implementation of all relevant policies, the surrounding legal and related environment and best practice principles.
- 3.25 In relation to Commands, the Unit staff would need to be able to give advice to the Commander and other senior staff about the appropriate sanctions for inappropriate workplace conduct. One reason for the head of the specialist Unit to be of senior status is to ensure that she or he can work with Commanders and others who require advice and assistance on an equal footing.
- 3.26 The head of the Unit would provide advice to all levels of management about current legal requirements, policies and their application including any revisions to the new code of conduct. Obviously, they would be assisted by the Unit staff.
- 3.27 Another major function for the specialist staff would be to provide advice about the complaints process to any interested personnel. While current policies refer any interested person to Human Resources and provides a telephone number, generally there is a lack of knowledge about such assistance being available. The internal organisation of the Unit would need to be arranged in such a way that there was a distinction between those giving advice to staff about their rights and responsibilities and those providing specialist advice to senior and middle management about dealing with complaints or issues arising.
- 3.28 The specialist Unit staff would deal with all external agencies handling discrimination complaints, particularly the Anti-



Discrimination Board and the Human Rights and Equal Opportunity Commission. This staff would remain involved and provide a support role for advice and assistance if a complaint was being heard and determined by the Federal Court, the Federal Magistrates Court or the Administrative Decisions Tribunal, although presumably the proceedings would be conducted through the auspices of the Legal Unit.

3.29 **Recommendation #8:** In summary, it is recommended that the specialist advice arm of the Unit has:

- (a) a core function to advise and assist senior and middle management on the handling of complaints or issues and planning around these matters,
- (b) a separate function with different personnel to advise staff with concerns or potential complaints about their rights and responsibilities and their avenues for resolution and redress and respondents about their rights and responsibilities,
- (c) a third function to liaise and negotiate with external agencies handling harassment and discrimination complaints, in particular the Anti-Discrimination Board and the Human Rights and Equal Opportunity Commission.

## **SPECIALIST INVESTIGATIVE FUNCTION**

### ***Lodging a complaint***

- 3.30 **Recommendation #9:** When a person decides to lodge a complaint of inappropriate workplace conduct, then their primary avenue must be to the Unit itself. This should be seen as the preferred point of receipt of complaints. If a person does not feel confident to approach the Unit, then there should be another option. The second option should have two parts. The first one is for the person to report the complaint directly to their Commander. The other option is for the person to approach another senior officer who is obliged to immediately report it to the Commander. Once the Commander receives notice of the complaint, then it is referred immediately to the Unit for initial assessment.
- 3.31 The aim of this process is that the Commander and the Command itself is not involved in any initial assessment or in the allocation of any resources to seeking to resolve the complaint. If assessed as trivial (see below), then the Unit may refer it back to the Command to deal with but that is the only time that it comes within their functions for operational decisions. This reporting process should eliminate or significantly reduce the breaches of confidentiality that currently cause such substantial damage to the conduct of the complaint system.
- 3.32 **Recommendation #10:** This investigation process must not be available for minor or trivial complaints that should be dealt with promptly as a local management issue. Such trivial matters

might include a single incident of workplace conflict that was ephemeral, brief and did not represent any substantial breakdown in working relationships. The distinction is usually not a difficult one to make, especially for the experienced staff proposed for the Unit.

- 3.33 Where there is a genuinely anonymous complaint to the Unit or a Commander with no further background information, then a preliminary inquiry by Unit staff may take no longer than an hour and be sufficient to determine that in the absence of any other material it will not be possible to pursue the matter further.

### ***Timeframes***

- 3.34 ***Recommendation #11:*** The investigative arm will need to establish best practice timeframes. The handling of any matter which does not come within these timelines will need to have an explanation at the time of the expiry of the timeline to a nominated Assistant Commissioner of the reason for the failure to comply and the timetable in place.

- 3.35 ***Recommendation #12:*** The recommended timelines are that upon the receipt of a formal complaint or other information:

- (a) an investigator is assigned to the matter within seven days,

- (b) within a further seven days an investigation plan is developed and approved by the Unit head,
- (c) within four weeks the investigation occurs,
- (d) within a further two weeks the report is completed, containing clear and definite recommendations as to future action including disciplinary outcomes with a nominated penalty,
- (e) all decisions on those recommendations should be made by a panel of senior management at the required level and the complainant and respondent advised within a further three weeks.

3.36 With these recommended timelines in place, best practice procedure would mean that the matter was investigated and finalised within eleven weeks. This includes all disciplinary outcomes including section 181D decisions. The current practice involves too many people making recommendations and too few people making decisions. The overly bureaucratic response means that months can be lost while the file travels from one person to another with no final decision being made. There must be a break in this pattern of procrastination and a prompt, clear decision making process established. This will benefit all involved, including the complainant, the respondent and any witnesses or managers involved in the investigation process.

- 3.37 The panel referred to in step (e) is a new body set up specifically for this role. It will review all recommendations and determine the appropriate penalty. Where the penalty requires the decision of the Commissioner, then the panel will make that recommendation. This panel is important as it will ensure consistency of decision making and will have the expertise to assess the gravity of the findings of fact and where they fall within the continuum of conduct. The panel will consist of two Assistant Commissioners and the Executive Director, Corporate Services. The seniority of the panel members will demonstrate the seriousness with which these issues are being approached within the organisation. Arrangements for a suitably senior delegate will be required to make decisions with respect to general staff employed under the *Public Sector Employment and Management Act 2002*.
- 3.38 **Recommendation #13:** In light of the specialist Unit and the above panel, the current Internal Review Panel should cease to have any role or function in relation to these complaints and disciplinary processes.
- 3.39 Timely and clear advice to all parties of the final outcome is an essential step in this process. One of the many deterrents to lodging or pursuing a complaint currently is the common knowledge about the lack of information about the final outcome to previous complainants.
- 3.40 In comparison to present practices, the recommended timeline may seem short. There are several important features of the

proposed new function. The specialist investigatory team will be skilled in such investigations and possess the requisite degree of training and qualifications to commence work immediately. Seeking out other advice or assistance will not be necessary. These investigations will be the only or the primary work they will be performing. Juggling or displacing usual work demands will not occur.

3.41 It is recognised that further time may on occasions be needed for step (c), that is, the investigation itself. If it is a large scale investigation, then a longer period may be required. If it is a smaller one, then only a few days may be needed. Many of these matters will not require elaborate or lengthy investigations.

3.42 Allegations under investigation require prompt analysis and review and action. It is when the matter drags on over several years and memories are clouded and recollections are lost that difficulties can and do arise. A timely investigation conducted within a short period after the matter is initially raised with management has many hallmarks of good practice and also frequently leads to a prompt resolution. As time passes, then positions become embedded and compromise more difficult.

### ***Investigators***

3.43 **Recommendation #14:** The investigative arm needs to be equipped with staff with the appropriate level of expertise in discrimination and harassment law and investigative techniques.

It is the lack of a centralised expertise that has caused some of the fragmentation of responsibilities and the disparate outcomes that have come to light during this inquiry with some lower sanctions applied than could reasonably be anticipated.

3.44 **Recommendation #15:** The best practice model for the investigative method will include:

- (a) each investigator has a comprehensive understanding of the relevant legislative framework,
- (b) each investigator must understand the burden of proof, and the fundamental difference between the civil and the criminal burden,
- (c) each investigator must have the necessary skills to be able to test the complainant's evidence properly,
- (d) each investigator must be able to accurately frame any allegation and put each to the respondent in a form where those allegations can be properly tested,
- (e) each investigator must have the skills to investigate conduct where, as is often the case, there is no evidence other than the conflicting testimony of the complainant and the respondent and so mechanisms for weighing evidence and reaching an informed decision needs to occur,

- (f) each investigator must understand the complaints process and the intersection between a duty of confidentiality to the complainant and the right of the respondent to procedural fairness.

3.45 The issue of confidentiality is sensitive and needs to be handled carefully. It must be recognised that the identity of the complainant has to be revealed to a harasser in almost all circumstances in order for them to be provided with procedural fairness to meet the complaint. It is fanciful to suggest that allegations of explicit acts of sexual harassment towards one person only can be dealt with in any other way.

3.46 There is a mechanism in section 169A(a) of the *Police Act* for the Commissioner to issue guidelines. The Commissioner issued Guidelines dated 6 July 2005 with an interpretative document annexed. Paragraph 4 of those Guidelines permits a police officer carrying out an investigation under Part 8A to disclose the identity of the complainant under certain circumstances. It could be clarified that the disclosure can be made to the person about whom the complaint is made. To ensure there is clarity and that the basis upon which the disclosure is to be made relies substantially on procedural fairness, these Guidelines should be amended to incorporate this approach.

3.47 **Recommendation #16:** One of the initial tasks of the specialist Unit should be to draft a revision to the existing Guidelines for review and eventual approval by the Commissioner to set out the obligations and requirements for the identification of the



complainant to the respondent in a clear and comprehensive manner. This should eliminate some of the doubts and difficulties currently existing.

3.48 **Recommendation #17:** Once a complaint is made or a senior manager becomes aware of specified misconduct occurring within their workplace, then they must act by advising the Unit. This must occur regardless of the wishes of the victim to ensure that there is a safe working environment for all staff. With a proper appreciation of the complaint processes and the complaint being handled by experienced investigators, it is anticipated that some of the resistance to making and then following through formal complaints will diminish.

3.49 **Recommendation #18:** There needs to be a clear policy statement linked to all harassment and discrimination policies and Codes and to related policies such as grievance handling that a breach of confidentiality by any person involved in the process is considered a serious matter possibly leading to either a reviewable or non-reviewable action as set out in Part 9 of the *Police Act*. This covers parties to the complaint, witnesses, investigators, decision-makers and those in receipt of the complaint. Others who acquire information through informal channels and pass it on should also be covered. The current culture of gossip about and innuendo against a complainant needs to be addressed by the provision of sanctions so that the matter is considered to be serious and actionable.

- 3.50 **Recommendation #19:** Investigators need the power to require the co-operation of all Commands. This arises in many circumstances such as taking specific actions to protect a victim, making workplace arrangements such as shift alterations or moving an alleged perpetrator or to other steps necessary to manage workplace risks that have been revealed by the complaint. This inquiry demonstrated that not all workplaces support a complainant and may indeed act against their interests to protect a perpetrator. To ensure this does not happen and to set proper systems in place to eliminate such risks to the complainant, the investigators need to be able to make demands on the resources of the Commands.
- 3.51 **Recommendation #20:** The investigative arm will have the function of conducting the investigation until it is completed and this includes involvement in the disciplinary process to advise the Commissioner, Commanders and other relevant Senior Commissioned Officers on appropriate levels of penalty and other outcomes.
- 3.52 **Recommendation #21:** The investigation process needs to be rigorous in relation to retaliatory complaints. Where the subject of a complaint raises an allegation that the current complainant is only acting in retaliation against an informal or formal complaint made by her against him for sexual harassment or a related matter, then this needs to be reviewed as part of the fact finding process and investigated also. Motivation for a complaint can be an essential element in the fact finding process as it may lead to a discrediting of the complainant and a

dismissal of the complaint. Part of the review mechanism needs to determine whether any breach of section 206 of the *Police Act* may have occurred.

- 3.53 **Recommendation #22:** Consistent with occupational health and safety obligations (see below), it is recommended that anonymous complaints be accepted and reviewed. A person with suitable expertise can then determine whether the matter should be further pursued by some preliminary inquiries. On some occasions, a complaint is not actually anonymous. The maker of the complaint is identified and willing to speak to an investigator but is not willing to have their name attached to the complaint for fear of being labelled a "troublemaker" or a "whistleblower". When that occurs, then a different set of investigative parameters need to be invoked.

#### **SPECIALIST TRAINING FUNCTION**

- 3.54 There is a lack of awareness and understanding about discrimination and harassment law and the parameters of inappropriate workplace conduct.

- 3.55 **Recommendation #23:** There needs to be a mandatory training program covering discrimination and harassment law and the attendant rights and responsibilities for all Senior Commissioned Officers including but not limited to all Commanders. In addition, Human Resources Managers, sworn and unsworn officers within the human resources portfolios, EDOs and CMT Executive Officers need to be trained. The training for all of the above should be completed within six

months of this report. The same mandatory training of all other staff should be completed within 12 months of this report.

3.56 **Recommendation #24:** The recommended training program requires an initial commitment of funds and resources for a comprehensive training program for all the NSW Police at two different levels – one for managers and one for other staff, both sworn and unsworn. The compulsory nature of the training is essential and must apply to everyone. There must be effective sanctions for any person who refuses to attend or fails to attend without a reasonable excuse. Where there is a reasonable excuse, then the person must attend the next appropriate session.

3.57 **Recommendation #25:** The training must be endorsed and supported by the Commissioner. Leadership and ownership must be demonstrated from the commencement. The first session should be attended by the Commissioner, the Deputy Commissioners and Assistant Commissioners and be publicly recorded at the commencement.

3.58 **Recommendation #26:** The training session must be a minimum of two hours and cover:

- (a) definitions of inappropriate workplace conduct,
- (b) fundamental requirements of discrimination and harassment laws,

- (c) coverage and operation of the code of conduct, discrimination policy other and relevant policies,
- (d) complaints mechanisms,
- (e) disciplinary action for breaches of code and legal requirements, including for an individual who breaches appropriate standards and any person involved in victimising a complainant,
- (f) sources of information and specialist advice,
- (g) the functions of the new specialist Unit.

3.59 **Recommendation #27:** All new recruits training at the Police College must be provided with a more extensive session for no less than half a day. This session must be mandatory for all students. The lack of understanding and information of probationary constables and graduates in the last five years demonstrates that the current course content and/or teaching method is insufficient. This course needs to be prepared and delivered by staff with expertise, ideally the special training staff from the specialist until and not the current College staff.

3.60 **Recommendation #28:** An ongoing program of training and professional development and refresher courses needs to be designed and instituted so that the current situation does not recur.

- 3.61 **Recommendation #29:** The staff of the Unit will need to have the necessary skills for the development and implementation of appropriate training materials. They will need to be able to do so promptly. After the initial period of development and then implementation, which should take no longer than nine months from the date of commencement, then the number of staff may be reduced as the immediate and large job will be completed.
- 3.62 **Recommendation #30:** In light of the general lack of understanding of the relevant concepts and their impact on the daily employment liabilities and responsibilities of the NSW Police as an employer, it is considered that this specialist arm should deliver the training and that it should not be delegated to the Commands to deliver. As the recent training survey done at part of this inquiry demonstrated, if left to their own devices and decisions, then the results are at best patchy and at worse, there are no actions at all. If there are any particular local sensitivities or information, then a suitable person at that workplace can liaise with the training staff to address that as a particular theme in the general sessions being delivered across the state.

## **RECOMMENDATIONS ON SEXUAL HARASSMENT**

- 3.63 The training program proposed in this chapter should have a particular focus on sexual harassment.
- 3.64 **Recommendation #31:** It is critically important that there be visible leadership on this issue from the Commissioner and other

commissioned ranks. The elimination of sexual harassment from the NSW Police is an important strategy for various reasons.

3.65 This leadership needs to address the two separate strands of sexual harassment. The first is the individual acts of one person towards another, usually a male towards a female police officer. The second is the sexually permeated workplace where the use of pornographic images and sexual banter create the prevailing atmosphere and the majority expect all to fit in with it without complaint or rejection. The recommended training needs to address this latter issue as a critical one also.

3.66 **Recommendation #32:** The condoning of acts of sexual harassment still occurs within some areas of NSW Police and this must cease. This can only be done if it is shown by clear signs from the top of the Force that this type of behaviour will not be tolerated at any level and that there will be a disciplinary outcome for any person breaching the harassment laws. Importantly, this message must also convey the information that there will be an appropriate disciplinary outcome for any person who aids and abets or who condones such actions by another person. This includes the failure to act when an incident is known about.

3.67 **Recommendation #33:** The review of Codes and policies must ensure that all aspects of sexual harassment are addressed with a consistent message of zero tolerance of all forms being spelt out. This must cover the use of emails and mobile telephones

and other technology capable of storing and displaying images and text.

### **Education Services**

- 3.68 The history and reputation of a minority of staff at the Police College at Goulburn have besmirched the reputation of the training of NSW police officers. In order for there to be the establishment of an appropriate professional standard in all training provided by Education Services, then there is no choice but for a total ban on sexual relationships between students and all staff and for a clear statement to be issued that no sexual relationships are acceptable.
- 3.69 Where a genuine, long term relationship is commenced during training, this ban will not interfere with its development or sustainability if it is commenced appropriately after one person is no longer a student.
- 3.70 This recommendation is aimed at relationships of a completely different nature than mutually respective long term commitments. The objective is to eliminate short term, exploitative relationships most commonly between either impressionable or opportunistic female students and more senior male police officers who make promises they well know they cannot deliver. Promises include study assistance, inside knowledge of exam content, higher grades or later assistance with career progression.



- 3.71 **Recommendation #34:** A decision at senior management level needs to be made and publicised that any sexual relationship between a student and a staff member during any Education Services program is completely banned. A "staff member" in these circumstances includes any person working at the Police College at Goulburn or at the Westmead campus in a permanent or temporary capacity and any secondee or any employee of the NSW Police, sworn or unsworn, visiting the location.
- 3.72 Trying to create exceptions to this blanket rule is not acceptable. It is no justification that the parties are consenting adults and so the organisation cannot interfere. Such an argument is an attempt to blur clear lines of responsibilities and should be completely rejected. It does not address the clear power imbalance. Similarly, trying to restrict the operation of this complete ban only to students and staff involved in their assessment at the time of the contact ignores the reality of the environment in which the students work. It ignores the extent and ramifications of long term professional relationships and fails to appreciate the complex obligations that arise in an educational environment.

## **RECOMMENDATIONS ON SEX DISCRIMINATION**

- 3.73 Set out below are the recommendations that relate to the main findings with respect to the incidence of sex discrimination.
- 3.74 Essential to alleviating the incidence of sex discrimination in the NSW Police and eliminating the opportunity for any such

discrimination in the future, is that the problems associated with the accommodation of part-time work and flexible working practices generally must be solved.

3.75 Obviously, there needs to be a proper balance between the needs of the Command and the needs of the part-timer officers. It is a misunderstanding of the discrimination law to claim that it permits women to demand certain shifts and refuse any others as a blanket rule.<sup>13</sup> Discrimination law requires that such requests be considered on a case by case basis. The employer must consider an employee's request. There will be circumstances which require an employer to accommodate an employee's request for rostering changes where they arise from carer's responsibilities. It may be suitable to allow an employee to work fixed shifts where the circumstances enable it to happen. Factors which may be taken into account include the nature of the request, the time period over which it will operate, operational requirements and the availability of other positions within the organisation. The employee is required to give his or her employer reasons for their inability to comply with the flexible working arrangements and to specify the time period of which the limitation applies.

3.76 The NSW Police has recognised that this is a critical issue and has been attempting to explore a number of options for greater staffing flexibility. There were previous working parties and

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<sup>13</sup> See, for example, *Hickie v Hunt & Hunt* (1998) EOC 92-910; *Escobar v Rainbow Printing Pty Ltd (No 2)* EOC 93-229; *Mayer v A.N.S.T.O* (2003) EOC 93-285; *Kelly v TPG Internet* (2004) EOC 93-315; *Reddy v International Cargo Express* (2004) EOC 93-351; *Tleyji v The Travel Spirit Group Pty Ltd* [2005] NSWADT 294; *Georgiadis v Powerlab Pty Ltd* (2005) EOC 93-379.

committees formed and discussions and reports produced. In August 2006, the first meeting of the Pregnancy Procedures Working Group was convened by the Executive Director, Human Resources.

3.77 **Recommendation #35:** This inquiry has determined without doubt that there is a serious issue arising in relation to the operational requirements when staff are working part-time and this is a particular problem as the majority are younger women working this way because of their family responsibilities. Many intend to work this way for a few years only. Their loss through resignation is a serious drain of trained and experienced officers. Some have resigned because of the hostile work environment created through negative and derogatory comments made to them or about them in their presence when they are working part-time.

3.78 **Recommendation #36:** There needs to be a review of staffing arrangements for police officers to directly focus on the identified sex discrimination and determining appropriate mechanisms to eliminate the discrimination by creating equal opportunities for all police officers to work in a way consistent with their carer's responsibilities and their responsibilities to their employer and to the community to make a worthwhile contribution as a trained and experienced police officer.

3.79 Some options could include:

- (a) the expansion and strengthening of job sharing opportunities,
- (b) the employment of casual police officers,
- (c) the use of fixed shift arrangements,
- (d) the creation of a relief pool which results from an increase in the numbers of authorised strength, and
- (e) related to (c), the creation of a new classification within the SAP structure, whereby a part-time maternity leave police officer is able to be employed and not included in the authorised strength for the Command. Therefore, this allows the Command to accommodate the part-time employee without compromising its ability to comply with operational issues such as the first response agreement.

3.80 Current job sharing arrangements are rarely used as they are seen as problematic and not a viable option. There are widespread perceptions that job sharing is not a feasible option because of continuity of service delivery and the authorised strength numbers. It is seen as giving up one position permanently resulting in an overall staffing loss. In addition, the reluctance appears to arise from general negative perceptions about women working part-time and the NSW Police not getting proper value from employees working part-time. Some contend that the current job sharing option impedes the Command's capacity to meet its first response obligations. There appears to

be no real substance to these concerns if the job sharing opportunities are properly implemented, including that the arrangement of the hours of the two persons sharing the job are technically only filling one person. This is a mathematical operation rather than a serious staffing impediment.

3.81 Fixed shifts can provide a great assistance to parents, especially single parents, to permit them to have stable child care arrangements for babies and pre-school infants in particular. They can provide a mechanism to permit a parent to continue working when changing rosters do not permit them to participate in the workplace at all.

3.82 The deployment of casual employees, who are able to relieve in or job-share with part-time employees, is another option. An impediment to this option may be that an increase in the authorised strength will be required. On the positive side, it would allow the utilisation of the experience of former police officers where there is specific need. In addition, the deployment of a casual pool would assist in short-term staffing shortages associated with employees who are injured on duty or are on restricted duties because of pregnancy. However, this option poses a number of challenges. First, there needs to be willing recruits to the casual pool. Secondly, the arrangement will need to be shown to be tenable when weighing the cost of the requisite licensing and mandatory continued training of these employees. This appears to have been a major obstacle to this option so far. It is assumed that the recruits would be limited to

former police officers otherwise the training obstacles stifle any benefit.

3.83 Another option is the creation of a relief pool of permanent police officers who elect to be transferred to the relief pool and be allocated when and where as the need arises. This option necessarily involves increasing the authorised strength within each region. The benefit of this option is that it would allow for Commands to accommodate part-time employees. It provides officers within the relieving pool with an opportunity to work in different locations and positions. It does not inhibit the ability for the female part-time employees to return to full-time work.

3.84 It may be that a more feasible approach is for each Commander, in consultation with their Human Resources Manager and their team, to identify non-operational policing roles within their area that could be used to provide real work for pregnant police officers on restricted duties. These positions must be for meaningful work that does not impede career progression. This job role analysis must not be used as an opportunity to identify dull, repetitive duties in other positions and then bring them together for the non-operational role. This approach should not impede consideration of the pregnant officer continuing to perform her usual duties in a modified fashion. This may only require the reallocation of some duties between a team of officers.

3.85 **Recommendation #37:** An assessment of part-time and job sharing work opportunities needs to be undertaken within each

Region and specialist Command to identify the operational roles that can readily be incorporated into part-time and job sharing arrangements to ensure that the opportunities in existing policies are fully utilised.

3.86 **Recommendation #38:** The critical role of a mentor for the careers of successful women police officers leads to the conclusion that there needs to be a formal mentoring program for those women who are interested in participating. Senior officers, particularly males, could volunteer to provide mentoring advice and assistance to more junior women officers to ensure that they are able to take advantage of all available career opportunities and present themselves in the most positive manner. These are matters that are not necessarily learned along the way. The value of an experienced officer to assist is well recognised in all mentoring programs.

3.87 **Recommendation #39:** A mentoring system should be instituted for junior women police officers by responsible senior police officers, particularly senior males. This should be organised through Human Resources and run as an opportunity for those women who seek it. It should be an informal system with regular contact and advice between the two officers.

3.88 **Recommendation #40:** The systems within the Commands for allocation of relieving and supervisory positions and the offer of training opportunities must be transparent and accountable. These decisions are critical to the career path of all officers and they should not be permitted to be made on a subjective

criterion to permit a senior officer to select his "favourite". There needs to be some objective criteria applied to all selections and these criteria need to be made available within each workplace so potential officers can know the criteria they need to be able to meet. A system of a publicly available list for the rotation of all persons ensures that all opportunities are allocated evenly and this system should operate in all individual workplaces. Officers from outside that workplace should only be given a relief position where there is clearly no candidate available at that workplace.

3.89 **Recommendation #41:** The barriers to women for promotion and for relieving opportunities need to be addressed. These include the informal mechanisms used to identify staff to relieve in positions as this can deny women opportunities to establish their skills and expand their experiences to assist them when applying for promotion. While the general parameters are set out in the *Higher Duties Allowance Policy and Guidelines* for police and administrative officers, greater emphasis needs to be placed on the methods used to identify and then select staff for opportunities to act in a higher graded position.

3.90 **Recommendation #42:** Region Commanders need to take the responsibility of overseeing the allocation of such opportunities so that the Local Area Commander is accountable for the decision she or he makes. This should be part of the regular reporting so that there is a transparency to the system and women officers do not continue to be denied the same



opportunities for promotion and advancement as their male colleagues.

## **RECOMMENDATIONS ON PREGNANCY DISCRIMINATION**

- 3.91 **Recommendation #43:** There needs to be a policy developed that critically assesses the factors that arise for women when in all stages of pregnancy and the job duties that she can and cannot perform. While there needs to be a degree of flexibility associated with the policy, the concept of reasonable adjustment and the period it may be available depending on the duties needs to be fully explored.
- 3.92 **Recommendation #44:** The proposed policy needs to set out the obligations of occupational health and safety law and discrimination law and the way that should be managed within the command. Currently, there is significant discretion left to Commanders and managers and women are being removed from their duties peremptorily before it is medically or organisationally required.
- 3.93 **Recommendation #45:** This policy needs to have the job duties for at least general duties set out and some identification of any of those which cannot be performed by pregnant women and the stage of their pregnancy at which this bar commences.
- 3.94 **Recommendation #46:** The risk assessment and risk management models to be set out need to be a realistic approach to the issue and not based on mythology of the impact

of pregnancy on job capacity. All necessary workplace adjustments should be set out.

- 3.95 **Recommendation #47:** The new policy needs to be drafted and approved as soon as possible and be available to all Commanders and manager within the next six months.

## **RECOMMENDATIONS ON VICTIMISATION**

- 3.96 A major recommendation to eliminate victimisation requires the leadership to demonstrate that there is zero tolerance for any acts of victimisation when a person lodges a complaint or assists or supports another person to do so.

- 3.97 **Recommendation #48:** There must be clear and unequivocal statements in all relevant Codes and policies that victimisation constitutes serious misconduct, or at a minimum misconduct, and if established as having occurred will incur a serious sanction due to the gravity with which such conduct is viewed at the highest level. Where a pattern of victimisation occurs, then the appropriate penalty is dismissal.

- 3.98 Management has the responsibility to ensure that there is no victimisation and it can only be prevented by active measures and a clear demonstration that such conduct will no longer be tolerated. Managers avoiding their responsibilities must be held accountable for the critical cultural shift to occur.

3.99 **Recommendation #49:** Where a senior or middle manager condones or permits victimisation of a complainant to occur within a workplace by one or more staff members against another, then the Codes and policies must make it clear that this is serious misconduct or at a minimum misconduct with a serious sanction.

### **RECOMMENDATIONS ON BULLYING**

3.100 **Recommendation #50:** There needs to be a policy relating to bullying that sets out the type of conduct that falls within the description and the sanctions if it occurs. The specialist Unit will deal with all complaints of bullying in the same manner as all other complaints made to it.

### **RECOMMENDATIONS ON COMPLAINT PROCESSES**

3.101 The recommendations relating to improving the integrity and efficiency of the complaint processes are addressed in the recommendations relating to the establishment of the specialist Unit set out above.

### **RECOMMENDATIONS ON DISCIPLINARY PROCESSES**

3.102 While each disciplinary matter turns on its individual facts, there are some common parameters established by judicial decisions that should guide the decision makers.

- 3.103 The assessment by specialised staff as to the gravity of the proven matters would be able to place the severity on a continuum and recommend an appropriate penalty. The severity will depend on all surrounding circumstances as well as the facts of the incident. The relationship between the parties will be important as will the pattern of conduct if there is one. The level of language, lewdness and graphic descriptors will also impact on the assessment of gravity.
- 3.104 When determining the category of seriousness on an objective basis, the impact on the victim is one factor to be taken into account. Conduct outside the workplace can form the basis of management action. Breaches of confidence, victimisation and failure to take appropriate management action are serious misconduct or misconduct.
- 3.105 **Recommendation #51:** Sanctions imposed on an errant officer who engages in serious misconduct or misconduct are to be consistent and imposed in all appropriate circumstances and that responsibility is not to be eschewed because of misplaced concerns about the failure of any external review agency to approve the decision when it is reviewed.
- 3.106 **Recommendation #52:** Where a manager fails or refuses to follow due process on receipt of a complaint of harassment or discrimination, then they should be subject to management action including disciplinary action.

3.107 **Recommendation #53:** Serious act(s) of sexual harassment or sex discrimination should result in dismissal. This can include a single act, a pattern of repeated conduct, more than one victim or continuation in the face of repeated refusals to comply and requests to cease. Lodging a retaliatory complaint with no foundation falls into this category.

3.108 **Recommendation #54:** Middle level act(s) of sexual harassment or sex discrimination should result in reviewable action. This can include a single act with less serious ramifications or where there is no direct victim such as showing pornography.

3.109 **Recommendation #55:** Lower level act(s) of sexual harassment or sex discrimination should result in non-reviewable action. This can include a single joke or one occasion of explicit sexual banter in a secluded environment where no members of the general community could hear or see.

3.110 Another issue is the imposition of the internal disciplinary outcome for officers facing criminal charges arising from the same events as the disciplinary proceedings.

3.111 There has been a practice that while the decision-making processes are completed, where the sanction is dismissal, then that decision is not implemented until the completion of the criminal processes. This can mean that an officer is suspended on full pay for a lengthy period.

3.112 There is no legal requirement for the disciplinary process to be delayed until the criminal processes are completed.

3.113 **Recommendation #56:** The disciplinary process should be completed at the earliest opportunity, regardless of whether there are any criminal charges arising from the same events.

3.114 If an officer is dismissed, then they have certain rights that they may elect to exercise by seeking a review in the NSW Industrial Relations Commission. The Commission may determine that it is not appropriate for the case to be heard and determined until the criminal processes are concluded.

3.115 This is a separate part of the process and should have no influence over the action of the NSW Police.

## **RECOMMENDATIONS ON CODES AND POLICIES**

3.116 There are a range of different policies and codes in operation that cover the areas of discrimination and harassment. They need to be reviewed to ensure that consistent terminology is used and there is a common approach.

3.117 It is accepted that a Code of Conduct is an essential benchmark of conduct and one that sends a clear message throughout the policing community of the values and expectations of performance and standards imposed and expected by the Commissioner for all serving police officers. It removes any "wriggle room" to provide any foundation that an individual did

not know or understand the obligations for accepted standards imposed on her or him and removes any possible contention that there was any uncertainty or lack of clarity in the expectations of the Commissioner and the senior management team for all ranks.

3.118 In October 2006, the Commissioner issued a new policy, *Standards of Professional Conduct*. All police officers have been required to read the policy and sign an acknowledgement to that effect. It includes a Statement of Values and a Code of Conduct and Ethics and information on Management Action for any breaches.

3.119 The Statement of Values incorporates seven core values that spell the word "ETHICAL". They are principles put at a high level of generality without any specificity.

3.120 The Code of Conduct and Ethics has 10 separate statements of expected levels of conduct and concludes with a statement that a failure to comply "may result in management action". The terminology of "management action" follows the terminology adopted in Part 8A and includes disciplinary action including dismissal although this is not clear on its face. There are a further four pages of expanded material which illustrate the general statement in the Code.

3.121 Paragraph 4 of the Code states: "An employee of the NSW Police must treat everyone with respect, courtesy and fairness". The notes state that it is unlawful to "harass, vilify, victimise or

discriminate against" any person on nine nominated grounds from the *Anti-Discrimination Act*.

3.122 There is no statement in the Code that directly addresses workplace conduct, although it is broadly covered paragraph 3 that requires knowledge of and compliance with "all policies, procedures and guidelines that relate to their duties". The explanatory notes contain no specific references to discrimination laws or OH&S laws. While it is recognised that the Code and the notes cannot specify every situation due to their general nature, it is a critical opportunity to reinforce obligations arising from internal workplace relations.

3.123 **Recommendation #57:** There needs to be an additional paragraph inserted into the Code of Conduct and Ethics between existing paragraphs 9 and 10 that states:

not engage in any inappropriate workplace conduct.

This term is used as defined in Annexure A to this report.

3.124 There are other policies that are relevant to the issues addressed in this inquiry.

3.125 The current *Gender Based and Sexual Harassment Policy* needs to be replaced by a new, broadly based policy. This new policy should also cover the discrimination parts of the *Equal Opportunity Policy* that will need to be reviewed also.



3.126 **Recommendation #58:** There needs to be a new policy to cover all forms of inappropriate workplace conduct, including all forms of discrimination and harassment, as defined in Annexure A to this report. It should be clear and unequivocal in its terms and refer to existing legislative obligations.

3.127 **Recommendation #59:** The new title for the policy should be "Inappropriate Workplace Conduct Policy". The training discussed above will ensure that this term becomes widely known and understood.

3.128 **Recommendation #60:** The information under the current policy of "Responsibilities of Employees" is inadequate. It needs to include a clear statement of the process and possible outcome for a person who breaches the policy such as:

In the event that you engage in inappropriate workplace conduct, you may be the subject of a formal complaint or disciplinary action leading to dismissal. Where you victimise a person who has been harassed or discriminated against, then you may be subject to disciplinary action leading to dismissal.

3.129 **Recommendation #61:** The aim of the above proposals is to create a specialist regime for all inappropriate workplace conduct as defined. This will mean that the internal grievance procedures should have no application in this area. This should create no difficulties as the new grievance policy contains no reference to harassment or discrimination, although the

rationale for such a serious shortcoming in coverage has not been able to be determined.

3.130 **Recommendation #62:** In line with the recommendation of the specialist Unit with the specialist investigative role, it is recommended that there be a clear and separate policy for the making and handling of complaints of inappropriate workplace conduct.

3.131 **Recommendation #63:** This policy needs to be readily identifiable on the intranet and will be included in the training modules recommended above.

3.132 **Recommendation #64:** The "Lodging an inappropriate workplace conduct complaint" policy needs to cover:

- (a) when a complaint should be made,
- (b) to whom the complaint should be made, including regulation 20 obligations and the preferred avenue of lodging the complaint with the Unit and the other options of to the Commander or to another senior manager who is required to pass it to the Commander immediately and then the Commander is required to pass it to the Unit,
- (c) the form and content of a complaint,
- (d) timelines that will be followed,

- (e) obligations of the Unit immediately upon receipt of complaint – where action is required after an initial assessment, the requirements of confidentiality, advice to respondent, advice to a Commander of receipt of a complaint and advice on appropriate staffing arrangements following the complaint and support services to offer to the complainant(s),
- (f) investigation process if instigated – following best practice model for the optimum rights and obligations of the complainant, the respondent and the investigator (see above),
- (g) instigation and completion of the disciplinary process and determination of penalty, including the involvement of the Commissioner, a Region Commander, a Local Area Commander or a head of a specialist Command, as required, and advice to complainant and the respondent,
- (h) communication of the outcome to the complainant and any other necessary persons,
- (i) finalisation of the process,
- (j) external review if sought by the complainant or the respondent.

## Education Services Codes

- 3.133 **Recommendation #65:** It is recommended that there be one, single Code of Conduct and Ethics that applies to all persons working, studying or visiting the Police College. It should use the same terms and impose the same obligations as the revised Code for all staff and also include the particular obligations imposed through the educational environment.
- 3.134 **Recommendation #66:** All students and educators should be required to sign a copy of the Code as part of their induction at the College. It is recommended that both the staff and students receive some training with respect to this issue in the first week of their attendance at the College (if they are students), on the first day of their attendance if they are secondees or as part of their induction if they are temporary or permanent staff members.
- 3.135 **Recommendation #67:** The term "professional distance" should be eliminated from any revised Code and from use generally. The term is confusing and not one in general use in the community when discussing these issues. It adds nothing to a clear and identifiable approach to the standard of conduct that is acceptable and unacceptable.
- 3.136 **Recommendation #68:** The Code must make it clear that there are to be no sexual relationships or close personal relationships between any student, pre or post-attestation, and any staff member.

## RECOMMENDATIONS ON EDUCATION SERVICES

3.137 Education is provided at the Goulburn and Westmead campuses. The recommendations refer to both locations unless otherwise specified.

3.138 **Recommendation #69:** Steps need to be taken to raise the status of the position of lecturer to attract experienced officers with a talent for teaching and learning. This can be done by various techniques including offering short term appointments for suitable officers with recognition within the promotion system for such work. The inculcation of appropriate values and ethics in new recruits is essential to maintaining a high quality Force and this can only be achieved with police officers as lecturers with recent practical experience and appropriate standards of behaviour.

3.139 **Recommendation #70:** It is recommended that all short-term and permanent staff at Goulburn and Westmead be required to undertake a minimum of one hour's training, prior to commencing educational work, concerning the Inappropriate Workplace Policy, the complaints process and the current Code for Education Services Staff. This recommendation assumes that each staff member had undertaken the general training from the specialist Unit (see above).

3.140 **Recommendation #71:** If a short-term staff member returns after an absence of greater than 12 months, then they must

have a refresher session. They must have a refresher session each 18 months if teaching on a regular basis. These refresher sessions will focus on their obligations as educators and the special nature of the relationship between lecturers and students and the expectations of the NSW Police on the way those relationships will be managed.

3.141 **Recommendation #72:** It is recommended that there be a regular rotation program of all short-term assessment secondees.

3.142 **Recommendation #73:** It is recommended that the recruitment process for short-term or permanent staff for Education Services include selection criteria, that the applicant has a demonstrated understanding of the Code of Conduct and Ethics and the special provisions relating to Education Services and also has an understanding of harassment and discrimination law and has not been the subject of any substantiated complaints relating to sexual harassment or discrimination.

3.143 **Recommendation #74:** In the event that an instructor/assessor (whether temporary or permanent) has been the subject of a substantiated complaint or adverse finding with respect to the current Codes of Conduct for education staff in the last five years, then that instructor/assessor should not be allowed to conduct any training for Education Services. Further, where that instructor/assessor is required to attend the campus for the purpose of his or her own education, they are not

allowed to return for at least three years from when the adverse finding was made.

3.144 **Recommendation #75:** Where an adverse finding or substantiated complaint has been made against an instructor/assessor, the prohibition and/or limitations placed on their attendance at either campus should be included in the Conduct Management Plan and entered on c@tsi.

3.145 **Recommendation #76:** All instructors, whether short-term or permanent, should be the subject of anonymous student evaluation questionnaires which include a question about whether the instructor acted in an appropriate manner towards the students and in accordance with the Code of Conduct and Ethics and the other requirements for all attendees. Such results should be forwarded to their usual Commander and maintained on their personnel file to be utilised in assessing their suitability for any further appointment to perform educational services.

3.146 **Recommendation #77:** At the Police College at Goulburn, there needs to be a one hour session in the first week for all female students addressed by a senior female police officer. This gender specific session will address the benefits of mentoring, specific issues that arise for women in policing and appropriate approaches to address them and ways to prevent negative experiences.

3.147 **Recommendation #78:** In order to raise the status of the position of lecturer, a system of twelve month secondments of

high calibre and experienced officers should be implemented.  
Secondments should enhance promotional opportunities.

### **REVIEW IN 3 YEARS**

3.148 **Recommendation #79:** There needs to be a review of the implementation of the range of recommendations in this report within three years from the completion of this report.

Chris Ronalds SC  
*Frederick Jordan Chambers*

22 December 2006



# ANNEXURES

# **ANNEXURE A**

## **DEFINITION OF "INAPPROPRIATE WORKPLACE CONDUCT"**

For the purposes of this report, this term means:

- (a) unlawful harassment being:
  - (i) sexual harassment,<sup>14</sup>
  - (ii) racial harassment,<sup>15</sup>
  - (iii) harassment on the ground of disability,<sup>16</sup>
  - (iv) gender based harassment,<sup>17</sup>
  - (v) harassment on any other unlawful grounds (see (b) below),
- (b) unlawful discrimination on the grounds of:
  - (i) sex, including pregnancy,<sup>18</sup>
  - (ii) race, including colour, nationality, descent and ethnic, ethno-religious or national origin,<sup>19</sup>
  - (iii) disability,<sup>20</sup>
  - (iv) carer's responsibilities<sup>21</sup> or family responsibilities,<sup>22</sup>

<sup>14</sup> Section 22A, *Anti-Discrimination Act 1977 (NSW)*, section 28A, *Sex Discrimination Act 1984 (Cth)*.

<sup>15</sup> Section 7, *Anti-Discrimination Act 1977*, section 9, *Racial Discrimination Act 1975 (Cth)*.

<sup>16</sup> Section 49B, *Anti-Discrimination Act 1977*, sections 35, 36, *Disability Discrimination Act 1992*.

<sup>17</sup> Section 24, *Anti-Discrimination Act 1977*, sections 4B, 5, 7, 7A, 7B, *Sex Discrimination Act 1984*.

<sup>18</sup> Section 24, *Anti-Discrimination Act 1977*, sections 4B, 5, 7, 7A, 7B, *Sex Discrimination Act 1984*.

<sup>19</sup> Section 4, definition of "race", section 7, *Anti-Discrimination Act 1977*, section 9, *Racial Discrimination Act 1975*.

<sup>20</sup> Section 4, definition of "disability", sections 49A, 49B, *Anti-Discrimination Act 1977*, sections 5, 6, *Disability Discrimination Act 1992*.

<sup>21</sup> Sections 49S, 49T, *Anti-Discrimination Act 1977*.

<sup>22</sup> Sections 4A, 7A, *Sex Discrimination Act 1984*.

- (v) age,<sup>23</sup>
  - (vi) homosexuality,<sup>24</sup>
  - (vii) marital status,<sup>25</sup>
  - (viii) transgender status,<sup>26</sup>
- (c) bullying, which is any conduct towards another employee that creates risk to their health and safety, including undue work scrutiny, verbal abuse, inappropriate comments, aggressive behaviour, intimidating conduct and physical interference, whether direct or indirect,
- (d) vilification on the grounds of:
- (i) race,<sup>27</sup>
  - (ii) sex,<sup>28</sup>
  - (iii) transgender status,<sup>29</sup>
  - (iv) homosexuality,<sup>30</sup>
  - (v) HIV/AIDS,<sup>31</sup>
- (e) victimisation,<sup>32</sup>
- (f) causing, instructing, inducing, aiding or permitting any conduct by another person as set out in paragraphs (a) to (e) above.<sup>33</sup>

"Conduct" means:

- (a) physical acts,
- (b) verbal acts,

<sup>23</sup> Section 49ZYA, *Anti-Discrimination Act 1977*.

<sup>24</sup> Section 49ZF, 49ZG, *Anti-Discrimination Act 1977*.

<sup>25</sup> Section 39, *Anti-Discrimination Act 1977*, section 6, *Sex Discrimination Act 1984*.

<sup>26</sup> Sections 38A, 38B, *Anti-Discrimination Act 1977*.

<sup>27</sup> Sections 20B, 20C, 20D, *Anti-Discrimination Act 1977*, sections 18B to 18F, *Racial Discrimination Act 1975*.

<sup>28</sup> Section 24, *Anti-Discrimination Act 1977*, sections 4B, 5, 7, 7A, 7B, *Sex Discrimination Act 1984*.

<sup>29</sup> Sections 38R, 38S, 38T, *Anti-Discrimination Act 1977*.

<sup>30</sup> Sections 49ZS, 49ZT, 49ZTA, *Anti-Discrimination Act 1977*.

<sup>31</sup> Sections 49ZXA, 49ZXB, 49ZXC, *Anti-Discrimination Act 1977*.

<sup>32</sup> Section 50, *Anti-Discrimination Act 1977*, section 94, *Sex Discrimination Act 1984*, section 42, *Disability Discrimination Act 1992*.

<sup>33</sup> Section 52, *Anti-Discrimination Act 1977*, sections 105, 106, *Sex Discrimination Act 1984*, section 18A, *Racial Discrimination Act 1975*, section 122, *Disability Discrimination Act 1992*.

- (c) non-verbal acts, including practical jokes, gestures and stalking,
- (d) use of material to convey offensive or degrading information, including use of images on computers and in other forms, letters, emails, faxes and notes.

While these definitions may appear overly complex, they are an attempt to be comprehensive in relation to the legal requirements currently imposed on the NSW Police.

# **ANNEXURE B**

## **STATE WIDE MEMO FROM THE COMMISSIONER AND CHRIS RONALDS SC**

### **COMMISSIONER SETS UP INQUIRY INTO SEXUAL HARASSMENT AND SEX DISCRIMINATION IN NSW POLICE: YOU CAN HELP**

#### **Important Message from the Commissioner:**

As announced on 5 August 2006, I have initiated an independent review of all NSW Police policies, training and complaint management procedures relating to sexual harassment and sex discrimination.

This review is to be conducted by Ms Chris Ronalds, Senior Counsel whom, I am informed is a leading expert in sexual discrimination and harassment law.

Chris has conducted a number of landmark cases relating to discrimination on the grounds of sex and sexual harassment and played a key role in the preparation of the Sex Discrimination Act 1984 and Disability Discrimination Act 1992.

Over the next two months, Chris will be available to conduct confidential interviews and I strongly encourage all staff both sworn and unsworn who wish to participate in this review to take this opportunity.

"The Ronalds Inquiry" will, I feel sure, provide NSW Police with key recommendations. I am confident this independent enquiry and its subsequent recommendations will pave the way for an improved process to deal with these difficult and sensitive matters.

All staff should feel free to participate in this important review to ensure its success.

**K E Moroney AO APM  
Commissioner of Police**

#### **Message from Chris Ronalds SC:**

I am seeking your help and advice.

I am undertaking an inquiry at the request of the Commissioner to ascertain, to identify and analyse the parameters of the current issues within NSW Police in relation to sexual harassment, sex discrimination, related areas of victimisation and the impact and understanding of the current discrimination laws. I am also looking at the impact and understanding of the current occupational health and safety laws in relation to harassment and discrimination issues.

I am a Senior Counsel at the New South Wales Bar. I am not employed by the Police Service. I have practised for many years in the areas of discrimination law and occupational, health and safety law. I have run many discrimination and harassment test cases and written and spoken extensively on the topic.

### **What I have to do?**

By the end of November 2006, I will present a report to the Commissioner that includes a number of case studies on current or recent events involving discrimination and harassment and identifying any deficiencies in policies, practices or legislative frameworks. The report will make recommendations to ensure that the NSW Police is able to provide a safe and secure workplace for all its employees, including all police officers.

I will only be able to do this with your assistance.

### **How can you assist?**

#### **1. Come to and speak with me, if you are a female police officer**

If you are a female police officer, come to the interviews I am conducting. I cannot compile a realistic picture without understanding what is going on. The dates and places are set out below. All interviews will be confidential. No member of NSW Police will be present. Any records of the interviews will be made without identification of any individuals. The final report will not identify any person.

#### **2. Send me an email**

All officers are invited to email me their personal experiences and views on these topics. Please send an email to [policeinquiry@counsel.net.au](mailto:policeinquiry@counsel.net.au). Please include your name (if you want to), your age, the number of years you have served, your age at joining and your current position and a description of your location. If you would like me to contact you for a telephone conversation, please say so. Include as many details on your working environment and these issues as you can.

The more information I can collect, then the better I will be able to advise the Commissioner.

**Be assured – this process is completely confidential. No one who is part of NSW Police will read these emails.**

Lastly, this inquiry will only work with your help and I understand that in order to enlist your help, your confidence must be assured. I have handled many sensitive cases and mediations in these areas and am well aware of the many factors that can come into play when deciding whether to make a complaint about an unpleasant or unacceptable work situation. If you did not complain, please tell me the reasons so I can identify the barriers to a safe work environment, if there are any.

Chris Ronalds SC

**Timetable:**

31 August, 1 September:	North Western Metropolitan Region, Parramatta
4, 5 September:	Central Metropolitan Region, Surry Hills
6, 7 September:	Northern Region, Newcastle
3 October:	Southern Region, Bateman's Bay
4 October:	Southern Region, Nowra (morning), Wollongong (afternoon)
5 October:	Southern Region, Wollongong
6 October:	Southern Region, Narrandera
9 October:	Northern Region, Coffs Harbour
10 October:	Northern Region, Armidale
11-12 October:	South Western Metropolitan Region, Bankstown
23-24 October:	Western Region, Dubbo
26 October:	State Crime Command, Parramatta

To participate in an interview on any of these dates, please contact Inspector Kate Patison, Senior Consultant, CMSU, Professional Standards on 40683/8234 5683

# ANNEXURE C

## INTERVIEW FORMAT

Gender: Police officer: yes / no  
[Previously police officer: yes/no]

Year of birth: Date start with NSW P:

Rank: Current duties:

Family circ's: \*Single \*Divorced \*In permanent relationship \*Other

Related to any other member of NSW P: Yes/no, specify relationship:

Children under age 18: yes/no \*How many: \*Age youngest:

Working: \*fulltime \*part-time \*job sharing \*other

[If changed work arrangements, did this require transfer or position-change? If so, specify.]

Location: \*city \*country town \*regional area

### WORKPLACE EXPERIENCES:

*What is your understanding of the term "sexual harassment":*

*And "discrimination":*

#### **Have you ever been subjected to an act of sexual harassment?**

\*How long ago? .....years ....months \*How many times? .....

**Rank of harasser:** \*senior \*same \*junior How many?

**Gender of harasser:** male/female

**Type of harassment:** \*Oral \*Physical contact \*Staring

\*Intimidatory actions \*Sexual requests \*Requests for social contact

\*Humiliation in front of others \*Unwanted post-work contact

\*Offensive jokes \*Discuss personal and/or sexual matters

\*Inapprop sexual emails \*Threatened promotion etc if no sex

\*Rumours spread about you \*Name calling

Further details:

#### **Have you ever been subjected to an act of sex discrimination?**

\*How long ago? .....years ....months \*How many times? .....

**Rank of discriminator:** \*senior \*same \*junior How many?

**Gender of discriminator:** male female

**Basis of conduct:**



\*Gender \*Pregnancy \*Marital Status \* Employment status (p/t, f/t)  
\*Capacity to perform duties \*Not assessed properly for opports  
\*Refusing join inapprop behaviour/language/treatment  
\*Inappropriate emails \*Inapprop comments re women police officers

Further details:

**Have you ever been subjected to an act of victimisation?**

\*How long ago? .....years ....months \*How many times? .....

What was the **victimisation**?

**Rank of person doing victimisation:** \*senior \*same \*junior How many?

**Gender of person doing victimisation:** male .....female

Basis of conduct: \*Making a formal complaint about colleague

\*Making an informal complaint about a colleague

\*Objecting to colleague's behaviour towards self or others

\*Supporting a colleague in a discrim or SH complaint

\*Raising the general issue of discrim or SH

Further details:

*Have you ever been subjected to any other relevant acts?*

\*How long ago? .....years ....months \*How many times? .....

Rank of discriminator: \*senior \*same \*junior How many?

Further details:

When at the **Police College at Goulburn**, any similar experiences: yes/no Details:

*Did you report this? Yes/ No, To whom?*

*Outcome:*

*If you did not, why not?*

Are there difference circumstances or processes under which you would have made a complaint?

Have flexible working hours and in particular **12 hour shifts** made any difference to your working environment? Positive / negative

Describe:

**Investigation/complaint process**

How long after the incident did you make a complaint?

If there was a delay, why?

To whom did you complain and why?

Did you seek the assistance of the police service support services for complainants and witnesses?

Were these adequate? If not, why not?

Please explain briefly, the complaint process?

- who investigated the complaint?
- are you aware of who else was interviewed?
- how long did the process take?

What comments do you have about the process?

What was the outcome of the process?

What is your opinion of this outcome?

**Policies and Training**

- Awareness of Police Codes of Conduct
- Awareness of the Complaints Process and any relevant employment/harassment/discrimination policies
- Amount of training relating to Police Codes of Conduct and discrimination and harassment law

# ANNEXURE D

## BIBLIOGRAPHY OF RELEVANT RESEARCH

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