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STANDARDS AND PROCEDURES FOR COMPLAINT INVESTIGATIONS

INTRODUCTION

2.1 This chapter addresses terms of reference (1)(a) and (1)(b), which require the Commission to inquire into, and report upon

- (1) the standards and procedures established by the Police as a matter of internal Police policy for the investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both, and, in particular, but not limited to,—
 - (a) whether, as a matter of internal Police policy, there have been, and are now, adequate standards and procedures in place regulating the handling of such investigations by members of the Police:
 - (b) whether, if so, any standards and procedures regulating the handling of such investigations by members of the Police have been, and are being, adequately communicated to all members of the Police:

2.2 There has not been a stand-alone document that sets out the standards and procedures established by the police for the investigation of complaints alleging sexual assault by members of the police or police associates. As Detective Superintendent Malcolm Burgess told me,

Investigators are expected to apply their experience, training, knowledge and common sense. There are certain steps that should be taken in every inquiry – for example obtaining a detailed statement of complaint, identifying other evidence that may be relevant, interviewing the suspect – but the circumstances will vary from case to case.¹⁵

2.3 I was referred to several different policy documents that would be relevant to the investigation of a sexual assault complaint against a police officer or police associate, in particular,

- law and policy documents regarding internal investigations of complaints against police officers (including general instructions, legislation, and the memorandum of understanding between New Zealand Police and the PCA)
- two policy documents regarding the investigation of sexual assault allegations generally: the sexual offences section of the Manual of Best Practice; and the Adult Sexual Assault Investigation Policy (ASAI Policy)

15 Detective Superintendent Malcolm Burgess, Brief of evidence, 8 July 2005, p. 2.

Background details of relevance to this chapter

Parties to the inquiry. The Commission formally recognised four parties to the inquiry: New Zealand Police, Police Complaints Authority (PCA), Police Association, and Police Managers' Guild.

Time frame. The period of interest to the inquiry was determined in March 2004 to be the 25 years from 1 January 1979. The Commission considered police investigations of relevant complaints that had been made since January 1979.

Operation Loft. Staff from the New Zealand Police Professional Standards section at the Office of the Commissioner carried out a comprehensive search of police records to identify all cases that related to the Commission's terms of reference (known as Operation Loft). As part of Operation Loft, Professional Standards staff members were asked to locate and retrieve any files that related to allegations of sexual offending by police or associates of the police since 1 January 1979. All these files were provided to the Commission for review.

- law and policy documents relevant to disciplinary processes (including the Police Act 1958, the Police Regulations 1992, and the police general instructions).
- 2.4 To assess the adequacy of these, as required in the terms of reference, it is necessary to understand how they have developed over the period of time on which the Commission is focusing. It goes without saying that any assessment of the adequacy of police investigations carried out 26 years previously needs to take account of the policies that were in place at that time. Moreover, it must be acknowledged that, from time to time, the police have themselves found those policies to be inadequate and have amended and updated them. (Whether or not these policies were in fact followed by police officers carrying out investigations of alleged sexual misconduct by fellow officers or police associates is a matter that will be addressed in Chapter 3.)
- 2.5 Answering the questions posed by terms of reference (1)(a) and (1)(b) necessarily involves first examining in detail a very large body of general material, including legislation, regulations, written policies, manuals, and other documents relevant to the way front-line policing is governed. All of these have been subject to change over the past 25 years, sometimes by replacing old standards with new ones, but more often by adding more detailed guidelines on particular points to the existing instructions. On some occasions, standards and guidelines have been issued as new material, despite the fact that they include no changes in substance.
- 2.6 The chapter therefore describes the following matters:
- First, to give context to the discussion of standards and procedures, it describes the number and categories of complaints that were at the heart of this inquiry and the outcomes of police investigations into these complaints, and comments on how best complaints might be classified.
 - Secondly, it explains the overall structure under which police standards and procedures are issued, and comments on the adequacy of the structure.
 - Thirdly, it outlines the general policy framework that covers the handling of complaints against police officers generally, and comments on its adequacy.

- Fourthly, it summarises the policy documents specifically related to the investigation of sexual assault allegations, including the Adult Sexual Assault Investigation Policy (ASAI Policy), and comments on their adequacy.
 - Finally, it discusses communication of the relevant instructions to members of the police.
- 2.7 I have attempted to simplify and summarise the relevant material, but even so I believe the complexity of this chapter of the report demonstrates both the complexity of the task of policing and the unfortunate tendency for it to become excessively rule-bound. In their submissions and evidence neither the police nor any other party attempted to summarise and analyse the significant body of relevant policies and procedures, presumably because of the enormity of the task. To presage my conclusion with respect to item (b) of this term of reference (whether any standards are adequately communicated to members of the police), it seems to me beyond the capability of any system of communication to ensure that more than 10,000 staff are adequately briefed on such a large volume of instructions.
- 2.8 There are no formal police standards, procedures, and policies regarding the identification of associations between police officers and alleged offenders, or for the conduct of the resulting investigations. Instead, the investigation of allegations of criminal offending, including allegations of sexual assault, by police associates follows the same process as any investigation of offending. Identification of an association between an alleged offender and the police is governed by general requirements involving the independence of investigating officers and, in particular, the avoidance of conflicts of interest, although the existence of such an association may require special steps to be taken to ensure that the investigation is (and is seen to be) fair and objective.
- 2.9 These and other matters relating to police associates are discussed in Chapter 3 in the specific context of independence.

COMPLAINTS REVIEWED

- 2.10 The police provided me with extensive documentary evidence of police investigations into complaints that were of interest to my inquiry. The Police Complaints Authority (PCA) also provided files relating to certain police investigations.

Number of complaints

- 2.11 There was difficulty in trying to reach agreement about the exact numbers of complaints before the Commission. Through Operation Loft the police identified 185 records of investigations into sexual assault allegations against police officers and 43 files recording investigations into sexual assault allegations against associates of the police that fell within my terms of reference. On examination I found that 26 of the 185 files contained allegations made by more than one person against a police member, 20 contained allegations made by one person against more than one police member, and four contained allegations made by more than one person against more than one police member.¹⁶ Looked at in this way, the

¹⁶ Not all instances are of complainants coming forward to the police. There is at least one example of the police investigators “soliciting” complaints: in Operation Loft file LT 187 an officer was accused of “disgraceful conduct” in using police equipment to photograph young women naked during police work time. None of the eight young women had come forward to the police initially.

figure of 185 is potentially misleading. By this I do not seek to imply that the police have tried in any way to try to mislead the Commission. (As noted in footnote 8, I have had much assistance from Detective Superintendent Malcolm Burgess and Detective Inspector Angela Gallagher throughout my inquiry.) However, the figure is potentially misleading because it is in danger of misleading the police themselves. If, for example, the number of police members against whom sexual assault allegations were made is counted the total is 222. On the other hand, if the number of people who had made statements alleging sexual assault by a police officer is counted the total is 262.

- 2.12 On whatever basis the figures are calculated, for management and best practice purposes the figures need to be as exact and discriminating as possible. Although it might not be inappropriate to describe a single investigation into the activities of officer A and officer B with three women as “one file”, for management purposes it is important to capture in the statistics the fact that this one file was three (or possibly more) separate complaints about two separate officers.
- 2.13 I consider the clearest method of determining the number of complaints that I have reviewed is to count both the number of complainants and the number of police officers complained about. For example, where a complainant complains of sexual assault by three members of the police each complaint is counted separately although they may have been investigated as a single allegation. Similarly, where more than one complainant complains about the actions of the same police officer each complaint is counted separately. Viewed this way I have reviewed 313 complaints of sexual assault against 222 police officers that were made between 1979 and 2005.
- 2.14 In order to provide as full and as accurate a set of statistics as possible for senior management within the police, I have recommended that New Zealand Police develop its databases accordingly (see recommendation R8).

Complaints against police associates

- 2.15 The number of complaints against associates of the police can also be described in a variety of ways. In total, 59 complainants made 61 allegations against 43 associates of the police between 1979 and 2005. I have treated this as 61 sexual assault complaints against police associates that fell within my terms of reference.

Outcomes of complaints

- 2.16 The complaint outcomes of the 313 complaints of sexual misconduct against members of the police that I reviewed were as follows:
- Criminal charges were laid against 32 police members or former police members as a result of 45 complaints (because a number of officers faced multiple charges as a result of multiple complaints). This resulted in 10 offenders being convicted of sexual assault; 20 accused were acquitted; and two officers committed suicide before their cases could be heard.
 - There were 93 complaints against 48 police officers resulting in some form of internal discipline. Of these 48 officers, 22 were subject to complaints that were referred for hearing before a disciplinary tribunal; 12 officers’ cases went to a hearing, of which 10 had complaints proven against them; and nine officers resigned or disengaged prior to

a hearing. The remainder were dealt with through lower level sanctions, ranging from counselling to reprimands.

- Three complaints against three officers were resolved under the police Sexual Harassment Policy.
- Four members of the police subject to investigation as a result of five complaints disengaged or resigned during the course of the investigation (i.e. before any charges were laid or disciplinary actions taken).
- Thirteen complaints (from nine complainants) against 12 officers were found to be false.
- Two complaints were investigated but were subsequently withdrawn by the complainants.
- There were 152 complaints against 129 police members that were “not upheld”.

2.17 The term “not upheld” requires some clarification. The definition used by New Zealand Police says, “The investigation does not sustain the complaint, or establishes that the acts complained of did occur but were justified.”¹⁷ In effect this means there is insufficient evidence for the complaint to be upheld to the standard required to take criminal or disciplinary action.¹⁸ It does not necessarily mean that the allegation was false or had no substance.¹⁹ Detective Superintendent Malcolm Burgess described to me a “continuum” of complaints:

I think there will be cases where the allegation is not false but where the allegation does not amount to a criminal or disciplinary offence. In that case, unfortunately the complaint will not be upheld.

It is similar to the situation that we’ve discussed here about an allegation of rape that might be made against anyone, where there are some complaints that are false, there are some complaints that are so obviously true and there is such a wealth of evidence that you have no difficulty with, and there are a significant number in the middle that are on a continuum, I guess, where the person complaining about the event perceives that they have been done wrong but in terms of legal requirements of proving that allegation, whether it be in a criminal or a Disciplinary Tribunal, presents difficulties to us.²⁰

2.18 I comment on the adequacy of this classification approach below.

Outcomes of complaints against police associates

2.19 The complaint outcomes of the 61 complaints of sexual assault by associates of the police that I reviewed were as follows:

- Nine associates of the police were charged and convicted of sexual offending as a result of complaints by 11 complainants.²¹

17 New Zealand Police, General instruction IA 114, “Clearance Classifications”, *Ten-One*, No 90b, 28 April 1995.

18 Detective Superintendent Malcolm Burgess, Transcript of hearing, 29 November 2005, p. 13.

19 In Operation Loft file LT 56, for example, the district commander wrote to the complainant, “While there is no doubt that you were subjected to a sexual assault, it was not considered that there was a strong case for prosecution.”

20 Detective Superintendent Malcolm Burgess, Transcript of hearing, 29 November 2005, pp. 13–14.

21 One associate was also acquitted of complaints made by two other complainants (Operation Loft file LTA 43). One associate was not charged as a result of a complaint by another complainant (Operation Loft files LTA 23 and LTA 24).

- One associate was charged and received diversion²² as a result of a complaint laid by one complainant.
- Fourteen associates were charged and acquitted as a result of complaints made by 20 complainants.²³
- Charges laid against two associates as a result of two complainants' allegations were withdrawn at depositions.²⁴
- Four associates were warned as a result of complaints made by five complainants.
- Fourteen associates were not charged as a result of 19 complaints (laid by 18 complainants).
- Three complaints (laid by two complainants) against three associates disclosed no offence.

Comment on the numbers and classification of complaints

- 2.20 I have two points of concern about the numbers and classifications of these complaints.
- 2.21 My first concern relates to the clearance classification codes that are specified in general instruction IA 114: upheld, not upheld, conciliated, or withdrawn. Although the meaning of “upheld”, “conciliated”, and “withdrawn” are readily apparent, the term “not upheld” needs clarification. General instruction IA 114 defines “not upheld” as “The investigation does not sustain the complaint, or establishes that the acts complained of did occur but were justified.”²⁵ This clearance classification is unsatisfactory because it includes complaints that are likely to be true but for which there is insufficient evidence to meet the required standard of proof for disciplinary or criminal charges.
- 2.22 The police emphasised that, regardless of the formal outcome of a complaint, they are always alert to conduct that might require comment or intervention.²⁶ Despite this I am concerned that the clearance classification does not necessarily fairly reflect whether or not poor behaviour has occurred, which should prompt action from a human resources management point of view, even if no criminal or disciplinary charge is progressed.
- 2.23 Secondly, I have real concerns both about the number of complaints of sexual misconduct made against police members, and the number of complaints (141 of the 313) regarded as containing sufficient evidence on which to lay criminal charges or undertake some form of disciplinary action. Although not all of these allegations were proven, I am concerned about the effect they would have had on the organisation. I am aware from my time as chief executive of large Government organisations that certain behaviours by staff members (even a tiny proportion of staff) are a serious threat to an organisation. This is especially the case

22 The Police Adult Diversion Scheme allows police to withdraw cases from prosecution in return for first-time offenders (aged 17 years or over and who admit guilt and accept responsibility for their actions) undertaking certain actions as appropriate to the circumstances of the offence.

23 One associate was also not charged as a result of a complaint made by a complainant (Operation Loft file LTA 10).

24 One associate was also not charged as a result of a separate complaint made by another complainant (Operation Loft file LTA 41).

25 New Zealand Police, General instruction IA 114, “Clearance Classifications”, *Ten-One*, No 90b, 28 April 1995.

26 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 36. (For comment on the provision of references to quotations, submissions, and other information provided by the parties, refer to “Notes for readers” in the Appendices.)

where staff deal with members of the public in situations where they are vulnerable, and where the integrity of the members, and the perceptions of that integrity, are paramount to delivering a professional service, as in the case of New Zealand Police.

- 2.24 The police submitted that it is important not to draw conclusions from the raw number of complaints received, without recognising that the nature of policing is “likely to give rise to larger numbers of complaints, and in particular larger numbers of meritless complaints, than might otherwise be expected”.²⁷ I agree that policing by nature involves a very high degree of community interaction; the exercise of a coercive function capable of arousing antagonism; and routine contact with both vulnerable and disturbed members of the community, as well as criminals. I accept that there will always be false complaints and the police will always be vulnerable in this regard. However, in my view the number of sexual misconduct complaints against police officers, in conjunction with the number of complaints that were seen to justify some form of action being taken by way of criminal or disciplinary charges, is significant enough for the Commissioner of Police to need to be alert to the potential risk to the reputation of New Zealand Police. The figures demonstrate how important it is that the Commissioner of Police not only ensure that all complaints are taken seriously and investigated thoroughly but also provide clear guidance to his or her staff about the high standards of ethics, integrity, and conduct that are expected of police members. (I deal with this matter in more detail in paragraphs 6.101 to 6.136.)

GENERAL DESCRIPTION OF POLICE POLICY STRUCTURE

- 2.25 The standards, procedures, and policies within which the police operate are voluminous and complex. In the course of their work (including the investigation of sexual assault complaints against police officers and associates) police officers are required to follow and be guided by the instructions contained in a formidable array of documents. These are set out in Table 2.1 overleaf.
- 2.26 The police hierarchy of procedure, policy, and guidelines is headed by statutes:
- the Police Act 1958, and subsequent amendments
 - regulations made pursuant to the Police Act
 - the Crimes Act 1961
 - other Acts that specify roles for the police (for example, the Summary Proceedings Act 1957 and the Children, Young Persons, and their Families Act 1989).
- 2.27 General instructions are the primary operational and administrative documents that govern day-to-day policing. They may be issued from time to time by the Commissioner of Police pursuant to section 30 of the Police Act 1958, and all members of police are bound to “obey and be guided by” those instructions.²⁸
- 2.28 The Office of the Commissioner may also, from time to time, issue commissioner’s directives and policy pointers. These policy documents are subordinate to general instructions and take the form of detailed instructions on a specific issue. In the past, commissioner’s directives and policy pointers were known as commissioner’s circulars and headquarters

²⁷ New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 13.

²⁸ Police Act 1958, section 30(1).

Table 2.1: Hierarchy of police policy and procedures

	Authority	Documents
Legislation ▼	Primary statute	Police Act 1958 , and subsequent amendments
	Regulations	Police Regulations 1992 , and amendments
	Other legislation	e.g. Crimes Act 1961
Policy ▼		General instructions
	Commissioner of Police	Police commissioner's directives and policy pointers e.g. Adult Sexual Assault Investigation Policy
	District commanders	District orders
	Station commanders	Station orders
Procedures	Office of the Commissioner	Manual of Best Practice (5 volumes)

Based on a chart provided by New Zealand Police.

circulars, and had a life span of two years unless renewed or reissued.²⁹ Under regulation 5 of the Police Regulations 1992 all members are also required to “obey and be guided by” these documents.

2.29 There appears to be some potential for confusion with respect to this requirement to “obey and be guided by” the various instructions. Superintendent David Trappitt, who produced much of the documentation on policies and procedures, when questioned on the “obey and be guided by” principle, told the Commission, “That’s a level of detail I haven’t thought about. I’ve considered they were the same, the same commentary, one to add to the other.”³⁰ The police later provided an explanation on how the requirement is to be interpreted. The police stated that although some general instructions (and policy) must be applied to the letter, others require the exercise of judgment: “those that are mandatory in form must be ‘obeyed’, while others prescribe a framework within which the Police must exercise their best judgment.”³¹ The absence of any clear distinction between, or explanation of, the “mandatory” and “guidance” provisions of policies, in my view results in an unhelpful lack of clarity about matters for which police officers are accountable.

2.30 Within each police region or district, commanders have the authority to issue standing orders applicable to all their staff.³² Region orders became obsolete on 1 January 1999

29 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 5.

30 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Transcript of cross-examination by Ms Scholtens QC, 24 May 2004, p. 10.

31 New Zealand Police, Submissions in response to draft report, 20 June 2006, pp. 35–36.

32 Regulation 5(1)(a) of the Police Regulations 1992 specifies that every member of the police shall obey the applicable region orders and district orders.

when the restructure of management levels within police abolished the regional tier of management.³³ District orders, however, continue to be used as a means of ensuring consistency of practice within a particular district. The purpose of a district order may be to reinforce a particular aspect of general instructions, or a district may develop its own policies in response to a specific local policing need. It was suggested to me that, given the quantity of general instructions, district orders are considered easier for managers to “get their heads around”.³⁴

- 2.31 Police members working within a particular police station are also expected to comply with relevant station orders and guidelines. District Commander Grant Nicholls explained the difference between district orders and guidelines: “The guideline is more focused on the frontline perhaps as an aid to assist good practice. The District Order is more focused on the management, ... at Area Commander level, to ensure absolute compliance.”³⁵
- 2.32 District Commander Nicholls told me that there should be consistency between district orders, guidelines, and general instructions, and that district commanders should ensure that the district order or guideline is not in conflict with relevant general instructions.³⁶ According to Superintendent Trappitt, districts are regularly audited by the Office of the Commissioner, and report constantly on local initiatives and performance.³⁷ It is not apparent if this audit includes a review of district orders to ensure consistency with general instructions.
- 2.33 It is apparent, however, that there is no mechanism to ensure that there is consistency in policy instructions between police districts. Although district commanders meet regularly and can exchange ideas, and the Organisational Performance Group encourages districts to share best practice,³⁸ each district commander has the discretion to choose what orders or guidelines he or she promulgates and the form of those orders or guidelines.
- 2.34 In addition to formal policy documents, the Office of the Commissioner publishes manuals of instruction giving practical advice and guidance for dealing with specific crimes or incidents. The manuals were initially printed in hard copy as the Constables Manual, the Manual for Detectives, and the Operations Manual.
- 2.35 These manuals were progressively developed in the late 1980s and 1990s into one set of manuals, referred to as the “Manual of Best Practice”.³⁹ General instruction P075, reissued in 2002, directs that all members of police “should comply with the instructions laid down” in the Manual of Best Practice.⁴⁰ The manuals were designed to reduce the

33 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 9.

34 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 25.

35 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 23.

36 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 15 November 2005, p. 24.

37 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 22 November 2005, p. 5.

38 Superintendent Gavin Jones, Acting District Commander, Auckland City, Transcript of hearing, 17 November 2005, p. 23. (The Organisational Performance Group in the Office of the Commissioner measures police performance. According to the New Zealand Police *Annual report for the year ended 30 June 2005*, the group carries out formal progress and performance evaluations against district performance agreements every six months.)

39 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 8.

40 New Zealand Police, General instruction P075, “Operations Manual”, 25 July 2002.

number of general instructions in existence and to provide general advice on the law and on the appropriate methods for investigation or management of crime, incidents, or other occurrences.⁴¹ There are currently five volumes governing major operations, investigation support, investigation, traffic, and human resources.⁴² I received Volume 2 (Investigation Support) and Volume 3 (Investigation) as relevant for my inquiry. Together these two volumes comprised around 1,900 pages.

Adequacy of this system

- 2.36 It is clear to me that the current structure of police policy and procedure is unnecessarily complicated and confusing. Although this kind of multi-tiered structure was common to Government departments in the early 1980s, all Government departments of which I have experience have shifted to a simpler and more accessible policy structure.
- 2.37 There is nothing in the Police Act or Police Regulations that stipulates this degree of complexity. Instead, the Act empowers the Commissioner of Police to issue whatever instructions he sees fit, in whatever form is most appropriate. The police explained the need for the lower tiers of instructions (those issued at the level of district commander and below) in terms of enabling a flexible response to particular regional needs and resources (for example, traffic policing in Southland in comparison with Auckland). Although I accept this explanation, these types of instructions should be used only for a policing situation that is unique to a particular area; they should not be used for matters such as the investigation of sexual offending that are applicable to all policing districts.
- 2.38 Certainly there are areas of police work (in particular those related to the gathering of evidence and the conduct of criminal investigations) that require very detailed procedures be documented and followed. However, the complexity of the system seems to arise in large part from the management culture of the police over many decades. As Superintendent Trappitt informed me,
- There has historically been a tendency in the Police to produce new instructions or policies in an ad hoc way, or for different individuals, with different areas of responsibility, to produce policy in different ways.⁴³
- 2.39 This tendency was also confirmed by Acting District Commander Gavin Jones:
- it would be timely to go back and refresh our General Instructions. There are difficulties. I am guilty of it myself because every time we have a problem in district, I say to someone, "Develop a Practice Note. We need to fix this and communicate it". That's what we tend to do.⁴⁴
- 2.40 This type of practice extended to some of the police responses to the work of this Commission. For example, in evidence given to the Commission in November 2005 Police Commissioner Robert Robinson said that, in response to concerns about the procedures for

41 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 6.

42 New Zealand Police, Manual of Best Practice, table of contents provided by Detective Superintendent Malcolm Burgess, Brief of evidence, 8 July 2005.

43 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 22 November 2005, pp. 2 and 3.

44 Superintendent Gavin Jones, Acting District Commander, Auckland City, Transcript of hearing, 17 November 2005, p. 17.

appointing suitably qualified and impartial officers to investigate complaints, he intended to issue a directive to district commanders that they consult the National Manager: Professional Standards before making appointments (except in cases addressed by the District Complaint Resolution process).⁴⁵ Similarly, in response to concerns I expressed about the lack of a policy governing inappropriate sexual relationships between police officers and persons with whom they come into contact in the course of their duties, I was informed that Police Commissioner Robinson had decided there should in future be a direction to all officers on this topic.⁴⁶

- 2.41 The current system of standards, procedures, and policies needs to be overhauled for the following reasons:
- It is unnecessarily complicated, voluminous, and confusing, all of which hinder accessibility and compliance.
 - It allows inconsistencies to develop between police standards, procedures, and policies because it lacks any mechanism to ensure that they are consistent. For example, there is no requirement that the Office of the Commissioner review district or station orders, or that districts liaise with each other about the content of their orders.⁴⁷
- 2.42 The police have acknowledged that the current system is unsatisfactory, and in early 2005 established a Corporate Instrument Review Project to assess the way that policies are developed and the way the policy and corporate instrument documents fit together, with the aim of developing a standard policy framework. One of the principal objectives of this project is to ensure consistency across the whole range of police corporate documents and, as part of the project, any conflicts between existing policies will be identified and resolved. I was informed that setting up the new policy framework would take up to three years, and the ongoing review and updating would continue indefinitely.⁴⁸
- 2.43 The police are to be commended for taking this initiative after the Commission of Inquiry into Police Conduct brought into sharper focus the need for a review of police policies.⁴⁹ In my view it is vital that front-line police officers receive clear and unambiguous policy directions, and are able to quickly access and understand key policies about how to carry out their duties.

POLICY DOCUMENTS REGARDING INTERNAL INVESTIGATIONS

- 2.44 The development of policies regarding internal investigations since 1979 can be divided into four phases:⁵⁰
- phase 1: 1979 to 1989, until the establishment of the Police Complaints Authority on 1 April 1989

45 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, pp. 18–19. This directive is discussed later in this chapter and in Chapter 3.

46 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 13. This matter is discussed fully in Chapter 6.

47 Note the comments in Chapter 3, paragraph 3.118 on inconsistency in police practice.

48 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 22 November 2005, pp. 2 and 3.

49 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 22 November 2005, p. 2.

50 The Commission of Inquiry into Police Conduct is interested only in the policies that were applicable between 1979 and the present as explained in Chapter 1 and Appendix 2.

- phase 2: 1989 to 1994, until a memorandum of understanding was signed between the police and the PCA on 10 November 1994 concerning their working relationship in dealing with certain offences by police
- phase 3: 1994 to 2000, during which period the current general instructions regarding internal investigations were in place
- phase 4: 2000 to 2006, during which period new policy developments have responded to recent issues.

Internal investigation policies, 1979–1989

2.45 During this period a complaint concerning the behaviour of a member of the police was received and dealt with either by the police under instructions issued by the Commissioner of Police, or by the Ombudsman, who could receive complaints of misconduct or complaints related to the way police handled an original complaint.⁵¹

2.46 Concerns regarding the manner in which the police were conducting internal investigations were evident as early as 1978, when the police commissioner issued a commissioner's circular with instruction on complaints against the police:

It is essential that complaints against the Police are conducted by the Police in a manner that leaves no room for valid criticism or give support to a campaign to impose civilian tribunals or other bodies to conduct such investigations or reviews.⁵²

2.47 The circular noted three key points giving rise to criticism:

- failure to bring inquiries to conclusion in a reasonable time
- unsatisfactory standard of investigation
- failure to adequately inform the complainant the result of inquiries.

2.48 The police commissioner gave the following directions:

- On receipt of a complaint, clear written directions were to be given to ensure the investigation was completed as early as possible. In serious matters an investigator who could see the matter through to the conclusion was to be appointed. If the file was not completed within six weeks it must go to the district commander; if not completed within 12 weeks, the file was to go to the police commissioner.
- District commanders were to keep a file containing copies of complaints and to ensure all complaints were dealt with in a manner that could not give rise to criticism, and without unnecessary delay.
- On completion of an inquiry, district commanders were to ensure that the complainant was personally informed of the result of the investigation of their complaint.

2.49 On 4 March 1980, a commissioner's circular confirmed that members of the police who offended against the criminal law were to be treated no differently from the general public, and in the absence of substantial reasons to the contrary, the matter should be dealt with in

51 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 11.

52 New Zealand Police, Commissioner's circular, "Complaints Against the Police", 18 August 1978.

the criminal courts.⁵³ The circular also provided that where the matter was actionable both in the criminal court and under the Police Regulations, it was to be referred to the then Police National Headquarters for a decision to ensure consistency of approach.

2.50 In July 1980 Deputy Commissioner Thompson issued a headquarters circular providing further policy direction to members of the police executive. The circular was prompted by continuing problems in the investigation of complaints against police members. It noted the principal faults with the handling of complaints against the police:

- non-assessment of the gravity of complaints
- delay in processing
- forwarding of files to staff against whom the complaint had been made to enable that staff member to submit a report
- inadequate inquiry into the true facts
- use of job sheets where statements would be more appropriate
- passing of the file from supervisor to supervisor rather than designating one member to expedite inquiries
- accepting recommendations that were not in keeping with the facts
- denigration of complainants.⁵⁴

2.51 In order to rectify this situation the circular placed greater responsibility on district commanders, suggesting that they institute a system

whereby complaints are brought to the notice of the District Commander as soon as reasonably practicable to enable him to direct the progress of the enquiry. ...

The object of these proposals is to:

- (a) Expedite enquiries into allegations of misconduct;
- (b) Improve the standard of enquiry so that our work can withstand the most rigorous scrutiny;
- (c) Establish within Districts a system whereby staff conduct can be monitored and corrective action taken when the need arises.

2.52 The circular acknowledged that in some cases, particularly the more serious ones, it might be desirable and necessary to have an investigation conducted by staff from outside the district where the event was alleged to have occurred. But as a general rule the deputy commissioner did not believe that there were any valid reasons why this should occur; instead what was required was a more professional approach.

General instruction D129 regarding internal investigations

2.53 The first general instruction regarding internal investigations that fell within the time period of interest to my inquiry was general instruction D129, issued in October 1980.⁵⁵

53 New Zealand Police, Commissioner's circular, "Police Discipline", 4 March 1980.

54 New Zealand Police, Circular from the Deputy Commissioner of Police, "Complaints Against the Police", 14 July 1980.

55 New Zealand Police, General instruction D129, "Complaints Against Police", *New Zealand Police Gazette*, 8 October 1980.

It specified that individuals making complaints were to be treated courteously, and were not to be referred to another station except where the member being complained of was the only available person. The complaint was to be taken down in writing, a copy of which should be forwarded to the district commander.

- 2.54 Upon receipt of the complaint the district commander was directed to notify the police commissioner if it amounted to a serious breach of conduct; take a personal interest in the progress of the inquiry; and ensure that the inquiry was handled at the correct level and expeditiously. What constituted a serious breach of conduct was not defined in the general instruction.
- 2.55 General instruction D129, adopting the policy formulated in the commissioner's circular of 4 March 1980, directed that the file be forwarded to the police commissioner if a decision was required as to whether criminal or disciplinary charges were to be laid. However, there was no requirement that an investigation be reviewed by headquarters in other circumstances.
- 2.56 The general instruction set out the principles and procedures to be followed by the member assigned the inquiry. In particular, it directed that the matter be afforded due priority and a weekly progress report made to the district commander, that statements were to be taken from witnesses except in relation to minor matters where job sheets would suffice, and that the member under investigation should not be shown the file but should be interviewed about the matter.
- 2.57 General instruction D129 noted that although the character of the complainant might be an issue, it should not override the need to have the complaint properly investigated, and it directed that no pressure or suggestion be made to the complainant to withdraw the complaint.
- 2.58 It also provided that members should not investigate complaints about matters in which they were personally involved unless they were of a minor nature that could be resolved quickly.

General instructions J80–J89

- 2.59 General instructions J80–J89 replaced general instruction D129 in April 1981. General instructions J80–J89 provided comprehensive guidelines for the investigation of complaints against members of the police and included a direction that such investigations be conducted thoroughly and fairly.⁵⁶
- 2.60 General instruction J80 acknowledged that complaints could provide a useful measure of police performance and directed that every reasonable effort should be made to resolve complaints as soon as practicable. It also noted, adopting the wording of general instruction D129, that although the character of the complainant might be an issue, it should not override the need to have the complaint properly investigated.
- 2.61 General instruction J83 directed that the complaint was to be brought, as soon as practicable, to the attention of the commissioned officer on duty, and should be forwarded promptly to the district commander with a report indicating the action already taken.

56 New Zealand Police, General instructions J80–J89, "Internal Investigations", *New Zealand Police Gazette*, 15 April 1981.

- 2.62 General instruction J84 set out the district commander's responsibilities regarding a complaint against the police, including sending a written acknowledgement to the complainant, appointing a member at an appropriate level to conduct or supervise the inquiry, and taking a personal interest in the progress of the inquiry.
- 2.63 General instruction J84 also gave the district commander the ability, if he or she were satisfied that an allegation was vexatious or groundless, to direct that the allegation not be investigated further.
- 2.64 General instruction J85 set out the responsibilities of the officer charged with conducting the inquiry. Of particular note are paragraphs (4) and (5). The former said that the officer should not pressure a complainant to withdraw a complaint. Paragraph (5) directed that, where practicable, the officer should endeavour to resolve complaints made because of misunderstanding by discussing the matter with the complainant.
- 2.65 As with the earlier general instruction, members were instructed not to investigate complaints about matters in which they were personally involved, unless the complaint was of a non-serious administrative nature.⁵⁷
- 2.66 In 1981 Police Commissioner Walton became concerned that some members had adopted a practice of automatically warning people who wished to make a complaint against the police of the consequences of making a false complaint, even where there were no reasons for believing that a particular complaint was false.⁵⁸ The police commissioner therefore directed that unless there were reasonable grounds for believing that a complaint was false, complainants should not be warned of the consequences of making a false complaint because such a warning could discourage people with a genuine complaint, or could be seen as intimidation of complainants.
- 2.67 In the early 1980s Police National Headquarters adopted a new practice of centrally recording all serious allegations against police members. This required police districts to notify the Deputy Commissioner (Administration) of all serious allegations. These were entered numerically on a district basis in a special system in the national headquarters records, known as the serious allegations against members (SAAM) system.⁵⁹ General instruction J81 (1) defined serious allegations as
- (a) Allegations that a member of the Police has committed any crime or offence punishable by imprisonment.
 - (b) Allegations by persons arrested, detained or interviewed (or by their parent, guardian or solicitor) that they have been unjustly arrested or mistreated.
 - (c) Any other allegation that is classified as "serious" by the District Commander.⁶⁰

57 New Zealand Police, General instruction J86, "[Internal Investigations] Exclusion", *New Zealand Police Gazette*, 15 April 1981.

58 New Zealand Police, Commissioner's circular, "Complaints Against the Police", 21 December 1981.

59 New Zealand Police, Headquarters circular, "Serious Allegations Against Members (SAAM) Recording System", 3 March 1982.

60 New Zealand Police, General instruction J81 (1), "[Internal Investigations] Definitions", *New Zealand Police Gazette*, 15 April 1981.

- 2.68 Although headquarters had to be notified of all serious allegations against police members, it was not considered necessary for a completed investigation file to be sent to the Deputy Commissioner (Administration) unless he or she so directed. The final review of the file and the decision whether or not to prosecute remained the responsibility of the district commander.
- 2.69 The results of the first 18 months' operation of the SAAM system revealed a higher number of complaints than anticipated; a preponderance of complaints of excessive force; the prevalence of certain bad practices, such as a form of strip-searching in public; and that some members were featuring on more than one occasion.⁶¹
- 2.70 A canvass of all districts showed, however, that in 1982 the creation of an internal affairs section to conduct inquiries into complaints against the police was generally not wanted. Police Commissioner Walton appears to have agreed with this, because he directed district commanders to
- ensure that every complaint was promptly and properly investigated (“one of the important duties of a District Commander, especially if discipline is to remain a line responsibility within Districts”)
 - consider the need for meetings with all staff to discuss disciplinary enquiries with a view to identifying and rectifying problem areas without further advice or direction from Police National Headquarters.⁶²

Refinement of general instructions J80–J89 in 1983

- 2.71 With effect from 1 January 1983 general instructions J80–J89 relating to internal investigations were revised.⁶³ Although the substance of these instructions remained largely unchanged, the 1983 revision saw the police commissioner's earlier direction that members were not to warn complainants of the consequence of making a false complaint brought into the general instructions. The commissioner's circular detailing the changes recorded the procedure regarding a new central register of complaints against police to be maintained in the Personnel Directorate at Police National Headquarters. For the purposes of the register, complaints were defined as serious allegations (as defined by general instruction J81 (1)) or misconduct (as referred to in general instruction J90), as well as any complaint from a member of the public about a member of the police that, in the view of the district commander, warranted inclusion in the register.
- 2.72 District commanders' obligations under the revised general instructions were also enhanced. General instruction J85 directed district commanders to forward a copy of a complaint to the Deputy Commissioner (Administration) within 48 hours of receipt of the complaint; and to refer complaint files to the Deputy Commissioner (Administration) for a decision on whether or not to proceed with a prosecution where the complaint file evidenced
- (a) Misconduct which may be a summary offence under statute or regulation, where charges could be preferred in either the open court or by way of disciplinary proceedings.

61 New Zealand Police, Commissioner's circular, "Serious Allegations Against the Police", 19 July 1982.

62 New Zealand Police, Commissioner's circular, "Serious Allegations Against the Police", 19 July 1982.

63 New Zealand Police, Commissioner's circular, "Internal Investigations", 15 December 1982.

- b) Complaints which have attracted a high degree of public interest or media publicity.⁶⁴
- 2.73 The 1983 revision of the general instructions relating to internal investigations also introduced processes for dealing with any person who might have made a complaint while in custody; complaint clearance codes to bring consistency into the coding of resolutions; refined processes for classifying complaints as serious or non-serious matters; and the category of discrimination as a type of serious allegation.⁶⁵
- 2.74 I was told by Superintendent Stuart Wildon that, as a result of “dissatisfaction with the way that Police handled complaints arising from the 1981 Springbok Tour”, a national Internal Affairs section was established in 1983.⁶⁶ There was initially some confusion regarding the interface between the new Internal Affairs section and the police districts. As a result, Police National Headquarters published a circular in June 1984 providing guidelines clarifying district commanders’ powers and ensuring consistency in the way they were exercised.⁶⁷ The circular set out the circumstances in which it was appropriate to deal with offending by sworn members by way of criminal charge, when recourse to an internal charge might be more appropriate, and when a warning might be appropriate.⁶⁸
- 2.75 The circular directed that police members were to be treated no differently from the general public with regard to the discretion to arrest or charge. This included treating the police no more stringently than members of the general public. However, the circular also noted that some offences that might be quite trivial when committed by a member of the public might be quite serious when committed by a member of the police.
- 2.76 The circular reiterated that the decision to prosecute or to lay disciplinary charges rested with the district commander within whose jurisdiction the offence was alleged to have been committed. If in doubt the district commander could seek the opinion of or advice from the Deputy Commissioner (Administration) or his senior staff.
- 2.77 Some police regions issued their own orders confirming the circumstances in which serious matters had to be reported to the regional commander. I was referred to a region order, published in Region 3 in 1988, that stressed the importance of the regional commander being advised of serious occurrences, incidents likely to cause embarrassment to the police, and matters of staff welfare in which the regional commander might wish to initiate a personal response. Specific matters in which reporting to the regional commander was mandatory included complaints against police members alleging a criminal act, or complaints likely to bring the district’s police generally into disrepute.⁶⁹

64 New Zealand Police, Commissioner’s circular, “Internal Investigations”, 15 December 1982. See also similar wording for general instruction J85 (2) as published in *New Zealand Police Gazette*, No. 39, 12 October 1983, p. 216.

65 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 12.

66 Superintendent Stuart Wildon, New Zealand Police National Manager: Professional Standards, Brief of evidence, 21 November 2005, p. 2.

67 New Zealand Police, Headquarters circular, “Criminal and Disciplinary Proceedings Against Members of the Police”, June 1984.

68 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 12.

69 New Zealand Police, Regional order, “Matters to be Reported to the Regional Commander”, 1988.

Internal investigation policies, 1989–1994

- 2.78 The second phase in the development of policies on internal investigations begins with the establishment of the Police Complaints Authority. The concept of some form of civilian oversight of the police was first considered as a result of ongoing public debate on the outcome of police internal inquiries. In 1985 the Minister of Police on behalf of the Government distributed a discussion paper setting out a series of alternatives for dealing with complaints against police.⁷⁰
- 2.79 An officials committee chaired by Sir David Beattie was established in 1986 to “prepare a draft Bill relating to the concept of an Independent Examiner of complaints relating to the Police.”⁷¹ This draft bill was subsequently adopted by the Government with only minor amendments and was enacted as the Police Complaints Authority Act 1988 (PCA Act) on 10 March 1988. The PCA came into operation on 1 April 1989.
- 2.80 The PCA was set up as an independent civilian oversight body tasked with ensuring, amongst other things, that complaints against members of police were dealt with satisfactorily. As Rt Hon Sir Geoffrey Palmer stated when introducing the second reading of the Police Complaints Authority Bill:
- However conscientiously the Police carry out their investigative function – and I am sure that they do so very conscientiously indeed – the suspicion of partiality must remain in the minds of complainants. It is fundamental to our system of justice that people should not be judges in their own cause. ...
- It is also patently clear that the public interest requires the establishment of a second complaints authority.⁷²
- 2.81 In 1989 the PCA had jurisdiction only over complaints against sworn members of police. Civilians working within the police were members of a public service organisation called the Police Department, which was considered a separate organisation from the New Zealand Police.⁷³ The Police Amendment Act 1989, which took effect on 1 March 1990, disestablished the Police Department and introduced non-sworn members as a new category of police employee. At this time the term “civilian” was replaced with the term “non-sworn”. From this point, every reference in the PCA Act to “member of the Police” was read to include non-sworn police employees.⁷⁴

General instructions P281–P292

- 2.82 As a result of this new statutory development described above, some amendment of general instructions was required. Accordingly, in the week before the establishment of the PCA, the police issued general instructions P281–P292, which gave effect to the new complaints

70 New Zealand Police, *Complaints Against Police*, Discussion paper, February 1985.

71 New Zealand, Committee on an Independent Examiner of Complaints Against the Police, *The Report of the Committee on an Independent Examiner of Complaints Against the Police*, 1986, p. 1.

72 New Zealand] *Hansard*, 16 February 1988, Vol. 486, pp. 2007–09. Rt Hon Sir Geoffrey Palmer for Minister of Police.

73 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 17.

74 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 17.

investigation procedures required by the PCA Act.⁷⁵ These instructions were promulgated without any opportunity for comment from the newly constituted PCA. However, they were to a large extent merely a reproduction of earlier general instructions relating to internal investigations, the only notable changes being

- the requirement to notify the PCA of every complaint alleging misconduct or neglect of duty by a member of the police; every complaint concerning police practice, policy, or procedure affecting the complainant in a personal capacity; and every incident involving death or serious bodily harm caused or apparently caused by a member acting in the execution of duty⁷⁶
- the introduction of a conciliation process for complaints involving alleged minor breaches of Police Regulations or offences that may be resolved by informal warnings or counselling⁷⁷ (According to general instruction P287 the responsibility for assessing whether a complaint was suitable for conciliation lay with the police and, in particular, with the investigating officer, or his or her superior. The complainant's consent to conciliation was also required.)⁷⁸
- the requirement to supply the PCA with sufficient material to enable an assessment to be made of the adequacy of the police investigation as soon as practicable and no later than two months after the completion of the police investigation.⁷⁹

2.83 Later that year the Commissioner of Police had to issue further directions regarding the interface between the police and the PCA. On 17 August 1989, the police commissioner clarified lines of responsibility for advising a complainant of the final disposition of a complaint against the police. Where a complaint was made directly to the PCA, letters advising the complainant of the result were to be sent from the PCA's office. Where the complaint was made to both the PCA and the police (and/or the Minister), letters should be sent from each organisation.⁸⁰

2.84 My attention was drawn to Tauranga District Order 89/4, promulgated in 1989, as an example of a district order giving advice on standardising the preparation of the final report into complaints against the police.⁸¹ It directed that the following headings were to be used: Introduction, Complainant(s) and the complaint, Member(s) complained about, Witnesses/independent witnesses, Reconciliation, Matters which cannot be resolved, Matters of law, Conclusions, Recommendations. The order also noted that witnesses who are other police members could not, as a general rule, be treated as being any more independent than an associate or friend of a complainant. It was not apparent

75 New Zealand Police, General instructions P281–P292, “Police Complaints Authority Act 1988”, *New Zealand Police Gazette*, 22 March 1989, pp. 105–11.

76 New Zealand Police, General instruction P281, “[Police Complaints Authority Act 1988:] Interpretation”, which sets out the requirements under sections 12, 13, and 15 of the Police Complaints Authority Act 1988, *New Zealand Police Gazette*, 22 March 1989, p. 105.

77 In general instruction IA131, “Counselling” (2002), it is defined as “advice intended to guide a member towards improving his or her conduct or performance where it has fallen below the standard expected because of inexperience, lack of knowledge, lack of training, or other reason clearly mitigating against any adverse report or reprimand”. Before 2002, counselling was included among the possible disciplinary actions in IA 122.

78 New Zealand Police, General instruction P287, “[Police Complaints Authority Act 1988:] Conciliation of Complaints”, *New Zealand Police Gazette*, 22 March 1989, p. 109.

79 New Zealand Police, General instruction P290, “[Police Complaints Authority Act 1988:] Complaint Files for National Headquarters”, *New Zealand Police Gazette*, 22 March 1989, p. 111.

80 New Zealand Police, Commissioner's circular, “Complaints to Police Complaints Authority”, 17 August 1989.

81 New Zealand Police, Tauranga District Order 89/4, “Investigations into Complaints Against the Police”, 22 November 1989.

from the documents provided to me whether other district commanders created similar orders.

Revision of general instructions P281–P292

2.85 At a meeting of the Police Executive in 1991 the Deputy Commissioner of Police introduced an internal paper for discussion regarding criticisms from the PCA over the standard of some internal investigations. The principal criticisms were listed:

- members complained of were being provided with or shown copies of complainants' statements or letters of complaint before interview or before submitting reports
- a failure by some district commanders and senior supervisors to address obvious deficiencies and relevant issues when forwarding files
- omitting to go back to a complainant and endeavour to reconcile conflicts between the original complaint and the account of the member complained of.⁸²

2.86 General instructions P281–P292, dealing with complaints investigation, were subsequently revised, extended, and republished on 15 May 1991. Among other things the new instructions included

- directions for the investigation of complaints made on behalf of another person, in particular, that the alleged victim should, if possible, be seen to confirm the allegations and the wish for an investigation⁸³ (Nevertheless, the deputy commissioner, or the regional or district commander, had a discretion to direct that an investigation be undertaken even if the alleged victim did not wish to support the complaint made on his or her behalf.)⁸⁴
- a requirement that, where the complaint was of a serious nature, district commanders make every endeavour to appoint an investigating officer from outside the section or unit to which the member complained of belonged⁸⁵
- directions to the region or district commander, when determining whether or not to charge a member with a disciplinary offence, to consider referring the file to the PCA under the consultative provisions in section 20(3) of the PCA Act⁸⁶ (In deciding whether to consult with the Authority, regard was to be given to the seriousness of the complaint and whether it would be an advantage to obtain the PCA's input before police action was determined.)⁸⁷
- an order that complaints made by an arrested person were to be investigated in the same manner as other complaints.⁸⁸

82 New Zealand Police Executive, "Police Complaints Authority – Complaints Investigations", Meeting document reference 1991/7/8.

83 New Zealand Police, General instruction P282(6), "[Police Complaints Authority Act 1988]: General Guidelines for Receiving Complaints", *New Zealand Police Gazette*, 15 May 1991, p. 130.

84 New Zealand Police, General instruction P282(7), "[Police Complaints Authority Act 1988:] Guidelines for Receiving Complaints", *New Zealand Police Gazette*, 15 May 1991, p. 130.

85 New Zealand Police, General instruction P284(1)(j), "[Police Complaints Authority Act 1988:] District Commanders' Responsibilities", *New Zealand Police Gazette*, 15 May 1991, p. 133.

86 New Zealand Police, General instruction P283(4), "[Police Complaints Authority Act 1988:] Referral of Complaints", *New Zealand Police Gazette*, 15 May 1991, p. 131.

87 New Zealand Police, General instruction P283(5), "[Police Complaints Authority Act 1988:] Referral of Complaints", *New Zealand Police Gazette*, 15 May 1991, p. 131.

88 New Zealand Police, General instruction P286(2), "[Police Complaints Authority Act 1988:] Investigating Member's Responsibilities", *New Zealand Police Gazette*, 15 May 1991, p.134.

Prosecution guidelines

2.87 In 1992 the Crown Law Office issued prosecution guidelines for Crown solicitors. These guidelines are also relevant to police and provide significant assistance as to the factors that should be taken into account when exercising the discretion to prosecute. According to the guidelines there are two major factors that a prosecutor must consider before deciding to initiate a prosecution: evidential sufficiency and the public interest. Evidential sufficiency requires, first, “admissible and reliable evidence that an offence has been committed by an identifiable person” and, secondly, that the evidence is “sufficiently strong to establish a prima facie case”. An assessment of the public interest will vary depending upon the circumstances of each case. According to the guidelines, “A dominant factor [in making this assessment] is that ordinarily the public interest will not require a prosecution to proceed unless it is more likely than not that it will result in a conviction.”⁸⁹ These guidelines continue to govern police exercise of the discretion to lay charges against a suspect today.

Internal investigation policies 1994–2000

2.88 The third phase in the development of policies on internal investigations can be dated from 10 November 1994 when the Commissioner of Police and the Police Complaints Authority signed a memorandum of understanding defining the working relationship between police and the PCA in relation to incidents of serious misconduct or serious neglect of duty that were reported by members of the police (that is, by colleagues of the officer concerned, rather than by the alleged victim or a third party).⁹⁰ According to the memorandum, when any serious misconduct or any serious neglect of duty was reported, the police commissioner should notify the Authority as soon as practicable. Serious misconduct or neglect of duty was defined as conduct that constituted a criminal offence, or was of such significant public interest as to put at risk the reputation of police. This memorandum remains in effect today.

General instructions IA 100–IA 132

2.89 A substantive revision of police general instructions relating to internal investigations was undertaken in 1995, and general instructions IA 100–IA 132 replaced general instructions P281–P292 on 28 April 1995.⁹¹

2.90 General instructions IA 100–IA 132 remain in force today. Although they were reissued in 2002, this was a change in format with only one substantive change to the content of the instructions.⁹² Therefore, although many aspects of these general instructions are similar to earlier instructions, I have set out what they provide in detail in order to assess their adequacy in today’s environment.

89 New Zealand Crown Law Office, *Crown Law Office Prosecution Guidelines for Crown Solicitors*, 1992. Refer 3.1 “Evidential Sufficiency” and 3.2 “The Public Interest”.

90 New Zealand Police and Police Complaints Authority, “Memorandum of Understanding between the New Zealand Police and the Police Complaints Authority”, 10 November 1994. In: New Zealand Police, *Ten-One*, No 90b, 28 April 1995, p. 18.

91 New Zealand Police, “General Instructions Supplement: Internal Affairs Complaints, Discipline and Procedure – IA 100–IA 132”, *Ten-One*, No 90b, 28 April 1995.

92 Counselling, which was listed as a disciplinary sanction in IA 122 of the 1995 general instructions, is now governed by its own general instruction (IA131, 2002).

2.91 The general instructions draw internal investigation and disciplinary procedures into a consolidated set of instructions. They are divided into six sections: an introductory section; a section setting out the complaints procedure for internal investigations; a section outlining “District Complaint Resolution” procedures; a section outlining the disciplinary procedures; a section outlining the whistle-blower protection process; and an administrative section. These are summarised below (paragraphs 2.92 to 2.119). There is also an annex containing a copy of the 1994 memorandum of understanding between the police and the PCA, referred to above.

Part I: Introduction

2.92 The introductory section outlines two essential themes underlying these general instructions, which are to be administered by the officer in charge of Internal Affairs at Police National Headquarters (now known as Professional Standards at the Office of the Commissioner):

- First, there is to be speedy reporting of complaints to the PCA. The general instructions recognise that the PCA has jurisdiction over every complaint made against the police and that it is the PCA that determines the manner in which a complaint is to be investigated or if it is to be investigated at all.⁹³ In order to facilitate this, police members are required to notify the PCA of the receipt of a complaint “as soon as practicable”,⁹⁴ although this term is not defined in the general instructions.
- Second, the PCA has the right to make recommendations regarding the disposal of the complaint before police action is taken. Upon the completion of a complaint investigation, the PCA should be informed of the police proposals regarding the disposal of the complaint. The PCA can then make its own recommendations, and if necessary, negotiations can be entered into regarding the final dispositive action to be taken. The general instruction noted, however, that the final decision on disposal rests with the police.⁹⁵

2.93 General instruction IA 101 recognises that the most critical asset of New Zealand Police is its reputation. It is the duty of every member of the police to promote and defend the police’s reputation. This is achieved by setting high professional standards and demonstrating to the public, through a willingness to be held accountable for breaches of those standards, that the police deserve the public’s trust and confidence.

2.94 The primary objective of an investigation is said to be to ensure that both the complainant and the member under investigation believe that they have been treated fairly.⁹⁶

Part II: Complaints Procedure

2.95 The procedure for the investigation of complaints against police members is set out in general instructions IA 103–IA 118.⁹⁷

93 New Zealand Police, General instruction IA 100(3)(a), “Principal themes in respect of complaint procedures”, *Ten-One*, No 90b, 28 April 1995.

94 New Zealand Police, General instruction IA 103(2), “The Police Complaints Authority Act 1988” and IA 105(1), “Referral of Complaints”, *Ten-One*, No 90b, 28 April 1995.

95 New Zealand Police, General Instruction IA 103, “The Police Complaints Authority Act 1988”, *Ten-One*, No 90b, 28 April 1995.

96 New Zealand Police, General instruction IA 101(5), “Internal Investigations and the Reputation of the New Zealand Police”, *Ten-One*, No 90b, 28 April 1995.

97 New Zealand Police, General instructions IA 103–IA 118, *Ten-One*, No 90b, 28 April 1995.

- 2.96 General instruction IA 103 sets out the requirements of the PCA Act and police obligations under the 1994 memorandum of understanding. It notes that the PCA Act does not prevent the police from commencing or continuing any investigation and that it is expected that the police will continue to have the primary complaint investigation role in respect of any complaint or incident.
- 2.97 The general guidelines for receiving complaints against members of police are set out in general instruction IA 104. This instruction sets out the obligation on the police to receive a complaint against a member of police when a complainant first approaches the police. According to this instruction the complainant should not be asked to return or call another day to deal with some other staff member or section. Nor should the complainant be referred to another station except where the member complained of is the only person readily available to take a complaint. In these circumstances a brief report should be submitted to the district commander.
- 2.98 In order to obtain an accurate record of the complaint, general instruction IA 104 directs that a complaint that is made orally is to be reduced to writing and signed by the complainant as soon as practicable. If the matter is not a complaint but an expression of dissatisfaction, then every effort should be made to resolve it by means of an explanation to the satisfaction of the inquirer.
- 2.99 The police recognise in general instruction IA 104 that a complainant may experience difficulties in making a complaint to the police. To manage this situation, police members are directed to advise any complainant who is unable or reluctant to call at a police station that arrangements could be made to take the complaint elsewhere.
- 2.100 The general instructions inform members of police that a complaint can be recorded in the presence of the complainant's solicitor, friend, or relative if the complainant wishes. (This instruction, I presume, is also designed to make it easier for a complainant to make a complaint. However, there is no requirement that the police inform the complainant of his or her right to have a support person present, which, it seems to me, defeats the purpose of this instruction.)
- 2.101 General instruction IA 104 also places obligations on members of the police to ensure that the complainant is appropriately treated:
- Every complainant is to be treated courteously.
 - The character of the complainant is irrelevant to receiving a complaint.
 - Every complainant is to be advised of the procedure to be followed in actioning his or her complaint.
 - A complainant should not be warned of the consequences of making a false complaint unless reasonable grounds exist for believing the complaint is false and it is appropriate for such a warning to be given.
 - Where a complaint is made by a person in police custody, he or she should be questioned only on matters directly relating to the allegation.
- 2.102 Where a complaint is made on behalf of another person, police officers are directed to see the person said to be aggrieved in the first instance to confirm the allegations and the wish for an investigation. (I note that in these circumstances an investigation can still be

undertaken even if the person said to be aggrieved does not wish to support the complaint made on his or her behalf.)

- 2.103 When a complaint has been received, police members are directed to refer the complaint as soon as possible to a supervising commissioned officer. The commissioned officer will issue appropriate instructions where any matter requires early attention and will ensure the file reaches the district commander, who, in turn, will arrange to notify the PCA.⁹⁸
- 2.104 District commanders, supervisors, and investigators are encouraged to consult with the Internal Affairs section and the PCA if they require guidance at any stage of a complaint investigation.⁹⁹ Consultation with the PCA is to be facilitated through the officer in charge of Internal Affairs.¹⁰⁰
- 2.105 General instructions IA 108 and IA 109 set out the district commander's responsibilities:
- monitoring complaints against his or her staff by maintaining a district register of complaints
 - notifying all interested parties of the receipt of a complaint, in particular,
 - notifying the officer in charge of Internal Affairs of a complaint immediately when it involves a serious allegation or matter likely to attract publicity, and as soon as practicable where the complaint is of a less serious nature
 - notifying the PCA as soon as practicable of a complaint
 - providing a written acknowledgment of the complaint to the complainant (including where possible the name of the investigating officer)
 - advising the police member who is the alleged offender of the substance of the complaint (unless there is good reason not to do so) and of the result of the investigation
 - overseeing the investigation of a complaint, including
 - appointing a staff member of appropriate rank to conduct or supervise the inquiry, and giving consideration to appointing an investigator from outside the section or district if necessary
 - ensuring that the investigation is completed as quickly as practicable
 - and if the complaint is upheld, proposing the appropriate action to be taken, and forwarding the completed investigation file to the officer in charge of Internal Affairs advising him or her of the appropriate clearance for a particular complaint.
- 2.106 General instruction IA 108 also gives a district commander the ability to suspend the investigation of a complaint if he or she considers the allegation to be trivial, frivolous, vexatious, not made in good faith, or the person alleged to be aggrieved does not desire further action to be taken. In these circumstances a report must be submitted to the officer in charge of Internal Affairs for forwarding to the PCA.

98 New Zealand Police, General instruction IA 105, "Referral of Complaints", *Ten-One*, No 90b, 28 April 1995.

99 New Zealand Police, General instructions IA 106, "Consultation with Internal Affairs Section" and IA 107(1), "Consultation with the Police Complaints Authority", *Ten-One*, No 90b, 28 April 1995.

100 New Zealand Police, General instruction IA 107, "Consultation with the Police Complaints Authority", *Ten-One*, No 90b, 28 April 1995.

- 2.107 Of significance to the appointment of an investigating officer is general instruction IA 110, which directs that a police member shall not investigate any complaint in which he or she was personally involved (unless the complaint is of a minor administrative nature), nor review his or her own decisions.
- 2.108 General instruction IA 111 stresses the pivotal role of the investigator in promoting the credibility of the complaints system, and notes that the investigation must be conducted thoroughly and in an unbiased manner to ensure the public's confidence in the ability of the police to conduct internal investigations. The investigation must address not only the substance of the complaint but also any incidental and material matters (administrative or operational matters) arising in the course of the investigation.
- 2.109 The investigator's primary responsibility in the investigation of complaints is to the Commissioner of Police. Thus, even where the PCA has elected to oversee a police investigation, the investigator is obliged to regularly update the officer in charge of Internal Affairs and follow any instructions given by him or her in the course of the investigation.¹⁰¹
- 2.110 Before commencing the investigation the investigator is directed to personally visit or telephone the complainant without delay to, amongst other things,
- clarify the circumstances and nature of the complaint and obtain any additional information from the complainant
 - explain how the complaint will be investigated
 - explain the functions of the PCA.¹⁰²
- 2.111 General instruction IA 111(5) requires the investigator to use the same skills and diligence in a complaint investigation as would be used in any criminal investigation. Investigators are directed to
- interview the police member who is the alleged offender and put the allegation to him or her
 - maintain effective liaison with complainants or their solicitors
 - provide progress reports at four-weekly intervals to the officer in charge of Internal Affairs
 - provide progress reports to the district commander as frequently as required by local district orders.
- 2.112 At the completion of the investigation the investigator is to visit the complainant personally to explain the outcome, and is to prepare a report setting out the evidence, a conclusion supported by that evidence, and the proposed corrective or remedial action. The file is to be submitted to the district commander for forwarding to the officer in charge of Internal Affairs.¹⁰³
- 2.113 General instruction IA 112 states that a complainant wishing to withdraw a complaint must do so in writing. The investigator must be satisfied that the complainant made an

101 New Zealand Police, General instruction IA 111(2), "[Investigator's Responsibilities:] Relationship between Investigator and Police Complaints Authority", *Ten-One*, No 90b, 28 April 1995.

102 New Zealand Police, General instruction IA 111(4), "[Investigator's Responsibilities:] Complainant", *Ten-One*, No 90b, 28 April 1995.

103 New Zealand Police, General instruction IA 111(6), "[Investigator's Responsibilities:] Completion Action", *Ten-One*, No 90b, 28 April 1995.

informed decision; and shall consider whether there is any evidence of misconduct or neglect of duty, and if so, ensure that the matter is investigated and the appropriate action taken.

- 2.114 General instruction IA 113 directs that conciliation, where appropriate, should be considered in all complaints. (I note the ambiguity in this instruction, which contains both discretionary (“where appropriate”) and mandatory language.)
- 2.115 Four clearance classification codes are specified in general instruction IA 114: upheld, not upheld, conciliated, or withdrawn (as mentioned earlier at paragraph 2.21).

Part III: District Complaint Resolution

- 2.116 General instruction IA 119 sets out the process for resolving minor complaints locally. Only the PCA can decide whether a complaint is a minor complaint to be dealt with in this manner.
- 2.117 A further discussion of the District Complaint Resolution procedure and practice can be found in Chapter 4.

Part IV: Disciplinary Procedures

- 2.118 General instructions IA 120–IA 130 set out disciplinary procedures for sworn staff suspected of having committed a criminal offence, or any misconduct or neglect of duty pursuant to regulation 9 of the Police Regulations 1992.¹⁰⁴
- 2.119 The non-sworn code of conduct governs discipline of non-sworn members except in relation to duty stand down and the availability of diversion to those charged with an offence.¹⁰⁵
- 2.120 A full discussion of disciplinary procedures and practices can be found in Chapter 5.

Internal investigation policies, 2000–2006

- 2.121 During the period since 2000 several policy developments have occurred, either nationally or in police districts, responding to particular issues arising (including latterly those related to the work of this Commission of Inquiry into Police Conduct).
- 2.122 In March 2000, the national manager of Internal Affairs (now Professional Standards) wrote to district commanders noting, among other things, new time frames within which internal inquiries should be completed. In particular, he specified that a preliminary report should be submitted within six weeks and the full investigation completed within three months of receipt of a complaint. A complaint classified as appropriate for District Complaint Resolution was to be completed within two months.¹⁰⁶

104 New Zealand Police, General instructions IA 120–IA 130, “Disciplinary Procedures”, *Ten-One*, No 90b, 28 April 1995.

105 New Zealand Police, General instruction IA 120(2), “[Introduction:] Nonsworn Members”, *Ten-One*, No 90b, 28 April 1995. For information on diversion, see footnote 22.

106 New Zealand Police, Letter, Superintendent P. R. Nickalls, National Manager: Internal Affairs, to Superintendent M.F. Lammas, District Commander, Central District, 28 March 2000.

- 2.123 The district commander of Central Police District informed his subordinates of the new requirements in a memorandum dated 29 March 2000.¹⁰⁷ This memorandum noted that, in general, extensions would be contemplated only if there was a reason connected to the availability of evidence, and that a higher priority for internal investigations was now required. It is unclear how other district commanders communicated the new time frames to their staff or if they also considered that a higher priority was now required in terms of internal complaint investigations.
- 2.124 The district commander of Eastern Police District issued two district orders in June 2000. The first directs that the district commander is to be notified immediately or as soon as practicable about, inter alia, any serious complaints against the police, and any incidents where there is likely to be public (media) attention that will be critical of police actions.¹⁰⁸
- 2.125 The second district order provides further operational direction and guidance on internal investigations.¹⁰⁹ The district order reiterates that general instructions IA100–IA132 are to be complied with, and summarises the procedures to be followed. In general the requirements of this district order follow those laid out in general instructions IA100–IA132, with the following differences:
- The area controller is to appoint the investigator, and the complainant must be consulted to ensure that there is no conflict. Once the appointment is made the district commander is to be notified.
 - There is no requirement for investigators to advise Professional Standards at the Office of the Commissioner of progress. District headquarters submits a monthly report schedule outlining the status of complaint investigations and consequently investigators need only advise the district of progress. This direction appears in direct contrast to general instruction IA 111(5)(c), which states that the investigator shall
provide progress reports at four-weekly intervals to the O/C Internal Affairs or more frequently as directed by the O/C Internal Affairs. A detailed but brief progress report should indicate the present state of the investigation, the inquiries yet to be conducted, and the likely completion date;¹¹⁰
- 2.126 In response to the first of these two district orders, the Gisborne area controller issued a station order in 2000 directing that he be notified immediately or as soon as practicable about any serious complaints against the police, and any incidents where there was likely to be public (media) attention that would be critical of police actions.¹¹¹
- 2.127 A desk file was created in 2002 for use by Professional Standards investigating officers, containing standard forms and precedent forms regarding notification of investigation,

107 New Zealand Police, Memorandum, Superintendent Mark Lammas, District Commander, Central District, to area commanders, station commanders, district headquarters managers, and Senior Sergeant Thorne, Central District, 29 March 2000.

108 New Zealand Police, Eastern District Order No. 4, “District Commander – Advice Regarding Serious Crime/Incidents”, issued by Superintendent P. D. Moore, District Commander: Eastern District, June 2000.

109 New Zealand Police, Eastern District Order No. 6, “Investigation of Complaints Against Police”, issued by Superintendent P. D. Moore, District Commander: Eastern District, June 2000.

110 New Zealand Police, General instruction IA 111(5)(c), “[Investigator’s Responsibilities:] Investigation Procedure”, *Ten-One*, No 90b, 28 April 1995.

111 New Zealand Police, Station Order 2000/22, “Advise [sic] Regarding Serious Crime/Incidents”, issued by Inspector Bruce Blayney, Area Controller, Gisborne, [June 2000].

notification of an intention to report a member to the District Commander (Regulation 12 Notice), specimen charges, duty stand down, proposal to suspend from duty, suspension from duty, reporting to the PCA, and letters accepting resignation.¹¹² This desk file represents an attempt to ensure consistency in approach between police districts.

- 2.128 General instructions IA 100–IA 132 were republished (as IA100–IA133) between May and July 2002. As mentioned earlier, these general instructions differ only in format from the instructions that were published in 1995.¹¹³
- 2.129 In October 2002, the Professional Standards national manager wrote to district commanders and district complaints managers recording concern about the practice of withdrawing criminal charges in relation to an incident from which an unresolved complaint against an officer has flowed. The letter directed that criminal charges should not be withdrawn in cases where there is a related and unresolved complaint against the police unless the district complaints manager has been consulted.¹¹⁴
- 2.130 On 6 April 2005 the Commissioner of Police and the Authority signed a protocol for cooperation. The purpose of the protocol was to define the working relationship between the Commissioner of Police and the PCA in relation to the investigation of complaints and incidents. The following points were agreed under the protocol:
- All serious complaints and incidents would be reported immediately to the Commissioner of Police (through the Professional Standards national manager).
 - The Professional Standards national manager would notify the PCA of all serious complaints and incidents as soon as possible.
 - The PCA would advise the Professional Standards national manager whether or not PCA investigators would be assigned, and whether the PCA required any specific action by the police.¹¹⁵
- 2.131 The protocol makes certain stipulations where a PCA investigator is assigned to an investigation:
- The PCA investigator will advise the officer in charge of the police investigation and the Professional Standards district manager of the PCA's proposed investigation and of any specific concerns or requirements of the PCA.
 - The police will, as soon as practicable, comply with all requests for information and assistance from PCA investigators and will supply them with all relevant documentation.
 - PCA investigators should be invited to attend relevant briefings, debriefings, and orders groups.
 - In undertaking whatever inquiries are appropriate in the interests of the PCA, the PCA investigators will have regard to the possibility of criminal or disciplinary charges. If there is a possibility that disciplinary or criminal charges could result from the

112 New Zealand Police, Professional Standards Desk File, [2002].

113 Detective Superintendent Malcolm Burgess, Brief of evidence, 8 July 2005, p. 2.

114 New Zealand Police, Letter, Superintendent G.P. Emery, National Manager: Professional Standards, to district commanders and district complaints managers, 21 October 2002.

115 New Zealand Police and Police Complaints Authority, "Protocol for Co-operation between the New Zealand Police and the Police Complaints Authority", 6 April 2005.

investigation, the PCA investigators will defer interviews with police officers under investigation, complainants, witnesses, and experts until police interviews have been carried out. This direction is given because of the statutory secrecy provisions that apply to investigations carried out by or on behalf of the PCA whereby information gathered by PCA investigators cannot be used in criminal or disciplinary proceedings. These matters are discussed further in Chapter 4.

- PCA investigators may request that police interviews deal with matters of interest to the Authority, and police interviewers shall, as far as the circumstances of their investigation permit, meet such requests.

2.132 As part of internal reviews being undertaken within police after the establishment of this Commission of Inquiry into Police Conduct, Police Commissioner Robinson issued a memorandum on 24 November 2005 to district commanders and the Police Executive regarding the appointment of officers to investigate complaints or allegations of a serious nature. The memorandum requires all district commanders to consult the Professional Standards national manager when determining who should investigate a complaint (other than for complaints dealt with under the District Complaint Resolution process). The purpose of this is to ensure that the principles of independence are appropriately applied, and to ensure consistency of decision-making.¹¹⁶

ADEQUACY OF THE INTERNAL INVESTIGATION POLICIES

2.133 The history outlined above shows a process of steady improvement in the direction and content of policies and procedures for investigating complaints against police officers. My impression, setting this development alongside the files I have read in chronological order, is that New Zealand Police has achieved in the past decade a high level of general competence in the matter of internal investigations. The files from the past decade show a marked improvement over those from earlier years, which may be attributed, in part, to the development of the policies regarding internal investigations.

2.134 Having said that, there do appear to be some areas of concern in relation to police policy that continue to require attention:

- the policy with regard to notifying complaints to the Commissioner of Police
- a question of how well members of the public understand their rights to make a complaint; and their rights when they have made a complaint
- the ad hoc nature of policy development in this area.

Notification to the Commissioner of Police

2.135 The general instructions require that the Professional Standards national manager is notified of every complaint made against a police member as soon as is practicable and is immediately notified of every complaint that is of a serious nature or likely to attract media attention. The Professional Standards national manager reports to the Deputy Commissioner of Police (Operations), who, it is presumed, will then brief the Commissioner of Police. However, there is no direction in the general instructions, nor any of the police policies placed before

116 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, Attachment 1 (dated 24 November 2005).

this Commission, that the Commissioner of Police is to be notified of a complaint and when he or she is to be notified. The only reference to notifying the Commissioner of Police about a serious complaint that I am aware of is the procedure set out in the protocol for cooperation with the PCA, which applies to very few complaints (see Chapter 4). This omission is of particular concern if the allegation could amount to a serious criminal offence or misconduct, or if it is likely to attract media publicity.

- 2.136 There should be no doubt over whether the Commissioner of Police should be informed of serious complaints, and I was told by the police that the police commissioner is, in fact, informed almost immediately of very serious complaints.¹¹⁷ Nevertheless I recommend that policy clearly specify the type of complaint that must be notified to the Commissioner of Police immediately, and the type of complaint that must be notified to the commissioner as soon as practicable. This direction should also specify who is to notify the police commissioner.

Rights of the public when making a complaint

- 2.137 It is not clear to me that members of the public are sufficiently aware of their rights: first, their right to make a complaint, and second, their rights as a complainant. Other public sector service delivery organisations clearly communicate to the people with whom they interact the standards of service they can expect, and also how to make a complaint about the services they receive. Very often these expectations are publicly displayed. In the case of the police, the general instructions currently in force clearly recognise that complainants have rights: the right to be treated courteously and with respect, the right to object if they feel that the investigating officer may be biased, the right to be informed of the investigation's progress, and so on. What is not clear is whether those rights are adequately and systematically explained to the public, particularly to complainants.
- 2.138 There are a number of models used by public service providers, such as a service charter or a code of rights that “uses simple and consistent messages” to inform and empower those using the services and making complaints and help staff understand how they should approach their role.¹¹⁸ This seems to me particularly important for sexual assault complainants. I believe that the police should introduce something similar whereby the rights of complainants (as contained in the general instructions) are clearly set out in a readily accessible manner. Existing models, such as the Inland Revenue Charter, about which I heard evidence, and the Code of Health and Disability Services Consumers' Rights, may provide useful guidance.
- 2.139 In addition to a service charter, I believe it is important that members of the public are able to access information on the complaints process with relative ease. This should be a matter for periodic survey to ensure that there is awareness amongst the general public that there are processes for making a complaint and that they have defined rights when doing so. As a start, it may be helpful for police stations to display large public notices explaining the complaints procedures.

117 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 36.

118 Mr David Butler, Commissioner of Inland Revenue, Transcript of hearing, 7 December 2005, pp. 9–10.

Ad hoc nature of policy development

- 2.140 I was concerned at the apparent ad hoc manner in which policy has been developed and implemented, particularly between 2000 and 2006. I could not discern any clear rationale for including important matters (such as the new time frames for conducting internal investigation and appointing investigating officers) in a commissioner's directive rather than a general instruction.
- 2.141 I was told by Police Commissioner Robinson that there is a "very formulaic process" involved in amending the general instructions, which involves the police commissioner of the day receiving recommendations to amend the general instructions and then signing them off personally. He also told me that there is no process for automatically updating the general instructions when changes occur that have an impact on them, for instance as a result of new legislation, or changes in policy and practice occurring as a result of a commissioner's directive.¹¹⁹
- 2.142 Directives issued by the Police Commissioner do not have the status of general instructions. It is also not the practice to update general instructions to reflect directives that have been issued. For example, general instruction IA 108 has not been amended to ensure consistency with Police Commissioner Robinson's directive of November 2005 regarding the appointment of investigators to internal complaint investigations.¹²⁰
- 2.143 Directives are placed on the police intranet as policy pointers, and in this way become available to all staff.¹²¹ However, directives are not necessarily addressed to those staff who may be affected by them. Police Commissioner Robinson told me that his directive of November 2005 was couched as an instruction to members of the Police Executive, because they were the only members that needed to comply with it and giving the direction to them would bring about the level of change he wanted. As such, it was also unnecessary to include it in the general instructions until they were next reviewed.¹²² I am concerned by this reasoning given the significant involvement of such people as the district complaints managers, area controllers, and supervisors in the management of complaints against police officers. Although general instruction IA 108 specifies that it is the district commander's decision who to appoint as investigating officer, there are obvious implications for other staff who assist with such matters or have authority to act under delegation. These people should be aware of any changes to policy that may affect their work.
- 2.144 I heard evidence in other areas that the general instructions tend to be written to address a particular issue, without relation back to other general instructions that exist. I was told for instance by Mr Wayne Annan, New Zealand Police General Manager: Human Resources, that there does not appear to be a rigorous process of aligning the human resources policy with relevant legislation in the human resources area.¹²³

119 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, p. 20.

120 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, pp. 19 and 20.

121 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 37.

122 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, p. 20.

123 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, pp. 10 and 11.

2.145 In my view the police need to develop

- a clearer policy development framework, which recognises that general instructions are the most appropriate way of ensuring consistent practice, addresses the need for both national consistency and regional flexibility where each is appropriate, and provides the police commissioner with clearer processes for revising instructions and ensuring compliance
- a process for ensuring that the general instructions are automatically updated when a change is made to an existing policy, for example, by way of a commissioner's directive
- an enhanced policy capability to provide policy analysis that draws upon the experience of front-line staff and upon research from New Zealand and beyond.

POLICIES AND PROCEDURES IN RESPECT OF SEXUAL ASSAULT ALLEGATIONS

2.146 The past 25 years have seen significant changes in the way that adult sexual assault allegations have been investigated by the police, including those involving complaints against police officers. These were driven in large part by the following trends:

- changes in social attitudes towards sexual violence
- changes in the law regarding crimes of sexual violence and evidence in such cases (for example, the question of corroboration)
- emergence of support groups to support victims and enable them to speak out
- greater understanding by professionals of the traumatic impacts of sexual violence and how this affects, for example, the way they present to the police.

2.147 The development of police standards, procedures, and policies since 1979 regarding the investigation of sexual assault allegations can be divided into four phases (these differ from the phases described previously relating to internal investigations in general):

- phase 1: 1979–1982, during which period the investigation of sexual assault complaints was governed by the 1964 Manual for Detectives
- phase 2: 1983–1985, during which period the sexual assault investigation sections of the Manual for Detectives and the Constables Manual were revised
- phase 3: 1986–1997, during which period significant changes to the law relating to sexual offences were made and new police policy documents issued
- phase 4: 1998–2006, during which period the ASAI Policy was promulgated and the Manual of Best Practice most recently updated.

Sexual assault investigation policies, 1979–1982

2.148 Before 1983 the investigation procedure for dealing with allegations of sexual assault was set out in a 1964 Manual for Detectives. This covered practice in interrogation; interviewing witnesses; investigating the offences of indecency (females), indecency (males), rape, and unlawful sexual intercourse; and the elements to be established for proving those offences.

2.149 The manual provided a detailed summary of how an investigation should proceed, and directed the officer to keep in touch with the complainant. The substance of the manual reflects the attitude prevalent when it was first published. Consider, for example, the

wording used by the manual in directing the investigator to consider whether the complaint was genuine:

False complaints in respect to offences of rape are not uncommon. Women often consent in the heat of passion and later make false complaints due to:

1. Fear of pregnancy
2. Shame
3. Revenge
4. Notoriety
5. After finding of seminal stains – allegation made in response to questioning to cover the indiscretion. (Complaints made under duress of parents or friends.)
6. Excuse by young women for arriving home late and in a dishevelled condition. (Complaints made under duress of parents or friends.)

If through lack of corroboration by failing to find any evidence at scene, or through medical examination, and the complainant's conduct and demeanour is not impressive, you are of the opinion the complaint may not be genuine you must closely interrogate her on this point before taking a written statement. Endeavour to speak to her alone as the influence of parents or friends may continue if present.¹²⁴

The manual did, however, qualify this by directing the investigator “not be too ready to jump to the conclusion that the complaint is false.”¹²⁵

2.150 Significant public concerns were voiced in the 1970s and early 1980s regarding police procedures when investigating rape complaints. These are evidenced in the police response to criticisms of the Committee on Women to the Select Committee on Violent Offending in 1978, and the report on rape investigations published by the Institute of Criminology at Victoria University of Wellington in 1982.¹²⁶

2.151 The police policy response to these criticisms was by way of a headquarters circular issued to all district commanders and the commandant of the Royal New Zealand Police College on 17 December 1982. The circular said,

While Police investigative procedures are adequate staff are reminded of the sensitivity of investigating rape complaints.

... [members] must be mindful of the circumstances of the complainant and her need for counselling and support.¹²⁷

2.152 By 1982 rape crisis centres were well established in most New Zealand centres and the headquarters circular recognised the counselling and support services that they provided to sexual assault complainants. The headquarters circular directed police to liaise with their local rape crisis centres to ensure that the police role was carefully explained and understood

124 New Zealand Police, Manual for Detectives, 1 May 1964, pp. 3 and 4 of “Rape” section.

125 New Zealand Police, Manual for Detectives, 1 May 1964, p. 4 of “Rape” section.

126 New Zealand Police, “Police Report on Submissions of the Committee on Women”, 14 September 1978; and New Zealand Police, Headquarters circular to district commanders and commandant of the Royal New Zealand Police College, 17 December 1982.

127 New Zealand Police, Headquarters circular to district commanders and commandant of the Royal New Zealand Police College, 17 December 1982.

and also to ensure that local police were aware of the service available from the rape crisis centre. Where necessary police were directed to assist the complainant by making initial contact with the rape crisis centre.

Sexual assault investigation policies, 1983–1986

- 2.153 A new edition of the Manual for Detectives dealing with serious sexual offending was published in 1983.¹²⁸ This manual remained in active use until replaced by the Manual of Best Practice in 1993.¹²⁹
- 2.154 Like the earlier edition, the 1983 Manual for Detectives set out the elements to be proved for the various sexual offences and possible defences. Further matters relevant to the prosecution of sexual offences were also elaborated on, including the character of the complainant, matters of corroboration, the admissibility of evidence, similar acts, evidence of a wife, and proof of age.
- 2.155 The 1983 Manual for Detectives clearly indicated that the police had taken notice of public criticisms regarding their interactions with sexual assault complainants, and the new manual included a section on dealing with sexual assault victims.¹³⁰ This section recognised that sensitivity was required by police and it directed police officers to respect the complainant and treat him or her with courtesy, decency, humanity, and good manners. This included interviewing the complainant in private with a parent or friend present if so desired; explaining the need for questions; explaining the investigation and court procedures; and advising the complainant of the counselling services available to assist him or her. Investigators were also directed to keep in touch with the complainant throughout the course of the investigation so as to demonstrate that the complaint was receiving all possible attention.
- 2.156 Although the Manual for Detectives directed investigators to “Accept that the victim is telling the truth ...” and not to “be too hasty to conclude that the complaint is false”, it also directed:
- Ensure complaint is genuine. Rape may be falsely alleged –
 - (i) due to fear of pregnancy
 - (ii) as an excuse for being late home¹³¹
- 2.157 In 1985 the Constables Manual was reprinted. This manual set out the relevant law and elements of the more minor sexual offences of indecent acts and indecent assault. It also described what a constable was required to do upon receiving a complaint of an indecent act or indecent assault: obtaining a statement from the complainant, advising his or her supervisor of the complaint, interviewing witnesses, interviewing the alleged offender, and so on. Regarding indecent assault on females, the Constables Manual also instructed police officers to

Take particular note of the victim’s physical and mental state:

128 New Zealand Police, Manual for Detectives, 1983.

129 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 7.

130 New Zealand Police, Manual for Detectives, 1983, pp. 48.17–48.19.

131 New Zealand Police, Manual for Detectives, 1983, pp. 48.18 and 48.21.

Consider: shame or fear of family retribution but also consider vindictiveness or pure fantasy.¹³²

There were no comparable cautions regarding the credibility of complainants of other types of offending.

Sexual assault investigation policies, 1986–1997

2.158 The third phase in the development of the police sexual assault investigation policies is linked to legislative change: amendments to the Crimes Act 1961, Evidence Act 1908, and Summary Proceedings Act 1957; and the enactment of the Victims of Offences Act 1987 (now repealed).

Legislative amendments

2.159 In December 1985 significant amendments regarding sexual offences were made to the Crimes Act, Evidence Act, and Summary Proceedings Act. These changes were communicated to police members on 15 January 1986 through the *New Zealand Police Gazette*.¹³³ Of particular importance to the investigation of sexual assault allegations was the enactment of sections 23AB and 23AC of the Evidence Act 1908.

2.160 Section 23AB reformed the law relating to corroboration of the complainant's evidence. Although it was possible before 1986 for a jury to convict on the uncorroborated evidence of a complainant, judges were obliged to warn juries that it was unsafe or dangerous to do so. Section 23AB of the Evidence Act, as inserted by section 3 of the Evidence Amendment Act (No 2) 1985, removed this requirement and provided that if the judge elected to comment on the absence of corroboration no particular form of words was required.

2.161 Section 23AC dealt with the question of delay by the complainant in making a complaint of sexual assault. Before 1986 it was often argued that the complainant would have complained at the first opportunity if her complaint were genuine. Any delay was said to reflect on the complainant's credibility. Under section 23AC, however, where such an argument was raised, the judge was able to explain to the jury that there might be good reasons why a victim of such an offence might refrain from or delay making such a complaint.

2.162 A substantial growth in the reporting of adult sexual violation and child sexual abuse offences occurred during the 1980s. To ensure that the police were well placed to deal with the volume of such complex crime the Assistant Commissioner of Police for Crime and Operations issued a headquarters circular on 15 January 1988 designed to give police accurate and up-to-date information to determine trends and develop systems to enhance investigation practices and procedures. To this end, the headquarters circular required a notification to be sent to Police National Headquarters in every case where a sexual violation or sexual abuse offence was reported.¹³⁴ A further headquarters circular was issued on 29 July of the same year to all district commanders and the commandant of the Royal

132 New Zealand Police, *Constables Manual*, Reprint 1985, p. 2 of "Indecent Assault on Females" section.

133 New Zealand Police, "Rape Law Reform", *New Zealand Police Gazette*, 15 January 1986, pp. 8–14.

134 New Zealand Police, Headquarters circular to district commanders and the commandant of the Royal New Zealand Police College, "Sexual Violation Offending Report", 15 January 1988.

New Zealand Police College requesting that they ensure that all police members were aware of the requirements of the earlier headquarters circular.¹³⁵

Victims of offences

2.163 The Victims of Offences Act was enacted in July 1987 to “make better provision for the treatment of victims of criminal offences”. A victim was defined by section 2 of the Act as

a person who, through or by means of a criminal offence ... suffers physical or emotional harm, or loss of or damage to property; and, where an offence results in death, the term includes the members of the immediate family of the deceased.

2.164 On 29 June 1990 the Commissioner of Police issued a commissioner’s circular regarding the police’s obligations under the Victims of Offences Act.¹³⁶ Police obligations, according to the commissioner’s circular, included

- treating victims with courtesy, compassion, and respect for their personal dignity and privacy
- providing access to welfare, health, counselling, medical, and legal services where needed
- explaining the services and remedies available to a victim
- providing information about the progress of the investigation, the charges laid or the reasons for not laying charges, the role of the victim as a witness in the prosecution of the offence, the date and place of the hearing, and the outcome of the proceedings (including any appeals)
- returning property held for evidentiary purposes as promptly as possible
- obtaining victim impact statements
- obtaining the victim’s views on bail in respect of a charge of sexual violation or other serious assault or injury
- notifying the victim of the escape or release of an offender convicted of an offence of sexual violation or other serious assault or injury.

2.165 The commissioner’s circular regarding victims of offences was followed in 1997 by a policy pointer setting out the police Victims of Crime Policy.¹³⁷ Although the substance of these documents was largely the same, the policy pointer required that the details of victims should be referred to relevant support services as soon as possible after the incident. It also included a direction that district managers ensure local agreements were in place with support agencies to ensure that early assistance was provided to all victims. The relevant support agencies for sexual assault complainants were such organisations as Rape Crisis, HELP, Sexual Abuse Survivors Trust (SAST) and the Women’s Refuge; Victim Support may also function as a support agency for victims of sexual assault.

135 New Zealand Police, Headquarters circular to district commanders and the commandant of the Royal New Zealand Police College, “Sexual Violation Offending Report”, 29 July 1988.

136 New Zealand Police, Commissioner’s circular to region commanders, district commanders, and the commandant of the Royal New Zealand Police College, “Victims of Offences”, 29 June 1990.

137 New Zealand Police, Policy pointer 1997/4, “Victims of Crime Policy”, *Ten-One*, No 149, 29 August 1997, pp. 11–15.

2.166 In addition to the legislative changes and the police responses to them as described above, other police policies and practices were updated and developed during 1986–1998. I was informed by Superintendent Trappitt that a new Manual of Best Practice was published in 1993.¹³⁸ Also, the police policy on investigation of child abuse was published in 1995.

Child Abuse Policy

2.167 A policy pointer, “Policy and guidelines for the investigation of child sexual abuse and serious physical abuse” (Child Abuse Policy), was issued on 1 December 1995. The Child Abuse Policy was developed in conjunction with the then New Zealand Children and Young Persons Services (NZCYPS) (now Child, Youth and Family). It recognises that

An inter-agency approach to the investigation and management of child abuse cases will enhance protection of the child, accountability of any offender, and partial or full reintegration of the child into the family.¹³⁹

2.168 The Child Abuse Policy forms the basis of a joint approach between the police and NZCYPS. Important features of the Child Abuse Policy are

- a clear enunciation of the procedures to be followed when undertaking a child abuse investigation, including contacting the child, interviewing the child, interviewing the child’s siblings and non-offending parent(s) where appropriate, and the interview of the offender
- inter-agency coordination of reports of physical and sexual abuse, which requires the police to notify NZCYPS of any allegations made to the police and vice versa
- recognition that the primary role of the police with respect to child abuse is the investigation of child abuse offences and, where appropriate, the prosecution of the offender
- consultation between the police and NZCYPS regarding the appropriate manner of investigation given the circumstances of each case (and to this end, the Child Abuse Policy directs that a police officer and social worker are to form the basis of the investigation team)
- child abuse investigations to be undertaken wherever possible by a member of the Child Abuse Team who has received specialised training. (The Child Abuse Policy specifically refers to the training courses that had been developed by the Royal New Zealand Police College to address this requirement of the policy.)

2.169 This is a nationally mandated policy, which is applied consistently across the country and which I consider to work well in practice.

Sexual assault investigation policies, 1998–2006

2.170 Two significant policy developments relating to the investigation of adult sexual assault allegations occurred during the period since 1997: the promulgation of the 1998 ASAI

138 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 7.

139 New Zealand Police, Policy pointer 1995/12, “Policy and guidelines for the investigation of child sexual abuse and serious physical abuse”, *Ten-One*, No 106, 1 December 1995, p. 12.

Policy and the revision of the Manual of Best Practice. The ASAI Policy is summarised below.

Adult Sexual Assault Investigation Policy

2.171 In the late 1990s the police prepared a specific policy to govern complaints of sexual assault against adults known as the Adult Sexual Assault Investigation Policy. An early draft of this policy was distributed in 1997. The finalised version was published as a policy pointer on 6 February 1998, and designated a two-year lead-in time to allow police to meet the requirements of the policy.¹⁴⁰

2.172 The ASAI Policy was developed with the assistance of representatives from medical practitioner groups, counselling agencies, and community groups. It is divided into 12 parts:

- Policy Principles
- The Police Commitment
- Selection of Personnel for Adult Sexual Assault Investigations
- Training
- Procedures – Investigation Management
- The Offender
- Legal Action
- Facilities and Equipment
- Statistics
- Historical Complaints
- Options available for resolution of complaints
- Administration.

A brief account of these 12 parts of the ASAI Policy follows, with some additional discussion and comment on training and administration based on evidence presented to the Commission.

“Policy Principles”

2.173 The ASAI Policy acknowledges the destructive consequences of adult sexual assault, that the safety of the victim is paramount, and that perpetrators of adult sexual assault must be held accountable for their actions.

2.174 It directs police to treat complaints of sexual assault as serious criminal matters to be investigated and, when evidence is available, to consider prosecution. Where an alleged sexual assault is reported within seven days of the incident, priority must be given to the investigation of the allegation wherever possible.

140 New Zealand Police, Policy pointer 1998/1, “Adult Sexual Assault Investigation Policy”, *Ten-One*, No 159, 6 February 1998, pp. 11–15.

- 2.175 The ASAI Policy recognises that an inter-agency approach to the investigation and management of adult sexual assault cases “will enhance protection of the adult victim, accountability of any offender, and reintegration of the victim into the community.”
- 2.176 The police response to the needs of the victim is aimed at ensuring early intervention and maximum protection, aiding the victim’s long-term recovery from the trauma, and ensuring the victim’s cooperation with the investigation through to its completion. To this end, the policy directs police to consult with the victim throughout any decision-making process.

“The Police Commitment”

- 2.177 According to the ASAI Policy the police have four main functions in sexual assault investigations:
- to ensure the safety of the victim
 - to investigate and, when evidence is available, consider prosecution
 - to coordinate the support for the victim, and keep the victim informed of the progress of the investigation as far as possible
 - to identify those responsible for offending and ensure they are held accountable.
- 2.178 The policy uses very prescriptive language (“shall”, “will”, “must”) to mandate how each of these functions will be performed.
- 2.179 District managers (now district commanders) are responsible for implementing the ASAI Policy. Importantly, the policy requires district managers to ensure, amongst other things, that front-line and watch-house staff under their control are trained in taking initial sexual assault complaint action and dealing with victims; that there are sufficient and suitable investigation staff who are fully trained in all aspects of the investigation of adult sexual assault; that investigating staff receive supervision from an appropriate non-commissioned officer; and that local agreements are in place with support agencies to ensure that early assistance is provided to all complainants.
- 2.180 The district manager is also responsible for appointing an adult sexual assault coordinator in his or her district. This person is responsible for liaising with all appropriate local support agencies, police medical officers, and Doctors for Sexual Abuse Care (DSAC) to ensure that police policy is being complied with. The coordinator is also responsible for ensuring that local training, in line with national directives, is being carried out; that there are sufficient qualified police members in place to satisfy local demands; monitoring the performance of trained members; and monitoring complaint files to ensure compliance with the ASAI Policy.¹⁴¹
- 2.181 Communication centre managers are also charged with ensuring that communication centre staff under their control are trained in taking initial sexual assault complaint action and dealing with victims.

141 New Zealand Police, Policy pointer 1998/1, “Adult Sexual Assault Investigation Policy”, Appendix 1, *Ten-One*, No 159, 6 February 1998, p. 15.

2.182 The ASAI Policy sets out the responsibilities of the various agencies involved in sexual assault complaints. The policy directs that police are responsible for the investigation of criminal offences; support agencies are responsible for ensuring that the victim receives crisis support, counselling, and the initiation of therapy; specially trained medical practitioners are responsible for both the forensic and standard medical examination of the adult victim; and Environmental Science and Research Limited (ESR), in conjunction with police, is responsible for forensic scene examination.

“Selection of Personnel for Adult Sexual Assault Investigations”

2.183 The ASAI Policy states that police personnel who investigate or have responsibility for the investigation of adult sexual assault complaints should possess a variety of knowledge, skills, and attributes. These include an awareness of the needs of adult sexual assault victims, an understanding of the roles and responsibilities of specialist agencies working with sexual assault victims, and knowledge of the relevant laws and practices relating to adult sexual assault investigations. Importantly they must also be trained in sexual assault investigations.

“Training”

2.184 The ASAI Policy recognises that trained investigators are essential to the successful functioning of this policy. To this end the policy requires that investigators must have fully undergone the specialised training into all aspects of adult sexual assault investigation procedures, including protocols with other agencies including Māori, before becoming responsible for any adult sexual assault investigations.

2.185 An ASAI training course was subsequently developed by Detective Senior Sergeant Neil Holden and has been delivered at the Royal New Zealand Police College since February 2003. The overall aim of the ASAI training course is to develop in investigators the understanding, knowledge, and skills to effectively investigate adult sexual assaults. It also aims to develop good practice in adult sexual assault investigations, encourage networking with other people involved in the investigation, and build empathy with victims. To this end, the course underscores the view that the victim’s perspective should be paramount and reinforces this by having five different victims’ presentations during the week-long course.¹⁴²

2.186 The training was based on a five-step good practice model developed by Detective Senior Sergeant Holden after lengthy research into current practice, overseas trends, consideration of criticism of police practice, and discussion with a curriculum group assembled by Detective Senior Sergeant Holden. The curriculum group was made up of senior police investigators and people working with the police in the adult sexual assault field, such as Dr Jordan from the Institute of Criminology, Victoria University of Wellington; Dr Jane MacDonald representing DSAC; Ms Linda Beckett; and two support agency representatives, one from Wellington Rape Crisis and a representative from Wellington Sexual Abuse HELP Foundation.

2.187 The curriculum group brought together ideas concerning the overall aims of the course, length of training, and target audience that resulted in the development of the first one-

142 Detective Senior Sergeant Neil Holden, Criminal Investigation Branch (CIB) Development Officer, Brief of evidence, 10 November 2005, p. 3.

week course. This initial course was held 10–14 February 2003 with 20 detectives and detective sergeants participating.¹⁴³

- 2.188 The ASAI Policy also says that, “Trained investigators should be encouraged to attend subsequent on-going training appropriate to their needs.”¹⁴⁴ I understand that an ongoing national training package for investigators trained in adult sexual assault investigation has yet to be developed by the police.

“Procedures – Investigation Management”

- 2.189 The ASAI Policy states that when the police receive a report of suspected adult sexual assault it should be referred as soon as possible to a trained investigator. If a trained investigator is not available and it is necessary that initial action, investigation, or intervention proceed as a matter of urgency, then “the most suitable police personnel should be tasked”. The complaint should be handed over to a trained investigator within two days for completion and the formal interview and statement-taking from the complainant.
- 2.190 The ASAI Policy says that the police must ensure that all victims have a support person or persons present during the interview process; this can be a friend, family member, counsellor, or a person from an identified support group. The victim can also request to have a support person from an identified sexual assault support group or trained sexual assault counsellor present during the medical examination.
- 2.191 The ASAI Policy recognises the importance of the formal interview of the complainant, and statement-taking in achieving a successful prosecution. It therefore directs that these aspects of the investigation must be undertaken only by a trained investigator.
- 2.192 Similarly, the ASAI Policy recognises the skills of doctors trained in the examination of suspected victims of sexual assault, such as DSAC and police medical officers, and states that they are to be the preferred medical practitioners when dealing with a sexual assault complaint.

“The Offender”

- 2.193 The ASAI Policy reiterates that the interview and any prosecution of an alleged offender is a police responsibility. Trained investigators are referred to the Manual of Best Practice for a description of the operational procedures for interviewing and prosecuting an alleged offender.

“Legal Action”

- 2.194 If a prosecution is not proceeded with, the reasons for not proceeding must be carefully explained to the complainant either by the officer in charge of the case or the coordinator of adult sexual assault investigations.¹⁴⁵

143 Detective Senior Sergeant Neil Holden, CIB Development Officer, Brief of evidence, 10 November 2005, p. 3.

144 New Zealand Police, Policy pointer 1998/1, “Adult Sexual Assault Investigation Policy”, *Ten-One*, No 159, 6 February 1998, p. 13.

145 This instruction can also be found in general instruction A293 “Informing Complainants”, issued in 2002, which provides that complainants should be advised, with a clear statement of the reason, where a decision is made not to arrest or prosecute an alleged offender.

“Facilities and Equipment”

- 2.195 The district manager is responsible for ensuring that appropriate facilities are available for interviews and medical examinations of adult sexual assault complainants.

“Statistics”

- 2.196 Like the 1988 headquarters circular regarding sexual offence reporting (see paragraph 2.162), the ASAI Policy requires that offences are promptly entered into the police database so that accurate and up-to-date information is available to determine trends and develop systems to enhance investigation practices and procedures.

“Historical Complaints”

- 2.197 In dealing with sexual assault complaints of a historical nature the ASAI Policy directs the police to consider such factors as the choice made by the victim, the evidence offered by the victim, availability of other evidence, availability of witnesses, legal precedents, the offender’s response, and the likelihood of continued offending. Police members are informed that consultation with the victim is a priority throughout the investigation process and that decisions must be made in consultation with the victim and the adult sexual assault investigations coordinator.

“Options available for resolution of complaints”

- 2.198 The ASAI Policy sets out the following options for police for resolution of a recent adult sexual assault investigation: recording the complaint and talking to the alleged offender; recording the complaint and taking no other police action; recording the complaint and referring the victim and alleged offender for counselling; full investigation and warning; investigation and prosecution.
- 2.199 For historical complaints the options available for resolution include
Recording the complaint and talking to the offender; recording the complaint and taking no other police action; recording the complaint and referring the victim and offender for counselling; warning; or prosecuting the offender.¹⁴⁶

“Administration”

- 2.200 The ASAI Policy assigns administrative responsibility for the policy to the manager of the Criminal Investigation Branch (CIB) Support Group.
- 2.201 Superintendent Trappitt informed me that a framework for the evaluation of the ASAI Policy had been developed in May 1998, and he produced a draft copy of the evaluation specification report.¹⁴⁷ According to this report the evaluation would comprise five components: victims, police, support persons, medical practitioners, and relevant agencies. It said that there was a need for a systematic evaluation to “assess, primarily, the

146 New Zealand Police, Policy pointer 1998/1, “Adult Sexual Assault Investigation Policy”, *Ten-One*, No 159, 6 February 1998, p. 15.

147 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 8.

implementation of the policy and the degree to which victims' needs are being met and their safety assured".¹⁴⁸

2.202 I have seen no evidence that this evaluation has yet been undertaken.

The revision of the Manual of Best Practice

2.203 In addition to the ASAI Policy, the other major development during the period from 1998 to 2006 was the revision of the Manual of Best Practice.

"Sexual Offences" section

2.204 Relevant to this inquiry is the revised "Sexual Offences" section, which was published in 2001 and is to be read in conjunction with the ASAI Policy. Like the earlier Manual for Detectives, the Manual of Best Practice details the law and the elements that must be proved for various sexual offences. It also sets out the procedures to be followed when investigating a sexual offence. The procedure section is divided into offences against decency and offences against the person.¹⁴⁹

2.205 The "Sexual Offences" section refers no less than four times to the ASAI Policy; the procedures section dealing with offences against the person begins with the instruction that the investigator must follow the ASAI Policy when investigating an adult sexual assault complaint "in spirit and in deed".

2.206 According to this procedures section, the investigator's first responsibility is to the victim. Specific instructions regarding initial action include giving priority to the victim's physical needs; ensuring the victim feels safe and secure; recording anything the victim says about the crime and the alleged offender when, and exactly as, the victim recounts it; and letting the victim know what to expect from that point. Where an alleged assault is reported within seven days, a forensic medical examination must take place as soon as possible. Preferred medical practitioners are those who have had specialised training in examining suspected victims of sexual assault, such as DSAC and police medical officers.

2.207 Police officers tasked with interviewing and obtaining a statement from the complainant are directed to try to help the victim feel safe; this includes telling the victim that the interview will be as brief as possible, and that he or she can have a support person present. After the interview police officers are directed to continue to include the victim in the investigative process. Direction is also provided regarding conducting the scene examination, including contacting Environmental Science and Research to obtain assistance or advice. If a prosecution does not proceed, the officer in charge of the investigation or the district coordinator of adult sexual assault investigations must carefully explain the reason to the victim.

2.208 Where a historical complaint is made, police officers must consider the following factors when deciding how to respond to the complaint:

148 New Zealand Police, *Adult Sexual Assault Investigation Policy: Evaluation Specification Report* (draft), May 1998, 14 p.

149 New Zealand Police, *Manual of Best Practice*, Volume 3, "Sexual Offences" section, 2001, as printed August 2005.

- the choices made by the victim, including their right not to report the assault at the time and their reasons for not reporting it then and reporting it now
- the evidence offered by the victim
- the availability of other evidence
- the availability of witnesses
- legal precedents
- the suspect's response
- the likelihood of continued offending.

“Victims Rights” section

2.209 The Manual of Best Practice was also updated in 2003 to recognise the enactment of the Victims' Rights Act 2002. The manual sets out relevant provisions of the Act and describes the programmes, remedies, and services available. It directs police officers to refer victims to support services as soon as practicable and provide them with full information about proceedings.¹⁵⁰ The manual details a memorandum of understanding between New Zealand Police and the New Zealand Council of Victim Support Groups. This is similar to the earlier memorandum attached to the Victims of Crime Policy.¹⁵¹ The “Victim Support” section of the manual includes a direction that the district commander or officer in charge of a station appoints a police representative on local Victim Support group committees. The manual also describes restorative justice processes and the procedure for notifying a victim of the release of an offender.

Adequacy of the sexual assault investigation policies

2.210 I was generally impressed at the way in which the police had steadily improved policies relating to the investigation of adult sexual assault during the period of interest to my inquiry. At the beginning of the period, policies in force reflected some very distorted views of the credibility of victims of alleged sexual assault, and the general approach to interviewing victims was rightly perceived as likely to be in itself a re-victimisation. The shift towards practices that recognise the impact of recent trauma, encourage a good working relationship with professional support agencies, and restore to the victim a sense of empowerment are all to be commended.

2.211 The overall impression I received was that the police now treat victims of alleged sexual assault very sensitively and, when they work effectively with support agencies, provide an environment in which the process of recovery and the process of investigating a crime can proceed alongside each other. The ASAI Policy appears to me an important step forward, formalising as it does the understanding of best practice that police have gained over the past two decades.

2.212 A number of the expert witnesses called by the police agreed that the ASAI Policy represented best practice in terms of investigating allegations of sexual assault; however, several concerns remained. For instance, Ms Angela Brott, Co-ordinator of the Women's Refuge and Sexual

150 New Zealand Police, Manual of Best Practice, Volume 2, “Victim Support” section, March 2003.

151 New Zealand Police, Policy pointer 1997/4, “Victims of Crime Policy”, Appendix A, *Ten-One*, No 149, 29 August 1997, pp. 13–15.

Assault Resource Centre Marlborough, said that the Adult Sexual Assault Investigation Policy was a good policy and usually worked well. Her only exception was the provision that allowed victims to choose their own support person. She considered a trained sexual abuse counsellor more appropriate for the support role than a friend or family member.¹⁵²

2.213 Ms Kathryn McPhillips, Clinical Manager of the Auckland Sexual Abuse Help Foundation Trust, also praised the ASAI Policy. In her experience it often operates effectively despite a shortage of police who have completed the formal training. She told me that the policy represents good practice in the investigation of sexual crimes and appropriately recognises the needs of victims.¹⁵³

2.214 Dr Jordan confirmed that the policy represented good intentions on the part of the police. Her concern, however, related to the implementation of the ASAI Policy:

as recently as March this year (2005), experienced detectives were arriving at the Royal New Zealand Police College for courses admitting that they did not even know such a policy existed, let alone what it specified.

The lack of policy implementation is reflected also in the fact that no attempt to appoint a National Sexual Assault Co-ordinator was made until 2005, ... nearly eight years since the Policy's introduction.

All districts have now appointed local co-ordinators, although some officers have questioned the rushed manner by which some were appointed.¹⁵⁴

2.215 A witness from DSAC, Dr Clare Healy, echoed this concern, saying, "For the policy to work it must be supported at all levels within the force." She observed,

There seems to be a widely held view that the policy as written is currently unworkable in many districts and it seems difficult in some districts to appoint adult sexual assault co-ordinators. This is due to staff shortage, untrained staff and appropriately trained staff leaving for other units.¹⁵⁵

2.216 Detective Sergeant Tusha Penny, whose police team at Lower Hutt specialises in child abuse, told me that although her team is aware of and follows the ASAI Policy, "in almost every respect that policy simply represents good investigative practice". She said that her CIB training (undertaken in 1994) "closely reflected the practices that later made up the [ASAI] Policy".¹⁵⁶

2.217 Based on the evidence presented to the Commission, there are three key areas in which I believe further improvement is needed, all of them related to aspects of the ASAI Policy, its status, and its effective implementation:

- the unrealistic mandatory wording in the ASAI Policy

152 Ms Angela Brott, Co-ordinator, Women's Refuge and Sexual Assault Resource Centre Marlborough, Brief of evidence, 2 November 2005, pp. 5.

153 Ms Kathryn McPhillips, Clinical Manager, Auckland Sexual Abuse Help Foundation Trust, Brief of evidence, 3 November 2005, p. 3.

154 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 6.

155 Dr Clare Healy, accredited member Doctors for Sexual Abuse Care (DSAC), Brief of evidence, 8 November 2005, paragraphs 10–11.

156 Detective Sergeant Tusha Penny, Brief of evidence, 3 November 2005, p. 2.

- the inconsistencies between the ASAI Policy and the Manual of Best Practice
- the apparent lack of a resource plan to ensure that the training and facilities referred to in the policy are actually available.

Mandatory wording in the Adult Sexual Assault Investigation Policy

- 2.218 The ASAI Policy is expressed in mandatory language. For example, it requires that the interview of a complainant must be undertaken by an investigator with specialised ASAI training. Despite that, Police Commissioner Robinson told me that, although the policy represents what is generally accepted as international best practice and is a highly desirable statement for an organisation to sign up to, compliance with it remains an “aspirational” target. He said that there are a range of tensions between delivering training while also delivering a 24-hours-a-day seven-days-a-week service to the community, and between the delivery of the significant suite of training required for the day-to-day operation of the police and the delivery of specialist training such as the ASAI training.¹⁵⁷
- 2.219 It is unclear to me how Police Commissioner Robinson could state that compliance with the ASAI Policy remained an “aspirational” target, given that regulation 5 of the Police Regulations requires that the mandatory wording in the ASAI Policy must be obeyed.¹⁵⁸
- 2.220 If the police are correct in their view that this policy represents international best practice, then mandatory compliance with it should cease to be aspirational. The police should address and resolve the range of tensions that exist so that full compliance with the policy can be achieved. If however the police consider that a lower standard of compliance is all that can realistically be achieved, then this should be reflected in the wording of the policy.
- 2.221 The problem is exemplified by the long delays experienced in establishing a specialist training programme, as envisaged by the ASAI Policy. The original intent was that a programme would be designed and implemented during the initial two-year lead-in period from 1998 to 2000. In the event, it was not until 2002 that Detective Senior Sergeant Holden was tasked with preparing the first ASAI training course, and it was not until February 2003, almost five years after the ASAI Policy was released and three years after it was officially to be implemented, that the first course was held for 20 detectives and detective sergeants.¹⁵⁹ I was given the impression that at current rates of throughput it is highly unlikely that the police will ever be in a position to comply with the requirement in the ASAI Policy that all cases of alleged adult sexual assault will be dealt with by officers with specialist training.
- 2.222 I also heard in evidence that there is a view amongst some members of the CIB that although the ASAI Policy and the related specialist training represents best practice, it does not alter the fact that a trained and experienced detective is entirely capable of dealing with sexual assault investigations. This view suggests that the ASAI training has not captured the hearts and imagination of some very senior CIB officers because they are very much of the view that the three-year detective training programme, which provides instruction in

157 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, p. 8.

158 Under regulation 5(2)(b) all members are required to obey and be guided by “The Commissioner’s circulars”, which are now called policy pointers, such as the ASAI Policy. As previously discussed at paragraph 2.29, general instructions and policies that are in mandatory form must be obeyed.

159 Detective Senior Sergeant Neil Holden, Brief of evidence, 10 November 2005, pp. 2 and 3.

dealing with victims and complainants across a raft of criminal areas, covers essentially the same ground as that dealt with during the five-day training course on the ASAI Policy.¹⁶⁰ Acting District Commander Gavin Jones told me that his personal view was that ASAI training

should have been rolled into either our CIB induction course, and that would give us some certainty that every member joining the CIB would be trained and, therefore, meet the policy, or rolled into our detective course, meaning that every detective graduating would be trained because it's untenable to – well, it's just not possible to train 1,000 detectives, that's about the number we have in New Zealand, within the timeframes that were set over the period of time set for the course.¹⁶¹

- 2.223 It seems to me a matter of great importance that the police clarify this situation, establish a clear policy on the required level of competence for sexual assault investigation, and proceed on that basis.

Aligning the Adult Sexual Assault Investigation Policy with the Manual of Best Practice

- 2.224 The ASAI Policy and the Manual of Best Practice purport to cover different material on adult sexual assault investigation, and both state that they must be read in conjunction with the other. However, it is unhelpful to have to cross-reference material on the same topic from two separate documents, especially when the material is at times repetitive and on a few occasions contradictory. The result is an unnecessarily unwieldy and fragmented approach to policy and procedure on adult sexual assault investigation.
- 2.225 The ASAI Policy is described as providing “the policy and principles for the practice and procedures for the investigation of ADULT [emphasis as printed] sexual assault”,¹⁶² while the Manual of Best Practice is described as containing the procedures for investigating sexual offences. There is, however, a degree of overlap and repetition in the two documents. For example, both provide nearly identical information on the procedure regarding medical examinations¹⁶³, and also on the approach to dealing with historical complaints.¹⁶⁴ The fact that the content of the two documents is contradictory in a few instances creates some ambiguity as to how a victim of sexual assault should be treated. For example, the ASAI Policy states that the police must ensure that all victims have a support person present during the interview process, who must be from an identified sexual assault support group or a trained sexual assault counsellor.¹⁶⁵ However, the Manual of Best Practice instructs the police officer to tell the victim that “he or she can have a support person present.”¹⁶⁶ Thus

160 Assistant Police Commissioner Peter Marshall, Transcript of hearing, 7 November 2005, p. 38.

161 Superintendent Gavin Jones, Acting District Commander, Auckland City, Transcript of hearing, 17 November 2005, p. 18.

162 New Zealand Police, Policy pointer 1998/1, “Adult Sexual Investigation Policy”, *Ten-One*, No 159, 6 February 1998, p. 11.

163 See paragraphs 5.4.2 and 5.4.3 of the Adult Sexual Assault Investigation Policy, 6 February 1998; and pp. 896–897 of the Manual of Best Practice, Volume 3, “Sexual Offences” section, 2001, as printed August 2005.

164 See paragraphs 2.197 and 2.208 of this report; paragraphs 10.1 and 10.2 of the Adult Sexual Assault Investigation Policy, 6 February 1998; and p. 898 of the Manual of Best Practice, Volume 3, “Sexual Offences” section, 2001, as printed August 2005.

165 New Zealand Police, Policy pointer 1998/1, “Adult Sexual Assault Investigation Policy”, *Ten-One*, No 159, 6 February 1998, p. 13.

166 New Zealand Police, Manual of Best Practice, 2001, Volume 3, “Sexual Offences” section, as printed August 2005, p. 893.

the presence of an expert support person during the interview is a mandatory requirement in the ASAI Policy, whereas the presence of any support person (expert or otherwise) is optional in the Manual of Best Practice.¹⁶⁷

- 2.226 In most other instances police officers must cross-reference and reconcile the instructions of both documents in order to meet the requirements for the investigation of adult sexual assault. Detective Senior Sergeant Holden, who has experience as a district adult sexual assault coordinator, confirmed to me that he saw no good reason to maintain two separate documents.¹⁶⁸ Similarly, in their submissions in response to my draft report, the police have said that they take no issue with the suggestion that the ASAI Policy should be incorporated within the Manual of Best Practice.¹⁶⁹

Resource planning for the ASAI Policy

- 2.227 I was concerned to find that the ASAI Policy was issued without an accompanying national plan for resourcing the training and the dedicated facilities to which it refers. Instead, district commanders were expected to meet the requirements of the policy within existing budgets without any specific guidance from police national headquarters.
- 2.228 With respect to dedicated facilities, I was told that some larger police stations had suites especially designed for the interviewing and examination of the victims of sexual abuse.¹⁷⁰ The police showed me an example of such facilities in Lower Hutt, where the facilities have obviously been designed with care having regard to the needs of complainants and the requirements of effective investigations. However, in many districts such facilities remain on a “wish list” of property projects to be considered by district commanders alongside other needs. The impression was that most medical examinations are now taking place at medical or rape crisis facilities. Similarly, interviews with the complainant may take place in the complainant’s own home or at rape crisis facilities. The police told me that the “primary consideration in the choice of venue, aside from the availability of suitable facilities, will be for the place selected to be as comfortable as possible for the victim.”¹⁷¹ This appears to represent an acceptable alternative to dedicated facilities. If so, the policy needs to reflect this and to spell out the important considerations in the choice of venue for interviews and medical examinations.
- 2.229 In relation to training, as noted above, a specialist training module has been available since February 2003, but the resources devoted to it mean that only a small proportion of CIB staff have so far received the training. I was told that the courses were fully subscribed; however, I was not given any indication of when, or even if, the police expected the whole of the CIB workforce to receive the training.
- 2.230 I was told that there is a move to prepare a “package” of training that can be taken out to the districts, and that this would enable more staff to go through the course without the

167 The advantages and importance of having a professional support person are discussed in Chapter 3 at paragraphs 3.219 to 3.222.

168 Detective Senior Sergeant Neil Holden, Transcript of hearing, 10 November 2005, p. 42.

169 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 38, paragraph 107.

170 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 10.

171 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 38, paragraph 108.

need to come to Wellington, and would enable the districts to involve more front-line staff in the training.¹⁷²

- 2.231 I fully appreciate that the police have to manage finite resources, and that difficult choices must be made regarding allocation of funding for facilities and training. It did seem clear to me, nevertheless, that a policy such as the ASAI Policy, which made very specific commitments on these matters, should have been implemented with a dedicated resourcing plan indicating how the commitments on training and facilities would be met. Given the importance of the policy and the costs involved, a specific budget should have been sought from Government, including realistic estimates of how many officers could be put through the training module per year, and addressing questions such as how to provide for access to appropriate facilities in smaller centres. If such a request for funding were approved by the Government and Parliament, I believe the resourcing issues associated with the ASAI Policy could be resolved, which would mean the policy could be fully implemented.

COMMUNICATION OF STANDARDS AND PROCEDURES

- 2.232 Term of reference (1)(b) requires the Commission to report on whether standards and procedures for complaint investigations have been, and are being, adequately communicated to members of the police. In answering this term of reference I have sought, in the course of my reading and questioning of those who have appeared before me, to understand the channels of communication with front-line officers; to ascertain, where possible, what level of familiarity front-line officers have with the body of standards and procedures described above; and to identify what training takes place to keep officers apprised of standards and procedures.

Publication

- 2.233 The form of publication for general instructions has varied from 1979 to the present day:
- Between 1979 and 1991 general instructions were published in the *New Zealand Police Gazette*. The instructions were also periodically printed in a manual personally available to each officer.¹⁷³
 - In 1991 publication of general instructions was changed to the police magazine *Ten-One*, which is personally delivered to each member. Since that time *Ten-One* has been the primary method of communicating new general instructions to members.¹⁷⁴
 - Today, general instructions are collected together electronically, and police staff can access the database to read and retrieve material.¹⁷⁵
- 2.234 In 2002 general instruction P075 directed that all commissioned and non-commissioned officers would also be issued with a copy of the Manual of Best Practice. Copies were issued to stations and officers as determined from time to time by the police commissioner. All

172 Dr Clare Healy, accredited member DSAC, Brief of evidence, 8 November 2005, paragraph 14.

173 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 5.

174 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 5.

175 New Zealand Police, Policy pointer 1993/05, "General Instructions Access and Administration", effective from 1 August 2003.

manuals on issue were to be properly maintained and updated when amendments were issued.¹⁷⁶

2.235 General instruction P075 was amended in October 2005 (since the establishment of the Commission). It no longer requires commissioned and non-commissioned officers to be issued with copies of the Manual of Best Practice. The new general instruction reads,

P075 – Manual of Best Practice

- (1) A Manual of Best Practice has been issued by the Commissioner to provide information, guidance, and instruction on procedures to be adopted in operational situations.
- (2) All members of police should comply with the guidelines laid down in the Manual of Best Practice in conjunction with the appropriate legislation, General Instructions and policy pointers.
- (3) The Manual of Best Practice can be accessed through the Police Intranet. This electronic version should be referred to in preference to any paper copies, which are likely to be out of date.
- (4) When a chapter is updated notification is given in the Ten-One magazine.
- (5) An online “Guide to Updates” sits in each volume of the Manual of Best Practice. Members are advised to refer to the guide for information on what has been updated in each chapter.
- (6) Members wanting to advise that information in the Manual of Best Practice is incorrect should contact the Publications Editor at the Royal New Zealand Police College.¹⁷⁷

Familiarity of front-line staff with investigation standards and procedures

2.236 Over the course of various interviews with front-line officers it became apparent that their degree of familiarity with police standards and procedures was variable. As one might expect, officers were knowledgeable about the formal requirements for their day-to-day tasks. When officers encountered a situation outside of their experience they tended to

- respond as best they could, drawing upon their training and experience
- consult with supervising officers wherever possible
- seek out specific guidance from the Manual of Best Practice and general instructions.

2.237 By way of illustration one detective was asked if someone made a complaint against an officer who worked in their area, whether there were policies that would apply to their decisions as to how to handle that, and whether they were different from every other policy. The answer: “To be honest I couldn’t tell you of the policy. I could only tell you how I would deal with that.”¹⁷⁸

2.238 A relatively new recruit, Constable Gregory Cater, commented,

If I need to find policy I know to look on the Police Intranet, as General Instructions are in the Online Library. I have also occasionally seen notices on the *Bully Board* on the Police Enterprise computers when

176 New Zealand Police, General instruction P075, “Operations Manual” (“Manual of Best Practice”), 25 July 2002.

177 New Zealand Police, [Quotation provided in] Submissions in response to draft report, 20 June 2006, pp. 39–40.

178 Detective Sergeant Tusha Penny, Transcript of hearing, 3 November 2005, p. 61.

policy changes. Policy is sometimes published in the Police *Ten-One* magazine. However I do not always get an individual copy of each *Ten-One*, but have access to copies in the Police station.¹⁷⁹

(This comment was surprising given the requirement for each member to have a copy of *Ten-One* personally delivered to them.)

Constable Cater explained how his access to the necessary information worked in practice:

Access to policy is not so much of an issue, as access to computers, as there are not a whole lot of computers at the station. When I do get on a computer it is quite easy to find what I am looking for due to the search options. Most of the time I don't have time with frontline policing to go to the *Bully Board* to check for policy.

I usually ask the older more experienced staff on my section if I need to know about policy, and they are able to provide advice. I also rely on my supervisor to direct how we do things, and to guide me on following general instructions and policy.¹⁸⁰

The same constable, who had spent several years in the military before joining the police, also commented,

In my experience the military have a better dissemination of policy down the ranks to officers. Officers are a smaller group of people. The military is a lot more structured. I attended weekly meetings where policy often got passed on. I was made aware of policy verbally, and was also emailed material, so I had to look at it, rather than go looking for it. I was asked about policy in a casual way, for example at the next meeting it was discussed and I was asked for my opinion. In the military I was forced to browse through policy and was made aware of the main points and changes, whereas I am not really sent anything in Police to examine in that detail.¹⁸¹

2.239 In response to questioning about the user-friendliness of police policy documents and manuals, a senior sergeant who has been in the police for 21 years, informed me, "They're forever in the updating process and they are definitely getting more user friendly, ...".¹⁸²

2.240 A constable who had been in the police for eight years was asked if she was familiar with the general instructions dealing with complaints against police. Her response was, "No, I am not familiar with those. In my role as a constable, I know where they are and I know if I need to get them where to find them."¹⁸³

2.241 There were some experienced officers who voiced concern over whether front-line staff were sufficiently aware of the general instructions. Acting District Commander Jones, for example, noted,

I suspect that, particularly our more junior staff, they wouldn't have a clue that we have General Instructions on this or that.

179 Constable Gregory Cater, Brief of evidence, 8 November 2005, p. 3.

180 Constable Gregory Cater, Brief of evidence, 8 November 2005, p. 4.

181 Constable Gregory Cater, Brief of evidence, 8 November 2005, p. 6.

182 Senior Sergeant Freda Grace, Transcript of hearing, 8 November 2005, p. 33.

183 Constable Andrea Mather, Transcript of hearing, 8 November 2005, p. 37.

You see, when I and people in my vintage did their promotion exams, we had an examination called Administration, and part of that Administration exam required us to learn verbatim every General Instruction. But that's okay because you had a year to study.

So most people in my era, ... if we don't know or can't quote the General Instruction, we know where to find it. And I think, sadly, most of our new staff either wouldn't know there was a General Instruction or wouldn't know where to find it.¹⁸⁴

Ensuring adequate communication

2.242 It seems entirely reasonable to expect that front-line police officers should be highly familiar with a core set of policies that relate to their general and specific duties, and should have access to timely guidance when confronted with something more unusual, either through manuals or from senior officers. The police did not believe the evidence demonstrated any shortcomings in this respect.¹⁸⁵ But I was left with the impression that, because there is such a large volume of policies and the core set of policies is not well defined, officers largely choose for themselves what policies they get to know in depth. No system appears to be in place to confirm that officers have read and understood changes to policy that are relevant to their work.

2.243 For example, in questioning Superintendent Trappitt, I asked if there was any way of knowing in any of these processes that every front-line person had actually read those instructions. He replied that there was not.¹⁸⁶ This surprised me, given that many organisations have systems that require staff to confirm in writing that they have read and understood policies that are essential to the performance of their duties.

2.244 This is of particular concern in the light of the statement in the Police Act, section 30:

(3) A general instruction is deemed to have been communicated to a member of the Police when the instruction has been—

- (a) Published in the *Police Gazette*; or
- (b) Published in a Police magazine that is published under the authority of the Commissioner and distributed to all members; or
- (c) Published in a manual of general instructions issued by the Commissioner to all members; or
- (d) In the case of a member of a particular group of Police, published in a manual of instructions issued by the Commissioner to members of that particular group; or
- (e) Brought to the personal notice of the member.

2.245 In other words, the Act contains a presumption that police officers are aware of general instructions and bring an understanding of them to bear upon their work. It would seem to me essential that the police have ways of demonstrating what the law presumes to be the

184 Superintendent Gavin Jones, Acting District Commander, Auckland City, Transcript of hearing, 17 November 2005, p. 16.

185 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 44.

186 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Transcript of hearing, 24 May 2004, p. 21.

case is indeed so. I would certainly expect that police officers were familiar with policies dealing with complaints against fellow officers.

Training

- 2.246 The police provide a basic grounding in standards, procedures, and policies through the recruit training programme run by the Royal New Zealand Police College. Newly qualified constables must also undertake ongoing training during their two-year probationary period. Officers who wish to qualify as detectives must go through the CIB training programme, which is a fairly exhaustive programme and includes training on handling adult sexual assault cases. In addition, the police provide and purchase a wide range of training packages for specialist areas of police work and general upskilling of their workforce. I was told that annual expenditure on training by the police is currently around \$50 million.¹⁸⁷ I was left in no doubt that New Zealand Police has invested considerable resources in building up a workforce that includes many very highly trained professionals.
- 2.247 Ongoing training priorities are managed at two levels. There are a few nationally mandated training packages that all staff must undertake in respect of certain “core” skills, and where proficiency must be certified each year. At present, a staff safety and tactical training programme, which consists of firearms and self-defence training, is in this category, as is first aid training. In addition, I was advised that custodial suicide prevention training would soon be nationally mandated.¹⁸⁸
- 2.248 Beyond this, district commanders determine what additional training is provided within their districts and to whom. A wide range of national training packages are available, although districts also have the option of contracting independent training providers to develop and/or run courses for district staff. The training needs of district staff are identified within the district, based on the particular needs of the district. For example, one district has recently had a training package developed on matters relating to dealing with people with a mental illness because of a perceived need in that district.¹⁸⁹
- 2.249 The need to keep staff training up to date raises important management issues such as the uncertain work pressures of staff and the difficulty in backfilling the positions of those attending training. Despite such constraints, it appears that training in a particular field can be delivered expeditiously if district commanders agree that it has high priority. I was told about an ethics training package that has recently been endorsed by the Police Executive. The officer in charge of the package expressed confidence that all 10,000 police staff could be put through the half-day course within 18 months.¹⁹⁰

Conversely, there are times when achieving training targets proves difficult. The delayed roll-out of the ASAI training course (noting, however, that it is a full week course) is a key example.

187 Assistant Police Commissioner Peter Marshall, Transcript of hearing, 7 November 2005, p. 37.

188 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 66.

189 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 61.

190 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 73. This ethics training is discussed further in Chapter 5.

- 2.250 It appeared to me that the current approach to the management of training makes it difficult for the police to give confident assurances about the extent to which all staff are sufficiently refreshing their skills, including their understanding of formal standards and of best practice. The police provide a national service and have to maintain a mobile workforce to deal with workload pressures that can be unpredictable. To achieve this, core skills need to be kept up to date (in the same way that professionals such as doctors are required to register ongoing training completed). I was surprised by how little training was nationally mandated compared with what was left up to the discretion of district commanders. I cannot understand how training objectives can be achieved without the police being able to demonstrate that the full range of core skills are being refreshed on a regular basis. Again, I would expect the policies dealing with complaints against fellow officers to be identified as “core” policies that every officer ought to know about.
- 2.251 The police place a lot of emphasis on the flexibility and autonomy that districts have to develop their own training packages to respond to local needs.¹⁹¹ District commanders enter those packages on a district training catalogue database within the Royal New Zealand Police College library. This means that district training coordinators around the country can access the database and find the training programme should they wish. I heard evidence of how this is done.¹⁹² However, it is not mandatory for districts to use an existing package – they may choose to develop their own programme.¹⁹³
- 2.252 Although the district commanders I spoke to concerning training seemed committed to the goal of maintaining a well-trained workforce, it did not seem to me that they received sufficient guidance on priorities from the Office of the Commissioner. One district commander commented to me, regarding training,
- what often happens in police is decisions are made in isolation and everything is seen [by the Office of the Commissioner] to have high priority and then districts are left to deliver it and at the same time achieve all the other outcomes that are expected of us.
- And I have made the comment from time to time that the organisation has been very poor in weighing up what through policy and good practice is required of us with the resource, people and time available to us.¹⁹⁴
- 2.253 Declaring everything to be high priority is not, in my experience, a particularly helpful practice. Training priorities ought to be determined by an appreciation of the important competencies required for each position within the police. I believe the police would be better able to give assurances concerning the skill levels of staff if there were a more rational approach to the prioritisation of training, providing clearer guidance to districts and clearer national standards.
- 2.254 Police services are provided on a national basis, and police members work and transfer regularly across district boundaries. Although some training needs vary from one district to

191 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 42.

192 Superintendent Gavin Jones, Acting District Commander, Auckland City, Transcript of hearing, 11 November 2005, pp. 6–7.

193 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 62.

194 Superintendent Mark Lammas, District Commander, Central District, Transcript of hearing, 15 November 2005, p. 63.

another, and some discretion and flexibility for district commanders may be desirable, it is important that the police are consistent in the implementation of policies and the delivery of services so that national standards of service are maintained. This requires a coordinated and strategic view of the organisation's overall training requirements and priorities.

OVERALL ASSESSMENT OF THE ADEQUACY OF POLICE STANDARDS AND PROCEDURES

- 2.255 In assessing the adequacy of the police standards and procedures for the investigation of sexual assault allegations against members of the police or associates of the police it is important to note that the earliest policies I reviewed were at a very rudimentary stage of development, and that much has been achieved since then. In 1979, the processes for carrying out internal investigations and for investigating adult sexual assault were largely indistinguishable from general police policies and guidelines. Neither issue had much prominence for police officers or managers. The situation now is greatly improved.
- 2.256 Despite that progress, there remain several issues that have come to my attention when assessing the police policies that in my view require attention. These are
- the proliferation of policies
 - the standards and procedures regarding internal investigations
 - implementation of the ASAI Policy
 - the systems for communicating information about standards and procedures to police members.

Proliferation of policies

- 2.257 There appears to be a general tendency within the police for standards, policies, and procedures to proliferate to the point where no officer can reasonably be expected to have a complete grasp of the detail. The Corporate Instrument Review Project commenced in 2005 (see paragraph 2.42) appears to be urgently needed. Rationalising and clarifying the relevant policies and procedures should assist in the investigation of sexual assault investigations along with other types of investigations. The process should ensure that the distinction between what is mandatory and what is guidance is made clear. The fact that there are three national policy documents governing sexual assault investigations into members of police (the general instructions regarding internal investigations, the ASAI Policy, and the Manual of Best Practice), plus the commissioner's directives and district orders, is not ideal and reflects the tendency to create new documents without necessarily amending or removing earlier ones.

Standards and procedures regarding internal investigations

- 2.258 There are four particular issues in relation to the policies regarding internal investigations:
- There appears to be no clearly stated policy with regard to notifying the Commissioner of Police when there is a serious complaint made against a police officer.
 - There is no easily accessible documentation available to complainants outlining their rights when making a complaint to the police, for instance their right to object if they feel the investigating officer may be biased.

- There is no formal strategy to ensure that members of the general public are informed of their rights to make a complaint against a member of the police.
- Policy development in this area appears to be uncoordinated and piecemeal.

Implementation of the Adult Sexual Assault Investigation Policy

- 2.259 The mandatory wording in the ASAI Policy is unrealistic in the light of the resources available to implement this policy. The policy appears to be well supported by those with expertise in this area, and in my view the policy should be implemented consistently across the country as a matter of priority. Implementation of the policy requires a resourcing plan and a dedicated budget, which should be supported by funding sought from the Government and Parliament.
- 2.260 The ASAI Policy and the Manual of Best Practice also need to be rationalised to ensure they are not contradictory in any way, and combined into a single document for ease of access and improved use.

Communication and training

- 2.261 There is no system in place to ensure that police officers are aware of what policies and instructions are important to their area of work, and that they have the necessary level of knowledge of those policies and instructions. Similarly, although there are a few nationally mandated training packages dealing with a narrow range of “core” skills for all staff, most staff training is decided at the district level without any national consistency.
- 2.262 Practices for communicating policies to staff need to be strengthened. There needs to be a system for ensuring that officers are aware of the policies and policy changes that are most important for their work, and have read and understood them. This work should be undertaken in conjunction with a review of what “core” skills need to be nationally mandated for ongoing training.

Recommendations

Police policies and procedures

- R1 New Zealand Police should review and consolidate the numerous policies, instructions, and directives related to investigating complaints of misconduct against police officers, as well as those relating to the investigation of sexual assault allegations.
- R2 New Zealand Police should ensure that general instructions are automatically updated when a change is made to an existing policy.
- R3 New Zealand Police should develop a set of policy principles regarding what instructions need to be nationally consistent and where regional flexibility should be allowed.
- R4 An enhanced policy capability should be developed within the Office of the Commissioner to provide policy analysis based on sound data, drawing upon the experience of front-line staff and upon research from New Zealand and beyond.

Police policies and procedures for complaints

- R5 New Zealand Police should develop an explicit policy on notifying the Commissioner of Police when there is a serious complaint made against a police officer. This policy and its associated procedures should specify who is to notify the police commissioner and within what time frames.
- R6 New Zealand Police should ensure that members of the public are able to access with relative ease information on the complaints process and on their rights if they do make a complaint against a member of the police.
- R7 New Zealand Police should undertake periodic surveys to determine public awareness of the processes for making a complaint against a member of the police or a police associate.
- R8 New Zealand Police should develop its database recording the numbers of complaints against police officers to allow identification of the exact number of complaints and the exact number of complainants for any one officer.

Adult Sexual Assault Investigation Policy

- R9 New Zealand Police should review the implementation of the Adult Sexual Assault Investigation Policy to ensure that the training and resources necessary for its effective implementation are available and seek dedicated funding from the Government and Parliament if necessary.

R10 New Zealand Police should incorporate the Adult Sexual Assault Investigation Policy in the “Sexual Offences” section of the New Zealand Police Manual of Best Practice for consistency and ease of reference.

Communication of policies and training

R11 New Zealand Police should strengthen its communication and training practices by developing a system for confirming that officers have read and understood policies and instructions that affect how they carry out their duties and any changes thereto.

R12 New Zealand Police should strengthen its communication and training practices to ensure the technical competencies of officers are updated in line with new policies and instructions.

R13 Bearing in mind the mobility of the workforce, New Zealand Police should conduct a review of what training should be mandatory at a national level and what should be left to the discretion of districts.