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STANDARDS AND CODES OF CONDUCT IN RELATION TO PERSONAL BEHAVIOUR

INTRODUCTION

- 6.1 This chapter addresses term of reference (4):
- (4) the standards and codes of conduct in relation to personal behaviour for members of the Police and, in particular, but not limited to,—
 - (a) whether the applicable standards or codes of conduct within the Police in relation to personal behaviour, including sexual conduct, have been and are adequate and effective, and, if they have not been or are not adequate and effective, the respects in which they are inadequate or ineffective:
 - (b) whether action has been taken or is taken if standards or requirements of codes of conduct are not met:
- 6.2 Term of reference (4)(a) refers to “applicable standards or codes of conduct” relevant to personal behaviour, including sexual conduct. I identified the following applicable standards or codes:
- the standards imposed by the disciplinary system for sworn members
 - the code of conduct for non-sworn members
 - the competency framework and core values, applicable to all members
 - the New Zealand Police Sexual Harassment Policy.
- 6.3 I have discussed the adequacy and effectiveness (or otherwise) of the police disciplinary system in Chapter 5. The first part of this chapter, therefore, discusses the code of conduct for non-sworn members, the competency framework and core values, and the police policy on sexual harassment.
- 6.4 The chapter then discusses two areas where the adequacy or effectiveness of standards of personal behaviour has been brought into question: sexual conduct towards members of the public (including the formation of consensual sexual relationships); and the misuse of computer technology within the police organisation. The latter topic was the subject of an internal police investigation and became a matter the Commission was asked to consider.
- 6.5 Turning to term of reference 4(b), the chapter then considers how the police address situations where inappropriate behaviour, including sexual behaviour and repeat breaches of standards, has occurred.

Background details of relevance to this chapter

Draft Code of Conduct for Sworn Members of the New Zealand Police. The draft code was issued by the Commissioner of Police in February 2002 with the agreement of the Police Association. This draft code was intended to replace the current disciplinary provisions in the Police Act 1958, Police Regulations 1992, and police general instructions.

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.

Submitters. Of those who approached the Commission directly about the police investigations into their complaints, 10 submitters were considered to fall within the terms of reference.

Witnesses. The Commission heard evidence from Police Commissioner Robert Robinson, a range of other New Zealand Police staff, the Police Complaints Authority, the president of the Police Association, and various specialist witnesses.

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.

Human Resources and Professional Standards sections and the EEO Unit at the Office of the Commissioner. During the period of interest to this Commission, the national headquarters of New Zealand Police (the Office of the Commissioner) had two separate sections involved with employment issues: Human Resources looking after performance management and appraisal, and Professional Standards dealing with complaints against staff members and any consequent disciplinary processes. Matters of equal employment opportunities (EEO) have, since 1994, been the responsibility of the EEO Unit at the Office of the Commissioner, now integrated into the Human Resources section.

Police Amendment Bill (No 2). This bill was introduced to Parliament on 31 July 2001. It sought to do two things: first, to strengthen police governance and accountability arrangements; second, to improve police effectiveness in managing human resources. The bill sat low in the order paper for several years and was withdrawn in March 2006 when the Minister of Police announced that the Police Act 1958 was to be reviewed with the aim of having a draft Police Bill ready by November 2007, for introduction to Parliament in 2008.

Police Act 1958 and Police Regulations 1992. This legislation governs the present police disciplinary system. It is currently subject to a comprehensive review.

- 6.6 Finally, the chapter discusses recent initiatives taken by New Zealand Police to enhance standards of personal behaviour:
- police leadership and management development initiatives
 - ethics training
 - recruit training
 - the development of ethics committees
 - the Integrity Project
 - the development of an early warning system
 - the development of a code of conduct for sworn members of police.

EXISTING CODES OF CONDUCT

- 6.7 There is, at the time of writing this report, no single code of conduct governing all members of New Zealand Police. Instead, a distinction must be made between sworn members and non-sworn members.
- 6.8 It came as a surprise to me that, notwithstanding the terms of reference, there is currently no code of conduct in place for sworn police officers. A draft code of conduct was prepared in 2002.⁶⁵⁸ I discuss this later in this chapter.
- 6.9 Non-sworn staff are subject to a code of conduct specifically authorised by regulation 30 of the Police Regulations 1992, which states,
- Non-sworn members of the Police shall be guided by and obey the Code of Conduct for Non-sworn Members of the Police as prescribed by the Commissioner in general instructions.
- 6.10 The code of conduct for non-sworn members came into force in 1994. The current general instruction C301 provides that all non-sworn staff will be issued with the code, and C302 provides that they are to be familiar with its contents.⁶⁵⁹ In this respect the disciplinary process for non-sworn staff is similar to that applying to public servants under the State Sector Act 1988.
- 6.11 An update of the code of conduct for non-sworn members was prepared in 2002. Implementation of this update is pending implementation of the conjoint code of conduct for sworn members.⁶⁶⁰ This, in turn, was treated as dependent upon the passage of the now withdrawn Police Amendment Bill (No 2).

CORPORATE EXPRESSIONS OF STANDARDS OF PERSONAL BEHAVIOUR

- 6.12 Other material that sets out expected standards of behaviour of members of New Zealand Police includes the core values in the competency framework; expressions of values and expectations in corporate accountability documents; and the ethics training module and recruit training material (discussed later in relation to enhancing the standards of behaviour).

658 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 18.

659 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 18.

660 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 18.

- 6.13 These expressions of values and expectations do not compensate for the lack of a formal code of conduct for sworn police staff.

Police competency framework and core values

- 6.14 The New Zealand Police Competency Framework is a document that sets out the knowledge, skills, behaviours, attributes, and characteristics that are required of all police staff. The competency framework has been developed by the Human Resources section in the Office of the Commissioner, with input from staff across the organisation. The framework was first issued in July 2003. The purpose of the framework is to provide the foundation for future human resource work in the areas of staff selection, training, assessment, performance management, and career planning.⁶⁶¹
- 6.15 The framework includes
- *Core values* and *Core competencies* common to all police staff
 - *Functional competencies* specific to a particular work group or area
 - *Technical competencies*, the technical skills required for particular positions.
- 6.16 I was told that the framework is designed to state clearly the expectations that the organisation has of its staff and to provide a clear reference point describing the expectations of individual performance. It is intended to clearly define the standards of behaviour, and thus to provide “the basis for performance management conversations”.⁶⁶²
- 6.17 There are four core values defined as part of the police competency framework. These are described by the police as “the key things that this organisation says are important”.⁶⁶³ The core values are as follows:
- *Integrity*. All police members are committed and loyal to the vision, values, and goals of the organisation. They inspire trust and behave honestly and ethically.
 - *Professionalism*. All police members are aware of the impact of their behaviour at all times. They maintain self-control, are resilient, and present a professional image. They uphold the rule of law and maintain the guidelines, standards, policies, and procedures set by the organisation.
 - *Respect*. All police members understand that their role is to acknowledge and to respond to our diverse society and to serve all people with dignity. In doing so they recognise the rights, values, and freedoms of all people.
 - *Commitment to Māori and Treaty*. New Zealand Police has a commitment to the Treaty of Waitangi principles and thus is responsive to Māori needs and aspirations. All police members recognise this commitment and follow through by integrating Māori values and principles into their work. They recognise that by being responsive they are promoting good police practice.⁶⁶⁴

661 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, attachment 3.

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664 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, attachment 3.

- 6.18 For each of these four values there is a description of the desirable and undesirable behaviours. For instance under the “Integrity” value, seven undesirable behaviours are listed:
- “turns a blind eye” to unethical or unprofessional behaviour
 - knowingly makes promises that can’t be kept
 - avoids taking personal responsibility
 - blames others for mistakes
 - deliberately misleads
 - uses police position for gain
 - considers some tasks beneath him or her regardless of the impact on service levels.⁶⁶⁵
- 6.19 Under “Professionalism” there are seven undesirable behaviours listed:
- easily provoked to inappropriate behaviour
 - reacts defensively or with hostility when given constructive feedback
 - makes inappropriate or unauthorised public comments about the police or stakeholders
 - deliberately ignores policies and procedures
 - allows emotions to show inappropriately when communicating
 - undermines colleagues, individuals, and teams
 - uses police connection as a platform for expressing personal views and opinions.⁶⁶⁶
- 6.20 In my view, describing the behaviours under each of the values is good practice, and helps to make it clear what the expected standards of behaviour are. However, it will be important that the core values are in due course aligned with the proposed code of conduct for sworn police staff.

Expressions of values in corporate accountability documents

- 6.21 In addition to the four core values included in the competency framework, the police values are also listed in their planning and accountability documents (the statement of intent and strategic plan).
- 6.22 When I reviewed these documents during my inquiry I was concerned to note that there was at that time a mismatch between key documents such as the competency framework and the organisational planning documents. My impression from reviewing the documents at that time was that there was confusion within the police around these different lists of values and how they may function together. In my view the delay in moving to a formal code of conduct has no doubt contributed to this confusion.
- 6.23 For instance, the New Zealand Police *Statement of Intent 2005/2006* listed seven values (as opposed to the four core values of the competency framework). These were as follows:
- Maintain the highest level of integrity and professionalism.

665 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, attachment 3.

666 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, attachment 3.

- Respect individual rights and freedoms.
 - Consult with, and be responsive to, the needs of the community.
 - Uphold the rule of law.
 - Consult with, and be responsive to, the needs, welfare, and aspirations of all police staff.
 - Be culturally sensitive.
 - Integrate Treaty of Waitangi principles and Māori values into policing.⁶⁶⁷
- 6.24 The *Police Strategic Plan to 2006*, which was referred to by the Commission at the time of drafting the report, also listed the seven values as set out above.
- 6.25 The *People in Policing: A Five Year HR Strategy to 2006* lists six of the seven values included in the statement of intent and strategic plan. It excludes the second value (“Respect individual rights and freedoms.”).
- 6.26 The four core values in the police competency framework were taken from the seven listed values in the strategic plan and statement of intent. I was told by one of the police witnesses that he was unsure “Why our HR group chose those four without reference to the seven ...”. In his view the seven stated values in the statement of intent “lack definition and examples of undesirable and desirable behaviours.”⁶⁶⁸
- 6.27 I was pleased to see that in the most recent New Zealand Police *Statement of Intent 2006/2007* and *Strategic Plan to 2010* the values listed in both these documents are now the same as the four core values in the police competency framework (namely Integrity, Professionalism, Respect, Commitment to Māori and Treaty).
- 6.28 To be effective, organisational values must be consistent in all key documents. They need to be repeatedly communicated in clear, simple messages. They also need to be well defined at the behavioural level, with regular monitoring of how well they are understood and how well they are practised across the organisation.⁶⁶⁹
- 6.29 I also note that the draft *Code of Conduct for Sworn Members of the New Zealand Police* sets out 10 standards of conduct (see paragraph 6.240). Once again, it will be important to ensure that the values set out in the corporate accountability documents are fully aligned with the standards set out in the code of conduct.

SEXUAL HARASSMENT

- 6.30 This section addresses the development of standards of conduct in relation to sexual harassment within the police workplace. Although the discussion that follows involves women as the recipients of male sexual harassment, it is important to acknowledge that sexual harassment is not defined by gender.
- 6.31 Sexual harassment encompasses a wide range of possible offending behaviour associated with matters of employment, membership, participation, and access. At one extreme

667 New Zealand Police, *Statement of Intent 2005/2006*, p. 6.

668 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 70.

669 Mr David Butler, Commissioner of Inland Revenue, Transcript of hearing, 7 December 2005, p. 9.

the behaviour may be criminal offending and give rise to formal police investigations. Policies and practice for such investigations have already been discussed in relation to the Commission's terms of reference (1), (2), and (3). In this section I consider the complete spectrum of personal behaviour that might amount to sexual harassment, as required by term of reference (4).

- 6.32 I describe police policy on sexual harassment and how complaints are recorded in a national database; outline the patterns revealed by cases of sexual harassment in the Operation Loft files; discuss a particular case examined during the inquiry; and consider the improvement in police practices over time and areas for future improvement.

Sexual harassment policy and procedures

- 6.33 There is no code of conduct as such relating to sexual harassment. However, the current police policy on sexual harassment developed during the 1990s is a detailed policy with clear descriptions of the expected standards of conduct, the available options to deal with breaches, and the procedures to be followed. In these respects the policy has many of the elements of a code of conduct as contemplated by term of reference (4)(a).

Development of the policy

- 6.34 Several statutes provide the legislative basis for the development of the police policy on sexual harassment. In 1989 a description of sexual harassment in the context of the police organisation was inserted as section 89 of the Police Act 1958 by the Police Amendment Act 1989. Sexual harassment was included in the Police Act as a potential personal grievance in relation to sworn members of the police. In 2000 the Police Act was amended so that personal grievances by sworn members of the police were dealt with using Part 9 of the Employment Relations Act 2000. The relevant definition of sexual harassment for the personal grievance procedure is provided in section 108 of the Employment Relations Act.
- 6.35 The earliest document provided to the Commission specifically concerning a sexual harassment policy for the police is dated 19 March 1991. This was a commissioner's circular issued to all region and district commanders and the commandant of the Royal New Zealand Police College. The circular outlined that, under the Human Rights Commission Act 1977 (now repealed), employers were legally liable for sexual harassment of employees. In the circular the Commissioner of Police expressed his views on sexual harassment in forceful terms: "I will not tolerate any such denigration of personnel within the police service. Neither will I tolerate any form of recrimination against a member who properly brings any such misconduct to notice."⁶⁷⁰
- 6.36 Some of the EEO policies of the early 1990s, including the policy on sexual harassment, were developed incorporating Australian police policies and training. The process of drafting a new national sexual harassment policy for New Zealand Police began in 1994 and continued for 18 months. During that period the draft policy was repeatedly tested and redrafted to incorporate proposed improvements. I was told that there had been approximately 15 drafts of the policy.⁶⁷¹

670 New Zealand Police, Commissioner's circular, to region and district commanders and commandant of the Royal New Zealand Police College, "Sexual Harassment Policy", 19 March 1991.

671 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 6.

6.37 In December 1996, at the conclusion of the extensive process of drafting and consultation, the New Zealand Police Sexual Harassment Policy was ratified by the Police Executive Committee. The current policy has not been significantly altered since then apart from some minor alterations in 2001 to take into account the Employment Relations Act 2000.⁶⁷²

6.38 The Sexual Harassment Policy sets out the relevant legislation, and the roles and responsibilities of supervisors and managers; provides for district sexual harassment coordinators, sexual harassment contact officers, and sexual harassment mediators; sets out procedures for the resolution of sexual harassment complaints (including formal and informal processes); explains the associated principles of confidentiality and natural justice; and sets out reporting requirements.⁶⁷³

6.39 The policy is very clear about the seriousness of sexual harassment:

Sexual harassment is unlawful. It affects morale, individual dignity, the effective functioning of a member at work and the right of that member to a safe and supportive work environment. It is a form of employment discrimination and contravenes the Human Rights Act 1993 and the Police Act 1958.

*The New Zealand Police will not tolerate sexual harassment and all levels of management in the police are committed to eliminating such discrimination.*⁶⁷⁴

6.40 The police policy on sexual harassment contains a useful list of the criteria to use in deciding whether behaviour or language is sexual harassment:

- Was the behaviour, language, or visual material of a sexual nature?
- Was it unwanted by the recipient?
- Was it repeated OR of a significant nature?
- Did the behaviour have a detrimental effect on the recipient?⁶⁷⁵

I also note that the police sexual harassment training material contains some useful descriptions of the type of behaviour that might constitute harassment and the effect it can have on complainants.⁶⁷⁶

6.41 The policy emphasises that it is the responsibility of all managers and supervisors to set appropriate standards of behaviour and to ensure that those standards are met. The policy states that managers and supervisors are responsible for dealing with any sexual harassment of which they become aware, and that failure to do so will be regarded as a failure to fulfil the responsibilities of their position. Managers and supervisors are advised to be familiar with the policy, and the procedures relating to dealing with sexual harassment complaints. They are advised that any complaint that is brought to their attention is to be dealt with appropriately, confidentially, and in accordance with the principles of natural justice.⁶⁷⁷

672 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 7.

673 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 7.

674 New Zealand Police, "Sexual Harassment Policy", 10 December 2001, p. 2.

675 New Zealand Police, "Sexual Harassment Policy", 10 December 2001, p. 5.

676 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, Attachment 6B: "Sexual Harassment Training Material".

677 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, pp. 7–8.

6.42 The New Zealand Police Sexual Harassment Policy is nationally mandated and consistent across the country. I believe this approach ensures the policy is effective.

Resolving sexual harassment complaints

6.43 In terms of resolving a sexual harassment complaint, the options available to a complainant under the policy may be by way of an informal or a formal process:

Informal process

- to take no action
- to deal with the matter themselves
- to request a mediated outcome.

Formal process

- to make a formal complaint with a specific request for resolution, including mediation
- to request an investigation
- to take a personal grievance
- to take the matter directly to the Human Rights Commission (under the Human Rights Act).⁶⁷⁸

6.44 Complainants may use as many of the options available to them as necessary. However, they may not take a personal grievance and also take the matter to the Human Rights Commission (by virtue of section 79A of the Human Rights Act and section 112 of the Employment Relations Act).⁶⁷⁹

6.45 One of the options available for resolving a sexual harassment complaint is the use of mediation. At present the police train staff to conduct sexual harassment mediations. Mediators (who must already be trained sexual harassment contact officers) receive two days of mediation training at a Royal New Zealand Police College course.⁶⁸⁰

6.46 I consider that the success of mediation frequently depends on the mediator being highly skilled in mediation practices and having a degree of independence from the parties involved. I was told that if there were problems resolving a complaint within a particular district, the EEO Unit would usually recommend using skilled mediators (or contact officers or district coordinators as appropriate) from another district.⁶⁸¹

Processes for criminal offences

6.47 When the alleged behaviour could amount to a crime such as rape, sexual violation, assault with intent to commit sexual violation, or a serious assault, the complaint is required to be the subject of a criminal investigation. The complainant has no choice about this. Professional Standards section and the Police Complaints Authority (PCA) are then

678 New Zealand Police, "Sexual Harassment Policy", 10 December 2001, p. 9.

679 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 10. Note section 79A of the Human Rights Act 1993 was inserted by section 4 of the Human Rights Amendment Act 2004.

680 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, pp. 13–14; and Attachment 11: "Sexual Harassment Prevention: A Workbook for New Zealand Police Harassment Mediators", 2004.

681 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 12.

involved, in accordance with the Police Complaints Authority Act 1988, the Police Act, the Police Regulations, and the police general instructions.⁶⁸²

- 6.48 Where the member is convicted of a criminal offence as a consequence of a sexual harassment complaint, he or she may be liable to internal disciplinary proceedings in addition to any sentence imposed by the court.⁶⁸³
- 6.49 If the behaviour could constitute a criminal offence but is at the lower end of the scale in terms of seriousness, the matter can still be dealt with as a sexual harassment matter under the Sexual Harassment Policy if the complainant so chooses.⁶⁸⁴
- 6.50 If the lower-level complaint is substantiated, internal disciplinary procedures can follow, as set out in the Police Regulations and the Police Act for sworn staff, or the code of conduct for non-sworn staff. The member may face dismissal, a reprimand, or an adverse report (which would be filed on the member's personal file for a period of four years, as specified in the general instructions).⁶⁸⁵

Police records of sexual harassment complaints

- 6.51 Before 1995 there was no centralised register of sexual harassment complaints within New Zealand Police. The regional management structure was largely autonomous, and issues, incidents, and files relating to sexual harassment were often kept within the region and not brought to the attention of the national manager of human resources or the EEO unit.⁶⁸⁶
- 6.52 The implementation of the Sexual Harassment Policy is now monitored through the assessment of advice notices and incident notification forms. Since April 1995, details of all complaints have been recorded on the national sexual harassment database. The records are kept primarily for Government reporting purposes, not for tracking individuals. However, the records are also used for identifying district trends in complaints, such as an increase in complaints from a specific station.⁶⁸⁷
- 6.53 I was informed that there were 76 sexual harassment complaints recorded by New Zealand Police for the period from 1 July 1995 to 17 July 2001.⁶⁸⁸ These included both formal and informal complaints. The outcomes reported for each of these complaints are shown in Table 6.1.
- 6.54 In the first year of recording details of sexual harassment complaints (July 1995–June 1996) the police database documented only four complaints filed. In the three successive years numbers were higher (17 to 22 complaints a year), but thereafter the numbers declined again.⁶⁸⁹ In her evidence to me, former New Zealand Police Senior Advisor EEO, Ms Alison

682 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 11.

683 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 12.

684 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 11.

685 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 11.

686 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 17.

687 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 17.

688 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, Attachment 12: "Sexual Harassment Complaints New Zealand Police as Recorded Nationally".

689 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, Attachment 12: "Sexual Harassment Complaints New Zealand Police as Recorded Nationally".

Table 6.1: Outcomes of 76 sexual harassment complaints, 1 July 1995–17 July 2001

Outcomes	Number of complaints
Take no action	6
Withdrawn	1
Complaint not found	3
Complaint not substantiated	1
Investigated, not resolved	1
Respondent unknown	4
Complaint taken to Human Rights Commission	2
Complaint ongoing	1
Statement taken	1
Complainant dealt with it themselves	19
Resolved (by mediation, apology, conciliation, transfer)	21
Management action taken	4
Fined/transferred	1
Counselled	4
Adverse report	2
Formal written warning	4
Formal charges laid	1
Total	76

Source: Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, Attachment 12: "Sexual Harassment Complaints New Zealand Police as Recorded Nationally".

Gracey, acknowledged that an increase or decrease in the reporting of sexual harassment complaints could be explained both positively and negatively:

For example, an increase in the level of complaints may be explained positively as a result of increased awareness, and increased confidence in Police as an organisation, to deal with sexual harassment. Conversely it could be explained as increased levels of inappropriate behaviours and actions. ... My genuine belief is that the increase in the numbers of staff making complaints in the years following the development, ratification and implementation of the Sexual Harassment Policy were a positive result of increased awareness, and increased confidence in the organisation to deal with the issues. However I do believe that

the reduction in complaints in the latter years of my employment demonstrated a lower incidence of such behaviours.⁶⁹⁰

Review of sexual harassment complaints in Operation Loft files

- 6.55 The statistics in Table 6.1 are drawn from the police database records of formal and informal complaints over six years from July 1995. In contrast, my own review of sexual harassment complaints within the police was based on complaints that had been the subject of a formal police investigation and formed part of the Operation Loft files. These files spanned the period 1979 to 2005. Of the 313 complaints I reviewed in the Operation Loft files, there were 76 complaints involving allegations of sexual harassment by 39 police members. The outcomes of these complaints are shown in Table 6.2.
- 6.56 The 76 sexual harassment complaints reviewed fell into the following time periods:
- Two complaints were made against two police officers in 1979 (one complainant).⁶⁹¹
 - Eight complaints were made against five police members in the 1980s (seven complainants).⁶⁹²
 - Thirty-one complaints were made against 25 members in the 1990s (22 complainants).
 - Thirty-five complaints were made against eight members between 2000 and 2003 (35 complainants).
- 6.57 The files show a clear progression in terms of how sexual harassment was viewed within the police and what response it elicited.

Sexual harassment complaints in the 1980s

- 6.58 In the early years of the period under review, women experienced considerable problems in having sexual harassment complaints upheld. A case in the early 1980s in which a police officer was alleged to have touched a woman's bottom and breasts and followed her around the workplace was investigated in two parts. It does not appear that the totality of the conduct was ever considered. Instead, the alleged indecency element of her complaint was classified as a criminal offence and was cleared as inconclusive. The second part of the complaint did not, in the district commander's view, amount to a disciplinary breach and was classed as "trivial".⁶⁹³
- 6.59 Various other issues emerged from the 1980s cases that I reviewed. One file recorded that the officer had a "bad attitude to women", which was apparently tolerated for some time, with colleagues unwilling to complain. In the event a complaint from a civilian eventually led to disciplinary charges being laid.⁶⁹⁴ This case was a good example of how more rigorous supervision of inappropriate behaviour could have prevented more serious incidents.

690 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, pp. 18–19.

691 Operation Loft file LT 113. Further complaints were made against one of the police officers by other complainants in 1988.

692 In Operation Loft file LT 136 the complainant makes two complaints, one in 1988 and another in 1991.

693 Operation Loft file LT 150.

694 Operation Loft file LT 149.

Table 6.2: Outcomes of investigations into 76 sexual harassment complaints in the Operation Loft files, 1979–2005

Outcomes	Number of members	Number of complaints
Internal discipline – cautioned	2	2
Internal discipline – written warning	1	2
Internal discipline – reprimanded	3	4
Internal discipline – adverse report	2	2
Internal discipline – proven ^a	5	14
Internal discipline – not proven	1	1
Internal discipline – counselled	10	10
Dismissed ^b	2	3
Internal discipline – resolved under Sexual Harassment Policy ^c	3	3
Internal discipline – disengaged prior to tribunal hearing	3	21
Internal discipline – resigned or disengaged during investigation	2	3
Not upheld	6	9
Complaint withdrawn	2	2
Total	42	76

The total number of police members in terms of outcomes (42) is greater than the number of individuals involved (39) because three police members fall into three categories of outcome.

- a Operation Loft file LT 149. One complaint by one complainant was proven, and one complaint by another complainant was not proven.
- b Operation Loft file LT 44: one officer was charged and discharged under section 19 of the Criminal Justice Act for the same complaint before being dismissed. Operation Loft file LT 145: one officer was charged and acquitted for the same complaints after being dismissed under the code of conduct for non-sworn staff.
- c Operation Loft file LT 91. One officer later disengaged prior to a tribunal hearing regarding complaints by other complainants.

6.60 In another 1980s case the Deputy Commissioner of Police, in a letter to a district commander, said that the fact that the complainants had allowed time to pass before making the allegations “must seriously weaken the complaint”.⁶⁹⁵ Such a complaint would be better handled today. In their submissions on the subject the police told me,

The particular problem with that file was the administration’s lack of understanding regarding the good reasons why complainants may delay

⁶⁹⁵ Operation Loft file LT 113.

before making a complaint, and that is certainly not a factor that would be held against them today.⁶⁹⁶

Sexual harassment complaints since 1990

- 6.61 During the 1990s attitudes to the investigation of sexual harassment complaints gradually began to change. The Operation Loft files reveal increasing recognition by police officers of the existence of unacceptable attitudes and efforts to combat them.

Recognition of problem areas

- 6.62 An inspector's report from 1991 recognised the need to prevent further instances of sexual harassment occurring:

I believe that the [complainant] enquiry is the "tip of the iceberg". I cannot help but wonder how many other females have been subjected to such behaviour and declined to come forward. I am committed to introducing a framework that will prevent a re-occurrence of what [the complainant] had to undergo. I have already introduced some interim measures, and would appreciate an opportunity of discussing some major policy changes which I believe are necessary if we are to treat this matter with the concern it deserves.⁶⁹⁷

- 6.63 In another example that demonstrated how senior police officers viewed sexual harassment complaints in the 1990s, Assistant Police Commissioner Wilson in a letter to the personnel officer wrote,

This particular case of sexual harassment ... is a classic example of the underground nature of sexual harassment in the New Zealand Police. Here is a case where this officer had sexually harassed other female police officer victims in [place name] in 1991, but none of the victims officially reported the matter or took action. All later explained the failure to report over a range of perceptions including fear, stigma, confusion, not wanting to get brother officers into trouble and lack of understanding of the organisation's policies.

The offending officer in this case developed a proclivity for sexual harassment and had it not been for the courage of the [place name] victim, he may well have gone on to pursue such behaviour for years to come.

This particular case and its history is very strong anecdotal evidence pointing to an internal police culture of discrimination by male officers on female officers, with indications that it is probably deep seated and relatively common.⁶⁹⁸

- 6.64 The commitment of the police to recognising and acting to prevent instances of sexual harassment occurring was similarly reflected in a letter from an assistant commissioner after the 1996 investigation of a sexual harassment complaint:

We are a modern organisation with responsibilities under legislation to ensure that sexual harassment does not flourish within. The Commissioner is committed to being a good employer and does not

696 New Zealand Police, Submissions in response to draft report, 20 June 2006, pp. 129–130.

697 Operation Loft file LT 188.

698 Operation Loft file LT 146.

regard favourably inappropriate behaviour from his commissioned officers who should know better.

...

Accordingly, I refer this file to you in order for [the alleged offender] to be reprimanded for his misconduct on this occasion. [The alleged offender] is to be left in no doubt that his behaviour was totally inappropriate and will not be tolerated in future.⁶⁹⁹

Persisting negative behaviour

6.65 Despite the increased determination by senior police to stamp out sexual harassment, there were still unsatisfactory attitudes demonstrated within the organisation.

6.66 In 1997 a woman police officer complained of sexual harassment and detailed a number of instances, one of which was the hanging of commercial posters of a woman modelling a sports bra and a lingerie poster in the gym; these were taken down when she complained, and then rehung anonymously. The police report described the reaction of another policewoman at the station: “[She] could not understand what [complainant policewoman’s] problem was in respect of the commercial posters of a woman modelling a sports bra. They did not concern her at all.”⁷⁰⁰ During the investigation, the police welfare officer said that he had been told by other women leaving the station that a contributing factor to their leaving had been “attitudes of some staff to women and working with them”.⁷⁰¹ He could not be more specific because he had been told in confidence.

In a police report on this case, a legal adviser wrote,

It seems to me from the file that, from the outset, the attitude has been taken that the problem was that of the complainant, rather than that of the Police or those complained of. ...

I am of the very clear view that this file contains material which reflects a marked lack of objectivity on the part of many involved in the matter.⁷⁰²

6.67 In 2002 an entire team made a formal complaint of sexual harassment against their supervising officer.⁷⁰³ During the course of the investigation it was established that he had been displaying sexually inappropriate behaviour since 1994 and his reputation was well known. An officer who had worked with the alleged offender for a number of years was interviewed during the investigation. He had told the interviewer that it was a well known fact that the alleged offender “had a huge reputation for being a ladies man and for being responsible for acts of sexual harassment”.⁷⁰⁴

The officer went on to say,

Without a doubt, everybody who had worked at [police station] for any period of time and who knew [the alleged offender] would have been well aware of his reputation and some of his antics.⁷⁰⁵

699 Operation Loft file LT 147.
700 Operation Loft file LT 59.
701 Operation Loft file LT 59.
702 Operation Loft file LT 59.
703 Operation Loft file LT 139.
704 Operation Loft file LT 139.
705 Operation Loft file LT 139.

Another officer said that the alleged offender, with whom she had worked in 1994–1995, had acted in an inappropriate manner to her on several occasions. She explained that she did not report these incidents at the time because she “didn’t really want to rock the boat”. She said, “I was just one person, I thought I could deal with it.”⁷⁰⁶

A different officer, who worked with the alleged offender in 1996–1997, said,

[Police Officer] had told me that any female on section that wore a dark coloured bra under her Police shirt got their bra strap pinged and I didn’t think anything of it. One day during line up he came up behind me and pinged my bra and told me that I was wearing a dark coloured bra.⁷⁰⁷

When asked if she thought that was unusual she replied,

No. For the short time I was on section I just took it to be part of his personality and that’s how he sort of dealt with or what he did with the women on section. I wasn’t singled out. It was across the board. It was his general behaviour towards the female Constables.⁷⁰⁸

After the officer’s promotion to supervisor the area controller called his predecessor in for a meeting and commented that “[Officer] was a bit sleazy and a bit of a lad”.⁷⁰⁹ When the formal complaints were laid, the officer was stood down and disengaged so that the police were unable to proceed with any internal disciplinary charges.

Submitter J’s allegation of sexual harassment

- 6.68 As mentioned earlier I held private hearings into the police investigation of 10 individual complaints in total. I discussed nine of these investigations (concerning Submitters A–I) in Chapter 3. I will discuss the tenth, a sexual harassment complaint from the 1990s, in this section of the report.
- 6.69 Submitter J had a number of complaints with the police. Only one of those was within my terms of reference; that related to the handling of her complaint of sexual harassment. The family of Submitter J presented this matter on her behalf because she had since died.
- 6.70 In 1994, Submitter J, a probationary police officer, made a complaint that she was sexually harassed by her sergeant. She was given the option of following the formal complaint process or resolving the complaint informally. She selected the informal process and expressed a strong desire not to have to work with the subject of the complaint again.
- 6.71 The police told me that the informal resolution process used in 1994 appears to have been a draft or interim policy, though it was a reasonably comprehensive document that provided a range of options for complainants. They said that the policy that guided the police was very similar to the draft published later that year.⁷¹⁰ They produced a copy of that for me. According to the policy the informal process involved a discussion of the issues; a clear statement by the complainant and/or the mediator to the harasser on the impact the

706 Operation Loft file LT 139.

707 Operation Loft file LT 139.

708 Operation Loft file LT 139.

709 Operation Loft file LT 139.

710 New Zealand Police, Submissions, 18 August 2005, pp. 2–3; New Zealand Police, “Policy and Procedure for Dealing with Complaints of Sexual Harassment” (draft), 30 December 1994. References made to the police policy at the time of dealing with Submitter J’s complaint are drawn from the latter document.

behaviour has had; and appropriate action as determined and agreed upon by the parties in full resolution of the matter. The role of the person handling the mediation was to mediate between the parties to effect a resolution of the complaint. If the alleged harasser did not admit to the allegation, the matter could not be informally resolved and should be referred back to the complainant for a decision on the future direction of the complaint. The complainant could then either pursue a formal investigation or decide not to pursue it.⁷¹¹ This ensured that the complainant kept control of the process.

- 6.72 I have two concerns with the police actions in respect of compliance with the policy.
- 6.73 My first concern is that the policy states that the role of the person handling the mediation is “to mediate between the parties to effect a resolution of the complaint”. In this case I could find no evidence of any real mediation attempts. When the subject of the complaint was interviewed by the sexual harassment officer, the subject was advised that he would be “transferred as soon as expedient to other duties off section”. The subject responded that that was “a bit one-sided” and that he was “being used for some goal that [Submitter J] has”.⁷¹² Submitter J wrote later that she had wanted the subject to be transferred to another station and she was unhappy with the final decision to transfer him to another section in the same station.
- 6.74 The informal resolution process was supposed to result in “Appropriate action as determined and agreed upon by the parties in full resolution of the matter”. The material presented to me did not suggest to me that either party was satisfied with the outcome even if at the time they appeared, to some at least, to accept the situation.
- 6.75 My second concern was that the policy said, “If the alleged harasser does not admit to the allegation or behaviour, the matter cannot be informally resolved and should be referred back to the complainant for a decision on the future direction of the complaint.” This seems to be a logical step where the subject does not admit the allegation.
- 6.76 At the interview dealing with Submitter J’s complaint, the subject denied the allegation.
- 6.77 The police submitted that transferring the subject of the complaint was preferable to placing the submitter in the position of “having to choose between dropping her complaint and pursuing the formal process she had been adamant she wished to avoid”.⁷¹³ I can see some sense in this approach in an appropriate case. However, it is clear that in this case it in fact led to other difficulties for Submitter J, which were obviously not within the thinking of the police when they made this decision.
- 6.78 Regardless of the subject’s denial, it was decided at an early stage to transfer him to another section in the same station. He said that he was angry and upset about the complaint. I read evidence in the files that there were times when the subject would ignore the submitter when their paths crossed for example in the muster room. I also read a constable’s account that the subject had been “spreading it around the [place name] station that [Submitter J]

711 New Zealand Police, Submissions, 18 August 2005, pp. 2–3; quoting from New Zealand Police, “Policy and Procedure for Dealing with Complaints of Sexual Harassment” (draft), 30 December 1994, pp. 11–12.

712 Operation Loft file LT 201. Unless otherwise referenced, all material in this passage is drawn from my review of Operation Loft file 201.

713 New Zealand Police, Submissions, 18 August 2005, p. 4.

had made it up – that it was all a complete fabrication”. Further, I read that Submitter J commented to a fellow officer that she wished she had never made the complaint and she was treated “as if she was worse than the person she complained against for complaining”.

- 6.79 I could see no evidence in the files of any substantive follow-up to monitor Submitter J’s satisfaction with the resolution. The police told me that the replacement sergeant was selected because she was an appropriately sensitive person with full knowledge of the complaint and was available to keep an eye on Submitter J’s wellbeing. She remained as supervisor until Submitter J left the station later in the year.⁷¹⁴ However, I read that this sergeant was relieving a sergeant at another station for the first four to six weeks so would not have seen the submitter or been aware of the submitter’s situation in the station for something in the region of half the three-month period she was “monitoring”.
- 6.80 A further concern I have with this case is the differing accounts of the submitter’s indicated preference for resolution and also the different accounts of the actual resolution.
- 6.81 Submitter J met with two members of the sexual harassment committee to discuss what action to take. She indicated that she preferred the informal resolution process and that she would like the subject of the complaint to be transferred. The unsigned minutes of that meeting reflect that the transfer was to be to other duties. In preparing for her employment mediation (which did not occur until two years after this incident), Submitter J, however, wrote that she understood the transfer was to be to another station. She felt let down when he was transferred only to a different section within the same station. She still had to see this officer at the change of shifts. She wrote, “This was the sort of situation I had wanted desperately to avoid. Another sergeant (x2) that had let me down.” She expressed dissatisfaction to her family and to some police colleagues.
- 6.82 One account (written about three years after the event) of the meeting to resolve the complaint was from a participant who recalled it being discussed that the subject of the complaint could not stay at the station because it was not fair when the submitter would still have to have some dealings with him. She went on to say that as far as she was aware the subject was moved immediately to another station (the subject was, in fact, transferred to another station some four months later for reasons unrelated to the sexual harassment). Another account (11 years later) was that the decision was that shown in the minutes: that the subject was to be transferred from one section to another in the same station. This person’s account went on to say that there was “no doubt that [Submitter J] would be comfortable with the decision; the only concern that she expressed to me was that she not have to work with [the subject] again, and [Submitter J] had herself raised the possibility of this being achieved by a change of Section”.⁷¹⁵
- 6.83 Had the resolution of the complaint been evidenced in writing at the time and signed by all participants it would have been clear as to what was the correct account and prevented the later misunderstandings and unpleasantness. Even though it was an informal process, I believe that it would be advantageous to all concerned to have any resolution of sexual harassment complaints finalised in writing and signed by both parties.

714 New Zealand Police, Submissions, 18 August 2005, p. 5.

715 New Zealand Police detective sergeant, Affidavit re Operation Loft file LT 201, 4 August 2005, p. 4.

- 6.84 I note that in the current Sexual Harassment Policy there is no requirement for a mediated resolution to be in writing. I recommend that the policy be amended to include this requirement to ensure clarity.
- 6.85 In summary, the police are to be commended for acting promptly in response to Submitter J's complaint. However, the areas where the police failed to comply with the policy at the time meant that the submitter lost control of the process. It was determined from the outset that the subject of the complaint would be transferred to another section. Contrary to policy, when the subject denied the allegations, the submitter was not given the option of proceeding with a formal investigation or withdrawing the complaint. These facts, combined with the lack of a comprehensive monitoring of Submitter J, led to a stressful working environment for her. It is clear that, rightly or wrongly, she felt let down by her superiors and by the organisation as a whole.
- 6.86 This file showed how the police dealt with one particular complaint when the Sexual Harassment Policy was in its formative (and draft) stage. It reveals some important lessons, particularly the need to record decisions and outcomes in an unambiguous way. As I note below, I have seen some great improvements since this time.

Improvements over time

- 6.87 There is evidence that since the mid-1990s there has been significant change in the culture within New Zealand Police about attitudes towards sexual harassment.⁷¹⁶ Since the late 1990s, several cases have emerged that demonstrated that women within the police were beginning to have the courage to stand together to complain.⁷¹⁷ Several officers who were the subject of numerous sexual harassment complaints were ousted from the police.⁷¹⁸
- 6.88 In reading the sexual harassment complaint files I was able to trace significant improvement that took place after the appointment of Ms Gracey as Senior Advisor EEO in 1994.⁷¹⁹ In her evidence to me Ms Gracey noted, "I believe that over time there was a far greater commitment by all staff to dealing with inappropriate behaviour at the time it arose."⁷²⁰ She described the changing attitudes she had observed:

In the early years (1994 to about 1998) Sergeants' courses were the most difficult; my impression was that some Sergeants regarded some aspects of EEO and the Sexual Harassment Policy as being imposed for the sake of political correctness rather than as having any relevance to policing. However that changed over time. Sergeants started to approach me about possible inappropriate behaviours they had become aware of, and expressed a desire to put in place realistic boundaries and expectations on their staff. I would describe those changes as a 'maturing' and an acceptance of good management practices.⁷²¹

716 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 25.

717 For example, Operation Loft files LT 86, LT 87, LT 94, and LT 139. The complaints date from 1997 to 2002.

718 For example, Operation Loft files LT 86, LT 94, LT 131, and LT 139. The complaints date from 1999 to 2002.

719 Noted in transcript of hearing, 11 November 2005, p. 64.

720 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 26.

721 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 15.

6.89 Ms Gracey noted the effects of increasing awareness of the policy and confidence in its application:

my perception ... at the time of my retirement [2004] was that most staff were well aware of sexual harassment and the implications of a complaint. The number of staff who dealt with sexual harassment matters themselves (at the time of the incident) became more common as their confidence increased. I believe this had the effect of reducing the number of sexual harassment complaints made under the Sexual Harassment Policy because issues were being resolved, at the time, by those involved. That has to be viewed positively.⁷²²

6.90 Another long-serving police officer, Inspector John Mitchell, Policing Development Manager, Auckland City Police District, offered his view on change in police culture:

7. When I first joined Police [1975] I witnessed overt sexual harassment (in terms of unwelcome verbal or minor physical approaches) of some female staff, and I heard openly racist or sexist remarks. ...

8. By the late 1980's and early 1990's, in my opinion, the Police culture had changed significantly and it was quite clear that such behaviour was not widely tolerated. Police recruiting policies had changed to remove the artificial cap on the employment of women, so that large numbers of younger women were recruited. By 1995, when I was a shift inspector, over half of the frontline constables on my shift (section four) across the district were female. A great deal of equality of work practices and culture was occurring naturally.

9. That is not to say that everything was perfect. In my experience there has always been extreme reluctance by staff to formally report sexual harassment. I understand from the literature that this is common in many workplaces.⁷²³

Reluctance to take formal action

6.91 Despite the improvements in attitudes to sexual harassment, there are, as indicated by Inspector Mitchell's remarks above, persistent difficulties in encouraging potential complainants to make official complaints.

6.92 Inspector Mitchell told me that from 1995 to 2003 he was informally made aware of about eight complaints of sexual harassment, two of them quite serious although falling short of criminal behaviour. He said, however, that in none of these cases were the complainants prepared to make formal complaints or statements despite personal assurances from senior staff up to and including the district commander that they would receive total support. He explained that in two cases mediation was arranged with a favourable outcome, and three of the alleged offenders were spoken to and transfers arranged. In the other cases no formal action was taken at the insistence of the complainants.⁷²⁴

722 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, pp. 31–32.

723 Inspector John Mitchell, Policing Development Manager, Auckland City Police District, Brief of evidence, 14 November 2005, 14 November 2005, paragraphs 7–9.

724 Inspector John Mitchell, Policing Development Manager, Auckland City Police District, Brief of evidence, 14 November 2005, paragraphs 9 and 10.

6.93 Professor David Bayley, an international expert on police culture and practices, suggested to me that merely looking at the number of complaints from staff about possible sexual harassment could be misleading. He said,

there is a tendency ... in Police for people to conclude that if there aren't any complaints everything must be okay and I think that's not right.

He also said that there are many reasons why women may be hesitant to complain about behaviour that makes them uncomfortable or is indeed outright abusive because of the stigmatisation that happens. He added,

We have surveys in the United States that show that 60 percent of policewomen believe they have been harassed at some point. 95 percent of them have never complained.

... what I am suggesting here is that it may be important to find other ways of auditing the comfort level of policing in the occupation⁷²⁵

6.94 I agree with these comments by Professor Bayley. Based on my experience in management I believe that women sometimes do not want to create conflict in their work environment; and based on the police files I read, I could see the difficulties involved in policewomen speaking up about sexual harassment in the workplace. One policewoman summed it up well on a file from the late 1990s:

I didn't want to be seen as a nark and I didn't want the staff to feel they had to tread carefully around me. I felt very uncomfortable in making a complaint against a [police officer of a superior rank] as they have power over you and the ability to affect your appraisal and work generally.⁷²⁶

6.95 At this point I would reiterate that sexual harassment is not defined by gender. Indeed, evidence provided to the Commission indicated that men in the police force had complained of sexual harassment from women and from other men.⁷²⁷ Nevertheless, it is the safety of women in the work environment that tends to be the focus of attention.

Current and future safety of women in the police workplace

6.96 The changes to the policy and processes for dealing with sexual harassment since the mid-1990s appear to have been effective. I heard evidence from several officers and some female staff who assured me that the work environment within New Zealand Police is now a safe one for women. One female officer, who had made a complaint of sexual harassment at the start of her police career but who had persisted with her choice of career, described the work environment and police culture as being now a very positive one.

6.97 The Hyman report, *Women in the CIB*, which was provided to me during the inquiry, outlined issues of concern by women police officers in the Wellington CIB.⁷²⁸ This

725 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, pp. 15–16.

726 Operation Loft file LT 86.

727 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, Attachment 12: "Sexual Harassment Complaints New Zealand Police as Recorded Nationally".

728 Associate Professor Prue Hyman, *Women in the CIB: Opportunities for and Barriers to the Recruitment, Progress, and Retention of Women in the Criminal Investigation Branch (CIB)*, July 2000, available at <http://www.police.govt.nz/resources/2000/women-in-cib/>, accessed 19 September 2006.

report was produced at the request of the New Zealand Police in response to concerns expressed by the National Women's Consultative Committee.⁷²⁹ The report reflected the variations in experiences of individual staff in the CIB, from having women very happy with their work environment to those experiencing a range of behaviours that were acknowledged by Police Commissioner Robinson to be inappropriate and in need of immediate change.⁷³⁰ The Police Executive Committee accepted the report as a working document in order to assist staff and managers in implementing the necessary changes.⁷³¹

- 6.98 I note, however, that one of the officers appearing on behalf of the police told the Commission that the report reflected the views of people who were negative about the organisation and that it did not reflect her views.⁷³² Another witness for the police also commented that the study was not “fully balanced” in that some people who had been reported extensively had self-selected to be interviewed rather than being part of a representative sample.⁷³³ Nevertheless, I consider that the Hyman report indicates a need for careful monitoring of the work environment for women police officers.
- 6.99 The police are to be commended for the way in which they have worked to ensure that their workplace is safer in terms of freedom from sexual harassment. It is essential that these gains be sustained over time. To ensure this, there should be continued monitoring of the Sexual Harassment Policy. I suggest that this monitoring take the form of an annual audit of the safety of women staff members (at least until such time as the numbers of men and women in the New Zealand Police force are in closer balance, as is recommended later in Chapter 7, recommendation R50).

ISSUES ABOUT THE ADEQUACY OR EFFECTIVENESS OF STANDARDS

- 6.100 In this section of the chapter I discuss two areas where the adequacy or effectiveness of standards of conduct in relation to personal behaviour of members of the police has been brought into question.

Standards of sexual conduct towards members of the public

- 6.101 I am concerned that no policy or guidelines exist about sexually inappropriate conduct by police officers towards members of the public, including the forming of relationships between officers and people with whom they come into contact in the course of their work. This contrasts with the issue of sexual conduct towards colleagues in the police workplace (discussed in the preceding section), in respect of which there are comprehensive policies and procedures.

729 The National Women's Consultative Committee was established by the assistant commissioner for human resources as an EEO initiative. It was described as the primary adviser to police management on the issues facing women in the organisation by Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 28.

730 Police Commissioner Robert Robinson, Foreword of *Women in the CIB* (see footnote 728), July 2000.

731 Police Commissioner Robert Robinson, Foreword of *Women in the CIB* (see footnote 728), July 2000.

732 Senior Sergeant Andrea Jopling, Transcript of hearing, 9 November 2005, p. 6.

733 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Transcript of hearing, 11 November 2005, p. 50.

Personal vulnerability and power imbalance

- 6.102 By the very nature of their duties police officers deal with a wide range of people, including many who may be in a vulnerable state either because of their personal circumstances generally or as a result of having been recently affected by a crime or other trauma (such as a death in the family). Members of the public often have no choice but to place high levels of trust in police officers in these circumstances.
- 6.103 Moreover, police officers hold a position of authority in our society. They are given significant coercive powers for the benefit of the community, and thus there will always be a power differential in their dealings with members of the public.
- 6.104 As with others who have professional dealings with the public, members of the police must apply the highest standards of conduct and take extreme care to avoid taking personal advantage of any situation of vulnerability or power imbalance, such as those arising from an individual
- being the victim of a crime or suffering a recent trauma (such as the death of a family member)
 - being a suspect in a criminal investigation
 - having limited means or lacking family support networks
 - having some form of disability (intellectual, psychological, physical, sensory, or neurological) that might affect their ability to give free and full consent to a sexual relationship and which also may mean that their credibility is doubted
 - having previous convictions or criminal associations, which may mean their credibility or truthfulness is doubted
 - being subject to (or a family member being subject to) legal processes (for example, being on probation, having the prospect of diversion,⁷³⁴ or fearing the loss of their children owing to care and protection issues)
 - being held in custody
 - being a young person.
- 6.105 Inappropriate sexual behaviour in a professional capacity such as the use of sexual banter, the making of sexual advances, or attempting to form a sexual relationship can bring the police into disrepute in any circumstance, but is especially inappropriate in relation to individuals in these types of situation.

Evidence of abuse of trust

- 6.106 The evidence I considered demonstrates that there have been instances when police officers have abused the trust placed in them by members of the public by engaging in these forms of behaviour.

Unwanted advances and sexual assaults

- 6.107 I saw some cases where police conduct resulted in allegations of sexual assault. For example, the complainant in a 1993 case had been stopped for a minor traffic offence. The officer

734 For information on diversion, see footnote 22.

initially denied the woman's complaint of indecent assault, but eventually admitted the incident and resigned from the police. The police decided not to prosecute on the basis that the complainant did not want to give evidence in court.⁷³⁵

- 6.108 In a case from 1995, the complainant met the police officer when she called the police as a result of a domestic incident with her husband. The police officer later returned to her home, while on duty, and indecently assaulted her. The complainant did not want the matter dealt with in open court and as a result it was put before a disciplinary tribunal. The tribunal found the police officer guilty of the charges and he was subsequently dismissed from the police. The tribunal stated,

His relationship with the Complainant commenced in circumstances in which he as a Police officer was dealing with her to all intents and purposes as a victim with the particular emotional and other vulnerabilities associated with that status.⁷³⁶

- 6.109 In this case the complainant said that the unwanted advances of the police officer led her to have her ex-husband come back into the home in order to provide her with some security:

I took the step of having [complainant's ex-husband] come back into the house because at this point, Constable [name] actions had gone to the point where I was concerned that he would return. I didn't know whether he would or not or what he would do if he ever returned. I have always trusted Policemen and had trusted Constable [name], right up to the point where he had made advances. My distrust for him came about when he refused to accept no for an answer and was persistent in his visits and in sexually touching me, after I had made it clear to him that he was not to do this. I didn't know what he was going to do next and had no choice but to get [complainant's ex-husband] to come back into the home. At one stage during the last incident when he was trying to undo my jeans, I actually thought whether or not I should give into him just to get it over and done with so that he would leave me alone. By giving in to him I actually thought that by giving him sex he would go away and leave me alone.⁷³⁷

- 6.110 Several cases involved women held in custody in police cells. In 2001 a police officer was convicted of indecent assault and sexual violation after he forced a woman who was being held in the cells and faced arrest for theft to perform a sexual act on him. The officer had told the woman that she would go to prison and lose custody of her son if she did not comply with his wishes.⁷³⁸

- 6.111 In 1984 there were two cases within a few days of each other regarding the same station and involving allegations of indecencies against two women who were being held in the cells.⁷³⁹ Neither of these complaints was upheld because there was insufficient evidence to lay charges. However, the investigating officer in the first case offered an opinion on the veracity of the complaint:

Bearing in mind the complaint against the Police made by [the second complainant], alleging indecency in the cells by a male Constable on [date],

735 Operation Loft file LT 123.

736 Operation Loft file LT 104.

737 Operation Loft file LT 104.

738 Operation Loft file LT 64.

739 Operation Loft files LT 166 and LT 137.

two days after this incident, and the same shifts were on duty, I have no hesitation in saying this complaint is genuine.

...

I conclude the acts complained of did happen but the likelihood of the offender being discovered is remote.⁷⁴⁰

- 6.112 In respect of the second complaint, the Deputy Commissioner of Police wrote to the district commander giving his assessment of the evidence:

I reject the conclusion that the complaint of indecency is unfounded. There is insufficient evidence to support such a clearance and until the identity of the 'male officer' who visited the complainant's cell is established the result must remain inconclusive.⁷⁴¹

Inappropriate consensual relationships

- 6.113 I also saw cases where apparently consensual sexual relationships were formed in circumstances that were clearly inappropriate. For example, when her husband was facing charges arising from a domestic dispute in 1996, Submitter E met with the diversion officer to discuss diversion. Subsequently she had a sexual relationship with him. After her complaint to the police that the officer had used his position to engage in sexual activity with her, an internal investigation was undertaken. Because the actions complained of were taken as consensual there was no opportunity for criminal charges to be laid. However, the police told me, "Had [police officer] not elected to retire, he would have undoubtedly faced serious internal disciplinary charges."⁷⁴² The officer retired on medical grounds.⁷⁴³ Counsel for the police submitted in this case, "Though [the relationship] was entirely consensual, the Police immediately recognised the inappropriate nature of the liaison ...".⁷⁴⁴ An internal police report on the same case stated that the police officer had misused his position.⁷⁴⁵

- 6.114 In another case involving diversion from the mid-1990s, two complainants who were subject to the diversion process had sexual relations with a police officer. In a police report on the case, a detective inspector said that although both complainants alleged a sexual relationship with the police officer ("the genesis of which was the diversion process"), only the second complainant alleged that sexual intercourse was consented to because of the position of authority and control the officer had over her.⁷⁴⁶ Although this case was dismissed, the detective inspector concluded that the central detail alleged against the police officer was in all probability true and that the officer was being untruthful in denying his alleged sexual relationship with both complainants.⁷⁴⁷

- 6.115 In other files the complainant was particularly vulnerable because of his or her youth or disability, or because of difficult personal circumstances. The case of Submitter B (discussed at paragraphs 3.130–3.135 and 3.191–3.198) involved a young woman

740 Operation Loft file LT 166.

741 Operation Loft file LT 137.

742 Submitter E, Operation Loft file LT 126; New Zealand Police, Submissions, 8 July 2005, p. 3. This case is also discussed in paragraphs 3.150–3.153.

743 Operation Loft file LT 126.

744 Submitter E, Operation Loft file LT 126; New Zealand Police, Submissions, 8 July 2005, p. 8.

745 Submitter E, Operation Loft file LT 126; New Zealand Police, Submissions, 8 July 2005, p. 7.

746 Operation Loft file LT 168.

747 Operation Loft file LT 168.

who in 1982 was placed in the home of a police officer, who subsequently had a sexual relationship with her over a period of some years. The young woman complained of sexual abuse and sexual assault which began when she was a teenager living in the police officer's house in his care. The officer was investigated but never faced disciplinary charges in relation to the sexual relationship he had with her. The police now accept that the complainant's complaints were handled inadequately at the time, the police having failed to pursue internal charges arising from the complaints of ongoing abuse and having failed to give closer consideration to criminal charges arising from the allegations of indecent assault before the complainant turned 16. The police also accept that it was unfortunate that no proper consideration was given to bringing charges when it became clear that the police officer had lied about the sexual relationship. The police have said that the police officer's conduct in the 1980s should have resulted in his facing serious charges before the disciplinary tribunal.⁷⁴⁸

- 6.116 A file from 1991 involved a 14-year-old male. The young complainant met the police officer concerned when he laid a complaint of indecent assault against another man (who was charged and convicted). The police officer established a close friendship with the boy, which subsequently led to incidents of indecent assault, for which the officer was arrested and charged. The alleged offender committed suicide before the matter went to court; however, the Police Complaints Authority subsequently upheld the complaint.⁷⁴⁹
- 6.117 In another file from the early 1990s, a young woman with an estimated mental age of 12 was assigned through a service organisation to do voluntary work for the Ministry of Transport, before the merger of the ministry's Traffic Safety Service with New Zealand Police. The officer in charge commenced a sexual relationship with the woman, which continued after the merger. The woman subsequently laid a complaint, saying that although she verbally consented to having sex, she did not feel that she could say no. The officer eventually admitted to having oral sex with the woman, but argued that he had not contravened any law or standard of conduct. Although no disciplinary charges were brought, the officer was strongly reprimanded for his unacceptable and exploitative conduct.⁷⁵⁰
- 6.118 The apparently consensual nature of a relationship does not mask its inappropriate nature if it arises from a power imbalance or one party's vulnerability. Three cases show how this became clear when an allegation of sexual assault was made at a later stage.
- 6.119 In a complaint arising from the mid-1980s, an officer investigating a road fatality entered into a sexual relationship with the wife of the deceased after supporting her through the trauma and its aftermath. This relationship developed into one allegedly involving group sex. The complainant subsequently made allegations of sexual offending but there was insufficient evidence to establish the complainant's lack of consent and/or the lack of the police officer's reasonable belief in her consent. Nevertheless, there seems little doubt that,

748 Operation Loft file LT 148; New Zealand Police, Submission, 10 August 2005, pp. 2 and 12; New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 124.

749 Operation Loft file LT 106.

750 Operation Loft file LT 75.

assuming the allegations are true, this police officer abused his position of trust and took advantage of the complainant's vulnerability.⁷⁵¹

- 6.120 In 1984 a schoolgirl who wanted to be a police officer had arranged through her school that for work experience she would go out on patrol with two police officers. She did this three or four times. She said that one weekend one of the officers called and asked her to a house to go out on patrol. Once at the house he had sexual intercourse with her while a second officer allegedly watched. Afterwards she said that she blamed herself for going to the address in the first place, and that she was discouraged from speaking about what had happened because, as she understood what was said, it would be embarrassing for her and her family. When she did eventually complain in 2004 she had difficulty recalling the detail because she had tried to block it out, and said that she could not remember how she ended up in the bedroom, but felt as if the officer took advantage of the situation. She said she did not mean for it to happen, but she was not forced. The officer admitted the sexual intercourse occurred and said it was purely consensual. There was not enough evidence of the complainant's lack of consent to prosecute the officers.⁷⁵²
- 6.121 Submitter D (whose case is discussed at paragraphs 3.88, 3.143–3.149, and 3.199–3.201) was going through a bitter custody dispute with her children's father in 1993 when she became involved with a police officer who worked on an aspect of her case. In 1995 Submitter D made a complaint of rape by the police officer. After an investigation by the police, and on the basis of legal advice, it was determined that a conviction was unlikely, and as a result no criminal charge was laid. Disciplinary proceedings were then commenced but the officer retired on medical grounds before the disciplinary charges were heard.⁷⁵³ The police commented that he would most certainly have been dismissed had he not disengaged.⁷⁵⁴

Effects of such conduct

- 6.122 I found these cases, and others like them, very disturbing. I saw evidence of the devastating effect on the people involved from the officers' conduct. For instance, Submitter E said,

My primary complaint was that I was abused by [police officer] at a time when I was in a vulnerable state, emotionally unstable and in need of support. I had regarded [police officer] as a senior member of the police and I had understood that he was helping me. ... Because of his role and seniority I had trusted him.

My mental and physical health was seriously affected ... for some time afterwards.⁷⁵⁵

Submitter B said that a doctor told her that she was suffering from post-traumatic stress disorder.⁷⁵⁶ Another complainant said that she has "fearful and petrifying flashback memories which make me worked up, tense and stressed out, often every few days".⁷⁵⁷ The complainant who was a schoolgirl on work experience said that after having sex with

751 Operation Loft file LT 219.

752 Operation Loft file LT 218.

753 Operation Loft file LT 1.

754 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 125.

755 Operation Loft file LT 126; Submitter E, Statement of evidence, May 2005, pp. 4 and 5.

756 Operation Loft file LT 148; Submitter B, Statement of evidence, 15 August 2005, p. 10.

757 Operation Loft file LT 75.

the officer she no longer wanted to join the police. Looking back at the impact of the incident she observed,

I didn't really give a shit about school after this happened to me. I went to eat my lunch and see my friends and play sport. I remained an average student.

I no longer held the police in high regard. I have never stressed to my children that going to a policeman is a safe option if they were in trouble, which is something that every parent would like to be able to do.

I never told any one at home about what happened to me – I was too embarrassed and ashamed about what had happened.

I was also shocked about what they had done to me, I didn't go there with the intention of anything like this happening.⁷⁵⁸

The need for standards on sexual conduct towards members of the public

6.123 The police unreservedly accepted that any breach of the professional trust the community places in the police is wholly unacceptable. However, they submitted that lapses are generally the result of bad judgment or an arrogant conviction that the officer could “get away with” the conduct in question, rather than any lack of awareness of the behaviour the police expect.⁷⁵⁹

6.124 I consider that two forms of response are needed to the types of cases summarised above. The first is the need for the police to clearly specify the types of actions or behaviour that a member of the public could reasonably interpret as sexually inappropriate or unprofessional. I was very surprised to find that none of the 42 listed offences set out in regulation 9 of the Police Regulations explicitly addresses the misuse of an officer's position of power to have sexual relations, particularly with vulnerable people with whom they come into contact in the course of their work. Nor is there any reference to this aspect of misconduct in the draft code of conduct for sworn members.

6.125 The trust that members of the public place in the police is well placed in the majority of instances. I also acknowledge the police submission that said,

The evidence shows that (again with very isolated exceptions, such as [Submitter B's] case) the Police have responded appropriately when alerted to professional misconduct of this kind.⁷⁶⁰

However, I believe that a proper response to cases of inappropriate sexual conduct requires the expected standards of conduct to be spelt out very clearly. A policy is needed that would clearly specify the boundaries for appropriate sexual conduct for police officers and describe any words, actions, or behaviour that could reasonably be interpreted as sexually inappropriate or unprofessional.⁷⁶¹

6.126 Secondly, there is the question of whether it is ever appropriate for a police officer to become involved in a sexual relationship with a member of the public with whom the

758 Operation Loft file, LT 218.

759 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 126.

760 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 126.

761 See paragraphs 6.228 to 6.232 for an outline of the New Zealand Public Service Code of Conduct.

officer has come into contact in the course of his or her work, even if this follows an initially professional form of contact. I believe there is also a need for clear direction on this issue. The problems associated with such relationships are not limited to the police. It is well known that vulnerable people can be susceptible to sexual advances from those they trust to help them through a difficult period in their lives, and that when a relationship develops the participants can have differing perceptions about the extent to which it is consensual. To my knowledge, a number of professions now have rules and guidelines about the formation of relationships with clients where power differentials exist (for example, those of health professionals, lawyers, and social workers).⁷⁶²

6.127 I outlined my concerns about this issue on several occasions during the hearings, and as my inquiry progressed, I was informed that Police Commissioner Robinson had decided that there should be in future a direction to all officers regarding sexual relations with certain people they encountered in the course of their duties. Before his retirement Police Commissioner Robinson directed that the necessary policy work be undertaken to enable future police commissioners to direct that certain personal associations be prohibited, consistent with similar restrictions that apply to other areas, for example the medical profession.⁷⁶³

6.128 Police Commissioner Robinson explained that he had in mind “a direction that will ensure that Police members do not engage in personal relationships with vulnerable members of the community, especially where the nature of the association results in a power differential, or might give rise to a suggestion that the other party has been the victim of exploitation”.⁷⁶⁴

6.129 Police Commissioner Robinson’s approach was supported by Professor Bayley. He commented on the issues associated with power differentials in the particular context of sexual abuse:

Very often in that situation, and this has to do with trainers in the Police College, it also has to do with Police investigators dealing with vulnerable females in the public, what sometimes happens is that the person will say I had consent, the person consented to whatever took place. The Police in New York are now saying that is never an acceptable excuse for sexual abuse and sexual activity when there is a power differential.

That’s the rationale that underlies this rule, that you cannot come back and say, “But she consented” if there’s a power differential ... by definition a person cannot consent if there is a constraint as a result of the person being an instructor, as result of the person being a uniformed Police Officer. It is inherently constraining and eliminates the possibility for consent⁷⁶⁵

6.130 Professor Bayley suggested that there need to be very clear guidelines in place about sexual relationships between people in positions of authority and those with whom they come into contact in the course of their work.⁷⁶⁶

762 See for example *Sexual Boundaries in the Doctor-Patient Relationship: A resource for doctors*, Medical Council of New Zealand, Wellington, updated October 2006, available at <http://www.mcnz.org.nz>, accessed February 2007.

763 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 13.

764 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 13.

765 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 22.

766 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 22.

6.131 In developing their policy and directive, the police should draw upon relevant examples of sexual ethics guidelines in professions such as health and social work. One of the key questions is whether the approach to be adopted should be one of “zero tolerance” of relationships with any member of the public with whom a police officer has come into contact in the course of his or her duties. I noted that in the case involving Submitter D, the police disciplinary tribunal contemplated that the formation of relationships does not always amount to “disgraceful conduct” in the context of the current disciplinary system:

In a theoretical sense at least the issue is not without some difficulty. It is not difficult to conceive of circumstances where a personal relationship of an intimate kind might develop between a Police officer and a member of the public from what is initially professional contact arising from the Police officer’s duty which will not amount to disgraceful conduct within Regulation 9(12). However, I do not believe that is the situation here. The Defendant, as I have already said, clearly had in mind a sexual liaison with the Complainant.

... the Defendant was using his position as a Police officer and the opportunity that position afforded him to have contact with her in order to pursue a sexual relationship with her. In those terms his conduct as I have found it to be is disgraceful within the meaning of Regulation 9(12).⁷⁶⁷

6.132 This contrasts with the evidence given by Professor Bayley, who believed that there should be a rule: “... those in positions of authority should not be permitted to have sexual relations with any person over whom they are in a position of authority and where there is a power differential.”⁷⁶⁸ I favour this approach, and note that a “zero tolerance” approach is evident in guidance issued by other organisations to address the same sorts of power imbalance situations as those which exist for the police. For example, the guidance that the Medical Council of New Zealand has given to doctors about sexual boundaries in the doctor–patient relationship identifies the following rationales for its “zero-tolerance” position on doctors who breach sexual boundaries:

- trust in the relationship
- harm to the patient and doctor
- power imbalance
- impairment of clinical judgment.⁷⁶⁹

6.133 The Police Association expressed reservations about Police Commissioner Robinson’s initiative (see paragraph 6.127). The association cautioned against a prescriptive approach to defining inappropriate sexual relationships, although it agreed that there are some very clear-cut situations, for instance relationships with witnesses or complainants.⁷⁷⁰ The association told me that, in its view, the best method of ensuring that inappropriate relationships do not occur is through supervision, and that there are already disciplinary

767 Operation Loft file LT 104.

768 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 22.

769 *Sexual Boundaries in the Doctor-Patient Relationship: A resource for doctors*, Medical Council of New Zealand, Wellington, updated October 2006 (available at <http://www.mcnz.org.nz>, accessed February 2007), pp. 4–5.

770 Mr Greg O’Connor, President, New Zealand Police Association, Transcript of hearing, 5 December 2005, p. 79.

provisions in place to deal with situations where individuals failed to heed the advice of their superiors.⁷⁷¹

- 6.134 I cannot agree that a matter as serious as this can be left solely to the oversight and discretion of supervisors. Of course any policy to prevent police officers from engaging in sexual relationships with people with whom they come into contact in their professional capacity should encourage officers to talk to their supervisors if they have any concerns about a developing relationship. Therefore supervisors would inevitably play a key part in applying and enforcing any policy. However, I believe that a direction is clearly needed to prescribe the boundaries of acceptable conduct.
- 6.135 I note in this respect that instructors at the Royal New Zealand Police College are already subject to guidelines that provide specific directions in relation to sexual conduct within the college. In particular the guidelines say that instructors are expected to maintain their professional role by not engaging in any sexual contact with recruits. (“This includes situations where the contact is initiated by the recruit.”)⁷⁷²
- 6.136 I agree with the approach taken to give direction to police instructors to avoid sexual relationships with recruits given that there is a clear power differential in this situation. Any breaches of this direction should continue to be treated seriously.

Recommended approach

- 6.137 There is a need for standards and policies dealing with conduct of a sexual nature by police officers in relation to those members of the public with whom they come into contact in the course of their work. The standards and policies should
- specify actions and types of behaviour of a sexual nature that are inappropriate or unprofessional
 - prohibit members of police from entering any relationship of a sexual nature with a person over whom they are in a position of authority or where there is a power differential
 - provide guidance to members and their supervisors about how to handle concerns about a possible or developing relationship that may be inappropriate
 - emphasise the ethical dimensions of sexual conduct, including the need for police officers to avoid bringing the police into disrepute through their private activities.
- 6.138 I would expect to see standards and policies addressing these issues to result from the policy work initiated by Police Commissioner Robinson in response to the Commission of Inquiry into Police Conduct. Once developed, they should be integrated into all relevant management and human resource documents such as the code of conduct, the core values, and the national ethics training, and also be communicated and implemented consistently across the country.
- 6.139 In doing this work the police should seek advice from someone outside the police with expertise in professional ethics.

771 Mr Greg O'Connor, President, New Zealand Police Association, Brief of evidence, 5 December 2005, pp. 26 and 27.

772 New Zealand Police, “Professional Guidelines for Instructors”, [Output of workshop 21 September 1995], p. 2.

Misuse of email and Internet by police

6.140 In this section I address the issue of the behaviour of members of the police in relation to misuse of New Zealand Police computer technology with email and Internet usage. Consideration of this matter began in April 2005 with the announcement by the Attorney-General, Hon Dr Michael Cullen, that the Commission's mandate had been changed. The subject of misuse of police information technology involves standards of personal behaviour by members of the police and therefore fits well with term of reference (4).

6.141 On 21 April 2005 Police Commissioner Robinson announced that an audit of the police email system had revealed that several hundred staff had been misusing the system by sending, receiving, and storing inappropriate and potentially obscene images.⁷⁷³ In his media release on how New Zealand Police intended to examine and amend its organisational culture, the police commissioner said that he welcomed the Government's announcement that it was extending the term of the Commission:

Dame Margaret Bazley has many years experience in the public sector and is widely regarded by many of us in Police as someone who will critically question, examine and make recommendations relating to our plans and actions to fix the issues before us⁷⁷⁴

6.142 As part of the Attorney-General's announcement (also on 21 April 2005) that the mandate of the Commission of Inquiry into Police Conduct had been changed, he outlined how the Commission would "have regard to a separate examination of police culture led by the Police Commissioner". He said the inquiry would provide a source of external advice and reference to the Commissioner of Police on his parallel investigations "into behaviour by a number of police staff which is not consistent with police expectations and may in some cases be criminal".⁷⁷⁵

6.143 The Government requested that Police Commissioner Robinson keep me informed of the action he was taking, and proposed to take, in connection with his review of police culture so that I might take that into account in shaping my recommendations.⁷⁷⁶

Computer use policies, procedures, and monitoring

6.144 Subsequently I sought information from the police about their policies and procedures related to the use of email by police, and also on the technical infrastructure the police use to assist them with the control of objectionable material. I received a comprehensive set of material from the police in response to my queries. I also received briefings from Police Commissioner Robinson on police progress on the investigations into the misuse of email. I reviewed the material supplied by the police and I retained an independent information technology (IT) adviser, Optimation NZ Ltd's Principal Consultant, Mr Jim Shaw, to review the material provided to me by the police. Mr Shaw's response was also made available to the parties.

773 New Zealand Police, "Police seize opportunity to examine culture", news release, 21 April 2005.

774 New Zealand Police, "Police seize opportunity to examine culture", news release, 21 April 2005.

775 Hon Dr Michael Cullen, Attorney-General, "Commission of Inquiry into Police Conduct, media statement, 21 April 2005.

776 Cabinet minute, "Commission of Inquiry into Police Conduct", 18 April 2005, CM (05) 14/16, p. 2.

- 6.145 The expert advice confirmed my assessment of the police approach. I was told that the technical infrastructure being used to monitor use of and block objectionable material was generally consistent with industry best practice. In particular,
- Police have deployed quality products to support their IT security requirements.
 - These products are backed up by policies that in general terms provide a clear statement of expectations and limitations of staff use of computer systems. The material provided for staff on the use of Internet and email is also available on the New Zealand Police intranet.⁷⁷⁷
- 6.146 However, the effectiveness of any technical solution depends not only on its initial design and implementation, but also on its ongoing monitoring and management, and I believe this is where improvements could be made to avoid inappropriate email and Internet use in New Zealand Police.
- 6.147 For instance, I was informed that the police Information and Technology Group did not provide regular reports on staff Internet usage, but did so in response to specific requests. In my experience, for an organisation the size of New Zealand Police this is not best practice. I agree with the advice received that regular reports on Internet usage should be provided to management as a routine matter. Such reports should cover staff with the highest World Wide Web (www) and related usage, and sites associated with that usage. These reports enable managers to see at a glance where possibly anomalous usage occurs and allow for early intervention and verification if required. Regular reports can provide an early awareness of potential issues and prevent more serious situations developing.
- 6.148 In the context of the police such information could also form part of the early warning system discussed later in this chapter. Where police officers are required to access sites that may appear to be unsuitable (for instance, if they are working on an investigation into child pornography), then prior approval could be obtained.
- 6.149 It is also considered best practice to have staff sign a document to confirm that they have read and understood the acceptable use policies. Staff should also sign to acknowledge reading and accepting changes to policies. This is not something currently being done within New Zealand Police. I was told, “The use of *Ten-One* to notify policy updates ... does not guarantee that all staff read and understand the updates.”⁷⁷⁸
- 6.150 I concur with Mr Shaw’s view that to be fully effective these policies and procedures, and any changes to them, must be disseminated through channels that ensure 100 percent coverage of all staff, and must be supported by training where necessary. For instance, information of acceptable use policies should be a component of induction and training for all new employees. Staff should be able to access these policies in their entirety at any time. Staff should also be regularly reminded about the key points in them, for instance, through the use of pop-up messages during the log-in process.⁷⁷⁹

777 Mr Jim Shaw, Principal Consultant, Optimation NZ Ltd, Memorandum of advice on police email and Internet usage, 8 September 2005.

778 Mr Jim Shaw, Principal Consultant, Optimation NZ Ltd, Memorandum of advice on police email and Internet usage, 8 September 2005, p. 5.

779 Mr Jim Shaw, Principal Consultant, Optimation NZ Ltd, Memorandum of advice on police email and Internet usage, 8 September 2005, p. 5.

- 6.151 It is also essential that all police staff understand that appropriate use policies are mandated and supported from the highest levels of management. I was provided with a “fax alert” from the acting Commissioner of Police that presented a strong senior management view to reinforce messages about appropriate computer use.⁷⁸⁰ However, I was concerned that this communication also left some room for individual discretion by its use of the phrase, “While accepting that individual standards may vary in terms of what constitutes offensive material ...”. I agree with Mr Shaw’s advice that more careful wording be used in future to avoid any implication that individual discretion may be appropriate in this context and to ensure that the full impact of the communication is achieved.
- 6.152 The New Zealand Police Association supports having a clear policy as to how email and Internet breaches are to be regarded. However, it does not support any process that is rigidly applied. In its view a “one size fits all” approach does not give sufficient opportunity to consider the circumstances of individual offending. Although I accept that police management should give consideration to all the relevant circumstances, when it comes to taking some sort of disciplinary action, this should not preclude it taking a very definite line on what constitutes acceptable and unacceptable use of email and the Internet.

Police investigations of misuse of information technology

- 6.153 As mentioned earlier in my report, Police Commissioner Robinson provided me with regular updates on his investigations into the inappropriate images on the police computer system. He told me that 351 sworn and non-sworn staff were found to have sent inappropriate images on more than one occasion, to have stored more than 10 inappropriate images, or to have stored one or more moving images. (Images were categorised as inappropriate if they were sexually explicit and/or might be objectionable for the purposes of the Films, Videos, and Publications Classification Act 1993.⁷⁸¹)
- 6.154 Police Commissioner Robinson told me that, in cases where the images were potentially objectionable under the Act, criminal inquiries were commenced. Thirteen images were submitted to the Chief Censor for classification; 12 of those images, held by 28 people, were classified as objectionable. The police commissioner sought advice from the Crown Law Office as to whether these matters should be resolved in the criminal jurisdiction, or using the disciplinary provisions of the Police Act and Police Regulations. Crown Law advice was that these matters should be dealt with under the disciplinary provisions.⁷⁸²
- 6.155 In respect of the remaining 323 police members who were identified as storing or sending inappropriate images on the police computer system, 320 were offered, and took advantage of, an alternative resolution process. That process required attendance at a programme run by an Auckland Internet safety group called NetSafe. The remaining three staff members were to be subject to the normal disciplinary processes.⁷⁸³

780 New Zealand Police intranet, “Think before you push SEND”, Fax alerts, 19 September 2002.

781 Police Commissioner Robert Robinson, Brief of evidence, 5 September 2005, pp. 3 and 4.

782 Police Commissioner Robert Robinson, Brief of evidence, 5 September 2005, p. 4.

783 Police Commissioner Robert Robinson, Brief of evidence, 5 September 2005, pp. 4 and 5.

ACTIONS IF STANDARDS AND CODES OF CONDUCT ARE NOT MET

6.156 As noted earlier, in the absence of a code of conduct for sworn staff, there is nothing enforceable that specifies acceptable standards of sexual behaviour by police officers in their professional role. None of the 42 listed offences set out in regulation 9 of the Police Regulations explicitly cover this area of personal behaviour. At present there are two essentially separate paths for the police to take action if they have concerns about a police officer's personal behaviour, or if there are complaints made against an officer for sexual misconduct:

- the performance management process
- the police disciplinary process.

6.157 Clearly there is also the ability to charge officers with a criminal offence, if appropriate.

Performance management

6.158 Performance issues are currently managed within the police performance appraisal system. I was told that the appraisal process involves an assessment of an employee's performance against the competency framework, in addition to an assessment of their performance against the functional requirements of their position. The appraisal process is designed to consider not only the results produced by a particular employee, but also how those results have been achieved. The achievements are assessed against the competencies and values set out in the framework.⁷⁸⁴

6.159 I was told that at the moment an underperforming police officer cannot be dismissed for poor performance alone and that police management is forced to "work around" the officer's inadequacies, or to try to fit the underperformance into a regulatory framework that is not designed to address this kind of issue. The new regime, which was to have been introduced after the enactment of the now withdrawn Police Amendment Bill (No 2), would have drawn a distinction between matters that could properly be described as issues of discipline, and matters that go to issues of performance.⁷⁸⁵

6.160 As discussed in Chapter 5, I was told by the police that, in practice, they rely heavily on the Police Association to help them "manage" unsuitable employees out of the police. The association and police management cooperate to persuade non-performing officers to explore other career options. This approach relies on non-performing officers appreciating that policing is not for them. If non-performing officers cling stubbornly to their jobs there is little the police management can do.⁷⁸⁶ The police have long recognised the difficulties that the present regime poses as a performance management system.⁷⁸⁷ I was very concerned to learn of the reliance on the police union for its assistance with arranging the departure of unsuitable members from the police. In my view this should be the role of the employer.

784 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Brief of evidence, 18 November 2005, p. 9.

785 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 12.

786 For example, Operation Loft file LT 168.

787 New Zealand Police, Closing submissions, 16 December 2005, p. 32.

6.161 The Police Association told me that it believes the police have excellent performance management policies and processes in place for the management of underperforming sworn members. However, in the association's view, in the vast majority of cases the police do not have the commitment to the process that is required to achieve the desired results. This is because performance management requires a significant commitment from the supervisor or manager to follow through the process required and this process requires consistent feedback to the employee about the level of performance required, where the employee is not meeting that level.⁷⁸⁸ Mr David McKirdy, New Zealand Police Association Field Officer, told me,

I am regularly contacted by supervisors who have issues with staff under their control and who wish to commence performance management processes. In the majority of these cases there is no record of any poor performance having been brought to the member's attention in the past, and in the vast majority of cases their most recent performance appraisal documents contain highly favourable and complimentary assessments.⁷⁸⁹

6.162 In my view being able to deal effectively with poor performance is critical if the police are able to ensure that sexual misconduct cases by police officers are kept to a minimum. I observed from some of the files I read that police supervisors and managers have endeavoured to document performance issues in relation to sexual misconduct. I saw a variety of examples of performance improvement plans and appraisals on the files I read and it appeared that the performance management processes had improved in recent years.

6.163 For example, the performance appraisal documentation I saw on a 1995 file was particularly extensive and lacked the clarity of later examples. It also reflected the difficulty in securing the police officer's agreement to the appraisal or to the proposed performance improvement plan.⁷⁹⁰ By contrast, a performance improvement plan written in 2004 (in conjunction with an adverse report) contained a copy of the core values referred to earlier in this chapter and noted in relation to the core values, "These are the specific areas where you need to ensure all future behaviour more closely reflects that described in the overall definition."⁷⁹¹ The plan had been written at the completion of a disciplinary investigation into the police officer's behaviour, in particular, his having "had a sexual encounter in a public place while under the influence of alcohol in a small rural town where [he was] known at the time to be an off-duty member of the New Zealand Police."⁷⁹² Although I see it as a positive step that reference is being made to the core values in a document such as this, my concern is whether the importance of the values is adequately communicated through this process and whether the performance improvement plan is regularly followed up and monitored by the officer's supervisor.

6.164 Many of the behaviours that I saw on the files gave me indications of the quality of police officers' performance and could be classed as poor performance rather than serious offending of the sort that might attract criminal investigation. To that extent it has been necessary for me to consider how the type of sexual behaviour that could be classed as non-performance or poor performance might best be dealt with as part of the performance management

788 Mr David McKirdy, Field Officer, New Zealand Police Association, Brief of evidence, 5 December 2005, p. 3.

789 Mr David McKirdy, Field Officer, New Zealand Police Association, Brief of evidence, 5 December 2005, pp. 3-4.

790 Operation Loft file LT 201.

791 Operation Loft file LT 208.

792 Operation Loft file LT 208.

process, rather than invoking the full rigour of the police disciplinary tribunal process. In my view the performance management system needs to be able to effectively address this lower level undesirable behaviour to avoid it continuing to fester in the organisation or in an individual.

Disciplinary action

- 6.165 As discussed in Chapter 5, the police do not have access to standard employment law and the processes associated with it in order to deal effectively with misconduct, particularly at the lower level of seriousness. They have an outdated tribunal system that requires courage and tenacity by management to deal successfully with behaviour requiring discipline. I was told that an officer may be involved in a series of incidents early in his or her career that are not in themselves serious enough to warrant disciplinary charges, that supervising officers may need to wait for a serious episode to occur before they can take disciplinary action, and that the behaviour may continue and escalate in the meantime.⁷⁹³
- 6.166 My reading of the files confirmed this impression. It was clear that some officers who committed serious offences or serious misconduct had been engaging in low-level misconduct for years before the serious incident. Sometimes they went on to bring New Zealand Police into disrepute over a long period before they eventually did something serious enough to justify the police bringing a disciplinary charge before the tribunal.⁷⁹⁴
- 6.167 Counsel for the Police Association reminded me that the police have available to them a range of disciplinary penalties, including counselling, adverse report, reprimand, and dismissal. However, as discussed in Chapter 5, I do not believe this sufficiently takes into account the procedural formality and complexity involved in removing an offending staff member.
- 6.168 The ability of officers to disengage from the police on medical grounds has also been an obstacle to achieving disciplinary outcomes. I have already commented about the practice of allowing officers to disengage on medical grounds before the disciplinary process has taken its course (particularly those who joined the force before 1992 and were members of the Government Superannuation Fund, who had a financial incentive to disengage).⁷⁹⁵
- 6.169 My proposals for reforming the disciplinary system are discussed in detail in Chapter 5.

Repeat breaches of standards

- 6.170 In the course of my inquiry I examined the geographical spread of alleged offences in the police files supplied to me and found no evidence to suggest that particular localities were more prone to these than others. The complainants in the Operation Loft files were distributed around the country in a pattern that accorded generally with the number of officers stationed in different locations. There did not seem to be any particular geographical “black spots” in this respect.

793 Detective Superintendent Malcolm Burgess, Transcript of hearing, 29 November 2005, pp. 7–8.

794 For example, LT 86.

795 See Chapter 5, paragraphs 5.80 to 5.91.

- 6.171 However, one point of note arising from the files is that a small number of alleged offenders appeared in multiple files. They were often characterised by active sexual exploits of a kind that could be seen by the community as inappropriate behaviour for a member of the police to engage in. Such conduct could be reasonably well known because of boasting, lack of discretion, or the involvement of others in their behaviour, including group sexual activities. In their closing submission to me the police said that about 15 of the Operation Loft files⁷⁹⁶ disclosed a police member whose systematic conduct would place him in this category of what they would describe as a “womaniser”.⁷⁹⁷
- 6.172 I saw an example of an officer who was the subject of allegations in one district (whether they were upheld or not) then transferred to a different district where he was subsequently the subject of fresh allegations. A similar pattern emerged from a few of the sexual harassment files, where disciplinary action uncovered incidents going back years and occurring in several locations.⁷⁹⁸
- 6.173 Inspector Mitchell told me that, although favourable outcomes were achieved in some cases after complaints were made, complainants in many cases were unwilling to make a formal complaint despite being given personal assurances from senior staff that they would receive protection should they do so. He told me of one case that stood out in his mind:
- it involved a large number of staff complaining about the behaviour of a Sergeant. No formal complaint was forthcoming and he was most uncooperative when spoken to. He was transferred to another work area where the pattern was repeated and again no complaint was forthcoming. He was transferred to another work area where his behaviour manifested itself once more, but in that case the complainant did make a stand which resulted in his conviction at a disciplinary tribunal and his dismissal.⁷⁹⁹
- 6.174 Although the above case eventually resulted in the officer’s dismissal via the disciplinary process, the police witnesses who appeared before me noted in their evidence that the existing disciplinary framework makes it difficult for them to properly manage individuals whose behaviour and performance is a concern.⁸⁰⁰ The police face a high standard of proof in disciplinary proceedings, especially when the charge is a serious one where dismissal could be an option. Because of this, they can have great difficulty in taking appropriate action against an officer where there is insufficient evidence to succeed in a disciplinary charge but, nevertheless, a clear prima facie case of some lesser level of misconduct.
- 6.175 From my examination of the files, it is clear to me that the risk to both the public and New Zealand Police’s integrity arises from problem people rather than within particular geographical areas. Those instances in which individuals have been able to stay in the police force despite repeated allegations of misconduct with apparent substance appear

796 The police said that this number represents no more than one police officer in a thousand over the relevant period.

797 New Zealand Police, Closing submissions, 16 December 2005, p. 6.

798 For example, Operation Loft files LT 86, LT 131, and LT 146.

799 Inspector John Mitchell, Policing Development Manager, Auckland City Police District, Brief of evidence, paragraph 11.

800 For example, Detective Superintendent Malcolm Burgess, Transcript of hearing, 29 November 2005, pp. 7–8.

to have been a result of both poor management practices and an inadequate disciplinary framework.⁸⁰¹ My view is that this risk needs careful management through

- an overhaul of the police disciplinary procedures for dealing with misconduct (see Chapter 5)
- introduction of a code of conduct for sworn staff
- development of the directive outlining the boundaries for sexual relationships between police officers and those with whom they come into contact in the course of their work (this directive should give examples of the words, actions, and behaviours that are sexually inappropriate or unprofessional)
- a national early warning system that alerts police management when individual officers begin to demonstrate behaviours that may indicate a risk of future offending
- careful human resources practices regarding the appointment and oversight of officers who are the subject of allegations that appear to have some substance, or whose behaviour causes concern (particular care should be taken when appointing officers to smaller or rural stations where risky behaviour may go unnoticed).

POLICE INITIATIVES TO ENHANCE STANDARDS OF PERSONAL BEHAVIOUR

6.176 In this section I discuss recent initiatives taken by the police in the areas of organisational and staff development, the development of a national early warning system, and moves towards a code of conduct for sworn police staff. Organisational and staff development and training can be an important influence in establishing standards of behaviour within a large organisation. Various recent training initiatives within the police are relevant broadly to the question of standards regarding sexual behaviour. These will be enhanced by the development of a national early warning system and the existence of codes of conduct for all staff and systems to monitor performance.

Police leadership and management development initiatives

6.177 In April 2004 the police appointed Ms Susan Christie as Human Resources Manager: Organisational and Employee Development; her brief was to “develop a framework for leadership and management development within the organisation . . . as a means of developing outstanding leadership and management capability in what is a changing environment.”⁸⁰² The framework is designed to assist New Zealand Police by equipping its members with the appropriate leadership and management skills and capabilities, to enable them to

- demonstrate effective leadership and management at all levels
- work within an ethical and values-based context
- develop and reach their full potential both individually and as members of a team
- contribute to increasing the levels of work satisfaction and commitment.⁸⁰³

801 For example, Operation Loft files LT 118 and LT 28.

802 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, p. 2.

803 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, p. 3.

- 6.178 A key principle for the police investing in leadership and management development is articulated as follows: “The core values will underpin and support professional and ethical Police practices; this will provide a common language and expectations of common and consistent leadership behaviours.”⁸⁰⁴
- 6.179 At November 2005, the leadership and management development framework was in the first year of a five-year cycle. The framework aims to assist the police to ensure that they have the required capability to achieve their strategic objectives, to identify how senior members can be supported by further development, and to identify and develop emerging leaders.⁸⁰⁵
- 6.180 Although I believe the aims of the police leadership and management development initiatives are laudable and consistent with good management practice in this area, I was concerned to note that in the first 18 months of the establishment of the organisational development manager’s position, no further resources were attached to the position. I understand that for the 2005/06 financial year, a small national budget was made available for leadership and management development that was to be used to resource the organisational development team as well as to supplement some of the training budgets, which are currently funded from district budgets.⁸⁰⁶

Ethics training

- 6.181 Before 2002 there was no national approach to ethics training. Instead, ethics training was developed and delivered at district level by a variety of different presenters.⁸⁰⁷
- 6.182 In 2002 the Royal New Zealand Police College commissioned the development of a national training package in ethics, entitled “Making Ethics Real”. The package is designed to be delivered to two separate and specific groups. One is to all police staff, who attend a two-and-a-half hour training session, and the other is to supervisors and managers, delivered in a four-hour session.⁸⁰⁸
- 6.183 The national ethics training package aims to help police officers develop three key qualities involved in ethical decision-making:
- the competencies to recognise ethical issues and to think through the consequences of alternative resolutions
 - the self-confidence to seek out different points of view and decide on the right course of action
 - the strength of mind and willingness to make decisions and follow them through.⁸⁰⁹

804 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, p. 11.

805 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, pp. 11–12.

806 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, p. 14.

807 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 74.

808 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Brief of evidence, 14 November 2005, p. 3.

809 New Zealand Police, “Ethics, Integrity & Professionalism Recruit Training, Facilitator’s Guide”, Introduction by Superintendent Olly Beckett to “Ethics, Integrity & Professionalism Workbook”, May 2005.

- 6.184 The training covers topics such as the subjective nature of what might constitute “ethical” behaviour in any given situation, and practical techniques for identifying ethical conduct in the range of difficult situations that staff are likely to confront in practice.⁸¹⁰
- 6.185 To assist individuals in assessing their own behaviours the training package includes a decision-making checklist called the “SELF” test. This test suggests that individuals consider the following questions before making decisions:
- Would your decision withstand Scrutiny (from the community, police service, and the media)?
 - Will your decision Ensure compliance (with policy and with the general instructions)?
 - Is your decision Lawful (with laws, regulations, rules)?
 - Is your decision Fair (to your community, colleagues, family, others)?
- 6.186 At November 2005 the national ethics training package had been delivered to 400 supervisors in the Wellington, Central, and Eastern Police Districts, as well as to all training service staff based at the police college. The training package is delivered on a district-by-district basis.⁸¹¹ I was told that it is for each district to determine whether the ethics training package is delivered and if so to whom, and that essentially it is a decision for the district commander and his or her management team as to whether a package will be mandated within the district. It is not mandatory for districts to participate in the new training package.⁸¹²
- 6.187 I was told in November 2005 that it was likely that it would take 18 months from that time to get everybody trained, assuming that all districts took up the new package. District commanders can choose to deliver their own ethics training programmes if they prefer. It is possible that districts will choose to use their own trainers, or their own packages, rather than this one, but the expectation from Mr Phillip Weeks, the police manager responsible for the national package, after he gave a presentation to the Police Executive Committee in September 2005, was that district commanders were likely to favour using the new package.⁸¹³
- 6.188 Superintendent Mark Lammas, District Commander, Central Police District, told me that he considers ethics training to be an important priority in terms of overall training. Such training, he said,
- has become even more important with the events of the last 18 months and the waning of public confidence in the police, so I would expect that whereas maybe two years ago some people might wonder whether it was a priority because we have a huge amount of training, I would expect that the vast majority of police staff now can see the benefits of it and the necessity for it.⁸¹⁴

810 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Brief of evidence, 14 November 2005, p. 3.

811 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Brief of evidence, 14 November 2005, p. 3.

812 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, pp. 66–67.

813 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 74.

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

- 6.189 I think that the development of the ethics training package is an excellent initiative; however, I am concerned that it is not mandatory in all districts. I believe it should be mandatory for district commanders to implement the ethics training throughout their districts. In my view this training is as important as training in firearms and first aid, and like those mandatory courses, should be rolled out to all staff on a nationally consistent basis.
- 6.190 I also understand that there has not been any evaluation of the effectiveness of this training, and that none is planned. I suggest that this would be a useful exercise as part of the monitoring required to ensure consistency of values and expected behaviours throughout the organisation. I also suggest that the police consider regular refresher courses in ethics in order to ensure that the understanding of the issues and principles and values discussed in the training remains fresh in people's minds, and as a way of evaluating the effectiveness of the initial training course.

Recruit training

- 6.191 I was told that police recruit training emphasises the need to maintain complete integrity as a police officer, and this is considered by the police to be the single most important feature of a recruit's training. Personal ethics are emphasised in various ways. The key theme stressed throughout the training is that, in joining the police, recruits become part of an organisation with very high standards, and they are expected to uphold those values at all times.⁸¹⁵ I was told that this material has been part of the recruits' training course since April 2002.⁸¹⁶
- 6.192 The first section of the Recruit Induction Book contains the competency framework referred to earlier, and lists the police core values and core competencies, of which the first is integrity. The examples of desirable and undesirable behaviours for each core value are listed in the book.⁸¹⁷
- 6.193 I was told that ethics training occupies a large part of the recruits' first week and that it is stressed throughout the training that the police organisation derives a significant part of its credibility from the fact that it does not tolerate any improper conduct on the part of its members. I was also informed that part of this training confronts the risk that members' natural loyalty to each other may spill over into a "code" by which they may turn a blind eye to, or even cover up, another's wrongdoings. Recruits are told that every action they take has an impact upon the reputation of New Zealand Police as a whole, and that the public does not view members of the police as individuals, but rather as "the police" in general. It is stressed to recruits that they are "on show" 24 hours a day, and that they do not cease to be members of the police when they return home from their shifts; almost any action they take, whether in their private or professional lives, is open to scrutiny. Recruits are asked whether they would feel comfortable having to explain any particular action they have taken to the media, in court, to their parents, or to any other person whose opinion they value.⁸¹⁸

815 Sergeant Andrea Cooke, Recruit Instructor, Royal New Zealand Police College, Brief of evidence, 10 November 2005, p. 2.

816 Sergeant Andrea Cooke, Recruit Instructor, Royal New Zealand Police College, Transcript of hearing, 10 November 2005, p. 61.

817 Sergeant Andrea Cooke, Recruit Instructor, Royal New Zealand Police College, Brief of evidence, 10 November 2005, p. 2.

818 Sergeant Andrea Cooke, Recruit Instructor, Royal New Zealand Police College, Brief of evidence, 10 November 2005, pp. 3–4.

- 6.194 A summary of the New Zealand Police Sexual Harassment Policy (discussed earlier in this chapter) is also included in the recruit's induction material. During the first week of the recruits' training the human resources manager and the welfare officer explain the sexual harassment complaints procedures, and emphasise what constitutes unacceptable conduct.⁸¹⁹
- 6.195 Recruits also receive training on communication with victims of sexual assault. This section of the course is currently under review, but it stresses guidelines for dealing with victims, such as the need to listen carefully, to give victims the opportunity to vent their feelings, and to accept that they are telling the truth (unless there is clear evidence to the contrary). This area is covered to assist recruits in their awareness of sexual offending. However, it is stressed to the recruits that skills associated with handling sexual complaints are specialist skills, and that it will almost always be the job of Criminal Investigation Branch (CIB) to undertake the initial contact with sexual assault victims.⁸²⁰
- 6.196 The training given to recruits on the need to maintain appropriate standards of behaviour is a good starting point for new people joining the New Zealand Police. I was pleased to see it included a section on ethics, and also that it introduced recruits to the police core values.

Ethics committees

- 6.197 Some district commanders told me about initiatives to establish ethics committees in their districts. These are a relatively new initiative. I was told that although every district has an ethics committee, they all operate differently. Some police districts have very active ethics committees; others use their management team as their ethics committee, and have ethics as a standing item on their usual monthly management meeting.⁸²¹
- 6.198 The purpose of the ethics committees, as described by Superintendent Grant Nicholls, District Commander, Eastern Police District, is to discuss matters of concern, or to discuss the issues and implications of a new policy. The committee deals with issues presented to them and interprets policy. The Eastern Police District committee also includes one external member, the Crown solicitor from the area.⁸²² Another district, however, is having difficulty establishing terms of reference for its ethics committee and has brought in outside help to build a framework for the committee.⁸²³
- 6.199 By comparison, Superintendent Mark Lammas, District Commander, Central Police District, has not established an ethics committee and has taken a different approach. He has a monthly management meeting at which a regular item on the agenda is discussion of an ethical dilemma. I was told that this discussion can be hypothetical or it can be based on an actual situation occurring in the district. The issue is debated and then each of the

819 Sergeant Andrea Cooke, Recruit Instructor, Royal New Zealand Police College, Brief of evidence, 10 November 2005, p. 4.

820 Sergeant Andrea Cooke, Recruit Instructor, Royal New Zealand Police College, Brief of evidence, 10 November 2005, p. 5–6.

821 Superintendent Grant O'Fee, Integrity Project Manager, Transcript of hearing, 21 November 2005, p. 12.

822 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 5 November 2005, pp. 36 and 37.

823 Superintendent Gavin Jones, Acting District Commander, Auckland City, Transcript of hearing, 17 November 2005, p. 7.

area commanders and other managers takes that issue back to their management teams for discussion. The managers also bring fresh issues back for discussion.⁸²⁴

- 6.200 Establishing these committees was not made mandatory by Police Commissioner Robinson, although I was told that he encouraged districts to set them up.⁸²⁵ Superintendent O’Fee, leader of the Integrity Project, stated, “Our recommendation ... to the Commissioner is there needs to be mandated processes that the Ethics Committees need to go through, not to the extent of making all the districts the same ... but certainly to the extent of having parameters that they have to operate around.”⁸²⁶
- 6.201 I commend the move to establish these ethics committees and consider that they should be standardised across districts. At the moment there is no nationally agreed approach to defining the purpose, operation, or membership of the ethics committees. I suggest that having a national approach would enhance the credibility of the ethics committees within the police. A nationally mandated approach would also ensure that police practices and community standards and expectations do not diverge too widely.
- 6.202 The ethics committees should provide a good means to reinforce the messages contained in the ethics training. They are also a mechanism to raise and discuss difficult ethical issues facing the police in their day-to-day work. The understanding of issues around inappropriate sexual relationships would benefit from wide discussion. Such committees also provide a good opportunity for community input by having non-police members involved.
- 6.203 I consider it imperative for such committees to have external, non-police members in order to ensure they obtain a wide perspective on the ethical issues being discussed. External members should come from a representative cross section of people in the local community who are active in some area of the community, but not necessarily in the justice sector. For instance, representatives from the local school, business community, or retail sector may have a useful contribution. I was told by Superintendent O’Fee that involving members of the community in their ethics committees would certainly be feasible because all the districts have their community contacts, and that this is something they could do more work on before submitting their recommendations in relation to how ethics committees should operate nationally.⁸²⁷

Integrity Project

- 6.204 As noted elsewhere in my report, Commissioner Robinson had put a number of new initiatives in train as a result of the establishment of the Commission of Inquiry into Police Conduct. One of these was the Integrity Project in 2005. The purpose of this project was to review the police Professional Standards function, including the way that internal investigations are conducted and overseen, and the way that internal investigators are selected. The project was also to look at ways to encourage the reporting of corrupt or inappropriate behaviour.

824 Superintendent Mark Lammas, District Commander, Central, Transcript of hearing, 5 November 2005, p. 60.

825 Superintendent Grant Nicholls, District Commander, Eastern, Transcript of hearing, 5 November 2005, p. 53.

826 Superintendent Grant O’Fee, Integrity Project Manager, Transcript of hearing, 21 November 2005, p. 12.

827 Superintendent Grant O’Fee, Integrity Project Manager, Transcript of hearing, 21 November 2005, pp. 13 and 14.

National early warning system

- 6.205 In an early warning system a police force undertakes routine assessments to determine whether an officer is at risk of doing something serious that would embarrass the organisation and harm people within the service or outside it.
- 6.206 Professor Bayley explained that the use of an early warning system is expanding around the world; American police forces have them, and soon all United Kingdom forces will have them (Northern Ireland is developing one). Although Professor Bayley had seen lists of 30–40 indicators for routine assessment, he suggested that careful choice of 10–15 indicators of potentially problematic behaviour could give a workable system. He commented that there was much evidence to show that 85–95 percent of the complaints of misbehaviour were caused by the actions of about 5 percent of the officers.⁸²⁸
- 6.207 Police managers need to be able to monitor and manage the performance of all staff, and take appropriate action. Ideally, a positive approach to managing staff, together with the ability and willingness to make sensible and timely interventions, will lead to more transparency and reinforce ethical behaviour. This provides an opportunity for the police to take a more strategic approach to complaints. It should also foster better relations between management and police members.
- 6.208 I noted in the report by Hon Sir David Tompkins QC on the Counties Manukau Police District that he made an attempt to analyse officers with a history of complaints. A list of staff in the Counties Manukau Police District with more than five complaints was prepared and analysed. The analysis was apparently inconclusive, other than showing that most of the complaints were for assault, attitude, and language. Sir David Tompkins said, “The limited nature of the data stored in the Professional Standards data base meant that a more detailed analysis could not be made.”⁸²⁹
- 6.209 The project manager for the Integrity Project, Superintendent O’Fee, told me that the project team would make a strong recommendation that an early warning system based on the recently developed “Wellington model” be implemented nationally. This system would involve identifying a range of behaviours that would be recorded on a central database. If there were three complaints received the supervisor would be notified; likewise, if an officer misses all mandatory training over several days (without good reason), this would be recorded. Managers could then access the information to identify, for instance, whether the member has a history of complaints, excessive force reports, or lack of attendance at mandated training.
- 6.210 I was told that currently all districts in New Zealand operate such systems; however, they are largely ad hoc, and when members transfer between districts the information is not always carried with them.⁸³⁰ For instance Inspector Neil Banks, Manager, Professional Standards, Canterbury Police District, explained to me how different districts monitor complaint trends and members who attract complaints in various ways. The Canterbury District has a database that can generate information on individuals, groups, and areas as to the number

828 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, pp. 17 and 18.

829 Hon Sir David Tompkins QC, *Report of the Hon Sir David Tompkins QC to the Commissioner of Police concerning the Counties-Manukau Police District*, 29 September 2005, p. 34.

830 Superintendent Grant O’Fee, Integrity Project Manager, Brief of evidence, 21 November 2005, p. 6; and Transcript of hearing, 21 November 2005, p. 19.

and nature of complaints. This database also holds complaint information.⁸³¹ Inspector Banks told me that he could not think of any reason why a nationally mandated process acceptable to all the districts is not put in place.⁸³²

- 6.211 The development by districts of several alternative early warning systems for police officers who are not meeting certain standards illustrates how useful data can be collected and, if integrated and analysed, can have wider application. For instance, Mr Wayne Annan, New Zealand Police General Manager: Human Resources, described how police database information would in future be made more accessible:

The Police currently maintain a number of different databases that hold information about staff, namely the sexual harassment database, the professional standards database, the health and safety issues database and the appraisal process database. Over time, and in a managed way, these parts of the system will be consolidated into a single database, which will be available to supervisors and managers as required.⁸³³

Development of a nationally consistent early warning system for identifying concerns with an individual officer's behaviour should, in my view, be an important priority for police human resources management.

- 6.212 When I asked Police Commissioner Robinson if the early intervention model proposed by the Integrity Project would be adopted as a national initiative he was unable to confirm that such a system would be nationally mandated. He explained to me,

It's essentially spread as a Johnny Appleseed beneficiary ... and many districts have already adopted it.

The Integrity Project will codify that and equally provide behind it the database that allows all that information to be collected and available to management.⁸³⁴

- 6.213 In my view implementation of an early warning system is a key initiative and should be nationally mandated by the Commissioner of Police. I saw several examples where police officers inappropriately remained in the police force over a period of years despite clear indicators that there were concerns about their behaviour.⁸³⁵ Some examples follow:

- An officer, who was first subject to an internal investigation because of sexual behaviour in the late 1980s, was then the subject of a complaint of disgraceful conduct in 1990. In 1995 he was charged with sexual violation by rape, but resigned from the police before the trial (at which he was acquitted).⁸³⁶
- Another officer was charged before the police disciplinary tribunal in 2000 with numerous incidents of misconduct, including making sexually offensive statements to members of the public. He had previously been the subject of a sexual harassment complaint in 1998 in which he allegedly made a sexually offensive remark to a colleague. He subsequently resigned, after having admitted three of seven charges.⁸³⁷

831 Inspector Neil Banks, Professional Standards, Canterbury, Brief of evidence, 14 November 2005, p. 5.

832 Inspector Neil Banks, Professional Standards, Canterbury, Transcript of hearing, 14 November 2005, p. 28.

833 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Brief of evidence, 18 November 2005, pp. 9 and 10.

834 Police Commissioner Robert Robinson, Transcript of hearing, 28 November 2005, p. 66.

835 For example, Operation Loft files LT 3, LT 91, LT 96/LT 116, LT 97/LT 198, and LT 101.

836 Operation Loft files LT 97 and LT 198.

837 Operation Loft files LT 96 and LT 116.

- An officer who was the subject of a series of both sexual and non-sexual complaints starting in 1992 was finally subject to charges of disgraceful conduct and dismissed in 1997.⁸³⁸
 - A Youth Aid Officer was the subject of numerous complaints over a 10-year period. The first complaint against him was made in late 1991 and related to the inappropriate touching of a 17-year-old in 1989. A charge was laid in the District Court and dismissed in 1992. In 1999 he was charged with an historical offence of indecently assaulting a male, a charge that was not upheld (the alleged offending dated from the 1980s). There was evidence on the file of various concerns about this officer's behaviour in relation to young people.⁸³⁹
- 6.214 I also saw several cases involving sexual harassment that could have benefited from having an effective early warning system in place.⁸⁴⁰ Three examples follow:
- A complaint was made of sexual harassment against an officer in later 1999. In the course of investigation it emerged that he had been the subject of previous sexual harassment complaints that had been dealt with by transferring him to different stations.⁸⁴¹
 - A complaint of sexual harassment was made against a police officer, resulting in the complaint being mediated. After the complaint was dealt with by mediation, a further three complaints arose.⁸⁴²
 - During investigation of one case of sexual harassment it became apparent that the officer complained about had a three-year history of complaints relating to a variety of matters, including careless driving causing injury and threatening to kill.⁸⁴³
- 6.215 An early warning system would reduce the opportunity for such staff to remain in the police force. It would also reduce the possibility of poorly performing staff changing positions within the police, which was described by a Police Association witness as “dressing for export”.⁸⁴⁴ Moreover, it would enable appropriate mentoring and training to be targeted to particular individuals.
- 6.216 To be effective I believe that an early warning system should be centrally organised and implemented on a consistent basis across the country. It must capture all the information currently held in the separate databases for performance appraisal, health and safety, professional standards (including complaints), and sexual harassment.⁸⁴⁵ It should also cover other information that may indicate a problem with an officer, for example improper use of the Internet for private purposes while at work. Information on the database would need to be collected, held, and used in accordance with the Privacy Act 1993 and the requirements of employment law in respect of monitoring and surveillance of employee conduct. This ought to enable the information to be made available to managers and supervisors for performance management purposes, and to complaint investigators for use in investigations when appropriate.

838 Operation Loft file LT 142.

839 Operation Loft files LT 28 and LT 118.

840 For example, Operation Loft files LT 61, LT 86, LT 88, LT 91, LT 131, and LT 139.

841 Operation Loft file LT 131.

842 Operation Loft file LT 91.

843 Operation Loft file LT 86.

844 Mr David McKirdy, Field Officer, New Zealand Police Association, Brief of evidence, 5 December 2005, p. 3.

845 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Brief of evidence, 18 November 2005, pp. 9 and 10.

- 6.217 A nationwide approach is particularly important in the context of this inquiry in order to ensure that early intervention occurs when information comes to light of inappropriate sexual behaviour and that information should be available notwithstanding an officer's movements across districts. It is also important that the information available to managers, supervisors, and complaint investigators is both comprehensive and cumulative, giving a picture of the officer's full record of service.
- 6.218 I was told that it costs \$200,000 to put a new police officer into the force, and \$500,000 to develop a detective.⁸⁴⁶ This is a major investment for the taxpayer, and every effort should be made to look after this investment, ensuring that new recruits are being counselled at the first sign of behaviour that is not acceptable so that they reach their full potential and remain in the force.

Development of a code of conduct for sworn members of police

- 6.219 I have discussed in Chapter 5 the need for a code of conduct for sworn staff that would form the basis of an integrated discipline and performance management system. In this section of the report I discuss in more detail the benefits of this approach, particularly in managing cases of sexual misconduct, and the issues that will need to be addressed in its implementation.
- 6.220 Other State servants in New Zealand work under codes of conduct and I see no reason why sworn police should be treated any differently in this respect. There is nothing inherent in the role and status of a police officer that justifies a different approach. On the contrary, the issues addressed in my inquiry have satisfied me that the police are in urgent need of a code of conduct for sworn members, and that introducing one as soon as possible will assist in restoring public confidence in the police.
- 6.221 Constabulary independence (a concept discussed in Chapter 3) is sometimes cited as a reason for differentiating between police officers and other State servants. I was interested in the implications of constabulary independence for the way misconduct by police officers is handled within the police. Dr Warren Young of the Law Commission explained to me that in its extreme form, the original doctrine held that a constable was "answerable to the law and the law alone". In his view, this is no longer applicable to a modern police force that is located within a statutory framework and subject to many of the same accountabilities as other state agencies.⁸⁴⁷ For instance, the Commissioner of Police is responsible to the Minister of Police for the administration and control, and financial management and performance, of the police (regulation 3 of the Police Regulations); New Zealand Police is treated as a department of State for the purposes of the Public Finance Act 1989; the Commissioner of Police is required to ensure that police officers discharge their duties to the Government and the public satisfactorily, efficiently, and effectively (police regulation 3); and individual police officers are required to obey general instructions and the lawful commands of a supervisor.⁸⁴⁸ Dr Young explained that constabulary independence should not prevent accountability for police conduct:

Claims that constabulary independence means that individual officers cannot be held to account other than through formal and regulated

846 Mr Wayne Annan, General Manager, Human Resources, Transcript of hearing, 18 November 2005, p. 36.

847 Dr Warren Young, Brief of evidence, 22 November 2005, p. 6.

848 Dr Warren Young, Brief of evidence, 22 November 2005, pp. 6–7.

judicial processes misunderstand the fundamental changes that modern police forces have necessarily undergone. It is important that constabulary independence be retained to ensure independence from executive control in the exercise of coercive powers. But it should not be used to prevent adequate accountability for police conduct and the police use of public resources, both internally and externally.⁸⁴⁹

Benefits of a code of conduct

6.222 A code of conduct would provide for a more flexible range of disciplinary and performance-related responses than is available at present. The issue of misuse of computer technology is a good example of how having a code of conduct would have provided the Commissioner of Police with a more flexible range of disciplinary and performance-related responses than available at present. Police Commissioner Robinson told me,

The number of members involved in the email enquiry meant that if they had not accepted the alternative process [of participating in a facilitated session on the appropriate use of email and the Internet], the formal police disciplinary structures (which have a rigid, quasi-judicial process of charging and determination of guilt and punishment) would have been overwhelmed.

The Code of Conduct would provide for lower-level misconduct, or performance issues, to be the subject of a less formal investigation and a forward-looking response that is tailored to the individual member which is delivered in a timely fashion.⁸⁵⁰

6.223 The leader of the project relating to ethics and integrity in the New Zealand Police, Superintendent Grant O'Fee, also discussed the benefits of dealing with non-serious complaints outside the formal disciplinary system:

We will also recommend that there is an urgent need to implement a Code of Conduct for all Police staff and for steps to be taken to differentiate between serious and non-serious complaints. The non-serious category would include attitude and behaviour complaints that do not amount to serious misconduct. It will be our recommendation that these non-serious matters not be dealt with as disciplinary matters. Overseas experience indicates that adopting this sort of process allows minor complaints to be dealt with quickly, efficiently and to the satisfaction of all parties.⁸⁵¹

Overseas experience: code of ethics for the police in Northern Ireland

6.224 Professor Bayley was brought to the Commission by New Zealand Police in the light of his expertise in working on the reform of police culture in a wide range of countries. For the past five years Professor Bayley has been part of an international commission overseeing the reform of the police in Northern Ireland.

6.225 Professor Bayley presented the code of ethics developed for the Northern Ireland police service as an example of an effective code of conduct. This code sets out the general principles that police conduct should be judged by. The code has 10 articles on 14 pages.

849 Dr Warren Young, Brief of evidence, 22 November 2005, p. 8.

850 Police Commissioner Robert Robinson, Brief of evidence, 29 June 2005, p. 11.

851 Superintendent Grant O'Fee, Integrity Project Manager, Brief of evidence, 21 November 2005, p. 6.

In Northern Ireland the code of ethics has been made the disciplinary code of the police service by statute.

- 6.226 Professor Bayley described it as “wonderfully simple”. He explained, “In training you don’t bore the life out of people by going through volumes and volumes of regulation, but what you try to instil in them is a sense of value of what they’re supposed to do, and you then guide them when it comes to operations ...”⁸⁵²
- 6.227 I agree that *Code of Ethics for the Police Service of Northern Ireland* provides an excellent template for a code of conduct.

Other State sector codes of conduct in New Zealand

- 6.228 Section 57 of the State Sector Act provides for the State Services Commissioner to set minimum standards of integrity and conduct for employees in “the public service” and to apply those minimum standards by way of a code of conduct. Those standards currently find expression in *New Zealand Public Service Code of Conduct*, which describes the standards of conduct required of public servants. New Zealand Police is not part of the public service, which means that *New Zealand Public Service Code of Conduct* does not apply to either sworn or non-sworn police members.⁸⁵³
- 6.229 The introduction to the code of conduct explains why a code is necessary for the public service. Key reasons include the fact that the strength of any government system lies in the respect it earns and holds from its citizens. That respect comes from the confidence that people have in the integrity of Government and the services it provides: “Everyone employed in the State Services has a part to play in earning public respect for government and maintaining confidence in the institutions of government.”⁸⁵⁴
- 6.230 The code also explains how the public service has extensive influence over people’s lives:
- Mismanagement or abuse can have serious and far reaching effects. ...
New Zealanders are entitled to the high expectations they have of the staff in government agencies. ...
They expect that public servants will always behave ethically, and be conscientious and competent in their work.⁸⁵⁵
- 6.231 The code describes the following three principles of conduct, which encompass the minimum standards of integrity and conduct expected of all public servants:
- Public servants should fulfil their lawful obligations to the Government with professionalism and integrity.
 - Public servants should perform their official duties honestly, faithfully and efficiently, respecting the rights of the public and their colleagues.
 - Public servants should not bring the public service into disrepute through their private activities.⁸⁵⁶

852 Professor David Bayley, State University, New York, Transcript of hearing, 4 December 2005, p. 30.

853 State Sector Act 1988, sections 2, 27(1), and Schedule 1; Police Act 1958, section 96.

854 State Services Commission, *New Zealand Public Service Code of Conduct*, February 2005, p. 5.

855 State Services Commission, *New Zealand Public Service Code of Conduct*, February 2005, p. 5.

856 State Services Commission, *New Zealand Public Service Code of Conduct*, February 2005, p. 2.

6.232 As this report was being finalised the State Services Commissioner published a draft of a new code of conduct for all agencies of the State services (including, but not limited to, the public service).⁸⁵⁷ The draft code is built on the values of being fair, impartial, responsible, and trustworthy, recognising,

The State Services is made up of many agencies with extensive powers to carry out the work of government. Although we have many different roles, we must meet high standards of integrity and conduct in everything we do.

6.233 In Chapter 8 of this report I suggest that the State Services Commission would be well placed to provide advice and guidance to the police on several of its ongoing initiatives, including in respect of codes of conduct, and that involving it in this way would be consistent with the direction of the State Sector Act reform. (See also recommendation R59.)

Development of a code of conduct for sworn police staff

6.234 In December 2001 New Zealand Police and the Police Association signed a heads of agreement relating to the development of a code of conduct for sworn members of police. The agreement said,

The new *Code of Conduct* will replace the current disciplinary provisions in the Police Act 1958, Police Regulations 1992 and *General Instructions*.⁸⁵⁸

Process used for developing the draft code of conduct

6.235 In February 2002 a draft code of conduct for sworn members was prepared in anticipation of the changes to the Police Act 1958.⁸⁵⁹

6.236 In May 2002 Police Commissioner Robert Robinson issued a memorandum to staff explaining the code and seeking feedback on the draft. The commissioner's memorandum said that the purpose of the code was to

- promote trust and confidence in the police
- ensure the police have communicated to staff and stakeholders a clear message about the paramount importance of ethics and integrity and expected standards of behaviour
- outline responsibilities of staff and the police
- be part of a programme of reform to improve human resources practices and organisational performance
- build capability to address poor performance in a timely way
- more effectively manage disciplinary procedures.⁸⁶⁰

6.237 The memorandum set out the ways that this would be achieved:

- bringing the procedure into line with general employment law and practice

857 *Strengthening Trust, Making a Difference: A [draft] code of conduct setting minimum standards of integrity and conduct for agencies of the State services*, issued under section 57 of the State Sector Act 1988, 23 February 2007.

858 New Zealand Police, New Zealand Police Association, Heads of Agreement: Code of Conduct for Sworn Staff, 3 and 4 December 2001.

859 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 18.

860 New Zealand Police, Memorandum from the Office of the Commissioner, 29 May 2002.

- promoting resolution at the lowest level between supervisors and staff
- empowering police districts to manage performance and non-serious misconduct
- ensuring consistency through a clearing house, a national disciplinary panel for serious misconduct (70–100 cases a year)
- applying a principle of proportionality (that is, the procedure will reflect the seriousness and nature of the issue)
- bringing together the Internal Affairs (now Professional Standards), Human Resources, and legal groups.⁸⁶¹

6.238 The memorandum explained the next steps in the processes, saying that feedback would be assessed and would inform the final product, which would then be issued as a draft for final comment. The memorandum also allowed for action in the event of legislative delay:

The *Code* is largely but not totally dependent on the enactment of the PAB [Police Amendment Bill (No 2)]. In the event of any extensive delay in that enactment we will consider how, and how much of the *Code* can be implemented.⁸⁶²

6.239 After a formal round of consultation in June and July 2002 various changes were proposed to the draft and some amendments made accordingly.⁸⁶³

Standards in the draft code of conduct

6.240 The draft code of 2002 set out 10 standards of conduct expected of all police officers at all times:

- honesty and integrity
- fairness and impartiality
- respect for people
- respect for property
- respect for confidentiality
- obedience to the law and lawful orders
- reasonable exercise of discretion
- efficient performance of duties
- political neutrality
- not damaging the reputation or relationships of the police.

The draft code said that these standards of conduct were expected of police officers while they were on duty, and also extended to off-duty behaviour that reflected on the individual's ability to hold the office of constable.⁸⁶⁴

861 New Zealand Police, Memorandum from the Office of the Commissioner, 29 May 2002.

862 New Zealand Police, Memorandum from the Office of the Commissioner, 29 May 2002.

863 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 19; and New Zealand Police, "Suggested amendments to the draft sworn *Code of Conduct* following the formal consultation round in June/July 2002".

864 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002], inside front cover.

- 6.241 The draft code explained the wider context for police officers and their unique position in society. In particular it noted,
- Because of ... their ability to exercise coercive power on behalf of the state – New Zealanders rightly expect police to display the highest standards of ethics, integrity and conduct. There is, and must be, a higher degree of scrutiny of on- and off-duty behaviour for police officers than for many other types of employees.⁸⁶⁵
- 6.242 The document set out the immediate context for introducing a code of conduct, noting,
- the disciplinary system for sworn members of Police involved a court-like process that was written into legislation. These complex procedures often placed Police staff and managers in adversarial roles, rather than helping them to work together on identified issues. To overcome these difficulties, it was agreed that Police needs to move towards a simpler and more modern performance management framework, such as a *Code of Conduct* environment.⁸⁶⁶
- 6.243 The draft code stated, at paragraph 11.2, that an officer's behaviour would be classified according to whether it represented a performance issue, a misconduct issue, or an issue that may involve criminality:
- A key function of this classification phase is to keep the increased formality of serious misconduct and criminal processes for the few cases where such heavy-duty procedures are really needed, thus allowing pure performance and low-level misconduct issues to be swiftly identified and resolved as employment issues within Police districts.⁸⁶⁷
- 6.244 Under the draft code, different categories of cases would have different investigation processes. For performance and minor misconduct matters, police districts would follow standard employment processes. If criminal issues were raised the member would be placed before the courts. For non-criminal serious misconduct, the draft code stated,
- ... Police will ensure that officers are advised from the start if allegations against them are serious (ie., potentially job-threatening), and they will apply investigative procedures that are more rigorous and objective than may be used by other employers.⁸⁶⁸
- 6.245 The process for dealing with cases in this category was outlined in the draft code. It included provision for a national disciplinary panel that “confirms apparent cases of serious misconduct, channels out possible criminality, and refers back any residue of less serious misconduct or performance”.⁸⁶⁹
- 6.246 Under this process, where dismissal is a possible penalty, the officer would have the ability to make representations to the decision-maker and an independent adviser.⁸⁷⁰
- 6.247 I was told by Mr Wayne Annan, New Zealand Police General Manager: Human Resources, that the draft code required updating in the light of developments that had occurred since

865 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002], p. 2.

866 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002], p. 2.

867 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002], p. 6.

868 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002], p. 6.

869 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002], p. 8.

870 New Zealand Police, Draft *Code of Conduct for Sworn Members of the New Zealand Police*, [February 2002], p. 8.

it was first drafted in 2002, such as the development of the core values and the competency framework (discussed earlier), in order that “they mesh nicely”.⁸⁷¹

Current status of the draft code of conduct

- 6.248 Promulgation of the code had been awaiting the passing of the Police Amendment Bill (No 2). This bill was withdrawn by the Minister of Police in March 2006.
- 6.249 The bill had sought to achieve two things: to strengthen police governance and accountability arrangements; and to improve police effectiveness in managing their human resources, in particular by offering more options in dealing with staff who perform poorly.⁸⁷²
- 6.250 Had the bill been enacted, a new section 16 of the Police Act would have enabled the Commissioner of Police to issue codes of conduct for all or any groups of members of the police⁸⁷³, after consultation with service organisations and the State Services Commission.⁸⁷⁴
- 6.251 A new section 16A would have empowered the Commissioner of Police to deal with unsatisfactory performance or misconduct in accordance with the relevant code of conduct. A range of options was laid out in the bill, including dismissal. These options could have been used if the Commissioner of Police was satisfied that, in accordance with the code of conduct, a member was unsuited to continue in their present role, or as a member of the police.⁸⁷⁵
- 6.252 Notwithstanding the withdrawal of the Police Amendment Bill (No 2), the draft code of conduct now stands ready to be implemented, subject to any amendments necessary to take into account developments since 2002.⁸⁷⁶

Views on the need for a code of conduct

- 6.253 The Police Association told me that it fully supported the concept of a code of conduct for sworn staff when it was initially considered in 2001. The association was also actively involved in the preparation of the draft code in 2002. The association now believes, however, that before it can be implemented, the draft code will have to be reassessed in the light of any recommendations that the Commission of Inquiry into Police Conduct makes. The association also agrees that the recently developed integrity values need to be integrated into the draft code.⁸⁷⁷
- 6.254 The Police Association also believes the code of conduct should be brought into operation in conjunction with the existing disciplinary tribunal system. It considers that the tribunal system offers important protections for the individual employee that should be retained. I addressed this issue earlier in Chapter 5.

871 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 21.

872 Explanatory note, Police Amendment Bill (No 2), pp. 1 and 2.

873 The term “member” includes both sworn and non-sworn members: Police Act 1958, section 5.

874 Police Amendment Bill (No 2), clause 4.

875 Police Amendment Bill (No 2): explanatory note, pp. 6 and 7; clause 4.

876 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 21.

877 Mr Greg O'Connor, President, New Zealand Police Association, Brief of evidence, 5 December 2005, p. 15.

- 6.255 The police agreed that a code of conduct for sworn members is desirable but cautioned that, because a code of conduct is usually expressed in non-prescriptive terms, adoption of a code for sworn officers is unlikely to make any significant difference to the manner in which issues of sexual misconduct are both highlighted within the police and resolved.⁸⁷⁸
- 6.256 In August 2006 the police informed me that negotiations were under way with police service organisations about the development of a code of conduct as part of the collective employment agreement.⁸⁷⁹
- 6.257 In my view implementation of a code of conduct for sworn police is a critical requirement for the effective management of sexual misconduct. A code of conduct sets out the organisation's standards and expectations. It can then be used as the basis for taking action if those standards are not met.
- 6.258 But I agree that a code of conduct does not stand on its own. It is only one of a number of measures, which have been discussed in this chapter, that are needed to provide consistent, clear, and accessible messages about acceptable standards of personal behaviour and sexual conduct. There also need to be simple human resource management processes to deal with poor performance and breaches of the code, which may or may not lead on to misconduct, and may or may not point towards a person's suitability for remaining as a police officer.

Effect of introducing a code of conduct without legislative change

- 6.259 During the course of the Commission hearings the question was raised as to whether the code of conduct for sworn members could be introduced without the passing of legislation to amend the provisions in the Police Act concerning the disciplining of sworn members. In his evidence to me, Police Commissioner Robinson said,

In one sense this is correct – the Code itself could be promulgated tomorrow if the Police wished to do this. That said, it would have no effect in terms of the organisation's ability to take action against under-performing sworn members. The disciplinary regime is set out in the Act and Regulations, and the Commissioner's powers under s 5 and 5A of the Act are, at present, dependent on a breach of Regulation 9 being proved before a Tribunal.⁸⁸⁰

As noted in paragraph 6.256, I was later informed that negotiations were under way with police service organisations about the development of a code of conduct as part of the collective employment agreement.

- 6.260 My understanding is that Police Commissioner Robinson was correct in this summary of the situation; that is, as long as the Act and regulations remain in force any code of conduct for sworn members would have little practical impact.
- 6.261 However, as discussed in Chapter 5, it is also my understanding that interim changes could be made to the disciplinary process for sworn members, without the need to await changes

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

879 New Zealand Police, Submission re Integration of Professional Standards and Human Resources, August 2006.

880 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 12.

to the Police Act, to enable the process to be made much simpler and, moreover, to give full effect to a code of conduct as the basis for managing all disciplinary and performance matters. This would require revocation of the relevant parts of the Police Regulations, but that could be achieved as a matter of Government decision (and action by the Executive Council) rather than having to wait for amending legislation to go through Parliament. In my view serious consideration should be given to this step being taken now, in advance of completion of the review of the Act and Regulations announced by the Minister of Police when she withdrew the Police Amendment (No 2) Bill in March 2006.

6.262 This is addressed by my recommendation in Chapter 5 concerning codes of conduct in the context of the police disciplinary system:

R34 New Zealand Police should implement a best practice State sector disciplinary system based on a code of conduct in keeping with the principles of fairness and natural justice as part of the employment relationship.

My other recommendations follow.

Recommendations

Code of conduct for police officers

- R38 A code of conduct for sworn police staff should be implemented as a matter of urgency. Subsequently, the existing code of conduct for non-sworn staff should be brought into line with the new code for sworn members.

Police Sexual Harassment Policy

- R39 New Zealand Police should amend its Sexual Harassment Policy to include a requirement that any mediated resolution of a complaint of sexual harassment be finalised in writing and signed by both parties.

Police policy on inappropriate sexual conduct and relationships

- R40 New Zealand Police should develop standards, policies, and guidelines on inappropriate sexual conduct towards, and the forming of sexual relationships with, members of the public. These should be incorporated into all codes of conduct and relevant policy and training materials. The standards, policies, and guidelines should be developed with the assistance of an external expert in professional ethics and should

- specify actions and types of behaviour of a sexual nature that are inappropriate or unprofessional
- prohibit members of police from entering any relationship of a sexual nature with a person over whom they are in a position of authority or where there is a power differential
- provide guidance to members and their supervisors about how to handle concerns about a possible or developing relationship that may be inappropriate
- emphasise the ethical dimensions of sexual conduct, including the need for police officers to avoid bringing the police into disrepute through their private activities.

Police email and computer use policies

- R41 Directions given by New Zealand Police management on what constitutes inappropriate use of police email and the Internet should not allow for any individual interpretation of appropriateness by police officers.

- R42 New Zealand Police should introduce a requirement that all staff sign a document to confirm that they have read and understood the acceptable use policies for the Internet and email. These requirements should be fully explained to all recruits during their training.

R43 All police officers should be required to acknowledge that they have read and understood any changes to police computer use policies. These requirements should also be fully explained to all recruits during their training.

R44 New Zealand Police managers should receive regular reports on the use of the Internet by their staff. This reporting requirement should be built into the early warning system that the police are developing (see recommendations R47, R48).

Ethics training and ethics committees

R45 All New Zealand Police districts should implement a nationally consistent ethics training programme that all police officers are required to attend. Police officers should also be required to attend regular refresher courses on ethics.

R46 New Zealand Police should ensure that the establishment of ethics committees is mandatory for all police districts. There should be a national set of guidelines to guide police districts on the purpose, operation, and membership of their ethics committees.

Early warning system and performance management

R47 New Zealand Police should implement a nationally mandated early warning system in order to identify staff demonstrating behaviour that does not meet acceptable standards and ensure such behaviour does not continue or escalate.

R48 The early warning system should ensure that all relevant information, sufficient to give a complete picture of an officer's full record of service, is captured in a single database, and is accessible to police managers and supervisors when making appointments and monitoring performance, as well as to complaint investigators when appropriate.

R49 New Zealand Police should review its approach to performance management, including the training provided to supervisors and managers, the performance appraisal process and documentation, and the methods in place to ensure that the follow-up identified in the performance improvement plans actually occurs.