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## POLICE ATTITUDES TO INVESTIGATIONS AND DISCLOSURE OF WRONGDOING

7.1 This chapter considers the attitude (or “culture”) of the police organisation in relation to the investigation of complaints of sexual assault against members of the police or associates of the police. This is required by term of reference (2)(f), which requires the Commission to inquire into, and report upon

(2) irrespective of the existence or adequacy of standards or procedures as a matter of Police policy, the practice of Police in the investigation of complaints alleging sexual assault by members of the Police or by associates or the Police or by both, in particular, but not limited to,—

...

(f) whether the attitude of the Police has been, and is now, conducive to the effective and impartial investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both:

7.2 The chapter also addresses reporting wrongdoing within New Zealand Police. Such “whistle-blowing”, when related specifically to knowledge within the organisation of sexual offending by police members or police associates, is the subject of two of the terms of reference of the Commission:

(1)(c) whether there have been, and are now, Police procedures adequately supporting and encouraging members of the Police who know of allegations that sexual assault has been committed by Police colleagues or by associates of the Police or by both to report the allegations to an appropriate senior member of the Police (or other appropriate person):

and

(2)(g) whether Police practice that has been in place, and is now in place, adequately supports and encourages members of the Police who know of allegations that sexual assault has been committed by Police colleagues or by associates of the Police or by both to report the allegations to an appropriate senior member of the Police (or other appropriate person):

7.3 Term of reference (2)(f) recognises that police attitudes are a critical success factor in the investigation of complaints against police members or police associates, especially those alleging sexual assault. Achieving an “attitude of the Police ... conducive to the effective and impartial investigation of complaints” requires attention not only to personal values

### Background details of relevance to this chapter

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

*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 expert 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.

and mindsets of individual officers (discussed under the heading of “Importance of independence” in Chapter 3) but also to the collective attitudes of the organisation as a whole – recognising the significant potential of the one to influence the other over time. The focus of the discussion in the first part of this chapter is on those collectively held attitudes, which are best described using the term “police culture”.

- 7.4 The expert evidence that has been put before me suggests that although some features of police cultures (for example, strong “bonding”) can have a positive effect, those same features can inhibit the effective and impartial investigation of complaints of sexual misconduct (for example, a code of silence). The expert evidence also makes it clear that the negative effects of those features of police culture may not be limited to the quality of investigations (which is the focus of term of reference (2)(f)) but may also have wider effects.
- 7.5 Accordingly, although the primary focus of the discussion of police culture in the first part of this chapter is on its effect on complaint investigation, as required by term of reference (2)(f), it also addresses the more general impact of cultural factors on standards of conduct within the police – including the reporting of wrongdoing. This takes the discussion beyond the strict requirements of term of reference (2)(f) and also results in something of an overlap with the second part of the chapter which, as required by terms of reference (1)(c) and (2)(g) respectively, discusses the reporting of wrongdoing but only in respect of the “procedures” and “practices” of the police that support and encourage it. It is necessary to recognise that the need for those procedures and practices may have its roots in features of police culture.
- 7.6 To avoid doubt, I consider these wider dimensions of the issue of police culture to be covered by term of reference (5) of the inquiry, which directs me to inquire into and report

upon “any other matter that may be thought by [me] to be relevant to the general or particular objects of the inquiry”.

7.7 The complete terms of reference are provided in Appendix 1.

## **POLICE CULTURE**

7.8 In general the police, both individually and collectively, take their obligation to investigate complaints against their members and associates of their members very seriously, especially in cases involving allegations of sexual assault. But it is clear that certain elements of police culture have adversely affected New Zealand Police’s ability to investigate complaints against police members and associates effectively and impartially. I am concerned that they may continue to do so, and therefore sought to ascertain the following:

- the features of police cultures generally
- the implications of these features for practices within police forces
- to what extent such features have been observed in New Zealand Police
- whether the files revealed evidence of attitudes that, among other things, are not conducive to the disclosure and/or effective investigation of complaints about sexual misconduct
- what practical steps the police could take to ensure that police culture fosters attitudes that support fair and rigorous investigation of such complaints.

7.9 The evidence I received about current police culture came to a large extent from witnesses called by the police during the hearings, including a number of serving police officers. It was not possible, for example, for the Commission to undertake its own survey of attitudes and opinions across the police as a whole. The evidence of the police witnesses was thoroughly tested by counsel assisting during the hearings, and I am confident that it represents the informed and genuinely held views of well-placed individuals. Nevertheless I am acutely conscious that it should not be taken as anything other than that.

### **Features of police culture generally**

7.10 Counsel for the police called two independent expert witnesses to outline general aspects of police culture: Professor David Bayley and Dr Jan Jordan. Professor Bayley is an international adviser on police culture and practices and has worked with several overseas police forces in the area of culture change. He provided an international perspective on police culture. Dr Jordan is a senior lecturer in criminology at Victoria University of Wellington and a member of the Curriculum Development Group for the police training courses in adult sexual assault investigations. For more than 12 years her particular research focus has been the experience of women reporting rape offences to the police in New Zealand. This research involved studies conducted with women victims, an analysis of police rape files, and interviews with senior detectives involved in sexual assault investigations. She described to me her observations of the culture of the New Zealand Police drawn from her research.

7.11 The two experts commented to varying degrees on common aspects of police cultures including

- strong bonding amongst colleagues

- a male-oriented culture
- attitudes towards the use of alcohol
- dual standards with respect to on-duty and off-duty behaviours.

### **Strong bonding amongst colleagues**

- 7.12 Professor Bayley outlined to me how there are both positive and negative features that make the police culture distinct. He explained that, on the one hand, police officers' alertness to danger and orientation to physical force enables them to be effective in dealing with threats to the general public, and to be alert to suspicious circumstances and risks. Professor Bayley said that because police officers are conditioned to deal with dangerous situations and to rely upon each other in circumstances where their lives may be in danger there is a strong bonding that develops between them.
- 7.13 Although this makes the police more effective in such situations, it can mean that officers are more loyal to their colleagues than to the organisation at large or to the broader public interest. Thus, in a situation where an officer is accused of criminal behaviour or misconduct, collegial bonding may lead to a "code of silence" in which fellow officers resist efforts to investigate allegations.<sup>881</sup> Professor Bayley suggested that the closer the work group is, the harder it is for colleagues to "tell on" each other regardless of whether they are members of the police or members of another organisation.
- 7.14 Dr Jordan outlined very similar views to those of Professor Bayley:
- This culture has been analysed and described by many police researchers as characterised by a variety of both positive and negative traits – for example, loyalty, and camaraderie are two positive traits which, if developed to excess, can lead to blind allegiance and the potential for engaging in 'cover-ups'.<sup>882</sup>

### **A male-oriented culture**

- 7.15 Both experts noted that police culture has traditionally been one dominated by men. Dr Jordan said to me that the beliefs of the police culture have been shaped by its origins as a male-dominated organisation, established initially to enforce male-defined laws.<sup>883</sup> Professor Bayley offered his view of a police organisation dominated by males, suggesting that males in general "bring certain attitudes and I'm afraid sometimes customary behaviours that women find uncomfortable."<sup>884</sup>
- 7.16 As an indicator of one such customary behaviour, Professor Bayley had noted the number of times policewomen had said to him, "I wish when I'm introduced to a new partner that he would look at my face before he looks at my chest". That type of behaviour he classed as "male baggage".<sup>885</sup>

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881 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, pp. 11 and 36.

882 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 14.

883 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 14.

884 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 13.

885 Professor David Bayley, State University, New York, Transcript of hearing, 4 December 2005, p. 13.

- 7.17 Professor Bayley outlined how police cultures in general need to change both their treatment of women in the force and their treatment of women generally, especially in the context of criminal investigations related to sexual assault. He said that elements of police life and culture could contribute to the sexist treatment of women, as well as attitudes brought to the job (the “male baggage”).<sup>886</sup>

### **Attitudes towards the use of alcohol**

- 7.18 Professor Bayley told me of the need to “deglamorise” drinking within the police. He said that many of the problems that women complain about in relation to police culture had their roots in drinking too much, and in the bonding ritual that drinking provides.<sup>887</sup> He recommended that police organisations work to discourage drinking as a bonding ritual. I support Professor Bayley’s recommendation in that area. He also suggested that there be a mandatory requirement for all officers to report drug and alcohol abuse.<sup>888</sup>

### **Dual standards with respect to on-duty and off-duty behaviour**

- 7.19 It seems that many police forces struggle with the issue of dual standards with respect to appropriate on-duty and off-duty behaviour. Officers frequently attempt to draw a very clear line between the two, and argue that what an individual does off duty, in terms of sexual behaviour or other moral issues, is no business of the police management. Professor Bayley told me that in America a sworn police officer is a police officer at all times, and his or her behaviour should always be able to withstand public scrutiny.<sup>889</sup> This principle also applies in other parts of the State sector in New Zealand.<sup>890</sup> Application of this philosophy may be seen to curtail the freedom of police officers to engage in activities that are legal but, if widely known, would bring the police into disrepute; however, in my view that is part of the price police officers pay in their choice of career.

### **Implications of these features**

- 7.20 As noted above, the expert evidence suggests there can be a positive side to some of these features. However, it also makes clear that they can have significant negative effects. For example, they may create an environment that encourages some officers to engage in sexual misconduct while off duty, and for others to condone or turn a blind eye to, or be reluctant to report, sexual activity of an inappropriate nature by police officers and their associates.
- 7.21 As a consequence, or in other ways, these features of police culture may not be conducive to the effective and impartial investigation of complaints. For example, they may
- encourage attitudes that reflect stereotyped views of complainants and scepticism about complainants of sexual assault, causing a perceived or actual loss of independence

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886 Professor David Bayley, State University, New York, Talking points, 4 November 2005, p. 3.

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

888 Professor David Bayley, State University, New York, “Talking Points for the New Zealand Commission of Inquiry”, 4 November 2005, pp. 6–7.

889 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, pp. 60–61.

890 *New Zealand Public Service Code of Conduct* states, as one of the minimum standards, that public servants should not bring the public service into disrepute through their private activities (see paragraph 6.231).

- produce a tendency to “protect one’s own”, meaning that investigators are confronted with a wall of silence from the colleagues of the officers against whom complaints have been made.

### **Features of the New Zealand Police culture**

7.22 As well as examining the attitudes reflected in the files themselves (which are discussed below), I drew upon four further sources of evidence to ascertain whether the culture of New Zealand Police was a concern, having regard to the expert evidence set out above about the effects of police culture, particularly on the investigation of allegations against police officers:

- First, I questioned several serving police officers (particularly women officers) on their observations of police culture.
- Secondly, I examined the attitudes reflected in the files themselves.
- Thirdly, I read with interest the September 2005 report of the Hon Sir David Tompkins QC concerning the particular culture of the Counties Manukau Police District.
- Fourthly, I heard evidence from senior police managers about formal programmes aimed at promoting an ethical culture within the police.

### ***Serving police officers’ views***

7.23 The police officers I spoke to were unanimous in their belief that the current culture of the organisation is a very positive one, and that it has become progressively more supportive of women staff. They freely acknowledged that the situation now is in contrast to what it was 10 or more years ago, but described a period of positive change starting in the 1990s and continuing to this day.

7.24 I heard evidence from some senior policewomen who told me of their experience of changes in police culture. In the 1980s women began to enter the police in significant numbers. At this time police culture included elements they found negative; however, the senior policewomen who appeared before me spoke of positive changes throughout the 1990s in attitudes toward women and their employment in the police. Those changes are attributed to various factors:

- changes in social attitudes, with, for example, greatly reduced tolerance of sexual harassment and of the use of sexually offensive language
- changing recruitment practices, which have led to increasing numbers of women throughout the organisation in both sworn and non-sworn capacities
- the implementation and use of policies such as the equal employment opportunities policy, the flexible employment policy, and the introduction of the National Women’s Consultative Committee in 1995.<sup>891</sup>

7.25 One senior woman police officer told me that she did have a challenging time when she started in the police in 1992. She said that she was aware of and experienced sexist attitudes, and at first questioned her choice of career. However, she now finds the culture in the

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891 Senior Sergeant Freda Grace, Brief of evidence, 8 November 2005, p. 4.

police to be much healthier. She told me that the changes have been incremental rather than dramatic, as might be expected in an organisation the size of New Zealand Police.<sup>892</sup>

- 7.26 Another senior policewoman told me that in her 24 years in the police she had observed an improvement in police behaviour which reflected changes in society's attitudes and behaviours. She told me that when she first joined the police there was a significant emphasis on being part of the team and joining in team social interactions, much of which was centred on police clubs or canteens.<sup>893</sup> This policewoman told me about a type of team social interaction involving alcohol. At one such occasion the team members went to the police bar and sat at a table while a "jug master" went through a "jug book" listing everyone's mistakes. People had to drink for each mistake that they had made. She said that when she first graduated there was a lot of pressure to drink but nowadays there is not that pressure and people sometimes sit and have non-alcoholic drinks.<sup>894</sup>
- 7.27 I was encouraged to hear from the same policewoman that nowadays most social interaction takes place away from police stations, and the drinking associated with being one of the team does not pervade the organisation as it once did. She felt that, although there may still be isolated examples of inappropriate behaviour by individuals, such behaviour is not the norm.<sup>895</sup>
- 7.28 Other witnesses confirmed the change in attitudes towards drinking. For instance a newly recruited constable told me that he does not drink alcohol, and although "jug sessions" still happen, there is no pressure to drink alcohol at them. He said that they have jug sessions at the police stations about every four weeks, and that having them at the station seems quite a safe environment rather than going to a bar.<sup>896</sup> Mr Greg O'Connor, President, New Zealand Police Association, also told me that there has been a major change in this aspect of police culture over the 29 years he has been associated with the force. He said that police bars are scarcely used by the younger officers who are more likely to engage in physical training after work than to go to a police bar.<sup>897</sup>
- 7.29 A female constable who has been a police officer for eight years told me that being a member of the police is like being a member of a family and that she has always felt safe in that culture. She said that in her experience most police officers do not tolerate bad behaviour by colleagues, including bad behaviour towards women colleagues. The constable explained to me that she has attended jug sessions and that in her experience they are very tame events and she has never felt unsafe at them, nor has she felt pressured to drink alcohol.<sup>898</sup>
- 7.30 As was explained in the section on sexual harassment in Chapter 6, the police have made concerted efforts since the mid-1990s to create a safe environment for women staff and these efforts continue. I heard evidence that showed that there has been a gradual change in police culture over the years and in particular since the mid to late 1990s. A key factor

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892 Detective Sergeant Tusha Penny, Brief of evidence, 3 November 2005, p. 6.

893 Senior Sergeant Andrea Jopling, Brief of evidence, 9 November 2005, p. 5.

894 Senior Sergeant Andrea Jopling, Transcript of hearing, 9 November 2005, pp. 8–9.

895 Senior Sergeant Andrea Jopling, Brief of evidence, 9 November 2005, p. 5.

896 Constable Gregory Cater, Brief of evidence, 8 November 2005, p. 7.

897 Mr Greg O'Connor, President, New Zealand Police Association, Brief of evidence, 5 December 2005, p. 18.

898 Constable Andrea Mather, Brief of evidence, 8 November 2005, pp. 2 and 3.

that has helped drive this shift in attitude is the development and implementation of a nationally mandated Sexual Harassment Policy. I heard evidence that a greater awareness of, and confidence with using, this policy has reduced the number of serious complaints received because issues are being resolved at the time by those involved.<sup>899</sup> I have no doubt that there has been a flow-on effect on the quality of police investigations of sexual misconduct involving officers and police associates.

### **Evidence from the files**

7.31 I am aware from comments I saw on the files that development of an appropriate culture that does not tolerate sexual misconduct or sexual harassment is an ongoing process in New Zealand Police. The files provided examples of inappropriate attitudes which I consider to be evidence of police culture existing at the relevant time. Much of this evidence related to cases of sexual harassment in the workforce, which I have discussed in Chapter 6.

7.32 Further evidence emerges from two other cases. First, a letter of January 1994 in a police report on a sexual harassment complaint said that the 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”.<sup>900</sup>

7.33 Secondly, in 2001 a key issue addressed by a disciplinary tribunal was the culture of the police. During the disciplinary hearing a policewoman gave evidence that she had been upset by sexual comments made to her by the alleged offender when she joined the police in 1998. However, in her statement made two and a half years later (in 2000) she said,

Looking back I don't think I was offended by the way [Police Officer] spoke to me but perhaps unfamiliar with the culture of the Police, and 2½ years later, I am only just getting used to the “culture”.<sup>901</sup>

Another police officer, from a religious background, talked about having grown in the career having to accept that “swearing, sexual banter amongst staff and throughout the ranks from commissioned officers through to NCOs and constables” was a part of the culture of the New Zealand Police.<sup>902</sup> In the tribunal hearing he said that he was by that time more tolerant towards the use of sexual banter and swearing. He explained that before joining the police he had been in a culture or an environment where he very rarely heard swearing.<sup>903</sup> Several police officers gave evidence to the same tribunal that swearing and jokes of a sexual nature were common in the police.<sup>904</sup>

7.34 My concern with these cases and those covered in the discussion of sexual harassment is that they indicate that sexually inappropriate attitudes and behaviours have been present in the police in the past. Some police officers have regarded swearing and sexual banter as a normal part of the police culture. I also saw in the files use of sexual nicknames (for example, “Shag” and “Stag”). The police submitted that inappropriate language and sexual

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899 Ms Alison Gracey, New Zealand Police Senior Advisor EEO (retired), Brief of evidence, 11 November 2005, p. 32.

900 Operation Loft file LT 146; see also paragraph 6.63.

901 Operation Loft file LT 86.

902 Operation Loft file LT 86.

903 Operation Loft file LT 86.

904 Operation Loft file LT 86.

banter is often seen as a manner in which staff manage the stressful and dangerous situations they are regularly forced to confront.<sup>905</sup> But I believe that a culture that tolerates excessive swearing and sexual banter creates an environment where the line between appropriate and inappropriate behaviour is blurred. Sexual harassment can start as a form of sexual banter and when someone crosses the line into harassment it is often difficult to detect.<sup>906</sup> Blurring of lines can in turn affect the perceived objectivity of an investigation and create risks to the independence of the investigating officer. The police need to be proactive in discouraging swearing and sexual banter as a form of stress management, and promote alternatives.

### **Report by Hon Sir David Tompkins**

7.35 Notwithstanding the evidence that police culture is now more welcoming towards women staff, there are indications that bonding amongst officers can still inhibit both the disclosure and the investigation of alleged misconduct by police officers. Women officers are now included within that strongly bonded community. This was highlighted by Hon Sir David Tompkins QC in his report concerning the Counties Manukau Police District. He outlined how evidence from his inquiry illustrated a “blue code of silence”. For example, he reported that at least six officers identified by his inquiry team saw photographs that were inappropriate and demeaning to the persons photographed, but none of the six ever took any action.<sup>907</sup> He also referred to a study of new recruits by J.B.L. Chan, entitled *Fair Cop: Learning the Art of Policing*,<sup>908</sup> which found that new recruits were quickly socialised into a culture of not telling, and discovered that, unless the offence was very serious, it was extremely inadvisable to blow the whistle on one’s colleagues.<sup>909</sup>

7.36 During his inquiry process Sir David contacted all the officers in Counties Manukau who were previously from the United Kingdom to obtain a comparative view from those officers. He reported,

In general the respondents agreed the culture was positive and many note the demanding environment in which they are working. They provide evidence of unnecessary aggressiveness by patrol officers involving minor assaults. None of these occasions were reported, another example of the “blue code of silence”. The incidents relate to ER staff or to senior NCOs with a history of complaints.<sup>910</sup>

### **Ethical culture within the police**

7.37 The police have made significant progress in developing a structure that provides staff with clear guidelines and definitions of what is ethical conduct. In 2003 the Human

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905 New Zealand Police, Submission (“Comments on seven new extracts (circulated on 8 September 2006), and on proposed interim report regarding police disciplinary system”), 27 October 2006, p. 29. (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.)

906 Sexual harassment is discussed in more detail in Chapter 6.

907 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, pp. 8 and 42.

908 Professor Janet B.L. Chan, *Fair Cop: Learning the Art of Policing*, University of Toronto Press, Toronto, 2003.

909 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. 8.

910 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. 28.

Resources section defined the core competencies and the core values, and a clear list of desirable and undesirable behaviours is now attached to each core value. Similarly, a national ethics training package was developed in 2002, which, I was told, “has had the effect of standardising training in this area”.<sup>911</sup> In particular the new ethics training package focuses on providing clear and practical guidance for identifying what constitutes ethical behaviour in any given situation.<sup>912</sup> Although it is designed to standardise training in this area, I note that each district has the discretion to determine whether the training is delivered, and if so, when and to whom.<sup>913</sup> This discretion is undesirable for such a valuable training package. These initiatives are discussed in more detail in paragraphs 6.181 to 6.190. The contribution that ethical training can make to awareness of the need for independence in police investigations, especially those involving allegations of sexual misconduct or offending by police members or associates, is discussed in paragraphs 3.39 to 3.105.

### **Evidence of inappropriate attitudes**

7.38 My reading of the files disclosed evidence of certain types of attitudes that, taking account of the expert evidence discussed earlier, cannot be said either to encourage the reporting of sexual misconduct by police officers and associates or to be conducive to its effective and impartial investigation. The examples come primarily from the 1980s, although isolated incidents suggest that the attitudes continued into the 1990s and beyond. The major areas of concern were

- attitudes that reflect stereotyped views of complainants and raise general doubts as to whether police officers may have been prejudiced in their approach to complaints
- evidence of a culture of scepticism in dealing with complainants of sexual assault
- evidence of other officers condoning or turning a blind eye to sexual activity of an inappropriate nature by police officers and their associates
- evidence that when senior police officers came to investigate complaints they were confronted with a wall of silence from the colleagues of the officers against whom complaints had been made.

7.39 I also record that there was evidence on the files of senior officers who were concerned about the sexual misconduct of which they became aware, took steps to ensure that it was addressed, and undertook thorough investigations into the complaints received. It is unfortunate that the good work of these officers at the time was undermined by the behaviour of a small minority of recalcitrant officers.

### **Stereotyped views of complainants**

7.40 Once again, the pattern that emerges is that up until the 1990s there were prevalent within the police attitudes that would now be regarded as inappropriate. Although one might argue that these attitudes were more acceptable at the time, I was concerned that a number

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911 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 106.

912 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.

913 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Brief of evidence, 14 November 2005, pp. 3 and 4.

of officers were dismissive towards the people making complaints of sexual assault against a police officer or police associate.

- 7.41 The review by an assistant commissioner of a 1983 rape allegation reflects a judgmental attitude that was also apparent in other respects during the investigation. After extensive inquiries into her character, the complainant decided she did not want to testify at disciplinary proceedings.<sup>914</sup> The assistant commissioner, when recommending that the members accused be counselled, commented,

In making this recommendation I am mindful that their conduct was discreditable. However, this loose woman, notorious in the neighbourhood as a sex mad woman, apparently enticed the policemen into her home for a sexual frolic. The evidence is hazy as to what exactly occurred but I believe the policemen – who were naïve in extreme – are now regretful of their actions in going to this woman’s home. Both the members are said to be worthwhile members of the Police.<sup>915</sup>

- 7.42 These attitudes were not generally present in the investigations undertaken during the 1990s. However, attitudes can creep back into an organisation if there is insufficient vigilance. For this reason I was very concerned by remarks in a police email from 2004, referring to a woman who had allegedly been sexually assaulted by a police officer in 1989:

There was never any question about consent except for the possible coercion side of things as the alleged root happened in a patrol car ... [The complainant] would be looking for a money train. If you can prove her wrong lock the bitch up for making a false complaint. I hate people who cause shit like this.<sup>916</sup>

- 7.43 Despite the fact that the file containing this email had been reviewed as part of the Professional Standards system and as part of Operation Loft, the police had not recognised the inappropriateness of either the wording or sentiments expressed until they were brought to the police’s attention by this Commission. The police explained, “No-one had taken the time to concentrate on the email, perhaps because [Officer] had also placed a job sheet on the file that recorded his evidence in a more comprehensive (and appropriately expressed) way.”<sup>917</sup> The officer was disciplined after the police considered the contents of the email. However, it is of concern to me not only that certain officers with the police may continue to hold inappropriate attitudes towards complainants (even in 2004) but also that these attitudes were not picked up by police management. I am also concerned that the officer responsible for the email failed to disclose to the investigating officer important details about the case at the time it came to light in 1991. This officer provided significantly more detail in his 2004 statement than he did in 1991.<sup>918</sup>

- 7.44 Alongside the dismissive attitudes towards external complainants that I have discussed, some of the files concerning internal complaints of sexual harassment indicate similarly dismissive

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914 For example, I believe that the level of investigation into her character (which involved amongst other things interviewing all her neighbours and trying to establish if she had had a relationship with a traffic officer) was unnecessary even given the legal requirements of the time.

915 Operation Loft file LT 134.

916 Email contained in Operation Loft file LT 200. I also saw evidence of a “wall of silence” in this file (see paragraph 7.50).

917 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 109.

918 Operation Loft file LT 200; New Zealand Police, Submissions in response to draft report, 7 September 2005, p. 8.

attitudes. In 1997 a sexual harassment case involved the display of lingerie posters, which were taken down when the complaint was made, and then rehung anonymously. A legal adviser in the case noted, “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.” She went on to observe, “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.”<sup>919</sup> In their submissions on my draft report the police noted, “the complainant received a full apology, compensation, and an acknowledgement that, as a result of her complaint, the Police were committed both to underlining the unacceptable nature of the offending officers’ conduct and to improving both the speed of their response to sexual harassment cases.”<sup>920</sup> The police argued that the problems appeared to stem, however, from a general lack of understanding regarding what can constitute sexual harassment, rather than any lack of sympathy for the complainants.<sup>921</sup> I accept this lack of understanding may have been the underlying cause, and that steps were taken in later years to address this, but nevertheless it is evident that dismissive attitudes were present. I also note a sexual harassment case from 1984 where the deputy commissioner, in finding that there was not enough evidence to lay charges, wrote that “we now have a situation where junior female staff are seeking some disciplinary action against a Senior Sergeant.”<sup>922</sup>

### **Culture of scepticism in dealing with complainants**

7.45 One area where police attitudes have been a cause of concern is the matter of warning complainants about making a false complaint. I discussed this in Chapter 2 in the context of the policies that have applied over the years to sexual assault investigations. Dr Jordan, on the basis of her research into women’s experiences of reporting rape offences to the police in New Zealand, told me,

It is well-recognised internationally that what has been termed ‘a culture of scepticism’ typically surrounds police responses to rape allegations. At a recent training course on Adult Sexual Assault Investigations (September, 2005), a detective commented that their station received so many false complaints that now one of the first questions they ask of rape complainants is: “Are you telling the truth?” The likely impact such a line of questioning could have on a genuine complainant, and the ripple effects from this, seemed not to be appreciated.<sup>923</sup>

7.46 She went on to say that most detectives can provide examples of cases that initially appeared highly “dodgy” but later transpired to be genuine – including “those where victims were disbelieved in ways that effectively allowed the perpetrators to victimise many more women until their final apprehension”.<sup>924</sup>

7.47 I was pleased to see, however, that in the majority of cases throughout the period in question the matter was properly investigated even where the investigator had some concerns over the veracity of the complainant.

919 Operation Loft file LT 59.

920 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 102.

921 New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 110.

922 Operation Loft file LT 113.

923 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 8.

924 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 9.

### **Condoning or ignoring inappropriate sexual behaviour**

7.48 Several files provided examples that were of concern for their toleration of inappropriate sexual behaviour:

- In a case in the mid-1980s an officer's sexual harassment was tolerated for some time without any complaint from his colleagues. This behaviour came to light only after a civilian complained of indecent assault.<sup>925</sup>
- In another case a constable and a sergeant were made aware in 1994 of an alleged incident in which an officer was said to have coerced a woman into having sex with him in return for arranging diversion for her husband on an assault charge. Despite this, neither officer took the matter any further; and, after the complaint eventually came to light, both were counselled.<sup>926</sup> I note that the police submit that the constable's decision not to take the matter further was made in the context of the woman's firm refusal to formalise her complaint. They argue this can be seen as an error of judgment, but not "condoning" or "turning a blind eye" to the offending. Nevertheless, the failure to take any action is of concern.
- In two similar cases in 2000<sup>927</sup> and 2002<sup>928</sup> officers engaged in serial sexual harassment that did not come to light for several years. In the latter instance, a complaint of rape precipitated the revelation of the long history of harassment. When the rape charge did not proceed and the officer concerned disengaged, a former police officer familiar with the case made a formal complaint that no action had been taken despite the considerable damage the officer had caused.

7.49 Such instances, although relatively few, can have a disproportionate impact upon the public's view of accountability within the police, and work to undermine public confidence. These instances may also adversely affect the working environment. Even though the files disclosed only a few officers who displayed sexually inappropriate conduct, the cases that I noted illustrate that a significant number of other officers were involved in condoning the inappropriate sexual conduct. Although the police do not accept this point, I am concerned that the sum of the evidence I heard may point to a culture where ongoing inappropriate behaviour has been tolerated. For that reason, I consider it imperative that police take a "zero tolerance" approach to the concealment of misconduct within their ranks.

### **A wall of silence from colleagues**

7.50 In contrast to the findings of Sir David Tompkins noted above, I have identified no recent cases in which police officers appear to have sought to shield a colleague from investigation. I did note several such cases dating from the 1980s and early 1990s in which investigators undertaking internal investigations had difficulty in obtaining evidence from other staff members or encountered behaviour that sought to undermine their investigations:

- In an example from 1981, the officers of a section indicated to the investigating officer that they were unhappy with the decision to charge the subject of a complaint with indecent assault and that they were arranging for the defence of the subject, making

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925 Operation Loft file LT 149.

926 Operation Loft file LT 45.

927 Operation Loft file LT 86.

928 Operation Loft file LT 139.

their own enquiries about the character of the complainant, and agreeing to pay \$10 per pay to their colleague until it was over.<sup>929</sup> What is of particular concern about this file was the change in evidence given by one police member. As the Crown Solicitor stated,

The inference I drew from this unsolicited evidence was that the Officer was endeavouring to lay the necessary factual basis for the Defendant to assert that he had good grounds [for the action he took].

...

It is my opinion that the circumstances I have outlined would justify an investigation into this member's conduct.<sup>930</sup>

- During an investigation into an allegation of sexual violation by rape in 1983 an officer interviewing police members who could potentially have provided evidence noted,

I get the impression that Constable [name] had convenient memory lapses where the two suspects are concerned. 10 marks for loyalty but when the watchhouse keepers for the relevant days are known they may be able to refresh his memory.

...

He thinks that the complainant [name] is a mad 'bitch' and cannot be trusted.<sup>931</sup>

- In a 1984 case, the investigating officer himself complained of a "closing of the ranks" in an allegation of inappropriate strip searching of a female prisoner. The investigating officer's report said,

I have no doubt some member/s know something of what is trying to be established. ... The Policeman's unethical 'code of silence' of the 'blue curtain' has come down, effectively stifling the enquiry.<sup>932</sup>

- Finally, in the 1989 case mentioned earlier, where an officer allegedly sexually assaulted a woman in a police car, a constable on duty at the time withheld important information from the officers who were later investigating the matter. It was not until 2004 that the constable admitted that he had excluded these details from his 1991 statement. (I understand that this officer is the subject of a disciplinary investigation arising from this file.)<sup>933</sup>

7.51 Once again, these cases are few, but each can have life-long impacts upon complainants and their families, and also a significant impact upon public confidence in the police. We have a right as citizens to expect that police officers will place a concern with justice and the interests of members of the public ahead of their loyalty to their fellow officers when it comes to matters of possible misconduct.

### Fostering attitudes supportive of fair and rigorous investigations

7.52 There have been many positive changes in police culture and attitudes over the past 25 years, as illustrated by the way in which sexual harassment has been discouraged (see

929 Operation Loft file LT 160.

930 Operation Loft file LT 160.

931 Operation Loft file LT 134.

932 Operation Loft file LT 166.

933 Operation Loft file LT 200; Submission of New Zealand Police, 7 September 2005, p. 8.

Chapter 6). There are, I believe, four practical steps that can be taken to ensure that such positive changes are firmly embedded in the organisation:

- positive leadership
- recruitment and advancement of more women staff
- a periodic external audit of police culture
- continuing development of effective whistle-blower mechanisms, reinforced by promoting a culture that supports and encourages the reporting of misconduct.

The first three are discussed immediately below, the fourth in the next section of this chapter. Although much of the following discussion focuses on the interaction of male police with women (either in the police workforce or members of the public), changing the organisational attitudes in this respect will, in turn, foster police attitudes that are conducive to the effective and impartial investigation of complaints.

### **Positive leadership**

7.53 Professor Bayley's experience was that effective leadership is crucial in improving organisational attitudes, and that the signals sent from the senior leadership level make all the difference. He said,

unless the rank and file and especially middle rank supervisors understand that the policies are a matter of priority and are taken seriously by senior leaders, they won't happen. And the people further down will think of these policies, however enlightened they may be, as the flavour of the month but are ignorable and the only people that can make them not ignored is the Commissioner.<sup>934</sup>

7.54 He also said that as well as changing police attitudes, it is important to have standardised routines in place that minimise potential areas of risk. For instance, in the United States special policing routines must be followed when arresting a female. Professor Bayley said that as a result of having the arresting processes so standardised, some of the behaviour that used to happen when women were taken into custody does not happen any more.<sup>935</sup>

7.55 Professor Bayley said, however, that just as the police have learned that there is no single solution to crime, so also there will be no single solution to the issue of culture change. He said that it is important to look at all varieties of things that may make women uncomfortable and are the basis of complaints, and then focus on solutions.<sup>936</sup>

7.56 Professor Bayley also suggested that the police should ensure that they eliminate all overt displays of sexism or chauvinism in language, jokes, and pictures and that this should include the inappropriate use of email. I agree that it is important that the police keep up with the changing social attitudes in these areas and ensure that their work environment reflects what is now socially accepted in a professional workplace.

7.57 I am aware from my own experience that changing the culture of an organisation is very difficult and can be done only over time. In my experience the key to effective change of

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934 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 15.

935 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 8.

936 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 9.

culture is to have clear and consistent messages that are reinforced regularly throughout the organisation. This view was confirmed in the evidence given to me by Mr David Butler, Commissioner of Inland Revenue. He said that having clear, consistent messages ensures that staff know how to approach dealing with difficult situations they may face in their work.<sup>937</sup>

7.58 The police recognise the importance of effective leadership and have recently begun to develop leadership and management development programmes as a means of developing outstanding leadership and management capability in a changing environment (see paragraphs 6.177 to 6.180). “Influential leadership” is one of the six core competencies common for all police staff and is defined as follows:

Effective performers communicate a vision, provide direction, co-ordinate and develop individuals and teams. They inspire and motivate others through personal example, while enabling colleagues to maximise potential. They use a combination of authority and influence at all levels of the organisation.<sup>938</sup>

### **Recruitment and advancement of women**

7.59 Dr Jordan argued that further increases in the numbers of high-ranking women in the police are necessary to ensure that the culture and values of the police reflect those of society at large. She explained that this is difficult to achieve when individual women may feel pressured to over-adapt to the male environment rather than risk challenging it.<sup>939</sup>

7.60 Professor Bayley noted that police managers ought to aim at creating an internal culture where “females in the Police service feel that they belong to the organisation and are fully valued members of that organisation and that women in the general public are respected regardless of their status ...”.<sup>940</sup> He told me that, in his view, if 50 percent of the police force were female, a lot of the problem attitudes and behaviour would go away. Indeed, he noted that some research into organisational cultures suggested that there is a “tipping point” at which an organisational culture changes markedly to recognise and accommodate the concerns of a minority.

7.61 He also referred favourably to the fact that 15 percent of the New Zealand police force is female, which is very good by international standards.<sup>941</sup> He said that a key step in changing the culture of the police would be to give high priority to the recruitment and retention of women and minority groups. In his view that was absolutely fundamental.<sup>942</sup>

7.62 For this reason I am of the view that it is critical that the police give high priority to the recruitment and retention of women. They also need to give greater attention to the

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

938 Ms Susan Christie, New Zealand Police Human Resources Manager: Organisational and Employee Development, Brief of evidence, 10 November 2005, p. 6.

939 Dr Jan Jordan, Senior Lecturer, Institute of Criminology, Victoria University of Wellington, Brief of evidence, 3 November 2005, p. 11.

940 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 10.

941 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 7.

942 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, p. 15.

recruitment of staff from minority groups to ensure that they have the capability in place to interact effectively with the wider New Zealand community.

- 7.63 I heard evidence that the police have targeted the recruitment of staff from minority communities with considerable success. For instance in Auckland City Police District 9.7 percent of its staff are now identifying as Māori, the proportion of Pacific peoples has increased from 3.9 percent to 11.45 percent in four years, and the proportion of Asian staff from 0.55 percent to 3.85 percent in two years. I was told that there are now more than 50 Asian men and women currently going through the recruiting process.<sup>943</sup>

### **A periodic external audit of culture**

- 7.64 The work being undertaken by the police in relation to the ongoing development and implementation of their Sexual Harassment Policy and the development of a national training package on ethics are important initiatives. They demonstrate the progress being made by the police in ensuring that any negative aspects of police culture in relation to their attitudes and behaviour towards women are being addressed.

- 7.65 In order to ensure that the momentum created by these initiatives and by this Commission of Inquiry into Police Conduct is not lost, I am of the view that an annual independent “health of the organisation” audit should be undertaken. The audit should be overseen by an independent body such as the State Services Commission. It would benchmark and monitor progress being made by the police. In particular it would

- canvass the views and experience of members of the police to determine how they rate their safety as employees and the safety of members of the public who come in contact with the police
- monitor and assess the representation and distribution of women in the police
- record and monitor the numbers of instances of sexual harassment and/or discrimination.

## **REPORTING KNOWLEDGE OF WRONGDOING**

- 7.66 Accessible, clearly understood policies and processes are vital to an organisational culture that encourages wrongdoing to be reported by staff and to be dealt with appropriately by management. I sought information on the policies and procedures established by New Zealand Police to deal with reporting by members of the police of wrongdoing by colleagues or by associates.

- 7.67 In this section of the chapter I examine the early police whistle-blower policy, the changes that occurred as a result of the enactment of the Protected Disclosures Act 2000, and other relevant policies that could allow or encourage the reporting of wrongdoing in the police and support members in doing so. I then review the evidence concerning cases where police members did report allegations of sexual offending concerning colleagues and how such reporting was supported.

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943 Inspector John Mitchell, Policing Development Manager, Auckland City Police District, Brief of evidence, 14 November 2005, paragraph 17.

## Police policies on whistle-blowing

### **General instruction IA 131**

7.68 The earliest police policy for encouraging and protecting whistle-blowers that was drawn to my attention was set out in general instruction IA 131 published in *Ten-One* on 28 April 1995:

- 1 Where, a staff member:
  - (a) believes he or she has material information which will show that a serious deficiency or error has been made in the execution of a Police duty or function, and
  - (b) has grave fears that any disclosure locally of that information will expose himself or herself to some physical, psychological or vocational harm;that staff member may approach his or her district commander, region commander, or the O/C Internal Affairs, directly with that information.<sup>944</sup>

7.69 The policy enables staff members with a certain restricted type of information, and who have a high level of concern for their own personal welfare if they disclose an allegation locally, to “go to the top” with the information. IA 131 directs the senior officer concerned to take such steps “as are necessary and appropriate in all circumstances” to protect the identity and welfare of the whistle-blower.

7.70 I did not hear of any instances where this policy was used during the years since its introduction, nor see it in effect on any of the files I considered from 1995 onwards. It seems to have offered limited, discretionary protection in certain restricted circumstances.

### **Protected Disclosures Act 2000**

7.71 The Protected Disclosures Act 2000 came into force on 1 January 2001. It has the dual purpose of facilitating the disclosure and investigation of serious wrongdoing in or by public and private sector organisations (including the police) and protecting from retaliatory action those who bring that information forward in accordance with the procedures under the Act. The Act requires those who receive disclosures to use their best endeavours to protect the identity of those who make disclosures, except where

- (a) that person consents in writing to the disclosure of that information; or
- (b) the person who has acquired knowledge of the protected disclosure reasonably believes that disclosure of identifying information—
  - (i) is essential to the effective investigation of the allegations in the protected disclosure; or
  - (ii) is essential to prevent serious risk to public health or public safety or the environment; or
  - (iii) is essential having regard to the principles of natural justice.<sup>945</sup>

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<sup>944</sup> New Zealand Police, General instruction IA 131, “Protection for Whistleblowers”, *Ten-One*, No 90b, 28 April 1995, p. 17.

<sup>945</sup> Protected Disclosures Act 2000, section 19(1).

“Serious wrongdoing” under the Act includes matters such as criminal acts, and acts by public officials that are oppressive, improperly discriminatory, grossly negligent, or constitute gross mismanagement.

- 7.72 The Act requires every public sector organisation, including the police, to have in operation appropriate internal procedures for receiving and dealing with information about serious wrongdoing in or by that organisation. Information about these procedures, and how to use them, must be published widely in the organisation and republished at regular intervals.<sup>946</sup>
- 7.73 In accordance with the Protected Disclosures Act, general instruction IA132 was promulgated by the police in 2002.<sup>947</sup> It explains the scope of the Act, and specifies the persons to whom disclosures may be made and what action will be taken in response to a disclosure. It also requires “the appropriate level of support” to be provided to a discloser.
- 7.74 None of the investigations I considered were undertaken as a result of a disclosure being made using the process created by general instruction IA132.

### **Police Complaints Authority Act 1988**

- 7.75 The Police Complaints Authority Act 1988 can also be seen as containing some protections for internal whistle-blowers. One of the core functions of the PCA is to receive complaints of misconduct against any member of the police.<sup>948</sup>
- 7.76 The PCA is obliged to keep secret all information coming to its knowledge except for the purpose of carrying out its functions under or giving effect to the Act,<sup>949</sup> and cannot be required to give evidence in any judicial proceedings.<sup>950</sup> This means a police officer could trigger an investigation by the PCA and potentially have his or her identity kept secret.

### **General instructions IA121 and IA121A**

- 7.77 Other general instructions are also relevant to the issue of disclosure of wrongdoing. General instruction IA121 requires any suspicion of criminal offending, misconduct, or neglect of duty to be reported to the district commander (who shall then cause an investigation to be carried out).<sup>951</sup> Superintendent Trappitt described this instruction as providing for “an investigation to be carried out where a staff member is suspected of having committed a criminal offence or misconduct or neglect of duty”.<sup>952</sup>
- 7.78 General instruction IA121A, entitled “Integrity Reporting”, provides for an on-duty member of the police to report to his or her supervisor the circumstances of any incomplete enforcement action initiated against another police member. If there has been

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946 Protected Disclosures Act 2000, sections 11(1) and 11(3).

947 New Zealand Police, General instruction IA132, “Protection for Whistleblowers – Protection [sic] Disclosures Act 2000”, 12 June 2002.

948 Police Complaints Authority Act 1988, section 12(1)(a)(i).

949 Police Complaints Authority Act 1988, section 32.

950 Police Complaints Authority Act 1988, section 33.

951 New Zealand Police, General instruction IA121, “Investigation”, 22 May 2002.

952 Superintendent David Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 15.

any attempt to evade the law enforcement process, the district commander shall set up an investigation.<sup>953</sup>

### **Adequacy of police instructions and policies on disclosure**

- 7.79 Only one of the general instructions dealing with disclosure of wrongdoing (IA121) appears to require, rather than encourage, suspected wrongdoing to be reported. But I heard nothing that would indicate that the police viewed this provision as a mandatory reporting requirement for all types of suspected misconduct. Indeed, I was told by a senior police staff member that, in his view, there was currently not really any avenue within the police for a staff member to blow the whistle for wrongdoing that did not constitute serious wrongdoing under the Protected Disclosures Act in circumstances where his or her identity would be kept confidential.<sup>954</sup>
- 7.80 Despite this, the sentiment of the police policies is well intentioned. However, they need to be followed through to an outcome that encourages, or even requires, reporting of all misconduct and that guarantees safeguards and support for the whistle-blower when reporting misconduct, and confidentiality as to their identity when possible.
- 7.81 I also believe that police employees need to have a reasonable idea of what steps might be taken once a disclosure has been made. Without this knowledge it is less likely that they will report wrongdoing. It is understandable that making a complaint or disclosing an allegation of sexual assault against a fellow police officer or police associate may cause some ill feeling in the workplace. For this reason, it would be sensible for there to be a review of the policies to cover practical matters, including the way in which whistle-blowers are given support by managers, so that the policy is as comprehensive as possible and employees know what to expect if they take the step of disclosing wrongdoing.
- 7.82 The policy should also reflect the police's obligations under the Protected Disclosures Act to remind their staff about the procedures that apply for making a protected disclosure and about the need to protect the confidentiality of disclosers' identities where possible.
- 7.83 I was also concerned that the policies did not recognise the need to provide a process to report sexual assault allegations against an associate of the police. There seems to me to be a real gap in the police policies in this regard, which is based on a failure to recognise the potential difficulties for a police member who wishes to report an allegation that he or she is aware of against a family member or close friend of a colleague.
- 7.84 The key issue seems to be that a policy of "report and be protected" is not actively promoted. The Protected Disclosures Act requires organisations to remind their staff at regular intervals about the procedures that are in place for making protected disclosures.<sup>955</sup> The New Zealand Police General Manager: Human Resources, Mr Wayne Annan, who has responsibility within the police for the Protected Disclosures Act, was not sure if this

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953 New Zealand Police, General instruction IA121A, "Integrity Reporting", 19 July 2002.

954 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, 14 November 2005, Transcript of hearing, p. 72.

955 Protected Disclosures Act 2000, section 11.

regular reminder had been done in the organisation; he also told me that the legislation has rarely been used.<sup>956</sup>

- 7.85 I was surprised that there was little detail about how often this procedure had been used because I would expect a formal register to be kept on the incidence of complaints under the Protected Disclosures Act. Furthermore, there was no process of checking back with any disclosers as to whether, from their point of view, the process and protections inherent in it worked well for them. It is important for organisations to adopt such auditing processes in order to be able to assess the impact of the legislation and their internal policies. Mr Annan reported that work had started on implementing systems for protected disclosures within the police.<sup>957</sup> This is a positive step, and this work should be continued.

### **Police practice on reporting of sexual misconduct**

- 7.86 I examined the Operation Loft files for evidence on the reporting of sexual misconduct within New Zealand Police, and considered other evidence submitted to the Commission.

#### ***Limitations of the evidence***

- 7.87 The only files that have been provided to me are those where allegations were in fact reported, albeit some at a later stage than others.
- 7.88 I acknowledge that there may be unrecorded allegations of which I am unaware. However, short of administering a survey to all police officers asking whether they have ever been aware of allegations of sexual assault that they decided not to report, and the reasons for this, I will never fully know the extent of non-reporting of allegations of sexual assault within the police. Certainly, in the files I read there were examples of inappropriate sexual behaviour (particularly sexual harassment) that went unreported for several years.

#### ***Where a member knows of conduct that could amount to a criminal offence***

- 7.89 I was told by counsel for the police that a police member who learned that a colleague or associate of the police had committed a criminal offence is under an obligation to report that offence to his superiors at the first opportunity.<sup>958</sup> However, in practical terms it is difficult to determine with any accuracy (in the cases that I have reviewed) the extent to which a police member knew or should have known of potentially criminal behaviour in a particular case.
- 7.90 I asked Detective Superintendent Nicholas Perry whether he thought that behaviour that has become evident in the investigation of several historic files would have been widely known. He replied,
- There were clearly those who were identified as womanisers and that was relatively well-known, their reputations, if you like, from that

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956 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 23.

957 Mr Wayne Annan, New Zealand Police General Manager: Human Resources, Transcript of hearing, 18 November 2005, p. 23.

958 New Zealand Police, Submission, 19 August 2005, p. 5.

perspective were apparently well-known amongst their work colleagues in the stations but in terms of the actual, shall we say, behaviour which was verging on criminal, I don't believe that was widely known.<sup>959</sup>

### **Police practice regarding allegations and rumours**

7.91 It is apparent from my reading of the cases identified by Operation Loft that some potential complaints came to the police's attention as a result of a member of police becoming aware of a rumour that a colleague (or an associate) had sexually assaulted someone.

7.92 The response of the police member who became aware of the rumour appears generally to be appropriate; the potential complainant is approached to establish the basis of the rumour and whether he or she wishes to lay a formal complaint, and the matter is referred to a senior member of staff. Two examples follow:

- In one file a police officer, upon being told by another staff member that she had engaged in inappropriate sexual behaviour, organised for that staff member to speak with another officer, and then contacted the senior sergeant in charge of the section.<sup>960</sup>
- In another instance, a police matron became aware of rumours that a police officer had made inappropriate sexual suggestions to a member of the public. The police matron spoke with the complainant immediately upon hearing the rumours and notified the senior sergeant as soon as it became apparent that there was some veracity to the rumours.<sup>961</sup>

7.93 In another case that I read, the report of the investigating officer shows a similar approach was taken:

In accordance with our local Sexual Abuse Team policy, I was directed to approach [the potential complainant] to ascertain whether in fact these rumours were true or otherwise.

I spoke with [the potential complainant] ... I told her that it had been brought to my attention that she may have been sexually abused. She indicated that this was in fact correct. I made it clear that we were prepared to take a complaint, however, I was not allowed to solicit a complaint. I told her to take her time about deciding what to do and to contact me if and when she wanted to make a complaint.<sup>962</sup>

7.94 Counsel for the police informed me that the policy referred to in this case was not a written policy. Nevertheless, this directive appears to me to be useful for two reasons. First, it ensures that complainants who may have been unable to access the police complaints system (for whatever reason) are given an opportunity to do so. Secondly, it provides police officers with guidance as to what course of action they should pursue when they become aware of an allegation or rumour. I believe that this direction should be incorporated into national policy.

7.95 The situation is more difficult where members of police become aware of informal or less precise allegations that do not amount to criminal misconduct, or where the reputation of the

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959 Detective Superintendent Nicholas Perry, Transcript of hearing, 20 October 2005, p. 11.

960 Operation Loft file LT 103.

961 Operation Loft file LT 198.

962 Operation Loft file LT 36.

officer suggests he or she may be engaging in inappropriate sexual behaviour. For example, it is apparent in one file from 2000 that several officers were aware that the complainants were uncomfortable with a particular officer's actions; however, it is not clear that they knew of the substance of the complainants' concerns (which amounted to allegations of indecent exposure and inappropriate advances). As a result, it was not until the sergeant in charge of the station overheard a conversation between the complainants and another member of police that the complainants were approached regarding the rumour.<sup>963</sup>

### Encouraging and supporting the reporting of allegations

- 7.96 As mentioned above, it is important that general instructions and policies encourage members who know of allegations to report the allegation to an appropriate senior member of police. But of equal importance is the need for managers and supervisors to create a culture where people are willing to stand up and challenge unethical or criminal behaviour, and are supported in doing so.
- 7.97 Detective Inspector Stephen Rutherford told me that, practically speaking, it was very difficult for people to report allegations against colleagues, although he believed the situation had improved. He also commented, "A lot of people have difficulties, they don't want to be seen as the whistleblower ...". He told me that once a staff member has had the courage to take the step, however, it is very important that they are looked after. Detective Inspector Rutherford said that he takes active steps to ensure such people are supported.<sup>964</sup>
- 7.98 I also saw examples on the files where police officers said that they did not want to raise issues related to a colleague's inappropriate sexual behaviour, for a variety of reasons as discussed in the first section of this chapter. That evidence reinforces the views of the expert witnesses, also discussed in the first part of this chapter, that some features of police culture mean that police officers may find it difficult to effectively "whistle-blow" on a colleague.
- 7.99 I was told that the police use ethics training to encourage members of police to report allegations of sexual assault by police colleagues or associates of the police. The training also emphasises the need for managers and supervisors to create a culture within their own groups where people are willing to stand up and challenge unethical or criminal behaviour.<sup>965</sup> Moreover, the ethics committees are providing another avenue to enable people to report misconduct, and are fostering an awareness of the importance of police officers adhering to high standards of conduct.
- 7.100 Professor Bayley provided an international perspective on this issue, and explained to me that certain overseas police services have considered creating a disciplinary offence where officers who are in a position to know of misbehaviour (or in a reasonable position to have known) choose not to report that misbehaviour. This approach creates a positive obligation on colleagues and peers to report what they know. It has been partly implemented in Northern Ireland, where there is a positive obligation on supervisors under the police

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963 Operation Loft file LT 101 (second complaint).

964 Detective Inspector Stephen Rutherford, Transcript of hearing, 17 November 2005, p. 30.

965 Mr Phillip Weeks, New Zealand Police Manager of Crime and Safety Training, Royal New Zealand Police College, Transcript of hearing, 14 November 2005, p. 72.

disciplinary code to report misbehaviour.<sup>966</sup> This is considered a new and somewhat controversial development.

- 7.101 I am also concerned that the existence of the current disciplinary process may further discourage whistle-blowing within the police because a whistle-blower is likely to be aware that they may have to give evidence before the police disciplinary tribunal and be subject to the formalities of that process. I acknowledge that the rule of evidence known as “informant privilege” can enable an informant’s identity to be protected in a court or tribunal situation. However, counsel assisting has advised me that it is unlikely that the identity of an informant could always be kept confidential in disciplinary proceedings, as envisaged by the Protected Disclosures Act.<sup>967</sup>
- 7.102 Encouraging a “report and be protected” approach is a challenge for any organisation. Among the important projects that the police have commenced since 2004 (discussed elsewhere in this report and tabulated in Appendix 4) is the Integrity Project, which aims to ensure New Zealand Police remains free of corruption. I was told that the Integrity Project was proposing to recommend to the Commissioner of Police that several policy options be considered to encourage confidential disclosures. One such option was a confidential telephone line, which appears to work well in Australian jurisdictions (where it is known in some Australian states as the “Blue Line”), and also in the London Metropolitan Police and the Manchester Police. I was told in 2005 that the project team proposed recommending that the policy stipulate that officers who come forward with information are provided with support by another nominated officer.<sup>968</sup>
- 7.103 In summary, police policy is well intentioned, and although there are certain formal policies amounting to “report and be protected”, they do not appear to be rationalised in one place, well understood, actively promoted, or used within the police. Moreover there is a distinct disjuncture between the developing policy and ethics training, and past and current practices regarding reporting misconduct.
- 7.104 In my view there should be two elements of a police strategy to support and encourage the reporting of allegations of inappropriate behaviour and sexual misconduct. First, New Zealand Police must continue to foster an organisational culture that encourages and supports internal reporting of inappropriate behaviour and sexual misconduct. The cases I have described, where misconduct went unchallenged for months or years, undoubtedly had a dampening effect upon the morale of female and male officers. Policies on disclosing wrongdoing should continue to be integrated into ethics training both for officers and for supervisors and managers.
- 7.105 Secondly, an effective whistle-blower mechanism is an essential component in a culture of openness. The police should design and actively promote a single stand-alone policy of “report and be protected” for all disclosures of wrongdoing, designed to ensure that staff feel safe coming forward to report any issue of concern. Other internal police policies should similarly reflect this intention. Although the policies should recognise

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966 Professor David Bayley, State University, New York, Transcript of hearing, 4 November 2005, pp. 18 and 19.

967 Ms Mary Scholtens QC, Counsel Assisting, Commission of Inquiry into Police Conduct, Submission, 8 December 2005, p. 10.

968 Superintendent Grant O’Fee, Integrity Project Manager, Brief of evidence, 18 November 2005, p. 2.

the special status of disclosures of “serious wrongdoing” under the Protected Disclosures Act, it would in my view be mistaken to limit the scope of the applicable policies to those types of disclosures. As the Police Association pointed out, the Act’s focus on serious wrongdoing of an organisational kind does not fit well with the nature of police operational activities.<sup>969</sup>

- 7.106 My recommendations on dealing with matters related to police attitudes to investigations and disclosure of wrongdoing are presented overleaf.

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969 New Zealand Police Association, Submission in response to draft report, 14 June 2006, p. 2.

## Recommendations

### Police culture

- R50** New Zealand Police should continue its efforts to increase the numbers of women and those from ethnic minority groups in the police force in order to promote a diverse organisational culture that reflects the community it serves and to enhance the effective and impartial investigation of complaints alleging sexual assault by members of the police or by associates of the police.
- R51** The Commissioner of Police should invite the State Services Commissioner to carry out an independent annual “health of the organisation” audit of the police culture (in particular, whether the organisation provides a safe work environment for female staff and staff from minority groups). The need for the audit should be reviewed after 10 years.

### Reporting of allegations of sexual misconduct

- R52** New Zealand Police should review its current policies, procedures, and practices on internal disclosure of wrongdoing, and actively promote a single stand-alone policy for all disclosures, including (but not limited to) those made under the Protected Disclosures Act 2000. The policy should ensure that proper inquiry is always made where information received indicates that a police member or associate may have committed a sexual offence.
- R53** New Zealand Police should ensure that the policy and the approach of “report and be protected” are well understood and implemented nationally.
- R54** New Zealand Police should ensure that all other relevant policies, procedures, and practices are consistent with the stand-alone policy on the reporting of serious wrongdoing and the approach of “report and be protected”.
- R55** The New Zealand Police ethics training programme should aim to foster a culture which encourages reporting of allegations of wrongdoing by police members or police associates and provide support to those who make disclosures, consistent with the “report and be protected” approach.
- R56** New Zealand Police managers and supervisors should actively communicate to police members the expectation that they will report any allegations of sexual misconduct made against a colleague or a police associate. Police managers and supervisors should encourage and support members to report such allegations.