



– EXECUTIVE SUMMARY –

The Commission of Inquiry into Police Conduct was established in February 2004 to carry out a full, independent investigation into the way in which New Zealand Police had dealt with allegations of sexual assault against members of the police and associates of the police. This followed the publication of allegations made independently by two women, Ms Louise Nicholas and Ms Judith Garrett, suggesting that police officers might have deliberately undermined or mishandled investigations into complaints of sexual assault that had been made against other officers.

The terms of reference, in summary, directed the Commission to inquire into and report upon

- standards and procedures established by the police as a matter of internal police policy for the investigation of complaints alleging sexual assault by members of the police or by associates of the police or by both
- the practice of police in the investigation of complaints alleging sexual assault by members of the police or by associates of the police or by both
- the adequacy of any investigations that had been carried out by the police on behalf of the Police Complaints Authority and that had concerned complaints alleging sexual assault by members of the police or by associates of the police or by both
- standards and codes of conduct in relation to personal behaviour for members of the police
- any other matters considered relevant to the inquiry.

The Commission was instructed not to comment on the guilt or innocence of individuals involved in the alleged offences.

Subsequently, in May 2005, important changes were made to the Commission and its brief as a result of the Commission's concerns not to jeopardise ongoing police inquiries that covered similar ground. The Commission was directed to focus on how the police responded in general to allegations of sexual assault against police members or associates, and whether people making allegations were treated appropriately, but not to take into account matters under police investigation or prosecution. This effectively prevented the Commission from inquiring into Ms Nicholas's or Ms Garrett's allegations. The Commission was also specifically prohibited from giving names or particulars that might identify any person involved in an allegation of misconduct (either complainant or alleged offender).

Standards and procedures for complaint investigations

The report describes the standards and procedures established by the police over the past quarter of a century relating to internal investigations and to the investigation of complaints alleging sexual assault by members of the police or police associates. These standards and procedures have

improved markedly and steadily over the years and appear now to reflect good practice (in contrast to their rudimentary stage of development in 1979, the starting point in the period of interest to this inquiry).

In assessing these standards and procedures for their adequacy and their communication to staff, the Commission made the following observations during the inquiry:

- The standards and procedures are to be found in, or originate from, a wide range of legislation, regulations, general instructions, directives, policy documents, manuals, and other documents. The volume and the complexity of standards and procedures hamper their communication to police staff. There appears to be no system for confirming that staff have read and understood important policy instructions.
- There is no stand-alone document that sets out how an inquiry into allegations of sexual assault against a police officer should be conducted.
- Development of policy on such internal investigations has been ad hoc.
- There is a lack of standards and procedures relating to investigation of complaints against associates of the police, including a lack of guidance on identifying and managing conflicts of interest in dealing with police associates.
- There is some confusion over whether or how promptly the Commissioner of Police is to be notified when complaints of serious misconduct are received.
- There are some discrepancies between the Manual of Best Practice as it relates to sexual offending and the Adult Sexual Assault Investigation Policy. These result in an unnecessarily unwieldy and fragmented approach.
- The Adult Sexual Assault Investigation Policy does not appear to have been adequately supported by training and the provision of appropriate facilities. Police described the policy as “aspirational”. This has both inhibited and prevented the mandatory aspects of the policy and its requirements concerning the competence of investigators from being adequately implemented.
- There are few nationally mandated training packages; the extent and content of most staff training is decided at the police district level. Consistency in the delivery of police services requires a more coordinated and strategic view of training requirements and priorities.
- Information on the rights of the public to make a complaint against a member of the police and their rights as complainants does not appear to be easily accessible or well publicised.

Numbers of complaints reviewed

I consider the clearest method of determining the number of complaints that I have reviewed is to count both the number of complainants and the number of police officers or police associates complained about.

Viewed this way I have reviewed 313 complaints of sexual assault against 222 police officers between 1979 and 2005. Of these, 141 were regarded as containing sufficient evidence on which to lay criminal charges or undertake some sort of disciplinary action. I also reviewed 61 allegations against 43 associates of the police, of which 39 resulted in charges or warnings.

It is important not to draw conclusions from the numbers of complaints involving police officers, without recognising that policing by nature can generate large numbers of complaints. However, I am concerned both about the number of complaints and the number that were seen to justify some sort of action being taken by way of criminal charges or disciplinary action. Although not all of these allegations were proven, I am concerned about the effect they would have had on the organisation. I am aware from my time as chief executive of large Government organisations that certain behaviours by staff members (even a tiny proportion of staff) are a serious threat to an organisation. This is especially the case where staff deal with members of the public in situations where they are vulnerable, and where the integrity of the members, and the perceptions of that integrity, are paramount to delivering a professional service, as in the case of New Zealand Police.

I also note that reaching agreement with the police about the exact numbers of complaints before the Commission proved a difficult and time-consuming exercise. This raised an issue for the police as well as for the Commission. The figures the police keep for management and best practice purposes need to reflect an accurate picture of numbers, and be as exact and discriminating as possible.

Police practice in complaint investigations

The Commission examined the information contained in police files relating to over 370 complaints of sexual assault made against both police officers and police associates covering the period 1979 to 2005, including those of 10 submitters who came forward with complaints. The quality of investigation of complaints against police officers over that period has improved considerably:

- Standards and procedures have been updated and improved.
- Skill levels of investigating officers have improved, as more is understood about sexual assault and its impact on victims.
- Relationships between the police and professional support groups have improved.

However, there are matters still needing attention:

- Over the entire period of interest to this inquiry, the files revealed a range of difficulties some complainants have had in laying a complaint. There is a need for greater effort in educating the public about the complaints process and their right to complain and how to go about it.
- There is a need for understanding of standards and procedures by front-line staff, including the need for independence of the investigator from the member being investigated.
- There is a need for more consistent Government funding of support groups, so as to provide an adequate national service of support for complainants. This vital work is not appropriately left entirely to the police.
- Further thought needs to be given by both police and support agencies how best to communicate to complainants the progress of an investigation and the reasons why, at the end of an investigation, a decision may be taken not to lay charges.

Requirements for compliance with standards and procedures

General oversight of compliance with standards and procedures is achieved through the chain of command.

The Commission found as follows:

- The mechanisms used by the police to ensure that practice in investigating allegations of sexual assault by police officers complies with the relevant standards and procedures vary across police districts.
- District and area commanders appear to have significant discretion as to how they operate and whether they implement national policies or develop and use their own preferred procedures.
- There is no systematic means for district initiatives and best practice to be shared and, where appropriate, nationalised. This results in a lack of consistency across the country in key areas, such as the practices used to supervise smaller and rural stations and internal investigative practices.
- Policies and directives are issued to districts without any obvious mechanisms for ensuring that they are understood and consistently followed by front-line staff.
- Extensive information is collected in relation to the behaviour of individual officers, but it is not well integrated and analysed on a consistent basis.

Investigations carried out on behalf of the Police Complaints Authority

The Police Complaints Authority (PCA) is an independent body that receives complaints against members of the police. The Commission was directed to inquire into the adequacy of any investigations that had been carried out by the police on behalf of the PCA and that concerned complaints alleging sexual assault by members of the police. The secrecy provisions in the Police Complaints Authority Act 1988 (PCA Act) and the PCA's limited resources mean that the PCA focuses primarily on reviewing investigations carried out by the police.

Considerable delays in the PCA processes (which may result from lack of resources or the need for relevant court proceedings to be completed first), and the relative lack of resources invested in publicising the PCA and communicating with complainants, create scope for confusion and disappointment amongst complainants. Thus, although the Commission's view is that the PCA system should continue in its present form, certain actions are recommended:

- review of the current secrecy provisions of the PCA Act to ensure that they do not inappropriately prevent PCA involvement in matters that may result in disciplinary action or criminal charges, and to ensure that the Act encourages a reasonable level of communication with complainants on the progress of complaints
- improvement of the accessibility of the PCA to those who may wish to make a complaint, including enabling complainants who are not confident in writing to make their complaints orally (with appropriate authentication)
- clarification of the requirement for the police to notify the PCA of complaints received "as soon as practicable" to mean no later than five working days after receipt of the complaint, and improved monitoring of compliance with that requirement
- appointment of members from outside the legal profession to the Authority to provide a broader range of perspectives and to strengthen the community's perception of the independence of the PCA.

Police disciplinary action

Where allegations of sexual misconduct by police are found to have substance they are dealt with either through a criminal prosecution (and, where appropriate, internal police disciplinary processes) or, where the matter is not considered to warrant criminal charges, through internal police disciplinary processes alone. The disciplinary process for non-sworn staff is based upon a code of conduct and conforms to standard public sector practices. However, there is no code of conduct for sworn members of New Zealand Police. The process for serious disciplinary matters involving sworn staff is a complex and cumbersome tribunal process that resembles in many respects a criminal trial.

The Commission's view is that this regime is outdated, does not serve the interests of complainants well, and stands in the way of good employment practice. There are seven major concerns:

- The cost and complexity of the system take up unnecessary police resources, and can cause long delays. This may lead to a reluctance for management to initiate formal disciplinary proceedings.
- Time limits on bringing charges, and the need to await the outcome of criminal proceedings, can mean that a high degree of care is needed in formulating disciplinary charges to ensure that the disciplinary action can continue, where appropriate, notwithstanding an acquittal of criminal offending.
- In serious cases the tribunal applies a high standard of proof (which many assume to be the equivalent of the criminal standard of beyond reasonable doubt). The formal and procedurally complex setting of the tribunal may dissuade police from pursuing disciplinary action in cases where the evidence does not meet this high standard.
- In many cases, particularly those involving complaints of sexual misconduct, disciplinary action can be initiated only when a complainant is prepared to be identified and, if necessary, give formal evidence at a disciplinary hearing. The formality of the process means that complainants may be reluctant to make this commitment.
- The balance of protection is overly weighted in favour of the individual police officer and imposes obligations on the police that extend beyond the requirements of natural justice.
- The disciplinary regime is kept separate from the police performance management system, hindering good human resources practice. The recent establishment of a single management structure for discipline and performance management is a good start, but full integration will take time.
- In the past, police officers have been allowed to disengage (to retire from the police because of medical or psychological unfitness) while disciplinary action was pending, creating for some complainants a perception that justice has been avoided.

The Police Association made submissions to the Commission in favour of continuing the existing regime, arguing that a formal process and a high standard of proof are appropriate given that an officer's career is at stake. The Commission does not agree, and considers that standard employment law procedures can ensure fair disciplinary processes.

The police stressed that there are a range of disciplinary options that do not require the tribunal's involvement, and that performance issues can be addressed as part of routine supervision. However,

the police also accepted that the current disciplinary framework is cumbersome and anachronistic, and that employment-based mechanisms for dealing with issues of performance are an essential reform.

The Commission's view is that the disciplinary regime for sworn staff should be abolished as soon as possible in favour of a standard employment regime. The Commission believes that such a change could be introduced without the passage of new legislation by revoking the regulations that set out offences and establish the disciplinary tribunal.

Codes of conduct

The new disciplinary regime recommended by the Commission should be based on enforceable codes of conduct for all members of police. Although non-sworn members of the police are subject to a code of conduct, there is currently no code of conduct in place for sworn police officers. A draft code of conduct for sworn members was prepared in 2002. Its promulgation was awaiting the passing of the Police Amendment Bill (No 2). However, the Minister of Police withdrew that bill in March 2006 and announced a comprehensive review of the Police Act 1958.

Introducing a code of conduct for sworn police officers would bring the police into line with other State sector employees. The code of conduct should be the basis for identifying and addressing behaviour that does not meet expected standards. Subsequently, the existing code of conduct for non-sworn staff should be brought into line with the new code.

Standards of conduct in relation to members of the public

There is no formal guidance for police officers in respect of their sexual conduct towards people with whom they come into contact in their professional capacity. This is not appropriate given the position of authority police officers hold in society and the vulnerable position of many of those with whom they deal. There is a need for standards and policies, to be integrated into the code of conduct, which 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.

Initiatives to improve standards of personal behaviour

The Commission received information about several police measures to describe and to promote expected standards of behaviour. These included the values listed in corporate accountability documents and the competency framework, the Sexual Harassment Policy, recruit training material, the ethics training programme, and the establishment of ethics committees in some police districts. The Commission commends these initiatives, although has some concern about their apparent ad hoc nature, and in any event notes that they do not compensate for the lack of a code of conduct for sworn staff.

One area of particular concern is the lack of an early warning system for inappropriate behaviour within the police. It was clear from the files that some officers who committed serious offences or serious misconduct had been engaging in low-level misconduct for years beforehand. Although the police gather and collate a variety of data concerning the performance of individual staff members, no national system has been developed to provide early warning of officers whose behaviour indicates that they are at risk of more serious misconduct. Implementation of a national early warning system is a key initiative, which should be nationally mandated.

Sexual harassment policy and procedures

Up until the mid to late 1990s it appears a work environment existed in the police that enabled a few male officers to sexually harass women officers and staff. However, police management took strong and decisive action in the mid-1990s to establish policies, practices, and staff training to detect and monitor staff who sexually harass police members. The New Zealand Police Sexual Harassment Policy is nationally mandated and consistent across the country. This helps to ensure that the policy is effective.

Nevertheless, there should be continued monitoring to ensure that the level of safety now achieved is maintained and enhanced.

Misuse of email and Internet by police

The report also discusses the behaviour of members of the police in terms of their misuse of email and Internet, a matter that arose during the course of the Commission's work and that was the subject of a separate review by the police. The Commission offers these comments:

- New Zealand Police should ask all police staff to sign an acknowledgment that they have read and agreed to an acceptable use policy for Internet and email, as well as acknowledging that they have read and understood any changes to police computer use policies.
- Directions from senior management on the appropriate use of police computer systems need to avoid any wording that implies there is an element of individual discretion in considering what is appropriate.

New Zealand Police management should also be receiving regular reports on staff Internet use as part of the early warning system they are in the process of developing.

How police address inappropriate behaviour

Performance issues, as opposed to matters requiring disciplinary charges, are currently managed within the police performance appraisal system. 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 Commission saw instances where individuals had been able to stay in the police despite repeated allegations of misconduct or concerns about their performance. The risk of this occurring and affecting New Zealand Police's integrity needs careful management. There is a need for all supervisors and managers to receive regular training on how to provide feedback to their staff, and a need also to review performance improvement plans to ensure that they are effective and that they are regularly monitored and acted upon.

Police attitudes to investigations

The Commission heard evidence from international experts on features of police culture that may adversely affect the effective and impartial investigation of complaints against police. Such organisational traits include strong bonding amongst colleagues, a male-oriented culture, attitudes towards the use of alcohol, and dual standards with respect to on-duty and off-duty behaviours.

The police files reviewed showed that the development of an appropriate culture that does not tolerate sexual misconduct or sexual harassment is an ongoing process. The examples of negative attitudes in New Zealand Police 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 reflected stereotyped views of complainants and raised 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.

The officers called by the police as witnesses were unanimous in their belief that the current culture of the organisation is a very positive one. There was also evidence from the files of some very thorough investigations into the complaints received. However, the Commission was not in a position to undertake its own survey of attitudes and opinions across the police as a whole.

Disclosure of wrongdoing

Features of police culture can make it difficult for police officers to report allegations against colleagues. The Commission considers that the police should 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 a concern.

It is important not only that standards and policies encourage members who know of allegations to report the allegation to an appropriate senior member of police but also that managers and supervisors create a culture where people are willing to stand up and challenge unethical or criminal behaviour, and are supported in doing so. Cases where misconduct went unchallenged for months or years undoubtedly had a dampening effect upon the morale of female and male officers. An effective whistle-blower mechanism is an essential component in a culture of openness.

The future

The Commission’s report gives a series of “snapshots” of police standards and practices over a 25-year period. Much of the Commission’s focus was necessarily on historical matters. The pictures are not always pretty – especially when measured by today’s standards. But the Commission’s report also notes the significant improvements in standards and practices over the period.

Improvements have also taken place over the three-year period of the Commission’s own existence. During the life of the Commission, and often in response to its work, New Zealand Police has

established numerous reviews and special projects, many of which complement the work of this inquiry. Some examples are

- a governance project, examining how specific functions are governed within the police and the options for community input into police governance
- a culture review looking at ways to minimise improper behaviour
- the Integrity Project designed to ensure that the police remain free of corruption, and examining the conduct and oversight of internal investigations.

Other issues are being addressed as part of the review of the Police Act announced in March 2006.

If well implemented, these initiatives will result in significant further improvements to police standards and practices. The Commission has prepared its report and tailored its own recommendations with this in mind.

There is a need for New Zealand Police to work with other agencies in the public sector to achieve the desired reforms to the police organisation. The Commission is aware of the operational independence of the Commissioner of Police, but suggests that the State Services Commission would be well placed to provide advice and guidance to the police on several of the recent police initiatives, and that when it comes to legislative change it will be vital to involve the Ministry of Justice to remove any inference that the police are driving a process that may affect the nature and extent of their powers.

The Commission also concluded that it would be beneficial for the police to strengthen community involvement in service delivery and local policing issues. This could be achieved by strengthening dialogue at a local level with the wider New Zealand community about the quality of police service delivery.

Finally, the risk with a long-running inquiry such as this is that the picture of “current” standards and practices obtained through evidence early in the Commission’s existence will be out of date, and overtaken by events, by the time the Commission produces its report. Yet in another sense the longevity of this type of commission of inquiry is one of its strengths because it provides a stimulus for reform and an opportunity for the police to develop and test new initiatives while the Commission is still running.

This makes the Commission’s report, and its snapshots of current and past practice, very important and relevant for the future development of police standards and practices. The historical examples used in this report involved real people, on whom the events in question have sometimes had a lasting impact. The examples provide valuable lessons from the past, which should not be forgotten, and insights and benchmarks for the future.

It is also very important that the changes recommended by this Commission and the various police initiatives already under way proceed in a considered and orderly way, and that they are carried through to implementation. The start has been encouraging, but the work is not yet complete and in some areas has barely begun. The Commission therefore strongly recommends that the full range of initiatives and projects be rationalised and appropriately planned and that for the next 10 years the Office of the Auditor-General independently monitor police progress on finalising these

initiatives as well as the recommendations of this Commission, and report regularly to Parliament on police progress.

The Commission of Inquiry into Police Conduct has made **60 recommendations** as a result of its inquiry.