



# **CORRUPTION AND CRIME COMMISSION**

## **REPORT ON THE MANAGEMENT OF MISCONDUCT BY WESTERN AUSTRALIA POLICE**

**2 September 2011**

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## CORRUPTION AND CRIME COMMISSION

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Dear Mr Peacock  
Dear Mr McHugh

As neither House of Parliament is presently sitting, in accordance with section 93 of the *Corruption and Crime Commission Act 2003* (WA) ("the CCC Act"), the Commission hereby transmits to you a copy of its *Report on the Management of Misconduct by Western Australia Police*.

The Commission notes that under section 93(3) of the CCC Act a copy of a report transmitted to the Clerk of a House is to be regarded as having been laid before that House.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mark Herron'.

Mark Herron  
**ACTING COMMISSIONER**

2 September 2011



## FOREWORD

- [1] This report represents a major milestone in the approach by the Corruption and Crime Commission (“the Commission”) to achieving the misconduct purpose of the *Corruption and Crime Commission Act 2003* (WA) (“the CCC Act”), that is, “to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector”.
- [2] Over the past three years the Commission has transitioned its misconduct prevention focus from addressing the conduct of individuals to addressing the role organisational systems and culture of public authorities plays in appropriately dealing with misconduct. It made this change in order to work with public authorities in the context of their organisational culture, systems and processes for preventing misconduct, and being able to identify allegations of misconduct and deal with them appropriately when they do occur, in order to create a misconduct resistant public sector.
- [3] In taking this approach the Commission initially focused on the Western Australia Police (WAPOL) as the basis for developing its processes and procedures.
- [4] This report is, therefore, the result of an evolutionary process of looking at the management of misconduct by WAPOL from a whole-of-system perspective in the context of low, medium and high risk misconduct allegations. This initial work has taken some time and the Commission has learned a great deal in the process. As a result, some of the data used and cases cited in this report are from matters dating back to 2007.
- [5] While the Commission acknowledges the age of some matters, the response by WAPOL to some of the criticisms in this report reflects its contemporary views and are, therefore, pertinent in establishing a benchmark for measuring future processes.
- [6] Based on the matters considered in this report, the Commission has a generally positive view of the adequacy of the approach taken by WAPOL to managing misconduct. However, criticism is made in this report of the WAPOL Internal Affairs Unit (IAU) misconduct management process and a lack or preparedness to deal with some matters thoroughly and rigorously.
- [7] Despite these criticisms, as a result of subsequent second round reviews, the preliminary view of the Commission is that IAU has improved the quality of its work. This will be the subject of a subsequent report which the Commission intends to publish during 2012.



## ABBREVIATIONS AND ACRONYMS

CAN	Complaint Advice Note
CAR	Complaint Assessment Report
“the CCC Act”	<i>Corruption and Crime Commission Act 2003 (WA)</i>
CMC	Crime and Misconduct Commission (Queensland)
“the Commission” or CCC	Corruption and Crime Commission
DPP	Director of Public Prosecutions
IAU	Internal Affairs Unit
LCR	Local Complaint Resolution
MAP	Management Action Plan
OIC	Officer-in-Charge
PCAC	Police Complaints Administration Centre
SBE	Systems-Based Evaluation
WAPOL	Western Australia Police





## GLOSSARY

**Allegation** – refers to each instance of alleged misconduct or reviewable police action. A single complaint may contain multiple allegations.

**Assessment** – a determination by the Corruption and Crime Commission (“the Commission”), pursuant to section 32 of the *Corruption and Crime Commission Act 2003* (WA) (“the CCC Act”), about how to deal with an allegation. This includes determining whether an allegation will be investigated by the Commission or by Western Australia Police (WAPOL).

**Commission Investigation** – when an allegation is investigated by the Commission.

**Complaint** – overall complaint of misconduct or reviewable police action. A single complaint may contain multiple allegations.

**Complaint Advice Note (CAN)** – the form used by WAPOL to formally record and notify the Commission of misconduct and reviewable police action allegations.

**Complaint Assessment Report (CAR)** – the form used by the Police Complaints Administration Centre (PCAC) to record low risk allegations.

**High Risk Allegations** – consistent with generally recognised approaches to risk management,<sup>i</sup> high risk allegations are those which, if not properly dealt with, embody major potentially adverse consequences for the reputation and business processes and systems of WAPOL. Allegations falling into this category typically involve serious misconduct and/or complicating issues. Failing to deal with these allegations is likely to adversely affect WAPOL’s reputation, and in turn undermine community confidence in policing.

**Information Only Complaint** – a method by which WAPOL deals with allegations relating to service delivery, a question of policy or procedure, or a misunderstanding of the law, but which are not dealt with by WAPOL as alleged misconduct or reviewable police action.

**Internal Affairs Unit (IAU)** – a unit within the Professional Standards Portfolio of WAPOL which investigates a proportion of high risk allegations.

**Investigation** – the process of gathering and analysing evidence to determine facts. For the purposes of this report investigations are conducted to determine the truth or otherwise of allegations.

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<sup>i</sup> Refer *Standards Australia Risk Management: Principles and Guidelines AS/NZS ISO 31000:2009*.

**Local Complaint Resolution (LCR)** – the process used within WAPOL districts and units for resolving complaints that are more suitably dealt with by resolution than by investigation.

**Low Risk Allegations** – consistent with generally recognised approaches to risk management,<sup>ii</sup> low risk allegations are those which, if not properly dealt with, embody relatively insignificant potentially adverse consequences for the reputation and business processes and systems of WAPOL. Allegations falling into this category typically involve issues relating to service delivery, policy or procedure, or a misunderstanding of the law. Failing to deal with these allegations, or trends evident in them, is unlikely to significantly adversely affect WAPOL’s reputation or community confidence in policing.

**Management Action Plan (MAP)** – the managerial action taken against individual police officers by WAPOL. MAPs are used to correct the behaviour of officers.

**Managerial Intervention Model** – the system used by WAPOL to deal with and correct inappropriate behaviour by police officers. An integral part of the WAPOL misconduct management system.

**Medium Risk Allegations** – consistent with generally recognised approaches to risk management,<sup>iii</sup> medium risk allegations are those which, if not properly dealt with, embody minor or moderate potentially adverse consequences for the reputation and business processes and systems of WAPOL. Allegations falling into this category do not typically involve serious misconduct and/or complicating issues. However, failing to deal with trends evident in these allegations is likely to adversely affect WAPOL’s reputation, and in turn undermine community confidence in policing.

**Misconduct** (refer also **Serious Misconduct**) – as defined by section 4 of the CCC Act.

*Misconduct occurs if —*

...

(d) *a public officer engages in conduct that —*

- (i) *adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;*
- (ii) *constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;*

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<sup>ii</sup> *Ibid.*

<sup>iii</sup> *Ibid.*

- (iii) *constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or*
- (iv) *involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,*

*and constitutes or could constitute —*

- (v) *an offence against the “Statutory Corporations (Liability of Directors) Act 1996” or any other written law; or*
- (vi) *a disciplinary offence providing reasonable grounds for the termination of a person’s office or employment as a public service officer under the “Public Sector Management Act 1994” (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).*

**Police Complaints Administration Centre (PCAC)** – a unit within the Professional Standards Portfolio. The unit deals with all police complaints, allocating cases to districts and units for resolution.

**Review** – case-by-case analysis of the adequacy of WAPOL investigations into misconduct and reviewable police action allegations, conducted pursuant to section 41 of the CCC Act.

**Reviewable Police Action** – as defined by section 3 of the CCC Act.

**[R]eviewable police action** means any action taken by a police officer or an employee of the Police Service of the Public Service, that –

- (a) *is contrary to law;*
- (b) *is unreasonable, unjust, oppressive or improperly discriminatory;*
- (c) *is in accordance with a rule of law, or a provision of an enactment or a practice, that is or may be unreasonable, unjust, oppressive or improperly discriminatory;*
- (d) *is taken in the exercise of a power or a discretion, and is so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations; or*

- (e) *is a decision that is made in the exercise of a power or a discretion and the reasons for the decision are not, but should be, given.*

**Serious Misconduct** (refer also **Misconduct**) – as defined by section 3 of the CCC Act. Section 3 of the CCC Act defines serious misconduct as “misconduct of a kind described in section 4(a), (b) or (c)”. Misconduct is defined by section 4(d) of the CCC Act. Thus serious misconduct occurs if:

- (a) *a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer’s office or employment;*
- (b) *a public officer corruptly takes advantage of the public officer’s office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; [or]*
- (c) *a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years’ imprisonment ...*

**Systems-Based Evaluation (SBE)** – Commission evaluation of systems and processes used by WAPOL districts and organisational units to manage misconduct and reviewable police action. Includes evaluating the way in which districts and units deal with misconduct and reviewable police action allegations.

**WAPOL Investigation** – an internal investigation into an allegation conducted by WAPOL to determine facts in order to ascertain the truth or otherwise of an allegation. For the purposes of this report a WAPOL investigation includes determining, as appropriate, what disciplinary, managerial action or redress is required to resolve proven allegations.

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# EXECUTIVE SUMMARY

## Introduction

- [1] One of the main purposes of the *Corruption and Crime Commission Act 2003* (WA) (“the CCC Act”) is “to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector”.<sup>iv</sup> The Corruption and Crime Commission (“the Commission”) achieves this by focusing on supporting and assisting public authorities<sup>v</sup> to develop their capacity to prevent misconduct and identify and appropriately deal with misconduct when it does occur.
- [2] The Western Australia Police (WAPOL) is a significant public authority that the Commission supports and assists to develop its capacity to prevent, identify and deal with misconduct.

## WAPOL Misconduct Management System

- [3] During 2008 and 2009, as part of that support and assistance, the Commission undertook an analysis of the capacity of the WAPOL misconduct management system to prevent, identify and deal with misconduct.
- [4] This involved:
- investigating three cases that had previously been the subject of inadequate WAPOL internal investigations;
  - conducting in-depth reviews of the adequacy of 165 high risk allegations against WAPOL;
  - reviewing 267 medium risk allegations against WAPOL;
  - analysing the way WAPOL handled and categorised 587 low risk allegations; and
  - visiting 14 WAPOL districts and three organisational units, and evaluating their misconduct management systems, including their practical application of the WAPOL management intervention model.
- [5] This analysis revealed that more than 96% of misconduct allegations are adequately dealt with by WAPOL. Good misconduct management practices were identified: by the Police Complaints Administration Centre (PCAC); in the Kimberley, Pilbara, Great Southern, Central Metropolitan, West Metropolitan, Wheatbelt, Eastern Metropolitan and South East Metropolitan Districts; and by the Specialist Crime Unit.

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<sup>iv</sup> Section 7A of the *Corruption and Crime Commission Act 2003* (WA).

<sup>v</sup> The term “public authority” is defined in section 3 of the *Corruption and Crime Commission Act 2003* (WA).

- [6] The capacity of WAPOL to adequately deal with almost all misconduct allegations it receives stems from the fact that its misconduct management system is long established and generally operates well.

### **High Risk Allegations**

- [7] Nevertheless, a small number of high risk cases were inadequately investigated by WAPOL during the period under consideration. High risk cases are serious enough to warrant a comprehensive investigation by WAPOL and review by the Commission. Allegations falling into this category typically involve serious misconduct and/or complicating issues. Failing to deal with these allegations is likely to adversely affect WAPOL's reputation, and in turn undermine community confidence in policing
- [8] During the period in which the Commission undertook the analysis inadequacies identified in WAPOL internal investigations into high risk allegations included:
- conflicts of interest;
  - a lack of objectivity by investigating officers;
  - matters relating to domestic disputes involving the families of WAPOL officers;
  - alleged unauthorised computer access cases; and
  - decisions not to provide an apology in circumstances where one was warranted.
- [9] Significant in these inadequate WAPOL internal investigations was the approach taken in some cases investigated by the Internal Affairs Unit (IAU). IAU is the only central, dedicated internal investigating unit within WAPOL. Improving quality assurance by IAU would reduce the likelihood of IAU conducting inadequate internal investigations. The Commission recommends that IAU adopt the quality assurance processes used by PCAC.
- [10] This report highlights two cases inadequately investigated by IAU.
- [11] One involved the pursuit and arrest of two men in a high speed chase. After their car crashed, both men surrendered to police by exiting the vehicle and raising their arms. Video footage from the police helicopter showed one of the men lying face down on the ground when he was attacked by a police dog and had a Taser weapon deployed against him. It took WAPOL over two years to properly deal with the evidence contained in the video footage and adequately resolve the case.
- [12] In the other case the Commission review of a WAPOL investigation into a police shooting identified that the WAPOL investigation had not gathered or analysed all of the available evidence. Corroborating evidence relating to the subject officer's statement was not obtained, and the ballistics report was ignored. The Commission conducted its own investigation, which identified an eyewitness to the incident and inadequacies in WAPOL policy.

- [13] Concurrent with the Commission investigation into the case, WAPOL initiated an independent review of the IAU investigation. This was conducted by a senior interstate police officer, who found similar shortcomings to those the Commission had identified and made a series of recommendations, which the Commission endorsed. These recommendations have not been fully implemented by WAPOL.
- [14] Another case investigated at the police district level, and also highlighted in this report, involved an allegation from a 17-year-old girl that she had been indecently assaulted by a detective. Although this allegation could not be proven, a number of issues about the detective's behaviour and personality were identified by WAPOL, but never substantively addressed. A subsequent Commission investigation established that the detective:
- misused registered police informants to meet and forge relationships with women;
  - deliberately disclosed confidential police information;
  - photographed sexual activity between himself and another woman, and provided the explicit photos to others without the woman's consent; and
  - made false and misleading entries in his official police diaries to cover up his inappropriate conduct.
- [15] As a result of the Commission investigation the detective was charged with 22 counts of unlawful use of computers pursuant to section 440A of *The Criminal Code* (six of which were discontinued), two counts of playing a restricted interview to unauthorised persons pursuant to section 120 of the *Criminal Investigation Act 2006* and other discontinued counts. The detective appeared in the Magistrates Court of Western Australia and was sentenced to imprisonment for a total period of seven months for the 16 offences relating to unlawful use of computers, suspended for 12 months, and fined for the other offences.
- [16] The Commission concluded that deficiencies in the WAPOL investigations into these, and other cases highlighted in this report, appeared to stem from an apparent lack of will by some WAPOL internal investigators to conduct a thorough investigation.

### **Medium Risk Allegations**

- [17] Medium risk allegations are not typically concerned with serious misconduct and/or complicating issues. However, failing to deal with trends evident in these allegations are likely to adversely affect WAPOL's reputation, and in turn undermine community confidence in policing.
- [18] Analysis by the Commission of 267 medium risk allegations during the 2008-2009 period identified no conflict of interest issues and found that:
- the vast majority were categorised appropriately and adequately investigated and/or resolved by WAPOL;

- potentially vulnerable complainants appeared to have been treated equitably; and
- Management Action Plans were more likely to result from internally generated allegations than from those that were externally generated.

### **Low Risk Allegations**

[19] Low risk allegations typically involve issues relating to service delivery, policy or procedure, or a misunderstanding of the law. Most of these cases can be resolved at the time the complaint is made. Failing to deal with these allegations, or trends evident in them, is unlikely to significantly adversely affect WAPOL's reputation or community confidence in policing.

[20] The analysis undertaken by the Commission revealed that low risk allegations were dealt with by an informal process within WAPOL. There were concerns about this process as a significant proportion of substantive misconduct or reviewable police action allegations were incorrectly recorded as low risk allegations. This resulted in:

- these allegations being dealt with in ways that were inconsistent with relevant, published, WAPOL policy and procedure;
- inequitable outcomes for both police officers and complainants;
- lack of detail on Complaint Assessment Reports; and
- inadequate record keeping, particularly in police districts.

### **Conclusion**

[21] WAPOL has instigated a number of positive changes in response to the issues identified by the Commission. These include:

- the introduction of a "short format report" for those cases which fall between a Local Complaint Resolution (LCR) and a full investigation;
- significant changes in the management team in the Peel District;
- amendments to policies so that officers do not have authority to access any information relating to themselves, members of their family, including partners, neighbours or any other person with whom they have formed a friendship or relationship;
- adoption of a Declarable Associations Policy;
- following the tabling of the Commission report entitled *The Use of Taser® Weapons by Western Australia Police* in the Parliament of Western Australia on 4 October 2010, the WAPOL policy on Taser use being amended to ensure that Taser weapons are not used for compliance;
- a new PCAC inquiry process for low risk allegations;
- forthcoming changes to a WAPOL information brochure entitled *Making a Complaint About the Police*;

- amendments to the WAPOL *Complaints Against Police Investigation Guide* to remove reference to “informal complaints”; and
- updates to the WAPOL Website that include reference to the PCAC investigation assessment process and the resolution of complaints independent of LCR or other formal investigation process.

## Recommendations

### Recommendations

The Commission recommends that Western Australia Police (WAPOL):

- (1) review its approach to providing apologies to complainants who are genuinely aggrieved with a view to achieving a more effective resolution of their complaints;
- (2) review its approach to dealing with conflict of interest allegations that involve WAPOL officers and alleged unauthorised computer access by WAPOL officers with a view to identifying whether its misconduct management system is at risk of systemic failure in these areas;
- (3) adopt Police Complaints Administration Centre quality assurance processes for all Internal Affairs Unit cases;
- (4) implement and deliver a training course for governance officers covering the principles of Local Complaint Resolution (LCR) and the practical application of those principles, and consider issuing clearer guidelines about the LCR process;
- (5) extend the use of the positive practices identified in this report that have been adopted by some WAPOL districts and units to increase the efficiency of its misconduct management process;
- (6) use the “information only” process for cases that can properly be considered enquiries or requests for information, and does not use that process to resolve complaints alleging misconduct; and
- (7) amend policy documents, guidelines, brochures and its Website to ensure that all complaint and enquiry processes are clearly and accurately outlined.



# CHAPTER ONE INTRODUCTION

## 1.1 Background

- [1] The Corruption and Crime Commission (“the Commission”) refers to and incorporates into this report, as appropriate, those generic and common matters set out in its *Special Report by the Corruption and Crime Commission on its Reporting Function with Respect to Misconduct Under Part 5 of the “Corruption and Crime Commission Act 2003” (WA)*, tabled in the Parliament of Western Australia on 21 October 2010 (“the Special Report”).<sup>1</sup>
- [2] For the purposes of this report, the term “misconduct” also includes “reviewable police action”, as defined by section 3 of the *Corruption and Crime Commission Act 2003* (WA) (“the CCC Act”).
- [3] Section 7A of the CCC Act outlines the main purposes of the CCC Act, which are to be achieved primarily by the Commission. These purposes are:
- (a) *to combat and reduce the incidence of organised crime; and*
  - (b) *to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.*
- [4] The Commission achieves the misconduct purpose in two ways. The first is to itself investigate misconduct. It does this in a relatively small number of the most serious cases.
- [5] More importantly, the second way in which the Commission achieves the misconduct purpose is to assist chief executive officers<sup>2</sup> to meet their responsibility to deal with misconduct within their organisations. That they do so is something that the CCC Act anticipates and requires of them.
- [6] The capacity of public authorities<sup>3</sup> to prevent misconduct, and identify and appropriately deal with misconduct when it does occur, is the underlying

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<sup>1</sup> Sections 83-86 of the *Public Sector Management Act 1994* (“the PSM Act”) were deleted by Amendment No. 39 of 2010 s. 99. Any reference to these sections in the *Special Report by the Corruption and Crime Commission on its Reporting Function with Respect to Misconduct Under Part 5 of the “Corruption and Crime Commission Act 2003” (WA)* (“the Special Report”) should be disregarded. In addition, parts of paragraphs [31]-[38] of the Special Report are no longer applicable as a result of other amendments made to the PSM Act by Amendment No. 39 of 2010.

<sup>2</sup> The term “principal officer of a notifying authority” is defined in Section 3 of the *Corruption and Crime Commission Act 2003* (WA), and includes the chief executive officer or chief employee of a department or organisation, where that department or organisation is defined as such in the *Public Sector Management Act 1994*.

<sup>3</sup> The term “public authority” is defined in section 3 of the *Corruption and Crime Commission Act 2003* (WA).

principle upon which the Commission's misconduct purpose, as outlined in the CCC Act, is built. The need for the Commission to use its investigation powers only arises when authorities are either unable or unwilling to investigate or the case itself is sufficiently serious to warrant Commission action.

- [7] Moreover, mandatory notification requirements, the Commission's statutory role in dealing with them, and the Commission's prevention and education function pursuant to section 17 of the CCC Act are centred on supporting and assisting public authorities to develop their capacity to prevent misconduct and identify and appropriately deal with misconduct when it does occur. Each of these, that is, to prevent misconduct, to identify misconduct and to deal with misconduct, are interrelated aspects of the Commission's work undertaken to achieve the second of the two main purposes of the CCC Act as outlined above. An elaboration on each aspect is provided below.

**Prevent Misconduct** — to support and assist public authorities to properly understand the behaviours which can occur within public authorities which amount to misconduct, the related risk factors and circumstances which are likely to give rise to those behaviours, and developing appropriate treatment strategies to minimise the risk of those behaviours occurring.

**Identify Misconduct** — to support and assist public authorities to properly understand misconduct and recognise misconduct behaviours when they arise.

**Deal with Misconduct** — to support and assist public authorities to officially respond to misconduct behaviours effectively and appropriately when they arise by:

- recording the behaviours in official organisational records as having occurred;
- notifying the Commission in accordance with section 28 of the CCC Act;
- taking reasonable steps to stop the behaviours from continuing;
- forming reasonable opinions about the harm caused by the behaviours;
- rectifying the harm;
- if necessary, taking appropriate disciplinary action; and
- establishing appropriate measures to mitigate the risk of similar misconduct occurring again.

- [8] A significant public authority that the Commission supports and assists to develop its capacity to prevent misconduct and identify and appropriately



deal with misconduct when it does occur is the Western Australia Police (WAPOL).

- [9] During 2008 and 2009, as part of that support and assistance, the Commission undertook an analysis of the capacity of the WAPOL misconduct management system to prevent, identify and deal with misconduct. That analysis was conducted partly under the Commission's prevention and education function, pursuant to section 17 of the CCC Act, and partly under its misconduct function, pursuant to section 18 of the CCC Act.

## 1.2 Reporting by the Commission

- [10] Under section 84(1) of the CCC Act the Commission may at any time prepare a report on any matter that has been the subject of an investigation or other action in respect of misconduct. By section 84(3) the Commission may include in a report:

- (a) *statements as to any of the Commission's assessments, opinions and recommendations; and*
- (b) *statements as to any of the Commission's reasons for the assessments, opinions and recommendations.*

- [11] The Commission may cause a report prepared under this section to be laid before each House of Parliament, as stipulated in section 84(4) of the CCC Act, or dealt with under section 93 of the CCC Act.

- [12] Section 86 of the CCC Act requires that before reporting any matters adverse to a person or body in a report under section 84 the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters.

- [13] In relation to this report, section 86 does not require the Commission to provide WAPOL with a copy of any working paper or draft report in order to fulfil the requirements of that section. Nevertheless, the Commission provided WAPOL with a copy of each of three comprehensive working papers and a copy of the draft of this report. In the working papers the Commission provided an explanation of how it had reached conclusions and an analysis of the information which had led to these conclusions.

- [14] WAPOL was given opportunities to comment on possible adverse matters as outlined below.

- |                     |   |
|---------------------|---|
| <b>14 July 2009</b> | A working paper entitled <i>Desktop Resolution of Complaints Working Paper</i> was provided to WAPOL (refer Chapter Five of this report). |
| <b>29 July 2009</b> | A working paper entitled <i>Police Audit Report Working Paper</i> was provided to WAPOL (refer Chapter Four of this report).              |

- 9 February 2010** A working paper entitled *High Risk Working Paper* was provided to WAPOL (refer Chapter Three of this report).
- 13 May 2010** The Commission met with the Assistant Commissioner Professional Standards and other senior WAPOL officers following a request from WAPOL for a round-table meeting to provide a response to the working papers. Detailed written notes of issues raised at the meeting were provided to the Commission on that day.
- 18 August 2010** WAPOL was advised that a chapter on Commission investigations was to be included in this report (refer Chapter Two of this report).
- 17 December 2010** A draft of this report was provided to WAPOL. The Commission requested a formal response from WAPOL by 14 January 2011. However, in response to a request from WAPOL an extension was granted by the Commission until 21 January 2011.

[15] In addition to meeting its obligations under section 86 of the CCC Act, the Commission provided the working papers and draft report to WAPOL to provide opportunities for WAPOL to consider the various issues identified, implement any changes considered necessary and advise the Commission of action undertaken prior to finalisation of this report.

[16] As a consequence, this report incorporates a record of various misconduct management issues identified by the Commission and corrective action undertaken by WAPOL.

[17] WAPOL's response to the draft report, dated 21 January 2011, was received by the Commission on 25 January 2011. In its response WAPOL stated that informal feedback provided (which the Commission believes to be the detailed notes provided to it at the round-table meeting of 13 May 2010) to the working papers had not been properly taken into account by the Commission and, therefore, considered the draft report to be an unfair representation of WAPOL's position with respect to misconduct management. WAPOL's overall response is best captured by the following excerpt from its response of 21 January 2011.

*The Commission's failure to acknowledge contemporary practices and improvements to policy and procedures within WAPOL unfairly and inaccurately presents the agency's commitment to the management of misconduct. The effect of such oversight is magnified by highlighting matters which are up to three years old; in which WAPOL acknowledge that errors occurred and have actually been the catalyst for improved practices. The Draft Report presents matters as if practices have not been improved.*

- [18] In finalising this report the Commission has been particularly mindful of the submission made by WAPOL about practices which have improved following the provision of the working papers, as outlined in WAPOL's response to the draft report. This approach is consistent with the Commission's purpose in providing WAPOL with working papers.
- [19] To avoid doubt about this issue, the Commission notes that there have been procedural changes to misconduct management in WAPOL that have occurred in response to issues identified by the Commission in the course of gathering information for, and compiling, this report. Reference to those changes is made throughout this report.

### 1.3 Management of Misconduct by WAPOL

- [20] The Commission was established as a result of recommendations made by the *Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct By Western Australia Police Officers* ("the Kennedy Royal Commission"). One of the core principles behind the recommendations of the Kennedy Royal Commission, as outlined in its *Interim Report* of December 2002, is that the Commission be established as an oversight body in a system where "the Commissioner of Police should retain the primary responsibility for managing the discipline of the Police Service".<sup>4</sup> In relation to this, it was further stated in the *Interim Report* that:

*... it is generally accepted that Commissioners of Police should bear the primary responsibility for the maintenance of discipline within their police services. That responsibility carries with it the primary obligation to investigate misconduct. Appropriately, police services investigate complaints about police conduct and conduct investigations for the purposes of identifying and profiling high risk areas and officers. Consistent with that approach, the role of an external oversight agency is the oversight of those operations within the police service. Such oversight involves scrutiny of the processes adopted by the police service in general, and individual investigations in particular. It also involves the external agency carrying out its own investigations into particular areas or officers. To enable such a system to operate, it is necessary to have a process whereby the Commissioner of Police advises the external agency of its internal operations, the complaints received and the progress and the outcome of its investigations into them. The external agency could then*

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<sup>4</sup> *Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct By Western Australia Police Officers, Interim Report*, December 2002, pp.44-45.

*discharge its function by identifying the conduct it wishes to investigate and by otherwise maintaining supervision of the investigations carried out by the police service. Such a system would preserve the primary responsibility of the Commissioner of Police to maintain discipline in the police service, but also puts in place a mechanism whereby the external agency can ensure that this responsibility is being properly discharged.*<sup>5</sup>

- [21] Part 3 of the CCC Act gives effect to the oversight system envisaged by the Kennedy Royal Commission. That is, a system in which primary responsibility for maintaining discipline in WAPOL lies with the Commissioner of Police.
- [22] In order to discharge that responsibility WAPOL needs an effective misconduct management system. That is, systems and processes that have the capacity to, and actually do, prevent misconduct and identify and appropriately deal with misconduct when it does occur.
- [23] In pursuing its role of overseeing the way WAPOL discharges this responsibility, the Commission recognises the particular challenges of operational policing. The Commission's role is not to make policing even more difficult through oppressive, unnecessary oversight methods, nor is the Commission a police complaints resolution agency.
- [24] The role of the Commission is to assist WAPOL to continuously improve its integrity through the continual improvement of its misconduct management systems, policies, procedures and processes; thereby reducing the incidence of misconduct. In particular, the Commission considers that WAPOL needs to deal rigorously with misconduct allegations and have in place appropriate and effective misconduct prevention measures.
- [25] In achieving its role the Commission expects WAPOL to pay particular attention to more serious misconduct cases, ensuring a rigorous investigation regime, supported by efficient investigative resources and a superior quality assurance process.
- [26] This includes ensuring that misconduct allegations are dealt with appropriately and effectively. The failure to do this is likely to result in it failing to deal appropriately with aberrant police officers and risks failing to properly redress deficiencies in the areas of training, equipment use, systems, policies, procedures and processes.
- [27] It is the Commission's contention that failure to properly and effectively deal with misconduct weakens the integrity of WAPOL and also places operational police officers at a distinct disadvantage and increased risk. Dealing with these cases appropriately strengthens the integrity of WAPOL and supports operational policing.

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<sup>5</sup> *Ibid*, pp.66-67.

[28] In that context the Commission notes that WAPOL's approach to misconduct management has evolved over many years. Its approach has been shaped by a number of factors, including:

- the recommendations made by the Kennedy Royal Commission;
- the *Australian Complaints Handling Standard (AS 4269)*; and
- the unique misconduct risks inherent in policing, for example, those associated with the powers to deprive a person of their liberty or to use force against a person.

[29] WAPOL's misconduct management system is long established and generally operates well. It includes the Police Complaints Administration Centre (PCAC) complaint receipt, categorisation and allocation processes, investigation and reporting processes, the Managerial Intervention Model, the disciplinary provisions of the *Police Act 1892*, and the Commissioner's Loss of Confidence provisions of the same Act. In a broader sense, managing misconduct in WAPOL also encompasses the systems and processes within WAPOL which monitor business practices, and assist in the identification and reporting of misconduct by police officers.

## 1.4 Notification Process

[30] The Commission receives advice about misconduct allegations in two ways.

- **Reports from Any Person** — a public officer or any other person (such as a member of the public) may report to the Commission, pursuant to section 25 of the CCC Act, any matter which that person suspects on reasonable grounds concerns or may concern misconduct that: has or may have occurred; is or may be occurring; is or may be about to occur; or is likely to occur. A report may be made to the Commission orally or in writing.
- **Notifications from Principal and Certain Other Officers** — section 28 of the CCC Act requires certain officers (such as the principal officer of a notifying authority<sup>6</sup>) to notify the Commission in writing, as soon as is reasonably practicable, of any matter which they suspect on reasonable grounds concerns or may concern misconduct, and which is of relevance or concern to them in their official capacity.

In addition the Commissioner of Police is required to notify the Commission of matters concerning, or that may concern, reviewable police action pursuant to section 21A of the CCC Act.<sup>7</sup> In practical

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<sup>6</sup> Refer Footnote 2.

<sup>7</sup> The Commission issued *Notification Guidelines for Principal Officers of Public Authorities (Guidelines)*, pursuant to section 30 of the *Corruption and Crime Commission Act 2003*, in 2005 and reissued these Guidelines in 2007. The Guidelines elaborate on notification requirements and responsibilities of principal officers of notifying authorities pursuant to section 28 and section 21A of the CCC Act. A copy of the Guidelines is located on the Commission Website at <http://www.ccc.wa.gov.au/Reporting/NotifyCCC/Pages/default.aspx>, viewed 13 August 2011.

terms WAPOL meets this requirement (that is, its obligations pursuant to sections 28 and 21A of the CCC Act) by providing the Commission with a copy of a Complaint Advice Note (CAN), an Internal Affairs Unit (IAU) information report or a Complaint Assessment Report (CAR).

## **1.5 Assessment Process**

[31] Each report or notification of misconduct contains one or more allegations. Under section 22 of the CCC Act the Commission assesses each allegation to determine whether the allegation is, or is not, about misconduct. The Commission then determines what action is needed to deal with the allegation.

[32] Under section 33 of the CCC Act the Commission may decide to:

- (a) *investigate or take action without the involvement of any other independent agency or appropriate authority;*
- (b) *investigate or take action in cooperation with an independent agency or appropriate authority;*
- (c) *refer the allegation to an independent agency or appropriate authority for action; or*
- (d) *take no action.*

[33] The majority of cases assessed are referred back to WAPOL for investigation. This occurs because this gives practical effect to the principles which form the basis of the oversight system outlined in the CCC Act. That is, the Commissioner of Police has primary responsibility for dealing with cases of discipline or misconduct in WAPOL in a system in which the Commission exercises an oversight role.

### **1.5.1 Determining Adequacy**

[34] Consistent with the Commission's oversight role, section 41 of the CCC Act enables the Commission to review the adequacy of completed WAPOL investigations. Rather than reviewing all completed WAPOL investigations, the Commission focuses its attention on reviewing completed WAPOL investigations into allegations that are relatively serious and/or complex, and/or have the potential to undermine public confidence in policing if not properly investigated by WAPOL.

### **1.5.2 Categorising Allegations**

[35] There is some debate between the Commission and WAPOL about how allegations should be categorised. The CCC Act provides some assistance in this regard. In broad terms, reviewable police action allegations have a lower level of seriousness, and serious misconduct allegations sit at the higher end of the scale. In the middle are misconduct allegations which do

not amount to serious misconduct. In this model, “lower level” allegations warrant a less comprehensive response than “higher level” allegations.

- [36] This model, however, is imperfect. Some reviewable police action allegations highlight systemic flaws in policing that warrant comprehensive responses by both the Commission and WAPOL. Equally, not all serious misconduct allegations warrant comprehensive responses. The WAPOL Local Complaints Resolution (LCR) process, a process intended to primarily deal with allegations at the lower end of the spectrum, regularly, and appropriately, deals with serious misconduct, misconduct and reviewable police action allegations.
- [37] The Commission acknowledges the sensitivities of categorising misconduct allegations. The Commission is presently examining the merits of adopting a system similar to the assessment process outlined in the Crime and Misconduct Commission (CMC) report entitled *Setting the Standard: A Review of Current Processes for the Management of Police Discipline and Misconduct Matters* published in December 2010.<sup>8</sup> The CMC defines misconduct complaints as either Category A or Category B. Category A cases must be notified to the CMC by police without delay. These cases range from corruption and extortion through to cases that may be the subject of significant media attention. Category B cases are all cases that fall outside Category A.
- [38] For the purposes of this particular report the Commission has adopted the principles of the *Standards Australia Risk Management: Principles and Guidelines AS/NZS ISO 31000:2009* to assist in categorising allegations. This approach advocates categorising risk in terms of the likelihood of particular events occurring and their consequences across a range of criteria in a risk assessment matrix.
- [39] Although discussion of risk associated with misconduct allegations in the context of a risk assessment matrix is possible, it is not necessary for this report. More relevantly, the principles involved can be applied to categorise misconduct allegations in terms of their potential to impact on the organisational reputation of WAPOL and WAPOL business processes and systems, and the relative importance of WAPOL mitigating those risks by adequately dealing with various categories of misconduct allegations.
- [40] On that basis, allegations are categorised in this report as follows.
- **Low Risk Allegations** – allegations which, if not properly dealt with, embody relatively insignificant potentially adverse consequences for the reputation and business processes and systems of WAPOL. Allegations falling into this category typically involve issues relating

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<sup>8</sup> A copy of the Crime and Misconduct Commission (CMC) report entitled *Setting the Standard: A Review of Current Processes for the Management of Police Discipline and Misconduct Matters*, 23 December 2010, can be located on the CMC Website at <http://www.cmc.qld.gov.au/data/portal/00000005/content/13136001292219485158.pdf>, viewed 23 December 2010.

to service delivery, policy or procedure, or a misunderstanding of the law. Failing to deal with these allegations, or trends evident in them, is unlikely to significantly adversely affect WAPOL's reputation or community confidence in policing.

- **Medium Risk Allegations** – allegations which, if not properly dealt with, embody minor risk or moderate potentially adverse consequences for the reputation and business processes and systems of WAPOL. Allegations falling into this category do not typically involve serious misconduct and/or complicating issues. However, failing to deal with trends evident in these allegations is likely to adversely affect WAPOL's reputation, and in turn undermine community confidence in policing.
- **High Risk Allegations** – allegations which, if not properly dealt with, embody major potentially adverse consequences for the reputation and business processes and systems of WAPOL. Allegations falling into this category typically involve serious misconduct and/or complicating issues. Failing to deal with these allegations is likely to adversely affect WAPOL's reputation, and in turn undermine community confidence in policing.

[41] WAPOL's response of 21 January 2011 to the draft report highlighted that this approach to categorising allegations is not formally recognised in the legislation. However, for the reasons discussed above, categorising allegations on the basis of the CCC Act would inadequately deal with the complexities of WAPOL misconduct allegations. For that reason, although the Commission accepts WAPOL's criticism that the above approach is imperfect, it does not follow that it is invalid.

[42] This report considers each of the above categories of allegation and evaluates the WAPOL management of those allegations. Chapter Two presents the details of three particular Commission investigations into high risk allegations that were not adequately dealt with by WAPOL. Chapter Three presents the Commission review of allegations deemed high risk. Chapter Four presents the Commission analysis of WAPOL management of medium risk allegations. Chapter Five presents the Commission analysis of WAPOL management of low risk allegations.

[43] Chapters Three, Four and Five have the following common elements.

- **Registering Complaints** — this element considers categorisation of complaints and data gathered about complainants. Complainants were considered potentially vulnerable if they identified as indigenous, were juvenile, were disabled or suffered from a mental illness, were culturally or linguistically diverse, or if the complaint related to an incident that involved domestic violence.
- **Investigation** — this element considers the adequacy of investigations and any conflict of interest within investigations. Adequacy is usually determined by the level of analysis of the



evidence and the appropriateness of conclusions reached by the investigator. Conflicts of interest may occur if, for example, there is a relationship between the investigating officer and the subject officer or the complainant.

- **Resolution** — this element considers how allegations were resolved. This includes complainant satisfaction, and the issue of Management Action Plans (MAP) for subject officers, or some other resolution. Cases were considered to be adequately resolved when it appeared that the investigating officer had done all that could reasonably be expected to try and achieve resolution. Cases which were not adequately resolved corresponded exactly to those cases in which the investigation was also inadequate.

In its 21 January 2011 response to the draft report WAPOL noted that the Commission did not understand the role of MAPs in the Managerial Intervention Model because MAPs and the Managerial Intervention Model are not investigative outcomes. The Commission fundamentally disagrees that it misunderstands the role of MAPs. Although MAPs might properly be regarded as a recording of agreed managerial action to deal with issues identified during an investigation, and to that extent are, therefore, separate from the investigation, they do form part of WAPOL's overall response to an allegation.

- **Quality Assurance** — this element considers the ability of WAPOL to ensure that it deals with misconduct allegations consistently and appropriately. In most cases the quality assurance function was performed by PCAC. In some serious cases (specifically considered in Chapter Three of this report) the cases were investigated by IAU with inadequate quality assurance.

## 1.6 Systems-Based Evaluation

[44] Systems-Based Evaluation (SBE) is one of a suite of processes used by the Commission to assist WAPOL to prevent, identify and deal with misconduct. It involves Commission staff visiting police districts and organisational units, analysing systems and cultures, and reporting the outcome of this work, with recommendations for change if necessary.

[45] Systems-based evaluations include examining the adequacy of a percentage of completed investigations into medium risk allegations, the role of governance officers, the use of MAPs, good practice and quality assurance.

## 1.7 Outcomes

[46] The main outcomes of the Commission analysis of the capacity of the WAPOL misconduct management system to prevent, identify and deal

with misconduct are articulated below, together with responses provided by WAPOL.

- (1) The overwhelming majority of misconduct allegations are adequately dealt with by WAPOL.
- (2) Inadequate WAPOL investigations into high risk allegations have the potential to undermine the integrity of the misconduct management system.

*In its response of 21 January 2011 to the draft report WAPOL stated that the Commission had not provided sufficient grounds to show that allegations classified as ... high risk were of such "frequency or seriousness to justify the extreme opinion posited" that they would lead to systems failure.*

- (3) There are issues with the IAU misconduct management process.

*In its response of 21 January 2011 to the draft report WAPOL disputed this outcome. WAPOL concedes that some historical matters involved errors which should have been identified during oversight, but does not consider that this is a "sufficient basis upon which to make a contemporary whole-of-unit criticism".*

- (4) WAPOL is effective at managing medium risk allegations.
- (5) The "information only" practice relating to low risk allegations has potential to undermine the integrity of the misconduct management system.

## CHAPTER TWO

# COMMISSION INVESTIGATIONS

### 2.1 Background

[47] Section 34(2) of the CCC Act directs how the Commission makes decisions about when it should conduct its own investigations. In making decisions it must have due regard to:

- (a) *the seniority of any public officer to whom the allegation relates;*
- (b) *whether, in the opinion of the Commission, serious misconduct*
  - (i) *has or may have occurred;*
  - (ii) *is or may be occurring;*
  - (iii) *is or may be about to occur; or*
  - (iv) *is likely to occur;*
- (c) *the need for an independent investigation rather than an investigation by a public authority with which any public officer to whom the allegation relates is connected by membership or employment or in any other respect.*

[48] In the following three cases the Commission conducted its own investigation because the cases involved alleged serious misconduct, inadequacies in the relevant WAPOL internal investigations were identified and the Commission determined that an independent investigation was needed.

[49] In the view of the Commission some WAPOL internal investigations demonstrated an apparent lack of will to conduct a thorough investigation, based on a lack of rigour and preparedness to deal with difficult issues. This was apparent in the cases considered below.

[50] In the context of police culture, this apparent lack of rigour and preparedness to deal with difficult issues is perhaps not surprising. Rothwell and Baldwin, for example, noted the police code of silence, which exaggerates "... the need for, and the benefits derived from, mutual loyalty and support".<sup>9</sup> Similarly, Bolen observed that police culture includes "... ends justifying means, and loyalty being directed to the primary work group, [which] assist in ensuring a degree of antagonism to the reform agenda ...".<sup>10</sup> In a related discussion, Reuss-Ianni and Ianni noted that one of the features of the "cop's code" is "... don't give up another cop ...".<sup>11</sup>

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<sup>9</sup> Rothwell G and Baldwin N, "Ethical Climate Theory, Whistle-Blowing, and the Code of Silence in Police Agencies in the State of Georgia", *Journal of Business Ethics*, Vol. 70, No. 4 (Feb 2007), pp.341-342.

<sup>10</sup> Bolen J, *Reform in Policing: Lessons from the Whitrod Era*, Hawkins Press, 1997, p.78.

<sup>11</sup> Reuss-Ianni E and Ianni F, "Street Cops and Management Cops: The Two Cultures of Policing", *Policing: Key Readings*, Tim Newburn (Ed), Willan Publishing, 2005, pp.308-309.

- [51] Although it is true that the overwhelming majority of misconduct cases are adequately dealt with by WAPOL, a small number of cases such as these continue to arise. On the one hand it is not difficult to understand that a small number of inadequately investigated cases may arise from time-to-time. However, there do not appear to be any logical reasons as to why these particular cases were inadequately investigated. They were not overly complex and there were no particularly challenging forensic or legal issues involved.
- [52] For these reasons the Commission believes that these cases are important. If they did not arise, or at least if there were logical reasons for the conduct of the inadequate investigations, arguments raised by WAPOL, that the sheer weight of the number of adequately investigated cases indicates that it is effectively dealing with misconduct, would be more convincing.
- [53] Because they continue to arise, reassurances made by WAPOL ought to be treated cautiously.

## **2.2 Investigation Case Study One**

### **2.2.1 Circumstances of the Case**

- [54] The complainant was married to a police officer and was the parent of two children as a consequence of the partnership. The couple commenced divorce proceedings, which resulted in a Family Court settlement with the main issue of contention being access to the children.
- [55] During the separation the complainant made allegations of harassment to WAPOL that her ex-husband (the subject officer) used his position as a police officer to harass and intimidate her. The allegations are outlined below.
- (1) The subject officer deliberately used his position as a police officer to harass the complainant by arriving unannounced at the family home and ordering the complainant's relatives to leave. When they refused to leave, he called the police. When police subsequently attended they asked the subject officer to leave.
  - (2) The subject officer deliberately used his position as a police officer to harass the complainant by causing police to conduct a welfare check on his children.
  - (3) The subject officer deliberately used his position as a police officer to harass the complainant by falsely reporting his mobile phone as stolen by the complainant. The subject officer's reported theft followed providing his children with a mobile phone so he could contact them, and the complainant removing the mobile phone from the children.
  - (4) The subject officer knowingly made a false complaint that the complainant had forged his signature on bank payments. The

circumstances of this complaint were that at the time of their separation the complainant and subject officer were building an investment house. Periodic payments made to the builder required two signatures to enable the transfer of funds.

### **2.2.2 WAPOL Resolution of Allegations**

- [56] In relation to the first three allegations PCAC prepared a Local Complaint Resolution (LCR) file and forwarded it to a district superintendent for resolution. The district superintendent delegated the file to an investigating officer.
- [57] The investigating officer advised the district superintendent that the complaint was “vexatious and malicious” and that no action was required. The complainant was advised in writing of this outcome, and the file was returned to PCAC resolved as “no action”.
- [58] PCAC quality assured the resolution. It found that the resolution had not met the required standards. The file and a checklist of actions were returned to the district for further work. The investigating officer returned the file without further action, restating his opinion that the complaint was “vexatious and malicious”. PCAC supported this reassessment and the case was forwarded to the Commission for review.
- [59] In relation to allegation four the subject officer had made a complaint of fraud to WAPOL. The case was investigated by the Major Fraud Squad. Detectives seized original signed bank documents and subsequently conducted a forensic examination of the signatures. A forensic document examiner identified the signatures as having been made by the subject officer and the Major Fraud Squad determined that no offence of fraud had been committed by the complainant. The investigation of fraud was closed. The question of whether the subject officer had made a false complaint was not progressed.

### **2.2.3 Commission Investigation**

- [60] The Commission review of the LCR found that the investigation was inadequate. The WAPOL investigating officer had a conflict of interest because he was a friend and colleague of the subject officer. There was an additional area of concern in that no action had been taken in relation to the subject officer’s possible false report of fraud. The Commission subsequently decided to investigate the case.
- [61] The Commission investigation looked at several areas of concern relating to the standard of the LCR file. The Commission also conducted a criminal investigation in relation to the subject officer’s possible false report of fraud.
- [62] As part of the investigation, the Commission:
- reviewed the material provided by WAPOL;
  - gathered relevant intelligence;

- sourced additional documents;
- interviewed witnesses; and
- interviewed witnesses, including some under criminal caution.

## **2.2.4 Commission Findings**

### **2.2.4.1 Inadequacies of Initial Police Investigation**

- [63] The initial LCR was inadequate in a number of key areas.
- The investigating officer did not interview the complainant or any other witnesses.
  - The investigating officer did not interview any of the police officers who attended the complainant's home in relation to allegation one.
  - The investigating officer interviewed the subject officer informally and the interview was not recorded.
  - The investigating officer had a conflict of interest in relation to the subject officer.
- [64] When interviewed by the Commission, the investigating officer said that he reached his decision of "no action" based in part on a previous complaint made by the complainant which had not been sustained. The investigating officer believed the complainant was attempting to discredit the subject officer in an upcoming Family Court settlement and did not believe that it was necessary for WAPOL to become involved in a personal conflict. The investigating officer disregarded PCAC's checklist of actions because of this view.
- [65] The conflict of interest arose because the investigating officer was a friend of the subject officer. The investigating officer served divorce papers on the complainant (not in his official capacity as a police officer) at the same time as conducting the LCR. The investigating officer did not understand how conflicts of interest arise.
- [66] It appeared that the conflict of interest was behind the relevant witnesses not being interviewed and the subject officer only being interviewed informally.

### **2.2.4.2 Making a False Report**

- [67] The Major Fraud Squad established that no offence of fraud was committed. The original documents relating to the fraud could not be located, but additional pre-signed forms were seized. The document examiner proved that these additional forms were signed by the subject officer, not by the complainant as he alleged. This evidence was used to close the subject officer's fraud complaint as unsubstantiated. The Commission reviewed the findings of the document examiner and other available evidence, and concluded that this outcome was reasonable.

[68] As part of the police investigation the subject officer provided a statement to police that he did not pre-sign any forms.

[69] Because the documents relating to the fraud complaint could not be located, there was insufficient evidence to substantiate a criminal charge of creating a false belief, pursuant to section 171 of *The Criminal Code*. However, there was evidence of a breach of regulation 606 in the *Police Force Regulations 1979* which states:

*A member or cadet shall not —*

(a) *knowingly make or sign any false statement in any official document or book;*

(b) *wilfully or negligently make any false, misleading or inaccurate statement ...*

[70] The Major Fraud Squad did not refer the investigation to PCAC once it was established that the complaint was possibly deliberately false. The detective-in-charge of the fraud investigation said that he did not consider it necessary to forward the case to PCAC because the Major Fraud Squad did not investigate false report allegations if it did not involve criminal fraud. The investigation was closed and no other action was taken.

### **2.2.5 Outcome**

[71] At the centre of this issue was a conflict of interest which led to a lack of will to conduct a thorough investigation into the allegations of harassment by the complainant. There were shortcomings in the LCR and in the review mechanisms to ensure that minimum standards were met. With the exception of the first senior officer at PCAC, there was a reticence to apply good quality assurance processes to the investigating officer's analysis and decisions.

[72] The Commission recommended that the Commissioner of Police consider taking disciplinary action against the investigating officer and require him to undertake conflict of interest training.

[73] The Commission also recommended that the Commissioner of Police consider counselling the detective from the Major Fraud Squad about his failure to report possible misconduct.

### **2.2.6 WAPOL Comment**

[74] In its 21 January 2011 response to the draft report WAPOL agreed that "the investigation [LCR] was inadequate and when quality assured by PCAC was returned to the District for further investigation". WAPOL stated that "[t]his reinforces the effectiveness of the PCAC QA [quality assurance] and oversight role". WAPOL also stated that it was regrettable that when the LCR file was "returned to PCAC further deficiencies were not identified". WAPOL acknowledged that "[t]he District response to the issues raised should not have been accepted" and that "[t]he file was incorrectly sent to the Commission for review".

- [75] WAPOL stressed that the LCR centred on a very acrimonious marriage break-up, which included allegations of fraud. Further, that after the investigation by the Commission, managerial action was taken against the subject officer and also the investigating officer for inappropriately dealing with a conflict of interest. Additionally, guidance (communicated verbally) was provided to officers from the Major Fraud Squad for failing to notify the Commission of the possible false report.
- [76] The Commission notes the action taken by WAPOL in this case and WAPOL's view that the actions of PCAC reinforce the importance of its quality assurance and oversight role. However, the Commission also notes that if that oversight role had been effective, unresolved deficiencies would have been identified when the file was returned to PCAC a second time.

## **2.3 Investigation Case Study Two**

### **2.3.1 Circumstances of the Case**

- [77] A 17-year-old girl (Complainant P) complained to WAPOL that she had been indecently assaulted by a police officer. Complainant P said she had been befriended by the subject officer and he would sometimes visit her at her unit, where she lived alone. Complainant P said a friend gave her the subject officer's phone number when she was in hospital after an argument with her boyfriend. Complainant P contacted the subject officer and he identified himself as a detective. Complainant P said that the subject officer would ring her and then he would meet her at the front of the block of units in which she lived.
- [78] The meetings always took place when Complainant P's boyfriend was not there because she was fearful of him. Complainant P said that the police officer told her she was pretty. There was no sexual relationship between the complainant and the subject officer. On the day of the alleged assault the subject officer came to the complainant's unit. Complainant P said that the subject officer grabbed her breasts and buttocks and made sexually suggestive comments towards her.

### **2.3.2 WAPOL Resolution of Allegations**

- [79] An internal investigation was immediately commenced by WAPOL. Complainant P's credibility was questioned, apparently because of a troubled background. Complainant P said that she suffered from depression as a result of alleged child sexual abuse and had previously attempted self-harm. She said that she had taken drugs in the past, and was drinking heavily on the day of the alleged assault. Complainant P said she only knew the first name of the subject officer, but she was able to identify the subject officer from a folder containing photographs of 12 men.
- [80] A background check was conducted on the subject officer. He had previously been the subject of an internal investigation, which involved



concerns about his behaviour following a marriage break-up. The WAPOL Risk Assessment Unit made recommendations to the subject officer's supervisors as to how to manage his behaviour. The Risk Assessment Unit proposed a more thorough inquiry, including surveillance of the subject officer, but this was not supported by the internal investigating officer. The assessment of risk that the subject officer presented to WAPOL did not progress beyond that point.

[81] The subject officer participated in a disciplinary interview in relation to the alleged indecent assault. He admitted knowing Complainant P, and visiting her unit on a number of occasions. He disputed the number of visits he had made and denied the indecent assault. He said that the visits were not social, but were as a result of Complainant P contacting him because she had problems.

[82] Complainant P was not prepared to go to court about the incident and withdrew her complaint because she did not want her boyfriend to find out. She said that she just wanted to cause trouble for the subject officer. No criminal charges were laid against the subject officer.

[83] The internal investigation determined that the subject officer had maintained unprofessional and inappropriate associations with Complainant P and another juvenile female, and that such associations were inconsistent with his public duties. The subject officer was placed on a 12-month MAP preventing him from having unmonitored dealings with any females. Details of the MAP were that:

- the subject officer receive informal counselling about his behaviour;
- the subject officer's supervisor monitor the subject officer's activities when dealing with young female complainants; and
- the subject officer be referred to the WAPOL Health and Welfare Branch to receive support to address his personal circumstances.

[84] A clinical psychologist found the subject officer to be fully fit and capable of performing police work from a psychological perspective, and was not a risk to the community or himself. This satisfied the counselling aspects of the MAP.

[85] The subject officer complained that the monitoring aspect of the MAP was harsh and unenforceable, and his supervisor agreed. As a result, the supervisory aspect of the MAP was shortened to eight months. No alternative means of supervising the subject officer's conduct were put in place.

### **2.3.3 Commission Investigation**

[86] The Commission undertook a review of the WAPOL investigation. The Commission agreed with the decision to not criminally charge the subject officer with indecent assault. However, the Commission disagreed with the suitability of a MAP to deal with the subject officer's conduct. The Commission formed the view that the MAP was unsuitable because the

subject officer refused to admit his mistakes and he was a difficult person to manage. Previous supervisors had described him as being a “loner” and “a very strange individual” whose behaviour did not fit with team norms. A MAP in such a case was bound to fail.

- [87] Further, the Commission identified a pattern of behaviour in relation to the subject officer which indicated that he presented a significant risk to WAPOL and potentially the wider community, irrespective of the views of the clinical psychologist. It had previously been suspected that the subject officer was unlawfully accessing the WAPOL computer system to obtain protected information for non-work related purposes.
- [88] The Commission commenced an investigation into the subject officer. A detailed analysis of the subject officer’s use of the WAPOL computer system was undertaken. The Commission established that the subject officer had been accessing protected information to identify young, vulnerable females and that such accesses did not appear to be related to work. It was of concern to the Commission that the subject officer’s behaviour in relation to Complainant P was indicative of a pattern of predatory behaviour.
- [89] A search warrant was executed on the subject officer’s home. A folder was found in a bedroom cupboard. In the folder were a number of printouts from the WAPOL computer system. These printouts included details of a large number of women stemming from vehicle checks the subject officer had conducted. Many of the printouts had handwritten notes describing the female drivers’ physical descriptions. A number of personal diaries were also located during the search. The diaries contained handwritten notes about the women named in the printouts. For example one woman was listed as “huge bazookas” and another “blonde/skinny legs”.
- [90] The Commission interviewed the women listed in the printouts in order to establish whether the subject officer had a legitimate reason for undertaking checks or recording details of their vehicles.
- [91] In one case the subject officer approached a woman he had identified from her vehicle registration details. The woman had an outstanding warrant from 1988 for an unpaid fine. The subject officer used this information to justify contacting the woman. The woman told Commission investigators that the subject officer contacted her and offered to escort her to court so she could pay her fine. In return he wanted her to have coffee with him.
- [92] The subject officer contacted her a number of times and the woman became suspicious of the subject officer’s motives in helping her. She agreed to organise a money order to pay the outstanding fine in order to discharge the warrant. The subject officer collected the money order from the woman at her workplace and gave her his business card. The woman refused to have coffee with him.

- [93] In another case the subject officer approached a woman on the pretext of investigating a bag snatch incident. The woman was the one who the subject officer had noted as having “huge bazookas”. The woman told Commission investigators that the subject officer asked her personal questions including where she was born. When the woman said she wanted to call her husband, the subject officer left and she did not see him again.
- [94] In several other cases the women contacted by the Commission could not recall any reason why a police officer would be checking their vehicle registration details. These women had not had any contact with police or with the subject officer.
- [95] Additional evidence obtained during the Commission’s investigation revealed that the subject officer:
- misused registered police informants to meet and forge relationships with women;
  - deliberately disclosed confidential police information;
  - photographed sexual activity between himself and another woman, and provided the explicit photos to others without the woman’s consent; and
  - made false and misleading entries in his official police diaries to cover up his inappropriate conduct.

#### **2.3.4 Outcome**

- [96] The Commission formed the opinion that the subject officer had engaged in serious misconduct.
- [97] As a result of the Commission investigation the detective was charged with 22 counts of unlawful use of computers pursuant to section 440A of *The Criminal Code* (six of which were discontinued), two counts of playing a restricted interview to unauthorised persons pursuant to section 120 of the *Criminal Investigation Act 2006* and other discontinued counts. The detective appeared in the Magistrates Court of Western Australia and was sentenced to imprisonment for a total period of seven months for the 16 offences relating to unlawful use of computers, suspended for 12 months, and fined for the other offences.

#### **2.3.5 WAPOL Comment**

- [98] In its response to the draft report WAPOL stated that the initial WAPOL investigation was hampered by the unwillingness of the complainant to support the investigative process. WAPOL agreed that the proposed managerial interventions recorded on a MAP were flawed because they did not seek to modify behaviour. Rather they effectively prevented the officer from performing his normal duties. The managerial interventions ultimately “fell away”, leaving the officer without adequate supervision.

[99] WAPOL acknowledged that, as had been proposed by the Risk Assessment Unit, had IAU become involved in an investigation earlier, with access to analytical and covert resources, it is likely that the subject officer's activities would have been more thoroughly investigated and the true situation uncovered.

## **2.4 Investigation Case Study Three**

### **2.4.1 Circumstances of the Case**

[100] Two uniform police officers were involved in a high speed pursuit. The driver of the car parked in the driveway of a house. The two police officers approached the car on foot. One of the officers got into the car through the passenger side and attempted to prevent the driver from driving away. The second officer (the subject officer) stood inside the opened passenger side door. The driver reversed the car and knocked the subject officer over. The car collided with another car that was parked on the verge. The offender then drove forward into the brick pillar of a carport.

[101] The first officer was still inside the car and was struggling with the driver. The subject officer fired three shots into the driver's side door of the car. One bullet hit the driver in the leg. The other two bullets lodged in the door of the car.

[102] The crime scene was attended by local WAPOL officers, local detectives and officers from the Forensic Crime Scene Unit, the Forensic Ballistics Unit and IAU.

[103] Initially the subject officer said he was lying in front of the car and shot at the driver because he believed it was the only way to stop the car. The subject officer said that he then moved out of the path of the car. In a second interview the subject officer said that he brought his firearm up as the car was moving towards him. He fired three shots into the driver's door as it passed him. He was unsure if he was standing or kneeling at the time.

### **2.4.2 WAPOL Internal Investigation**

[104] Two investigations commenced. The first was a criminal investigation in relation to the offences committed by the driver of the car. This investigation was conducted by local detectives. The second was an internal investigation in relation to the shooting conducted by IAU.

[105] The ballistics report indicated that the first shot was fired while the subject officer was beside the car. The second and third shots were fired once the car had passed the subject officer. All shots were fired while the car and/or the subject officer were moving. A report from the Operational Safety and Tactics Training Unit said that the tactics used by both officers were not in accordance with tactics taught at the Police Academy. The report also questioned the lawfulness of the shooting.

[106] IAU concluded that the subject officer was in fear of his life and therefore the discharging of his firearm and the wounding of the driver was lawfully justified under the self-defence provisions of section 248 of *The Criminal Code*. The result of the internal investigation was that the subject officer's actions were justified.

### **2.4.3 Commission Investigation**

[107] The Commission reviewed the lawfulness of the shooting. As the review evolved it raised questions as to the adequacy of the IAU investigation, and the potential criminal offence committed by the subject officer. Several issues of concern were identified.

- The only evidence that the subject officer was in danger of being run over by the car was provided by the officer himself.
- The IAU explanation of self-defence did not appear credible.
- The subject officer's evidence conflicted with the ballistics report.
- The investigation was not thorough and the conclusions reached by the investigating officer did not appear likely on the evidence.

[108] The Commission decided to investigate the incident and subsequent internal investigation.

[109] As part of its investigation the Commission:

- reviewed the material provided by WAPOL;
- obtained additional information;
- conducted door-to-door visits to residents of the street where the shooting took place;
- interviewed witnesses;
- interviewed expert witnesses, namely forensic ballistic officers; and
- invited relevant people to participate in interviews, some under criminal caution.

[110] The first part of the investigation was to reassess the evidence obtained by WAPOL in relation to the lawfulness of the subject officer's actions. Additional documents were obtained, including WAPOL radio communications of the incident, the subject officer's personal file, a copy of the IAU file, forensic ballistics reports, the local detectives criminal investigation file and a copy of the criminal brief against the driver.

[111] The Commission then conducted door-to-door visits to residents of the street where the incident took place and reinterviewed witnesses. An independent eyewitness was identified. This witness had been interviewed by local detectives in relation to the criminal investigation

against the driver, but the witness's statement had not been provided to IAU for consideration in the investigation against the subject officer.

- [112] The eyewitness account corroborated the version of another eyewitness whose statement had not been considered by internal investigators. The eyewitnesses stated they had seen the subject officer running alongside the car yelling at the driver, pointing his gun at the driver's side door and then firing three times into the door.
- [113] The ballistics report proved that the shots were fired at a downward angle. The entry points of the bullets were too high for the subject officer to be kneeling or lying on the ground. It was more likely that the shots had been fired while the subject officer was standing or running. All three shots were fired further than 20 cm from the car.
- [114] Commission investigators interviewed the driver of the car. This option had not been available to police investigators. The driver said he did not see the subject officer because he was struggling with the other officer at the time. At first he did not realise he had been shot.

#### **2.4.4 Commission Findings**

- [115] The IAU investigation was found to be inadequate on a number of grounds.
- Evidence compiled by detectives for the criminal investigation against the driver was relied upon for the internal investigation. This evidence was obtained in respect of the actions of the driver, not the actions of the subject officer.
  - Witnesses were not reinterviewed to clarify previous statements.
  - Corroborating evidence relating to the subject officer's statement was not obtained, such as photographs of the subject officer's injuries or a medical report of his injuries. There was no attempt to get the subject officer to re-enact the incident at the scene.
  - The evidence of the eyewitnesses and the ballistics report were ignored.
  - Unwarranted reliance was placed on the explanation given by the subject officer.
- [116] Further, inadequacies were found in the WAPOL policy entitled *Investigation Into Incidents Involving the Non-Fatal Discharge of Firearms by Police* (COP FR 1.2.12). The Commission's investigation determined that the policy was too general and ambiguous.

#### **2.4.5 Outcome**

- [117] The Commission investigation resulted in the subject officer being charged with unlawful wounding. This charge was discontinued by the Director of

Public Prosecutions (DPP) on the basis that there was no reasonable prospect of conviction.

- [118] The shortcomings in the internal investigation were articulated in the Commission's investigation report which was provided to WAPOL. Overall it was determined there was an apparent lack of will to conduct a thorough investigation into the shooting.
- [119] At the same time as the Commission's investigation was being conducted, the Assistant Commissioner Corruption Prevention and Investigation instigated an independent review of the IAU investigation by an experienced and senior interstate police officer. The review included an examination of the IAU structure and investigation process. The Commission provided information and documents to this review.
- [120] This WAPOL review resulted in a report which was highly critical of IAU and revealed a number of deficiencies in the investigation. A total of 19 recommendations were made in the report. The Commission received a copy of the report and endorsed the recommendations.
- [121] In its final investigation report to WAPOL the Commission recommended that:
- (1) the Commissioner of Police consider disciplinary action against the IAU investigating officers;
  - (2) the Commissioner of Police consider disciplinary action against the subject officer;
  - (3) the driver of the car be advised of the results of the Commission investigation;
  - (4) the Commissioner of Police implement the recommendations of the independent review; and
  - (5) WAPOL use this real life example as part of its scenario training at the Police Academy.
- [122] In relation to recommendation one, the IAU investigating officers were provided with guidance (communicated verbally), rather than disciplinary action.
- [123] In relation to recommendation four, the final recommendations of the independent review outlined a number of suggested changes to the structure and processes of IAU that took into account the individual culture of IAU, business processes and practices unique to IAU, the introduction of operational debriefs and the introduction of a Critical Incident Management Review Committee.
- [124] A program of implementation was undertaken including regular reports to the Commission. Upon a change of assistant commissioner to the new Professional Standards Portfolio, concerns were raised by the new assistant commissioner in relation to the independent report. Several

recommendations were not implemented on the basis that the recommendations were made beyond the premise of the review.

- [125] In its response of 21 January 2011 to the draft report WAPOL stated that all but two of the 19 recommendations were “accepted for implementation to varying degrees”.
- [126] The Commission considers that all the recommendations are valid and should have been implemented. This was a high risk allegation, with real potentially adverse consequences for the reputation and business processes and systems of WAPOL. An adequate internal investigation was needed to mitigate that risk.
- [127] Inadequate investigations into incidents such as this inevitably undermine public confidence in policing. The inadequacy of this particular internal investigation appeared to stem from an apparent lack of will within IAU to properly investigate the case. In the Commission’s view, an apparent lack of will on the part of IAU, the only central, dedicated internal investigating unit within WAPOL, to properly investigate high risk cases is not acceptable
- [128] It is, therefore, important that the recommendations resulting from the independent review of IAU are implemented because these weaknesses will otherwise not be resolved. This, in turn, is likely to adversely affect community confidence in policing.

## **2.5 Overall Conclusions**

- [129] In an organisation that rightly claims that it adequately investigates the overwhelming majority of misconduct allegations it deals with, the outcomes of its investigations into the three cases considered above are perplexing.
- [130] These cases were not inadequately investigated because of some technical difficulty or oversight. The inadequacy stems from an apparent lack of will to conduct a thorough investigation.
- [131] Glossing over these cases has broad implications for WAPOL.
- It reinforces poor investigative processes.
  - Opportunities to identify and address operational, procedural and training deficiencies are lost.
  - Opportunities to identify, and deal with, aberrant individuals not suited to police work are lost.
  - Public confidence in the capacity of WAPOL to manage the misconduct within is undermined, in turn undermining community confidence in policing.



## CHAPTER THREE HIGH RISK ALLEGATIONS

### 3.1 Introduction

- [132] High risk allegations are those which, if not properly dealt with, embody major potentially adverse consequences for the reputation, and business processes and systems of WAPOL. Allegations falling into this category typically involve serious misconduct and/or complicating issues. Failing to deal with these allegations is likely to adversely affect WAPOL's reputation, and in turn undermine community confidence in policing.
- [133] High risk allegations make up approximately a third of WAPOL misconduct allegations.
- [134] These cases potentially involve complex events which require police officers to evaluate and balance important, indeed potentially life threatening, issues on the spur of the moment. This balancing act can result in disagreements between senior officers within WAPOL concerning the reasonableness of the officers' actions and the potentially conflicting issues of timeliness, natural justice and the public interest.
- [135] The effectiveness of WAPOL's misconduct management system is therefore likely to be challenged by high risk cases. Inadequate investigations into these cases is likely to adversely affect WAPOL's reputation, and in turn undermine community confidence in policing.

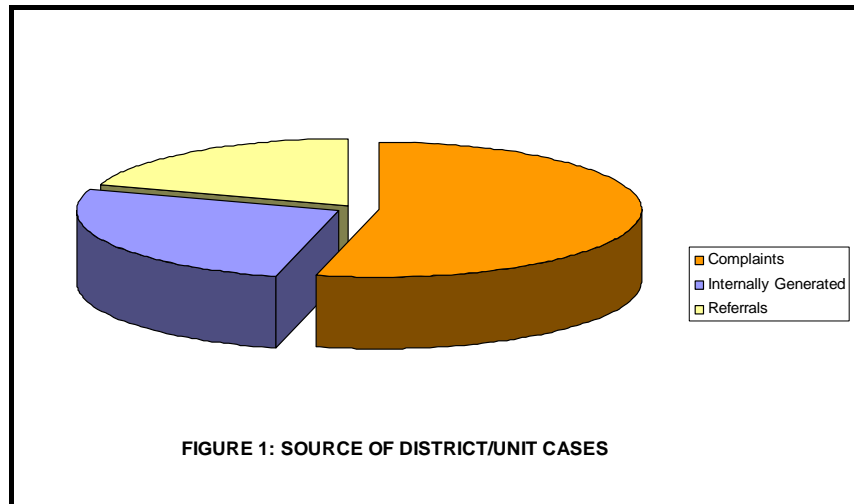
### 3.2 Methodology

- [136] All notified cases assessed as high risk were selected for review by the Commission. The Commission review process included obtaining the completed case files and checking all evidence gathered, and possibly gathering further evidence, to determine whether the case had been finalised and investigated adequately.
- [137] Information was reviewed in relation to 165 high risk cases. Of these 48 related to cases from IAU and 117 were from districts/units as detailed below (Table 1).

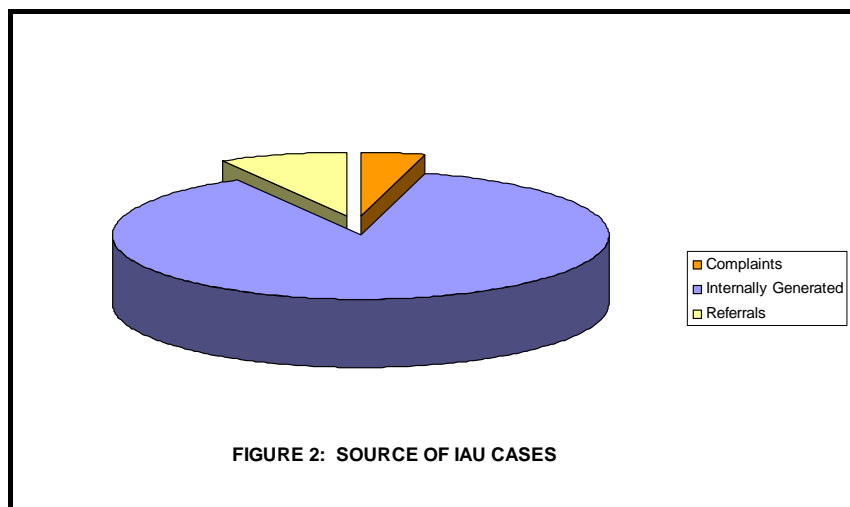
DISTRICT/UNIT	CASES REVIEWED	DISTRICT/UNIT	CASES REVIEWED
Internal Affairs Unit	48	Peel	8
Central Metropolitan	7	Pilbara	3
East Metropolitan	2	South East Metropolitan	8
Goldfields-Esperance	5	South Metropolitan	15
Great Southern	6	South West	3
Kimberley	5	Specialist Crime	7
Mid-West Gascoyne	5	Traffic and Operations	13
North West Metropolitan	10	West Metropolitan	8
Other	5	Wheatbelt	7
<b>TOTAL</b>		<b>165</b>	

**TABLE 1: NUMBER OF CASES REVIEWED**

[138] Of the 117 district/unit cases (excluding the 48 IAU cases), 63 were complaints to WAPOL by members of the public, 31 were internally generated, and the remaining 23 were referred from the Commission after being reported to the Commission by members of the public or from other agencies (Figure 1).



[139] Of the 48 IAU cases two resulted from complaints to WAPOL by members of the public, 42 were internally generated, and four were referred from the Commission after being reported to the Commission by members of the public (Figure 2).



### 3.3 Registering Complaints

#### 3.3.1 Categorisation

[140] Two cases were not properly categorised. Both related to cases that were dealt with by LCR when the seriousness of the allegation warranted that they be fully investigated.

### 3.3.2 Vulnerable Complainants

[141] As can be seen by Table 2, 34 cases involved potentially vulnerable complainants. Two domestic violence investigations were deemed inadequate (both conducted in the districts) and one indigenous case investigated by IAU was inadequate. All three cases are considered below.

POTENTIALLY VULNERABLE COMPLAINANT	DISTRICT/UNIT	IAU
Indigenous	10	2
Culturally or Linguistically Diverse	0	0
Juvenile	5	0
Disability	3	0
Mental Illness	1	0
Domestic Violence	12	1
<b>TOTAL</b>	<b>31</b>	<b>3</b>

TABLE 2: POTENTIALLY VULNERABLE COMPLAINANTS

## 3.4 Investigation

### 3.4.1 Conflict of Interest

[142] A conflict of interest was identified in three cases, that is, Investigation Case Study One in Chapter Two, which resulted in the Commission conducting its own investigation, and Case Studies One and Four in this Chapter.

#### 3.4.1.1 Case Study One

*A solicitor made a complaint to police about a police officer who was dealing with one of her clients. Her complaint was allocated to an investigating officer. The investigating officer allegedly contacted the solicitor and falsely represented to her that three other police officers had heard her use an offensive word to the subject officer. The investigating officer allegedly told the solicitor that the three police officers were willing to provide statements to the Legal Profession Complaints Committee in support of a complaint against her.*

*The solicitor subsequently made a complaint about the actions of the investigating officer. The complaint was given to the same investigating officer to investigate. The investigating officer also falsified this complaint by causing the subject officer of the first complaint to become the subject officer of the second complaint, rather than himself.*

[143] The Commission wrote to PCAC about this case outlining the failure to recognise a conflict of interest by the investigating officer. The

Commission suggested that a MAP addressing the investigating officer's apparent lack of understanding of conflict of interest be considered.

- [144] In its response of 21 January 2011 to the draft report WAPOL indicated that it disagreed with the Commission's interpretation of Case Study One. WAPOL stated that PCAC is "acutely aware of the ramifications that a conflict of interest has on the conduct and outcome of an internal investigation and the potential loss of public confidence that may be attributed of such conflict". Nevertheless, the Commission maintains a conflict of interest was not recognised.

### **3.4.2 Adequacy**

- [145] Cases were determined by the Commission to be investigated adequately by WAPOL if all relevant evidence was gathered and the analysis of the evidence was thorough.
- [146] Of the 165 cases reviewed, 159 were considered to be adequate and six were considered to be inadequate — two cases were from IAU, two from the Peel District and one case each from the North West Metropolitan District and the South East Metropolitan District.
- [147] While the numbers may appear small, inadequate WAPOL investigations into high risk cases have real potential to undermine the integrity of the misconduct management system and, in turn, community confidence in policing.
- [148] Of the four district cases three were inadequate because of poor analysis of the evidence, and consequent flaws in the conclusions reached by the investigator, rather than a shortfall in the evidence gathered. The fourth case (refer Case Study Two in this Chapter) was inadequate due to a failure to gather relevant evidence.
- [149] In its response of 21 January 2011 to the draft report WAPOL stated that it was inappropriate to draw an agency-wide assumption based on comparatively low numbers of inadequate cases, particularly in respect of IAU.
- [150] The Commission disagrees. The potential adverse impact on public confidence in policing that these issues sometimes involve means that mishandling even a comparatively low number of matters can have negative ramifications for the entire police service.

#### **3.4.2.1 Case Study Two**

*The complainant stated he was the victim of a "car jacking". Alleged offenders followed the complainant in two cars, then got out of their cars and into the complainant's car. The alleged offenders threatened the complainant and ordered him to drive off. The complainant drove to a police station while the alleged offenders were still in the vehicle. The police officer who received the report did not take statements from the complainant or from the alleged offenders.*

*The complainant then made a complaint about the failure of the police officer to take action against the alleged offenders.*

*An investigating officer was assigned to the case. Both alleged offenders refused to talk to the internal investigator, referring him to their solicitors. The solicitors and alleged offenders were only prepared to talk to the internal investigator “off the record”.*

*“Off the record” the alleged offenders told the internal investigator that the complainant was romantically linked with the ex-wife of one of the alleged offenders. The alleged offender was involved in a bitter family law dispute with his ex-wife. He said that the complainant had threatened his daughter.*

*The investigating officer concluded that there was likely to be some truth to the claims and, on that basis, determined that the complainant’s version of the event was not credible. The investigating officer determined that the decision not to take any action in relation to the “car jacking” was correct.*

*When subsequently interviewed, the complainant told the investigating officer that the claims were untrue. The alleged offender’s ex-wife was known to him and his wife as a family friend only, and that he was not a party to the family law dispute. The complainant told the investigating officer that he had never met the alleged offender prior to the “car jacking”.*

*According to the complainant, this information angered the investigating officer who then insisted the complainant leave the premises.*

- [151] This case was deemed to be inadequately investigated because the investigating officer made no attempt to try and verify any of the stories of the people involved. Regardless of the accuracy of the complainant’s version of events, the alleged “car jacking” involved an allegation of criminality. This was never substantively addressed by the internal investigator. WAPOL has acknowledged that Case Study Two “could have been better managed”.

### **3.4.3 Lack of Objectivity**

- [152] Although the number of inadequate investigations conducted by IAU is comparatively low, those that are found to be inadequate tend to be very deficient, likely because of the lack of quality assurance.
- [153] Case Study Three illustrates this point. It involved a series of inadequate investigations relating to an incident that was initially investigated at a police district level, before being taken over by IAU.

#### **3.4.3.1 Case Study Three**

*This incident was partly captured by a police helicopter (Pol-Air) video recording. Two men (Person A and Person B) were in a high speed chase. Both men surrendered to police after their car crashed. They exited the car with their arms raised in surrender.*

*The Pol-Air footage clearly shows Person A getting out of the car with his arms above his head and lying face down on the ground. After surrendering, Person A was attacked by a police dog and a Taser weapon was deployed on him.*

*The footage of Person B is less clear, although Person B said that he was also attacked by a police dog and had a Taser weapon deployed against him.*

*Five separate WAPOL investigations were conducted over a two-year period before the case was brought to a conclusion.*

*The first investigation was conducted at district level. The investigating officer attempted to deal with the case by way of an LCR, which was not appropriate given the seriousness of the allegations. The investigating officer obtained a withdrawal of the complaint from Person B after giving him a criminal caution about making a false report to police. The video evidence from Pol-Air was not included in the investigation, on the basis that there was no complaint. The investigating officer relied on guilty pleas of obstructing police from the two people involved in forming the conclusion that no police officer had breached the "Code of Conduct".*

*Three months after the incident the case was quality assured by PCAC and deficiencies were identified. The file was sent back to the district for further investigation.*

*The second investigating officer obtained a second written withdrawal of complaint from Person B. Person B said that the criminal caution given to him by the first investigating officer had not influenced his decision to withdraw the complaint. Person A was unable to be located to clarify the issues regarding the deployment of a dog on him. Enhanced video footage was analysed. No police officer was found to have used excessive force.*

*The case was quality assured by PCAC a second time, which identified remaining concerns about the investigation. The dog handler had not been asked why he deployed the dog against Person A. Person A needed to be located and interviewed. The two police officers involved had not been shown the enhanced footage showing Person B with his arms raised in surrender.*

*The case was sent to IAU for investigation. Twelve months had elapsed since the incident. The IAU investigating officer did not reinterview the two officers or the dog handler. He also did not locate Person A for reinterview. The IAU investigating officer concluded that no further investigation was necessary.*

*The case was reviewed by the then Assistant Commissioner Corruption Prevention and Investigation and was sent back to IAU to address concerns raised by PCAC, and to determine the adequacy of the investigations, and what managerial actions needed to be taken against the subject officers and the senior officers who signed-off on deficient investigations.*

*The case was investigated a second time by IAU. The IAU investigating officer determined that no officers committed acts of misconduct or criminality. Person A was located but failed to attend the interview. The IAU investigating officer determined that the dog handler acted with haste and did not have a "proper appreciation" of the situation, but no managerial action was recommended. The IAU investigating officer recommended the initial investigating officer and the supervisor be issued with MAPs for use of an incorrect caution when interviewing Person B.*

*The second IAU investigation was quality assured by PCAC at the request of the then Assistant Commissioner Prevention and Investigation. There remained issues of concern, that is, the decision not to take managerial action against the dog handler was incorrect and the dog handler had not complied with Dog Squad standard operating procedures.*

*If the initial complaint had been investigated adequately, the case would have been resolved in a much shorter time. Regardless of the length of time of an investigation, if managerial action was warranted, it should have been recommended.*

*The case was sent back to IAU for a third investigation almost 18 months after the original incident.*

*The IAU investigating officer concluded that his original investigation conclusions were accurate and appropriate. He said that insufficient weight had been placed on the fact that Person B pleaded guilty to obstructing police, thereby accepting the facts as detailed by police.*

*The case was reviewed a second time by the then Assistant Commissioner Prevention and Investigation, who directed that the dog handler be issued with a MAP for his actions. The MAP was issued and the dog handler resigned.*

- [154] This case illustrates the serious deficiencies that can result from an inadequate investigation.
- [155] The investigation process was flawed at several stages, both at the district level and by IAU. There was a lack of objectivity in the investigation and a reluctance to take managerial action against the officers involved. This lack of objectivity was perpetuated through the series of investigations.
- [156] It was not relevant that there was no complaint from Person A, nor that Person B had pleaded guilty to a set of facts.
- [157] Another reason the IAU investigating officer gave to justify the position not to take action against the dog handler was that the dog had died and the handler had since been transferred to another district. Delays in the investigation were not a valid reason to preclude managerial action. The fact that the dog had died and the handler transferred was irrelevant to the decisions made on the night of the incident.
- [158] In its response of 21 January 2011 to the draft report WAPOL highlighted what it believed were the key issues in relation to this case.
- The incident occurred in March 2007.
  - The vehicle and its occupants were known to have been involved in the commission of serious offences including an attempt to run down a police officer.
  - There was a protracted pursuit with the vehicle monitored from the air by the police helicopter.

- The pursuit concluded only because the offending vehicle collided with a traffic control light at speed and was unable to be driven.
- The actions of the police dog handler have been subject to comprehensive investigation and review.
- The outcome of this investigation was that an experienced police officer and trained dog handler, who had been pursued over a long period of time over a tactical decision, terminated his employment with WAPOL.

[159] It is difficult to reconcile this submission to other submissions made by WAPOL about MAPs and the Managerial Intervention Model. These submissions argue that MAPs, rather than being punitive, are designed to help officers correct behavioural issues – how to better manage tactical decision-making in stressful circumstances, for example.

[160] In this case it would appear that WAPOL's initial reluctance to issue MAPs to the officers involved stemmed from a fundamental misunderstanding of the purpose of the Managerial Intervention Model. WAPOL's reluctance to issue MAPs implies that MAPs were viewed as a punitive or disciplinary tool, rather than one of guidance. The tactical errors made on the night could have been managed or rectified through the guidance of MAPs, and this would have been an appropriate and timely response to the incident.

[161] In this particular case the Commission gave careful consideration to whether it should conduct its own investigation. In the end, however, it decided not to do so. The facts of the case were not at issue so much as an apparent lack of will by WAPOL to deal with them.

[162] It is the apparent lack of will to properly deal with cases such as this, even if only a small number of these types of cases exist, that has the potential to undermine public confidence in policing.

[163] This case also highlighted quality assurance deficiencies by IAU. Quality assurance processes of a type utilised by PCAC would have identified deficiencies in the IAU investigation, in the same way that PCAC quality assurance processes identified deficiencies in the district level investigation. It is relevant to this observation that both PCAC and IAU are in the same portfolio.

[164] In terms of public confidence in misconduct management by WAPOL, and public confidence in policing, this is of particular concern because IAU only deals with a small percentage of cases at the very high end of the spectrum of seriousness and complexity.

[165] In its response of 21 January 2011 to the draft report WAPOL argued that the IAU quality assurance process is equally as stringent as the PCAC quality assurance process. WAPOL concedes that some historical matters display errors which should have been identified during oversight and quality assurance processes. However, WAPOL claims this is not a



sufficient basis upon which to make a contemporary whole-of-unit criticism.

- [166] The Commission disagrees. If that observation was accurate, deficiencies in the IAU investigation of this case would have been identified by IAU, not PCAC.

### **3.4.4 Domestic Dispute Cases**

- [167] Lack of objectivity in investigations was also evident in cases relating to domestic disputes involving the families of WAPOL officers. Case Study Four, investigated in the North West Metropolitan District, provides some insight into this.

#### **3.4.4.1 Case Study Four**

*The complainant's (then) husband called police to their home stating his wife was "going off" and was "bipolar". When the police arrived, the complainant and her husband were struggling on the ground in front of the house.*

*According to the complainant, the stress of a domestic violence incident caused her to run from her home, despite the presence of police officers. As she ran away, a Taser weapon was deployed on her causing her to fall to the ground.*

*The complainant alleged the Taser weapon was fired without warning and that the experience was painful and distressing. She requested an apology from police.*

*The internal investigation found the police use of the Taser weapon was justified and within policy. However, a letter of apology was sent to her.*

- [168] The Commission determined that the internal investigation was inadequate. The issue most clearly contributing to the inadequacy was a lack of objectivity from the investigating officer, which is illustrated by the following points.

- The investigating officer expressed doubt that domestic violence existed in this case on the basis that the complainant had not made previous complaints of domestic violence.
- The investigating officer expressed an opinion that the complainant was not credible. He determined her lack of credibility because in her statement of complaint she stated she had been "flung around by police". When questioned about this statement by the investigating officer, the complainant clarified that it expressed how she felt. This seems understandable given that the complainant had been chased, had a Taser deployed on her, was restrained, pulled to her feet and forced towards a police van despite not committing an offence.
- The investigating officer questioned the complainant's credibility on the basis that she was now in a relationship with her former brother-in-law.

- The investigating officer accepted the unsubstantiated account of the complainant's former husband that she suffered from bipolar disorder.
- The investigating officer first contacted and interviewed the complainant's former husband, who was the only witness to the incident, and then used his account to test the complainant's evidence. As a witness who potentially had an agenda adverse to the complainant, it would have been more appropriate for the investigating officer to first contact the complainant.

[169] This case resulted in considerable discussion between police and the Commission around the significant issues of whether the Taser weapon was used for compliance rather than to prevent harm, the veracity of the officer's evidence to the internal investigating officer, alleged bullying by the investigating officer of the complainant and the seemingly insufficient attention paid by police to the question of alternative action that could have been taken against the complainant, rather than the use of the Taser weapon.

[170] In its response to the draft report WAPOL conceded that had the apology been provided much earlier, then the matter may have been resolved more easily and to the general satisfaction of the complainant. WAPOL also noted that the Taser weapon policy has been revised.

[171] The Commission agrees that a timelier apology to the complainant by police would most likely have resulted in a speedier resolution of this case as far as the complainant was concerned. However, although perhaps reassuring to the complainant, that would not have properly resolved the case because the significant inadequacies in the internal investigation would have remained.

### **3.4.5 Unauthorised Computer Access**

[172] An important issue that arose during reviews of high risk cases was the inconsistent way allegations of unauthorised access to the WAPOL computer system were handled.

[173] The major challenge presented by investigations into this type of misconduct is that there are a wide range of reasons for unlawfully accessing WAPOL computers. Previous investigations have revealed that officers have accessed the WAPOL computer system for:

- curiosity (particularly in relation to incidents that have a high media profile);
- protection of the integrity of a police officer when dealing with friends, family members and associates;
- benefitting in competitive contexts, for example, the rental market or when purchasing items online;
- malicious intention to harm, influence or control; and/or
- corruption.

- [174] The Police Manual defines computer access as unauthorised if it falls outside the work functions of an officer. Proven unauthorised computer access can result in criminal charges under section 440A of *The Criminal Code* and/or disciplinary action.
- [175] Inconsistencies in internal investigations (by both IAU and in districts/units) revealed that there was confusion as to how to interpret whether misconduct had occurred. Under a narrow interpretation of “work functions” police access to the computer system would only be legitimate if it related to a particular operation in which the officer was involved or his/her area of work. Under a broad interpretation, access was legitimate if it related to the officer’s broad range of responsibilities and functions as a police officer. A variety of legal opinions provided to WAPOL over several years and prosecution decisions of the DPP led WAPOL to the view that officers would only be prosecuted under section 440A when there was a pecuniary benefit or detriment involved.
- [176] Investigating officers in some districts did not consider whether or not criminal charges should be preferred, while this remained standard practice in other districts. This resulted in inconsistency for subject officers, some of whom were immediately reassured that their actions would not result in criminal charges, while others were left waiting to discover if they would be charged even in relatively minor cases of unauthorised access.
- [177] Further confusion resulted when completed investigations were quality assured by PCAC. PCAC took the view that all cases in which there was *prima facie* evidence of an offence under section 440A would be referred to the DPP. Thus, officers who had initially been reassured that no criminal charges would result were later informed that legal advice about preferring charges was being obtained or that the case had been sent to the DPP.
- [178] The challenges of an investigation into unauthorised computer access are highlighted in Case Study Five, investigated in the Pilbara District.

#### **3.4.5.1 Case Study Five**

*Senior police had concerns about the subject officer’s partner and the subject officer was advised to “check him out”. The subject officer assumed this meant that she should check his details on the police computer. She obtained a letter of consent from her partner and looked up his details.*

*One of the senior officers who allegedly advised the subject officer to “check out” her partner then reported her for unauthorised accesses of the police computer system. The case was investigated and the subject officer was given a MAP, which included verbal guidance and six months supervision. The subject officer appealed the severity of the MAP and it was reduced from six to three months.*

*Because of the MAP, the subject officer became ineligible for a promotion for which she had applied.*

- [179] The Commission had a number of concerns about the case. The subject officer's partner had previously made a complaint, which was later withdrawn, against the senior officer who suggested that the subject officer "check out" her partner. Further, the subject officer appeared to have been directed to access the computer, yet no investigation was conducted into the actions of the senior officer.
- [180] The Commission requested clarification from WAPOL in relation to policy about computer access. In particular, the Commission requested that clarification be provided as to how an officer could be confident that their associates were not criminally implicated if a narrow interpretation of work functions was applied, which would limit computer access to those matters that related to a particular operation in which the officer was involved or his/her area of work.
- [181] WAPOL advised that the response provided to the "Frequently Asked Question" on the Police Intranet — "Am I illegally accessing computer information?" — made it clear that a narrow interpretation of work functions is applied to computer access.
- [182] Further to this, the Commission was aware that WAPOL had adopted a new Declarable Associations Policy outlining a procedure by which officers (and potentially their supervisors) could request that the Police Risk Assessment Unit conduct an assessment of any suspect associates. The Risk Assessment Unit would then assist the officer in the management of that association.
- [183] In terms of inconsistent approaches and outcomes between districts, WAPOL advised that it was implementing measures to ensure greater consistency. These included:
- a benchmarking exercise by the Ethical Standards Division;
  - correspondence to the DPP seeking clarification as to when criminal charges would be prosecuted under section 440A of *The Criminal Code*;
  - creation of a draft policy to assist officers to protect their integrity; and
  - efforts by PCAC to ensure that all unauthorised computer access cases sent to districts and units contain a copy of the legal opinion and agency position.
- [184] The inconsistencies identified by the Commission were also evident in cases investigated by IAU. It is, therefore, important that the above measures also include IAU.
- [185] In its response of 21 January 2011 to the draft report WAPOL acknowledged Case Study Five, and that there had been changes in policy and practice. The Commission has maintained an active oversight of matters involving allegations of unauthorised computer access and is satisfied that the modifications made by WAPOL to policy and practice appear to have resolved the inconsistencies identified above.

## 3.5 Resolution

- [186] Most cases were resolved in a manner that was reasonable. Those cases that were not reasonably resolved corresponded exactly to those cases that were inadequately investigated.

### 3.5.1 Complainant Satisfaction

- [187] The Commission considered that the resolution of cases was reasonable when it appeared that the investigating officer had made a genuine attempt to achieve a resolution, regardless of whether the complainant was satisfied with the outcome.
- [188] Inadequacies in an investigation can result if the investigating officer does not aim for resolution of the case. In Case Study Four an apology was not unreasonable in the circumstances and, so far as the complainant was concerned, would have resolved the case.
- [189] Case Study Six is another example of a situation in which an apology may have provided an effective resolution. This case was investigated in the West Metropolitan District and although an apology was written, it was weak and unnecessarily inflammatory. Consequently resolution of this case was not deemed reasonable.

#### 3.5.1.1 Case Study Six

*The complainant was arrested for obstructing a police officer. Believing that the police officer did not have the power to arrest her, the complainant attempted to drive away. The complainant alleged the police officer reached into her car to take hold of her arm. She grabbed the arm of the police officer and there was a struggle. The complainant was charged with assaulting and obstructing police.*

*The complainant made a complaint that she had been wrongly arrested and that she had not been treated well by police.*

*The complainant was found not guilty of both charges. The Magistrate found that although the officer acted in good faith, he was not "acting in the course of his lawful duty" when he initially arrested the complainant, and thus the arrest was unlawful.*

*The internal investigation did not sustain any of the complainant's allegations.*

- [190] Upon review of this case the Commission determined that the investigating officer's conclusions required reconsideration. The subsequent allegations by the complainant followed on from this unlawful arrest. The Commission suggested that an apology may go some way towards resolving the case.
- [191] WAPOL was of the view that an apology was unwarranted as:
- the subject officer acted in good faith;
  - the complainant was "belligerent"; and
  - that an apology may give rise to civil liability.

- [192] The Commission maintained that:
- an honest mistake is still a mistake;
  - the complainant's personality and attitude should have no bearing on the actions of the police; and
  - if civil liability arose it would be the officer's actions that caused such liability, not the apology offered for those actions.

[193] The district superintendent wrote to the complainant. His letter reiterated the Magistrate's findings that the subject officer was acting in good faith and that the complainant was "belligerent". He concluded by observing that:

*... [w]hile the incident is regrettable, it is not proposed that any disciplinary action will be taken against the officer. However the officer will receive some guidance to enable him to better understand the requirements of the Restraining Orders Act and to assist him when carrying out his duties in the future.*

[194] The Commission considered the apology weak and unnecessarily inflammatory. The complainant remained dissatisfied with the outcome and with the apology.

[195] In its response of 21 January 2011 to the draft report WAPOL stated that the original outcome of the internal investigation was reconsidered but remained. WAPOL stated that the interpretation of legal research was not available to the officers who were required to make an immediate decision. In its view, this was the correct outcome given the circumstances.

[196] In its response WAPOL also stated that "[i]n so far as the lack of an apology and the wording of the [District] Superintendent's letter to the complainant, it still remains the view of PCAC that a limited apology could have been provided. While this would have provided a more satisfactory outcome for the complainant the Legal opinion provided to the District Superintendent was that it was not necessary or appropriate to apologise to the complainant in relation to this incident".

### **3.5.2 Managerial Action**

[197] Of the high risk district and unit cases reviewed 36 (30.8%) resulted in the implementation of a MAP. Twelve (25%) IAU cases reviewed resulted in a MAP. This compares to 10.8% of medium risk district/unit cases, and 6.2% of medium risk IAU cases (considered in Chapter Four of this report). The significantly higher rate of MAPs issued for high risk cases is logical. The more serious the case, the more likely the officer is to receive a MAP.

[198] The number of MAPs issued for internally generated cases was significantly higher in districts/units (64.5%) than for IAU (28.6%). This discrepancy appeared to result from senior officers within districts, units

and PCAC having a greater, and it must be said appropriate, focus on the development and management of individual officers than officers at IAU.

[199] IAU investigating officers did not always take the additional step of questioning whether it was appropriate for managerial action to be taken in relation to an officer's conduct, with a view to preventing similar conduct in the future. This difference in approach was at odds with the Managerial Intervention Model and resulted in inconsistent outcomes between cases at IAU.

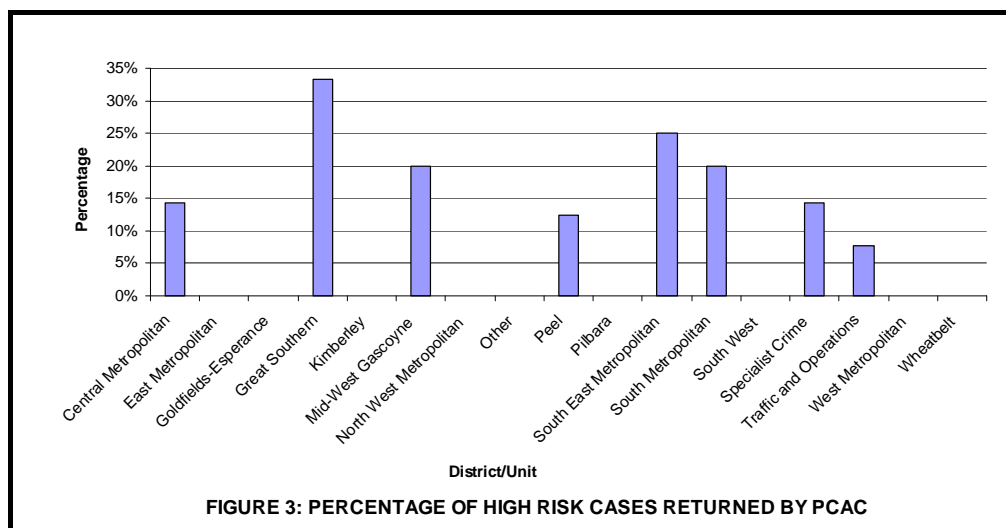
### 3.6 Quality Assurance

[200] All district/unit cases were subject to quality assurance by PCAC. IAU cases were not subject to quality assurance to a standard similar to that used by PCAC.

[201] The PCAC quality assurance process, which is a formal documented process, resulted in 12 of the 117 high risk cases (10.3%) quality assured being returned to the district/unit for clarification or further investigation. This is a higher return rate than for medium risk cases (6.4%), which are considered in Chapter Four of this report.

[202] It is interesting to note that the same districts that had medium risk cases returned also had high risk cases returned. Overall, PCAC discharges its quality assurance role in relation to high risk cases competently.

[203] Cases returned to districts/units by PCAC are illustrated by Figure 3.



### 3.7 Summary and Conclusion

[204] Although the overwhelming majority of internal investigations into high risk cases were adequate, the reviews undertaken by the Commission of these cases has revealed that inadequacies in WAPOL investigations can still arise. There needs to be a thorough and rigorous system in place to manage these inadequacies. IAU, in particular, appears to suffer from weaknesses in its quality assurance processes.

[205] It is the ramifications of inadequate investigations, particularly those conducted by IAU, that are of concern to the Commission, not the quantity. Inadequate investigations into high risk cases have real potential to undermine the integrity of the misconduct management system, and in turn community confidence in policing.

[206] Reviews of high risk cases identified the following.

- 159 of the 165 cases reviewed were investigated adequately.
- PCAC's quality assurance role was effective.
- Only two cases were not properly categorised.
- Three complaints from potentially vulnerable complainants were investigated inadequately. Two related to domestic violence and one was an indigenous case. Otherwise, potentially vulnerable complainants were treated equitably.
- Conflict of interest arose in relation to three cases, one of which was investigated by the Commission (refer Investigation Case Study One in Chapter Two of this report).
- A lack of objectivity by investigating officers resulted in deficiencies in a small number of serious investigations.
- Investigations by WAPOL officers involving domestic disputes featured prominently among inadequate investigations.
- There were inequities in the way alleged unauthorised computer access cases were investigated.
- Not providing an apology, or timely apology, in circumstances in which one was warranted was significant in preventing WAPOL from adequately resolving the two domestic dispute cases highlighted.

### **3.8 Changes at WAPOL**

[207] In its response of 21 January 2011 to the draft report WAPOL outlined that the following changes had been made to policies in relation to unauthorised computer access.

- Amendments to policies mean that officers do not have authority to access any information relating to:
  - themselves;
  - members of their family, including partners;
  - neighbours; or
  - any other person with whom they have formed a friendship or relationship.
- WAPOL has adopted a Declarable Associations Policy, which outlines what action an employee needs to take with respect to these



associations and what is required to be done should they believe that they need to access computer information that may not be part of their function or duty to perform.

- Following the tabling in the Parliament of Western Australia on 4 October 2010 the Commission report entitled *The Use of Taser® Weapons by Western Australia Police* the WAPOL Taser use policy was amended to ensure that Taser weapons are not used for compliance.

### 3.9 Recommendations

- [208] In relation to WAPOL's dealings with allegations of misconduct that have been categorised as high risk the Commission makes three recommendations.

#### **Recommendation One**

It is recommended that Western Australia Police review its approach to providing apologies to complainants who are genuinely aggrieved with a view to achieving a more effective resolution of their complaints.

- [209] In its response to the draft report WAPOL stated that "[t]he practice of providing an apology is largely a case by case decision; the circumstances in which the failure to provide an apology leads to a flawed outcome are likely to be minimal ... WAPOL will provide an apology when appropriate".
- [210] The Commission makes this recommendation with the view that individual districts would benefit from wider application of apologies in circumstances in which the complainant is genuinely aggrieved. The Commission's view has been formed with due consideration to the *Australian Complaints Handling Standard (AS 4269)*, the *International Complaints Handling Standard (ISO 10002-2006)* and the Guidelines issued by the Ombudsman Western Australia entitled *Remedies and Redress*, which state that:

*The "Civil Liability Act 2002" defines "apology" as ... [a]n expression of sorrow, regret or sympathy by a person that does not contain an acknowledgment of fault by that person ...*

*The Act provides that an apology expressed in this way does not constitute an admission of liability, and therefore should not be relevant to the determination of fault or liability in connection with civil liability of any kind, nor should it be admitted into evidence in a court hearing.*

*The impact of a sincere apology, offered early in the process, should not be underestimated. Even where an apology may not appear to be warranted, it is worthwhile expressing regret or sympathy in a way*

*that does not accept blame; for example “I’m sorry that this situation has left you feeling disappointed”. It will often avoid the escalation of a dispute and the significant cost in time and resources that can be involved.<sup>12</sup>*

### **Recommendation Two**

It is recommended that Western Australia Police review its approach to dealing with conflict of interest allegations that involve WAPOL officers and alleged unauthorised computer access by WAPOL officers with a view to identifying whether its misconduct management system is at risk of systemic failure in these areas.

- [211] In its response of 21 January 2011 to the draft report WAPOL stated that “[t]he Commission has not provided sufficient grounds to show that these classes of complaint are of such frequency or seriousness to justify the extreme opinion posited that they will lead to systems failure”.
- [212] The Commission disagrees with WAPOL’s position. It is the ramifications of inadequate investigations, particularly by IAU, that are of concern to the Commission, not the quantity.

### **Recommendation Three**

It is recommended that Western Australia Police adopt Police Complaints Administration Centre quality assurance processes for all Internal Affairs Unit cases.

- [213] The Commission notes that more recently changes made with respect to IAU appear to have fulfilled the requirements of this recommendation. However, the Commission makes no assertions that the IAU quality assurance process is an adequate system. It is planned that future Commission reports on the management of misconduct by WAPOL will consider in detail the IAU quality assurance process.
- [214] In its response to the draft report WAPOL stated that the: “Internal Affairs Unit currently employ[s] equally stringent quality assurance processes, inclusive of a PCAC style checklist, in [sic] respect to investigation files together with independent review and checking of investigations at various stages”.

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<sup>12</sup> A copy of the Guidelines entitled *Remedies and Redress* can be located on the Ombudsman Western Australia Website at <http://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Remedies-and-Redress-guidelines-30409.pdf>, viewed 14 August 2011.

## **CHAPTER FOUR MEDIUM RISK ALLEGATIONS**

### **4.1 Introduction**

- [215] Medium risk allegations are those which, if not properly dealt with, embody minor or moderate potentially adverse consequences for the reputation and business processes and systems of WAPOL. Allegations falling into this category do not typically involve serious misconduct and/or complicating issues. However, failing to deal with trends evident in these allegations is likely to adversely affect WAPOL's reputation, and in turn undermine community confidence in policing.
- [216] Medium risk allegations make up approximately two thirds of WAPOL misconduct allegations.

### **4.2 Methodology**

- [217] The way WAPOL dealt with medium risk cases was analysed during Systems-Based Evaluations (SBE) of police districts and units during 2008 and 2009. Between 11 April 2008 and 25 March 2009 all 14 WAPOL districts and three organisational units were evaluated. During those evaluations the adequacy of all medium risk case files were analysed.
- [218] An officer from PCAC also attended all SBE visits. This was to facilitate the process and to determine whether PCAC needed to take any preventive action in relation to any specific investigation or issue raised.
- [219] Officers of all ranks from all districts and units welcomed both the SBE process and Commission officers to their sections. Almost without exception, district and unit superintendents, and in the case of the Specialist Crime Unit, an assistant commissioner, made themselves available for discussion and took the opportunity to provide the Commission with their views about misconduct management in their area. If any issues requiring immediate attention arose during the course of a SBE visit, they were discussed with the relevant superintendent, governance officer or investigator.
- [220] During this round of SBE visits 267 district and unit investigation files were analysed (refer Table 3 below).
- [221] With the exception of the cases from IAU, most cases had been subject to quality control by PCAC.<sup>13</sup>

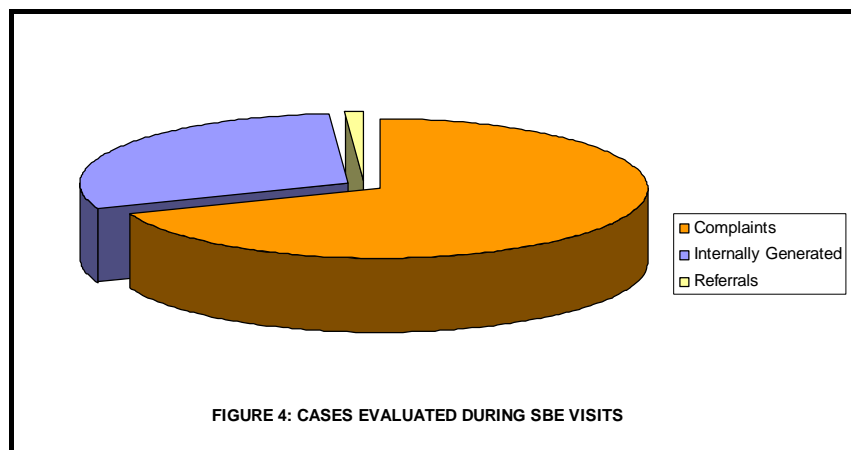
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<sup>13</sup> IAU cases were not subject to the same quality control requirements as those assessed by PCAC. Also, a small number of cases were analysed within districts that were finalised but had not yet been subject to quality control by PCAC.

DISTRICT/UNIT	CASES EVALUATED	DISTRICT/UNIT	CASES EVALUATED
Internal Affairs Unit	64	Pilbara	23
Central Metropolitan	19	South East Metropolitan	22
East Metropolitan	3	South Metropolitan	12
Goldfields-Esperance	19	South West	8
Great Southern	15	Specialist Crime	14
Kimberley	8	Traffic and Operations	8
Mid-West Gascoyne	15	West Metropolitan	17
North West Metropolitan	7	Wheatbelt	12
Peel	1		
<b>TOTAL</b>	<b>267</b>		

**TABLE 3: NUMBER OF CASES ANALYSED**

[222] Of the 267 cases 185 were complaints by members of the public, 79 were internally generated, and three cases were referred from the Commission after receiving reports from members of the public (Figure 4).



### 4.3 Registering Complaints

[223] IAU dealt with 61 (77.2%) of the internally generated complaints, which were cases mainly originating from intelligence sources or issues of overriding concern to WAPOL rather than as a result of externally generated complaints. The three cases referred by the Commission were investigated by IAU.

[224] All other cases were notified to PCAC, either by complainants or by districts.

#### 4.3.1 Categorisation

[225] The vast majority of cases were categorised appropriately by PCAC as part of its assessment process. Once the investigation file was forwarded to a district or unit for investigation categorisation could only be altered following consultation with PCAC. Only two not properly categorised cases were identified.

[226] Both cases were dealt with by LCR when the level of seriousness of the allegation warranted a more thorough investigation. It is noted that PCAC

has since introduced a “short format report” that applies to those cases in which the level of seriousness falls between an LCR and a full investigation.

### 4.3.2 Vulnerable Complainants

[227] The number of cases involving complainants from potentially vulnerable backgrounds is represented by Table 4.

DISTRICT/UNIT	I	CLD	J	D	MI	DV
Internal Affairs Unit	0	1	1	0	0	0
Central Metropolitan	*	0	0	0	0	*
East Metropolitan	*	0	0	0	0	*
Goldfields-Esperance	4	0	0	0	0	0
Great Southern	3	0	1	0	0	0
Kimberley	5	0	0	0	0	*
Mid-West Gascoyne	4	0	0	0	2	0
North West Metropolitan	*	0	0	0	0	*
Peel	*	0	0	0	0	*
Pilbara	5	1	2	0	0	0
South East Metropolitan	1	1	0	0	0	1
South Metropolitan	*	0	0	0	0	*
South West	2	0	0	0	0	*
Specialist Crime	0	0	0	0	0	*
Traffic and Operations	0	0	0	1	0	0
West Metropolitan	0	0	0	0	0	0
Wheatbelt	0	0	0	0	0	0
<b>TOTALS</b>	<b>24</b>	<b>3</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>*</b>

**TABLE 4: POTENTIALLY VULNERABLE COMPLAINANTS**

**KEY: I=Indigenous; CLD=Culturally or Linguistically Diverse; J=Juvenile; D=Disability; MI=Mental Illness; DV=Domestic Violence; and \*=Incomplete Data.**

[228] Figures relating to indigenous complainants were only captured during the second half of SBE visits. At least 24 complaints were made by, or on behalf of, an indigenous person. All cases involving an indigenous complainant were dealt with appropriately.

[229] All cases involving complaints from people suffering a mental illness and from juveniles were dealt with appropriately. Three cases involved complainants of Middle Eastern origin, of which one was dealt with inadequately. This case was investigated in the South East Metropolitan District.

## 4.4 Investigation

### 4.4.1 Conflict of Interest

[230] There were no conflict of interest issues identified in medium risk cases.

[231] It is worth noting the approach taken by the Kimberley and Pilbara Districts to avoid potential conflict of interest between investigating and subject

officers. If a conflict of interest, or a potential conflict of interest, was identified, a senior officer went to the particular area and remained there until the investigation was complete.

- [232] This approach provided greater reassurance about impartiality and ensured that the case was addressed promptly. These remote districts more effectively dealt with a problem than other better resourced, and more accessible districts, despite human resource and financial limitations, and difficulties associated with isolation.

#### **4.4.2 Adequacy**

- [233] Of the 267 medium risk cases analysed, 260 were found to be adequately investigated. Seven investigations were deemed inadequate. The most frequent reason for this was poor analysis of the evidence and, therefore, a deficiency in the conclusions reached by the investigator.
- [234] Two of the seven cases were investigations from IAU. One of the IAU cases was deemed inadequate because there was a shortfall in the evidence gathered, in the other case the evidence was inadequately analysed.
- [235] In its response of 21 January 2011 to the draft report WAPOL questioned any whole-of-agency interpretation based on data gathered by the Commission's SBE process. WAPOL said that PCAC is aware of deficiencies and regularly addresses those matters through quality assurance, either by returning files to the district for further work or undertaking the work themselves.

#### **4.4.3 Positive Investigation Practices**

- [236] The SBE process revealed a number of positive investigation practices occurring within districts and units. These practices could also be incorporated into other districts.
- **Great Southern District** — district inspectors met with the superintendent once a week at a tasking and coordinating meeting to discuss the progress of all internal investigations. In that way there was progressive oversight of all investigations and an opportunity to review the decisions of each inspector.
  - **Central Metropolitan District** — a second, more experienced, investigating officer was allocated to each investigation or LCR. This practice ensured that the investigation was not delayed if the primary investigating officer was absent for any reason. The primary investigating officer also had the opportunity to lead an investigation under the guidance of a more experienced officer.
  - **West Metropolitan District** — investigating officers presented all evidence relating to the investigation to the superintendent and governance officer, resulting in a shared, objective conclusion. Investigators were counselled not to make a decision about the outcome of a case until this shared decision-making process had occurred.

#### **4.4.4 Governance Officer: Case Studies Seven and Eight**

- [237] The SBE process revealed a difference in the role of the governance officer between districts and units.
- [238] In the Wheatbelt District the governance officer had developed a procedures manual which described the processes for managing all daily and weekly duties including LCRs, investigations, the MAP process and Commission reviews or evaluations. The manual also included a district check sheet for internal investigation files, which was essentially a district version of the PCAC review sheet, used before forwarding a completed investigation to PCAC.
- [239] In most districts and units the authority and role of the governance officer was respected and strongly supported by the superintendent. The investigation process received time and resources so that investigations were brought to timely conclusions.
- [240] However, this was not the case in the Peel District, as illustrated by the following two case studies.

##### **4.4.4.1 Case Study Seven**

*An investigating officer completed a substandard investigation. The governance officer returned the file to the investigating officer with a request to conduct further inquiries. The Officer-in-Charge of the investigating officer's station refused to release the investigating officer from frontline duties, stating the complaint was irrelevant and the complainant's evidence was inconsistent. In a report returned to the governance officer, the Officer-in-Charge acknowledged that the subject officers could have acted in a more appropriate manner. At the time of the SBE, the governance officer had again returned the file on the basis of this admission, seeking a decision as to whether the complaint was sustained. This illustrates an unnecessary waste of time for what was a relatively minor allegation, because the Officer-in-Charge subjugated the governance officer's authority.*

##### **4.4.4.2 Case Study Eight**

*The governance officer had some concerns with an investigation. He felt further work was required and forwarded the case to PCAC for its assessment. The governance officer was reluctant to approach the investigating officer directly about the substandard investigation. PCAC agreed with the issues raised by the governance officer and returned the case to the investigating officer for further action. The investigating officer completed the minimum of work requested and sent the file to PCAC with a covering memorandum outlining what he believed was an unwarranted expectation that he "chase every rabbit down every hole". The tone of the memorandum and the general views of the district inspectors about low level investigations highlighted the limited value placed on the investigation of lower level matters in this district and, therefore, the governance officer's reluctance to direct the investigating officer to undertake further inquiries.*

- [241] Since the Commission's SBE of the Peel District significant changes to the management team in that district have occurred.

#### 4.4.5 Local Complaint Resolution

[242] LCRs are generally used for allegations at the lower end of the seriousness spectrum and for which resolution, rather than determining facts, is appropriate. They are less intensive than investigations, but are still quality assured.

[243] The SBE process revealed a number of positive LCR practices occurring within districts and units. These practices could also be incorporated into other districts

- **South East Metropolitan District and the Specialist Crime Unit** — LCRs were expected to be completed within seven days rather than within the standard 30 days. Complainants were required to be contacted within 48 hours. Investigating officers were permitted to put all other cases aside for that period (operational considerations already having been taken into account by the superintendent and governance officer prior to allocation of the LCR). This reduced timeframe had several advantages including:

- increasing complainant satisfaction;
- increasing the recall capacity of officers and witnesses;
- increasing the likelihood of the investigating officer and governance officer having more regular interaction and thereby keeping the investigation on target; and
- allowing investigating officers to better manage their files by prioritising internal investigations over a shorter period without allowing other cases to intervene.

- **Wheatbelt District** — this district demonstrated a fine example of the practice of including running sheets on the LCR files, although this practice was also followed in other districts. These running sheets included details of conversations with complainants, witnesses and subject officers, whether the relevant allegations had been addressed, and how the complainant and subject officer were notified of the outcome. This greatly improved the transparency and accountability of the LCR and allowed the SBE process to be conducted more efficiently.

[244] Some districts put too much work into LCRs, often investigating the case until all available avenues of investigation had been explored rather than to the point when the allegation could reasonably be resolved. This approach resulted in comprehensive files containing evidence that the Commission would anticipate seeing on WAPOL investigation files into high risk cases.

[245] This work far exceeded that envisaged by the architects of the LCR process and at times delayed the case being brought to a resolution. It is, however, noted that the districts which overworked LCRs did not have any inadequate investigations.

[246] The main reason given for overworking LCRs was a lack of certainty about the requirements of the Commission and quality control requirements of



PCAC. Officers responsible for conducting LCRs did not want to be criticised for not having interviewed all available witnesses, even if further evidence would not meaningfully alter the outcome of their inquiries.

- [247] This problem could be remedied by a retraining program or to issue clearer guidelines for governance officers to remind them of the objectives of the LCR process and to accurately update them on the expectations of PCAC and the Commission.

## **4.5 Resolution**

- [248] Most cases were resolved in a manner that was reasonable. Those cases that were not reasonably resolved corresponded exactly to those cases that were inadequately investigated.

### **4.5.1 Complainant Satisfaction**

- [249] The resolution of cases was considered reasonable when it appeared that the investigating officer had made a reasonable attempt to achieve a resolution, regardless of whether the complainant was satisfied with the outcome.

- [250] As a tool for reconciliation with complainants whose complaints were neither resolved nor sustained, a letter of apology was sent by some district superintendents. Apologies were also written when considered warranted if the complaint was sustained. The letter was typically worded in an empathetic but non-prejudicial way. If a complaint about unprofessional or discourteous service was sustained a sincere apology on behalf of WAPOL was provided. Letters of apology were particularly well done in the South East and East Metropolitan Districts.

### **4.5.2 Managerial Action Plan**

- [251] MAPs were recognised in almost all districts and units as being an effective means of correcting an officer's behaviour in order to enhance his or her performance. A total of 26 MAPs were issued from the 267 medium risk cases analysed.

- [252] Four of these MAPs were issued from the 64 IAU medium risk cases analysed (or 6.2%) and arose from internally generated allegations. The remaining 22 MAPs were issued from the 203 district/unit cases (or 10.8%).

- [253] Of particular note was that 66.6% of MAPs issued by districts and units arose from internally generated allegations, compared to 6.2% from IAU. This is a similar discrepancy to that which was revealed during high risk cases (64.5% compared to 28.6%) and the same reason discussed during Chapter Three is likely to explain the discrepancy for medium risk cases. That is, senior officers within districts, units and PCAC having a greater, and it must be said appropriate, focus on the development and management of individual officers than officers at IAU.

[254] The difference between the rate of MAPs issued for internally generated cases compared to external complaint cases also deserves attention. There are several possible explanations.

- Since internally generated cases are more likely to be of a serious nature (breaches of Code of Conduct, policy and regulations), MAPs are a more likely outcome. Lower level complaints are more likely to be resolved through conciliation.
- Witness or complainant officers may be able to provide an account that is more easily verifiable than that provided by a member of the public, and therefore more readily resolved through a MAP.
- It is likely that WAPOL officers will only notify their superiors about misconduct when it is of a particular level of seriousness.

[255] In most districts/units MAPs were used to correct the behaviour of officers. However, in the Peel District, the process was misunderstood and MAPs were seen as a punishment or to influence or control a particular outcome. In the Peel District the fact that very few MAPs had been delivered was viewed as a positive feature of district operations.

[256] In other districts the use of MAPs was done well. Of the many good examples observed several practices that could be adopted easily by other districts are listed below.

- MAPs were issued by superintendents rather than by more junior managers.
- Prior to delivering a MAP the district superintendent met with the governance officer who made inquiries into whether there were factors that may have had some bearing on future risk management of the officer concerned, but which were not apparent from the facts.
- The subject officer was given the opportunity to present additional information or evidence to the district superintendent if it became available.
- MAPs were monitored by the staff officer to ensure that each stage of the process was met according to the planned schedule.
- Emphasis was placed on the need for the MAP to be delivered in a timely way and for MAPs to be relevant to the issues at hand.
- Guidance communicated verbally was recorded on MAPs to ensure that the information was centrally recorded and the outcomes were equitable.
- By the time a MAP was to be delivered it was not unexpected. The subject officer had been notified that he or she was going to receive a MAP, including its purpose. If the officer was unclear about any aspect of a proposed MAP or disagreed with it, this was discussed prior to the MAP being formally issued.

[257] In its response of 21 January 2011 to the draft report it was observed by WAPOL that the Commission refers to MAPs as though they are “an investigative outcome, and perhaps a unit of measurement”. In the

opinion of WAPOL this shows a “lack of understanding” of the Managerial Intervention Model. WAPOL maintains that it is not whether a MAP was issued that is pivotal to the resolution of the complaint or adequacy of the investigation, but whether there was scope for some intervention to modify behaviour.

[258] Interestingly, in its response WAPOL acknowledge an “unfortunate” inconsistency within WAPOL in which “the term MAP has become synonymous with punishment. Eg. ‘Officer X has failed to submit some paperwork, I’ll give him a MAP’”.

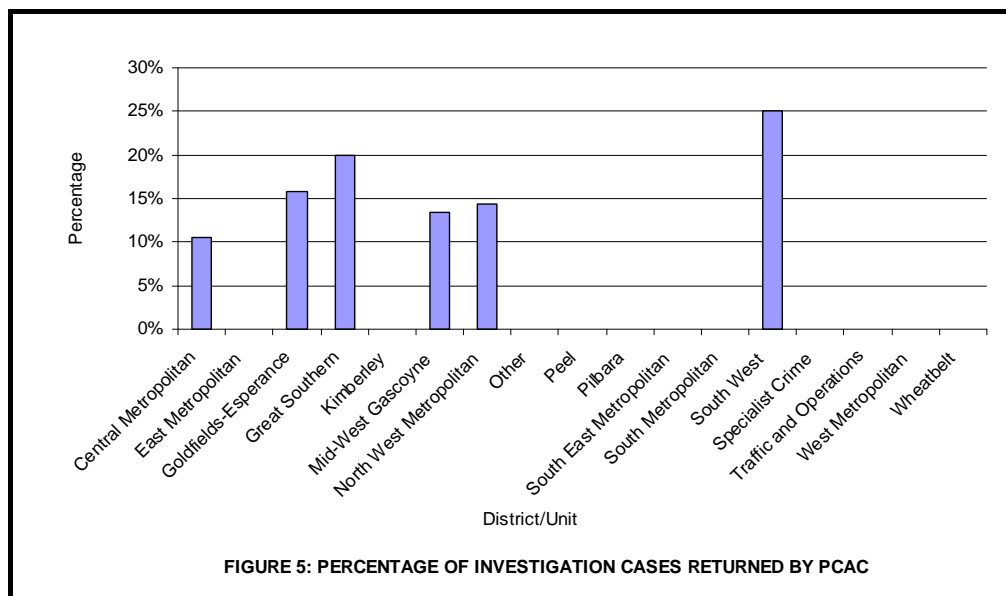
[259] The Commission does not imply that the issue of a MAP indicates an adequate or inadequate investigation, nor is the Commission of the belief that a MAP is punitive action. However, the contents of a MAP can, and do, reveal how an investigation is resolved.

#### 4.6 Quality Assurance

[260] After the finalisation of an LCR or investigation of medium risk cases in districts it was forwarded to PCAC for quality assurance. Of the 203 district cases analysed by the Commission, 13 were returned by PCAC as a result of an identified deficiency in the investigation.

[261] The majority of issues were administrative, but in a small number of cases potentially serious deficiencies were identified. This included failing to obtain the account of a witness officer and not properly implementing managerial action. Without this quality assurance role by PCAC the number of investigations deemed inadequate would have been much higher.

[262] Figure 5 shows the percentage of cases returned by district/unit.



[263] Medium risk IAU cases were not subject to quality assurance by PCAC. These cases were subject to quality assurance processes by senior

officers within IAU. The lack of thoroughness in the two IAU investigations that the Commission found to be inadequate may have been avoided if stringent quality assurance processes had been applied.

[264] In its response of 21 January 2011 to the draft report WAPOL acknowledged “that proper oversight and review of investigations is critical to the maintenance of the misconduct management system”. WAPOL stated that even though IAU was not overseen by PCAC, it “employs stringent oversight of investigations ...”. WAPOL also stated that even though two investigations from IAU were lacking thoroughness, it did not invalidate the IAU quality assurance process.

## 4.7 Summary and Conclusion

[265] The bulk of WAPOL misconduct allegations fall into the medium risk category. Therefore, the way WAPOL deals with them is critical.

[266] There are examples of genuine innovation in the way WAPOL districts and units deal with these cases. This demonstrates the commitment of district managers to misconduct management. At the centre of the organisation PCAC plays a *bona fide*, and almost always effective, quality assurance and coordination role.

[267] The Commission analysis of these cases identified the following.

- The vast majority of cases were categorised appropriately.
- Potentially vulnerable complainants appeared to be treated equitably.
- There were no conflict of interest issues identified.
- WAPOL investigations into medium risk cases were considered to be adequate in 260 of the 267 cases analysed.
- Most cases were resolved in a manner that was reasonable in consideration of the actions available. Those cases that were not reasonably resolved corresponded exactly to those cases that were inadequately investigated.
- MAPs were more likely to result from internally generated cases than from complainants.

[268] Positive investigation practices were identified, as follows.

- Kimberley and Pilbara Districts responded to potential conflict of interest effectively by ensuring that the oversight of the investigation was undertaken by a senior officer.
- Tasking and coordination oversight in the Great Southern District ensured progressive oversight of investigations.

- The appointment of a second investigating officer in the Central Metropolitan District ensured that investigations were not delayed and that experienced officers mentored less senior officers.
- Shared decision-making in the West Metropolitan District enhanced the objectivity of decision-making.
- A governance officer's procedures manual in the Wheatbelt District ensured greater quality control and consistency.
- LCRs were conducted well in the districts and units, although some districts were overworking the process.
- Reduced timeframes for LCRs in the Specialist Crime Unit and South East Metropolitan District aided the resolution process, and the use of comprehensive running sheets on LCR files in the Wheatbelt District aided transparency and accountability.
- Letters of apology from the superintendents in the South East and East Metropolitan Districts assisted reconciliation with complainants.

[269] Although not strictly limited to medium risk allegations, SBEs of districts and units revealed several practices related to managerial action that could be adopted easily by other districts.

- MAPs were issued by superintendents rather than by more junior managers.
- Prior to delivering a MAP the district superintendent met with the governance officer who made enquiries into whether there were factors that may have had some bearing on future risk management of the officer concerned, but which were not apparent from the facts.
- The subject officer was given the opportunity to present additional information or evidence to the district superintendent if it became available.
- MAPs were monitored by the staff officer to ensure that each stage of the process was met according to the planned schedule.
- Emphasis was placed on the need for the MAP to be delivered in a timely way and for MAPs to be relevant to the issues at hand.
- Guidance communicated verbally was recorded on MAPs to ensure that the information was centrally recorded and the outcomes were equitable.
- By the time a MAP was to be delivered it was not unexpected. The subject officer had been notified that he or she was going to receive a MAP, including its purpose. If the officer was unclear about any aspect of a proposed MAP or disagreed with it, this was discussed prior to the MAP being formally issued.

## 4.8 Changes at WAPOL

[270] In its response of 21 January 2011 to the draft report WAPOL commented on the following changes.

- Introduction of a “short format report” for those cases which fall between an LCR and a full investigation. That is, less than serious misconduct but more than a low risk complaint.
- There have been significant changes to the management team in the Peel District.

## 4.9 Recommendations

[271] In relation to WAPOL’s dealings with allegations of misconduct that have been categorised as medium risk the Commission makes two recommendations.

### **Recommendation Four**

It is recommended that Western Australia Police implement and deliver a training course for governance officers covering the principles of Local Complaint Resolution (LCR) and the practical application of those principles, and consider issuing clearer guidelines about the LCR process.

[272] In its response to the draft report WAPOL stated that “practical advice, direction and guidelines for Governance Officers are in place and PCAC also provides ongoing input to Recruit and In Service Training at the Police Academy in [sic] respect to the management and resolution of complaints”.

[273] The Commission acknowledges that this would appear to fulfil the requirements of this recommendation. However, the Commission is not in a position to comment at this time in relation to the quality of the said advice, directions and guidelines.

### **Recommendation Five**

It is recommended that Western Australia Police (WAPOL) extend the use of the positive practices identified in this report that have been adopted by some WAPOL districts and units to increase the efficiency of its misconduct management process.

[274] In its response to the draft report WAPOL stated that “[b]etter practices which are identified may be communicated to Governance Officers for their information and application if appropriate”. WAPOL also stated “that Professional Standards will not mandate that a particular process be

adopted by District/Divisional Superintendents outside of organisational policy”.

- [275] It appears to the Commission that WAPOL does not propose to implement this recommendation, and may have misunderstood the spirit in which it was offered. The Commission identified good practices from individual districts with a view to assisting WAPOL to improve practices across all districts.





## **CHAPTER FIVE LOW RISK ALLEGATIONS**

### **5.1 Introduction**

- [276] Low risk allegations are those which, if not properly dealt with, embody relatively insignificant potentially adverse consequences for the reputation, and business processes and systems of WAPOL. Allegations falling into this category typically involve issues relating to service delivery, policy or procedure, or a misunderstanding of the law. Failing to deal with these allegations, or trends evident in them, is unlikely to significantly adversely affect WAPOL's reputation or community confidence in policing.
- [277] WAPOL has come to refer to these allegations as "information only" complaints.
- [278] The Commission's interest in low risk allegations extends only to the extent that they amount to misconduct. That is, when they are incorrectly recorded by WAPOL. The Commission analysed the way WAPOL deals with these cases to ensure that misconduct allegations (or, in the context of this report, medium risk allegations or high risk allegations) were not incorrectly dealt with as low risk allegations.
- [279] When low risk complaints are made to PCAC they are documented in a CAR and retained on file by PCAC. After November 2006 all cases resolved and recorded on CARs have been forwarded to the Commission for its information and oversight. Completed CARs are also forwarded to the relevant district so that districts can use the complaint to better guide management and practice.
- [280] At the time the Commission analysis was undertaken there was no existing process for districts to record low risk complaints that had been resolved immediately. When low risk complaints were received by districts (as opposed to being received by PCAC) no CAR was required.
- [281] The PCAC process for dealing with low risk complaints was implemented in January 2005 with the creation of two complaint assessment officer positions. The initial role of the complaint assessment officers was to contact complainants with the intention of better understanding complaints and attempting to assist with their early and efficient resolution.
- [282] When the Managerial Intervention Model was implemented in October 2006 the role of complaint assessment officers was modified to assess complaints prior to allocation to the districts for investigation and resolution. "Information only" complaints were resolved by these officers.
- [283] Prior to the Commission analysis of this issue, which included identifying issues in a working paper to WAPOL on 14 July 2009, no official policies or guidelines existed about the resolution of "information only" complaints.

[284] The WAPOL Website and the brochure *Making a Complaint About the Police* states that complaints are dealt with in one of two ways, that is, by LCR or a formal investigation.

[285] The only document that contained reference to “informal” complaints (though not “information only”) was the WAPOL *Complaints Against Police Investigations Guide*, which outlined the process for dealing with a complaint (received at station level) as follows.

*When a complaint against Police is received at a station, the member receiving the complaint shall undertake the following actions:*

- *Record the complaint in writing.*
- *Assess the material and determine which of the following categories the issues belong to.*
- ***Informal** complaints which can be dealt with by local management.*
- *Local Complaint Resolution ...*
- *Major (Assessable) Complaints ...*
- *Record the complaint in the Occurrence Book.*
- *NOTIFY the District Superintendent or Governance Officer/equivalent ... of the essential elements of [the] complaint ...*
- *The member concerned or a supervisor/manager shall submit the relevant form [CAN] to the OIC, Police Complaints Administration Centre [PCAC] ...*

(emphasis added)

[286] The use of the term “informal” is problematic. It is worth noting that the *Australian Complaints Handling Standard (ASO 4269)* does not differentiate between informal and formal complaints, except that it encourages organisations to minimise formality when dealing with complaints.

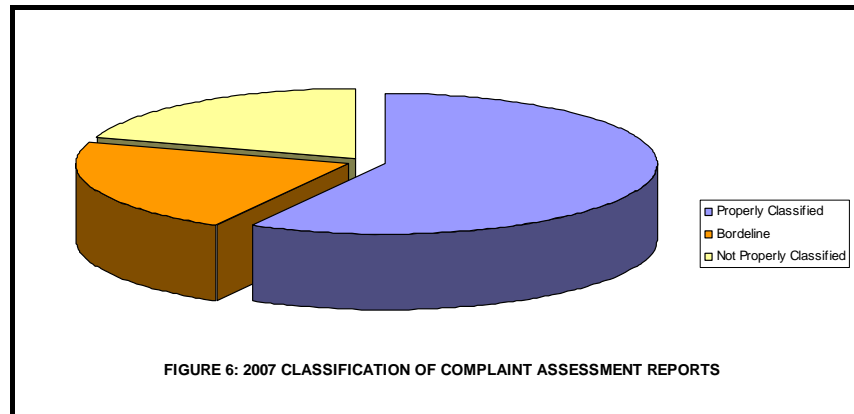
## **5.2 Registering Complaints**

### **5.2.1 Categorisation**

[287] During 2007 the Commission was notified of 224 cases by way of CARs from PCAC. The Commission determined that 130 (58%) were properly categorised as “information only”. These generally involved enquiries about police procedure or police inaction. Forty-nine cases (22%) were borderline in that they involved reviewable police action allegations about manner or unprofessional conduct and could have been handled by way of an LCR at the district level.

[288] There were 45 cases (20%) which should not have been handled as “information only”. These cases involved substantive misconduct allegations about possible criminal behaviour such as unauthorised access of computers or assault, or allegations about excessive force, bullying, intimidation or aggression. These cases should have been allocated to districts or units for LCR or investigation. They were clearly not properly categorised.

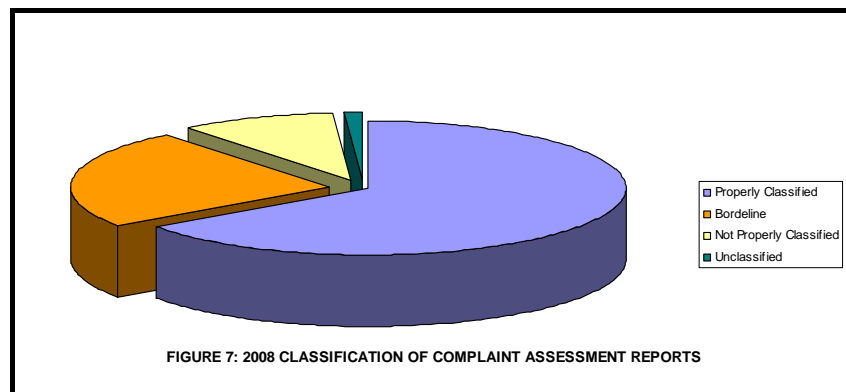
[289] This can be seen below by Figure 6.



[290] In its response of 21 January 2011 to the draft report WAPOL stated that PCAC conducted its own review of cases which were not properly categorised, reaching a figure of 10% (compared to the Commission figure of 20%). WAPOL states that the discrepancy further highlights the fact that on review there will be investigations upon which WAPOL and the Commission disagree as to categorisation.

[291] During 2008 the Commission was notified of 363 cases by way of CARs from PCAC, a 62% increase on 2007. Of these, 240 (66%) were properly categorised, 87 (24%) were borderline and 36 (10%) were not properly categorised. There were four cases about which a determination could not be made due to a lack of information. These cases are labelled “unclassified”.

[292] This can be seen below by Figure 7.



[293] In its response to the draft report WAPOL acknowledges that the cases should have been subject to approval and sign-off by a supervisor before

they were closed. WAPOL stated that it is confident that a revised PCAC inquiry process will result in better management of these issues.

- [294] Classification issues are highlighted by the following three case studies, drawn from the 2008 “information only” cases. In its response to the draft report WAPOL acknowledged that these cases could have been handled differently, observing that changes to the PCAC inquiry process will result in improved outcomes in the future.

#### **5.2.1.1 Case Study Nine**

*The complainant contacted the Commission to report his allegations. He said that he had made two attempts by email to report the case to WAPOL using the PCAC email address but had not received a response.*

*The allegations related to the use of excessive force by police officers, including the use of a Taser weapon for compliance.*

*The PCAC assessor determined that the case did not need to be allocated to a district for investigation or LCR, but instead could be resolved by PCAC. The case was received and finalised by PCAC on that same day.*

*Neither the subject officers nor the complainant were spoken to about the case, and no associated material (for example, Use of Force reports, Taser discharge records or video footage) was obtained in order to form a view about the appropriateness of the actions of the subject officer.*

*The decision was reviewed by the PCAC Complaints Coordinator. He noted that:*

*“... The incident has been reviewed and I am satisfied that police policy and procedures has [sic] been complied with and the issues relating to the use of the Taser warrants no further investigation ...”*

- [295] Because of the seriousness of the complaint and the investigation necessary to consider the allegations, this case should have been referred to a district for investigation.

#### **5.2.1.2 Case Study Ten**

*The complainant made a complaint alleging that the subject officer used the WAPOL computer system to access the complainant’s personal details for non-work related purposes. The complainant further alleged that the subject officer repeatedly sent him and a family member sms messages in a harassing manner, and on at least two occasions the subject officer physically confronted him and abused him.*

*The CAR did not clearly record the investigation or resolution of this case. From the details on the CAR it appeared as if two audits were conducted of the subject officer’s computer access. It was noted in the CAR that the second audit (conducted by an IAU officer) “revealed no further access of the complainant’s details”. This implies that the complainant’s details were accessed by the officer, and that this was revealed by a first audit, although this was not stated.*

*Further it was noted in the CAR that “the complainant was adamant he does not want the subject officer charged with any offences, he just wants her to cease any contact with him”. It was also noted in the CAR that the complainant had taken out an interim Violence Restraint Order “in an attempt to cease any contact or further stalking by the subject officer”.*

*The PCAC complaint assessment officer concluded the report by stating:*

*“[r]egular telephone calls and contact by PCAC with the complainant and he is happy with the service provided by police. File can be closed with no further action required ...”.*

*WAPOL subsequently advised the Commission that the case was forwarded to the relevant district for investigation. The subject officer received a written reprimand and this information was recorded on the subject officer’s complaint history.*

*This information was not recorded on the CAR.*

- [296] The categorisation of cases as “information only”, or similar, also occurred in the districts. Categorisation was inconsistent, and there was no requirement for the cases to be recorded, therefore the quality of categorisation cannot be evaluated.

### **5.2.2 Unauthorised Computer Access**

- [297] There were a number of PCAC “information only” cases which dealt with allegations of unauthorised computer access or release of confidential information. Dealing with allegations of this nature as “information only” is inappropriate. They are substantive misconduct cases that potentially involve breaches of section 440 of *The Criminal Code*.
- [298] In some of these cases the PCAC complaint assessment officer or an IAU officer conducted an audit of the subject officer’s recent accesses of the complainant and found that there was no evidence to substantiate the allegations. Although such an audit is relevant and informative, it is not necessarily definitive. By not allocating such cases for investigation the opportunity to gather and interpret important relevant evidence is lost.
- [299] In its response of 21 January 2011 to the draft report WAPOL stated that it would be a waste of valuable frontline police resources to send a file out for investigation when a properly managed, auditable, preliminary assessment would achieve the same outcome. WAPOL also stated that an audit proving that the restricted access system was not accessed is sufficient to finalise the matter, unless the allegation is supported by actual evidence of information release.

### **5.2.3 Complainants**

- [300] A small number of complaints contained within the 2007 CARs from PCAC were made on behalf of another person. In relation to these complaints the complainant was advised that the person making the allegations needed to complain to police themselves. This was incorrect advice. Consistent with WAPOL complaints policy, as articulated in the brochure

*Making a Complaint About the Police* and on the WAPOL Website, complaints can be made on behalf of:

- a juvenile;
- someone who suffers from a mental illness or other disability;
- a person who has a direct relationship to the person he or she is lodging a complaint on behalf of; or
- a person who has a direct interest in the incident that gave rise to the complaint.

#### **5.2.4 Unknown Subject Officer**

[301] Cases dealt with as “information only” complaints often included cases in which the subject officer was not able to be identified by the complainant, or in which the complainant was not able to provide sufficient information to enable the officer to be identified. Some of these cases could have been forwarded to the relevant districts for further investigation in an effort to identify the subject officer.

#### **5.2.5 Withdrawn Complaints**

[302] Cases in which the complainant said that they did not wish to proceed with their complaint, or did not wish to “formalise” their complaint, were often dealt with as “information only” by PCAC.

[303] The reluctance of a complainant to participate in an investigation or resolution process should not, on its own, determine whether a case is continued by WAPOL. Consistent with WAPOL complaints policy, as articulated in the brochure *Making a Complaint About the Police* and on the WAPOL Website, decisions about the most appropriate way to address a complaint should be based on the seriousness of the allegations as well as other relevant factors, such as the availability of evidence and the circumstances of the case.

### **5.3 Investigation**

[304] By their nature CARs were not investigated. Adequacy of CARs was determined through appropriate categorisation and resolution.

### **5.4 Resolution**

[305] The LCR process was implemented in 2001, with the creation of the LCR Manual (now the LCR Guidelines).

[306] The LCR Guidelines contain a comprehensive list of cases that may be dealt with by LCR.

- *Complaints relating to demeanour, discourtesy, rudeness, abruptness or any similar act of incivility.*

- *Complaints alleging careless or inadequate performance in relation to customer service matters, such as a failure to respond promptly, return property, make inquiries, lay charges (minor matters only), return telephone calls and other failure/s to provide adequate service.*
- *Complaints which may be resolved by explanation, such as those based on a misunderstanding of facts or law, police practices or procedures.*
- *Complaints of police driving or parking behaviour (excluding serious traffic offences).*
- *Complaints made by persons who are possibly disturbed or obsessive and the allegations have either been made or considered before or which, by their nature, are consistent with the complainant's known state of mind.*
- *Complaints of minor use of force associated with an arrest or other lawful police conduct, which may include mere jostling, pushing and shoving without any attendant features such as intimidation, attempts to obtain a confession or exacting retribution.*
- *Complaints which initially appear to be more serious but which, on further examination and in consultation and agreement with PCAC, are deemed to be of a less serious nature and are capable of being dealt with by the LCR process (downgraded).*
- *Such other cases as the Commissioner of Police or the CCC may from time to time determine.*

[307] The reasons given for dealing with complaints which fit into these categories by the PCAC "information only" process rather than LCR actually mirrored the reasons why the LCR Guidelines stated they should be dealt with by the LCR process. For example, because the complainant was emotional, the case had been investigated before or that the complaint could be easily resolved by way of explanation. That is, the PCAC "information only" process dealt with the very cases for which the LCR process was created.

[308] In its response of 21 January 2011 to the draft report WAPOL stated that the new PCAC inquiry process has improved the rigour of recording and oversight that existed during the period of analysis by the Commission.

## **5.5 Quality Assurance**

### **5.5.1 Transparency**

[309] The normal process of investigation or LCR requires that complaints be recorded and the resolution or investigation documented. This makes each case capable of review by senior officers, PCAC and the Commission, thereby ensuring transparency. Such transparency is not

possible in “information only” cases because the same level of documentation is not maintained.

- [310] As part of the LCR process the complainant is asked to sign the LCR form indicating that the case had been resolved to their satisfaction, or at least that the outcome had been explained to them and a copy was provided to them. In “information only” PCAC cases there was no indication on the documentation that the complainant was aware of, or agreed with, the outcome, other than a statement to this effect on the CAR by the complaint assessment officer. “Information only” district cases may not record the case at all.
- [311] There was a far reduced potential for false redress to occur in the case of an LCR than in the case of an “information only” process, as the resolving officer was generally a senior officer connected to the police station and to the district office where the subject officer was located. Therefore, there was a reduced chance that a promise of action would be made that was not later implemented.

### **5.5.2 Record Keeping**

- [312] Recording and acting on minor allegations is considered by WAPOL to be critical in preventing officers graduating to more serious types of misconduct. “Information only” cases were not consistently recorded. All CARs completed by PCAC were recorded and made available to the Commission for evaluation, but there was no such requirement in the districts.
- [313] Some districts had developed their own process to deal with “information only” cases. For example, in the Wheatbelt District the governance officer personally dealt with all complaints made directly to the district office. In relation to minor allegations, the governance officer created an electronic file. It contained an informal running sheet, copies of relevant emails between the governance officer and the subject officer and relevant incident reports. The officer also kept a central record of all cases dealt with in this way.
- [314] In the South East Metropolitan District a case could only be dealt with by way of an “information only” process if the governance officer was contacted for authorisation. Details of the case were then included in the occurrence book. Even if the complainant expressed satisfaction with the outcome of the process, he or she was given a pamphlet explaining how to formalise the process by lodging a formal complaint. If the complainant was not satisfied, the case was automatically committed to a CAN and a formal process commenced.
- [315] In the South West District a small number of misconduct cases had been processed locally by police but had not been progressed to PCAC and the Commission. The files were available to the Commission during its SBE of the district but neither PCAC nor the Commission had a record of them. This appeared to have been because a number of officers from outlying areas in the district did not have a proper understanding of the



requirements of the complaints and notification processes. Further, the district superintendent was willing to allow informal resolution of cases of varying importance rather than requiring all cases to be committed to a CAN and forwarded to PCAC for a decision as to their seriousness.

### **5.5.3 Equity**

- [316] Because a significant proportion of PCAC “information only” complaints should have been, but were not, allocated to districts and units for LCR or investigation, the integrity and equity of the misconduct management system was potentially compromised.
- [317] It was inequitable that some complaints were formalised and subject to investigation at the district level when other, essentially identical, complaints were not. That this sometimes depended upon arbitrary factors, including how amenable the complainant was to agreeing to the case being resolved by way of an informal process, exacerbated this inequity.
- [318] Such inequity also extended to complainants. Those whose complaints had been investigated or resolved through LCR or investigation had an investigating or resolving officer visit their home to obtain their account and, as a minimum, received written acknowledgement of the outcome of their complaint. Those whose complaint was dealt with in the “information only” process may have received only a verbal assurance that their complaint had been dealt with.

## **5.6 Summary and Conclusion**

- [319] Analysis of the “information only” process revealed the following issues.
- A significant proportion of complaints were not properly categorised during 2007 and 2008.
  - The process was not being recorded at the district level.
  - The process undermined the integrity of the misconduct management system.
  - The process lacked transparency.
  - The process was inequitable.
- [320] The Commission accepts that low risk complaints, which do not involve misconduct allegations, are made to WAPOL. The “information only” process may be suitable to deal with these complaints. However, complaints that involve misconduct allegations must be resolved using the existing WAPOL process, not through an informal process. That is, in accordance with WAPOL policies and practices for dealing with complaints.

## 5.7 Changes at WAPOL

[321] In its response of 21 January 2011 to the draft report WAPOL outlined the following changes.

- The PCAC inquiry process now includes:
  - a new CAR developed in discussion with Commission officers;
  - a checklist that addresses all the points that should have been attended to during the course of the internal investigation;
  - a completed CAR being provided to a district as notification of action completed by PCAC and to the Commission, regardless of whether they meet reporting requirements for “reviewable police action – misconduct”;
  - reviewed PCAC Standard Operating Procedures;
  - a triage process in which staff discuss and assess complaints (third party complaints will be accepted and assessed on their merits);
  - a process in which complaint assessors can no longer approve their own assessment; and
  - auditable documentation including an electronic record of the nature of the complaint, written confirmation of the outcome of inquiries (which includes advice on the role of the Commission) and advice provided to complainants.
- An updated WAPOL Website that includes reference to:
  - the PCAC investigation assessment process; and
  - the resolution of complaints independent of LCR or other formal investigation process.
- Forthcoming changes to a WAPOL information brochure entitled *Making a Complaint About the Police*.
- Amendments to the *WAPOL Complaints Against Police Investigation Guide* to remove reference to “informal complaints”.

## 5.8 Recommendations

[322] In relation to WAPOL’s dealings with low risk allegations the Commission makes two recommendations.

### **Recommendation Six**

It is recommended that Western Australia Police use the “information only” process for cases that can properly be considered enquiries or requests for information, and does not use that process to resolve complaints alleging misconduct.

[323] In its response of 21 January 2011 to the draft report WAPOL stated that the new PCAC inquiry process “is a properly managed auditable and documented system for recording the resolution of low risk matters”.

[324] These changes appear to have fulfilled the requirements of the above recommendation. However, the Commission makes no assertions that the PCAC inquiry process is an adequate system. It is planned that future Commission reports on the management of misconduct by WAPOL will consider the PCAC inquiry process in detail.

#### **Recommendation Seven**

It is recommended that Western Australia Police amend policy documents, guidelines, brochures and its Website to ensure that all complaint and enquiry processes are clearly and accurately outlined.

[325] In its response to the draft report WAPOL stated that “[a]ll documents have been suitably amended during the period following release and discussion of the Commission’s Working Papers”. However, WAPOL stated that although the brochure *Making a Complaint About Police* had not yet been amended, it is planned that it will be amended prior to the next reprint.

[326] These changes appear to have fulfilled the requirements of the above recommendation. However, the Commission makes no assertions that the PCAC inquiry process is an adequate system. It is planned that future Commission reports on the management of misconduct by WAPOL will consider relevant amended documents in detail.



## CHAPTER SIX

# CONCLUSION AND RECOMMENDATIONS

### 6.1 Background

[327] During 2008 and 2009 the Commission undertook an analysis of the capacity of WAPOL to manage misconduct and analysed the way WAPOL handled misconduct allegations by classifying them into three categories.

- **High Risk** — which account for about a third of WAPOL misconduct allegations.
- **Medium Risk** — which account for about two thirds of WAPOL misconduct allegations.
- **Low Risk** (or “Information Only”, and not misconduct allegations) — a significant proportion of which were not properly categorised by WAPOL.

[328] The analysis undertaken by the Commission during 2008 and 2009 resulted in the production of three working papers, and the detailed analysis of the management of misconduct by WAPOL in this report is based on those working papers. Each of the working papers was provided to WAPOL for consideration and response, the first being provided on 14 July 2009, the second on 29 July 2009 and the third on 9 February 2010. A draft copy of this report was provided to WAPOL on 17 December 2010 for consideration and response.

[329] Although WAPOL did not provide responses to the three working papers, it did provide a response to the draft report. The response dated 21 January 2011 was received by the Commission on 25 January 2011. The Commission has taken into account all aspects of the WAPOL response to the December 2010 draft report in finalising this report.

### 6.2 Conclusion

[330] Misconduct is managed in WAPOL through long established processes that usually operate well. This is particularly true of the bulk of allegations dealt with by WAPOL that fall into the medium risk category.

[331] However, issues were identified in the way WAPOL dealt with a small number of cases. The Commission investigated three of these cases. Inadequacies in WAPOL investigations in relation to these cases appeared to stem from an apparent lack of will by WAPOL to conduct a thorough investigation, based on a lack of rigour and preparedness to deal with difficult issues.

[332] In its response of 21 January 2011 to the draft report WAPOL advanced a number of arguments against the Commission’s observations about inadequacies in its misconduct management processes.

[333] Generally, WAPOL’s position is that the small number of cases identified by the Commission as inadequate supports the proposition that

misconduct is well managed by WAPOL. Although this could be considered a reasonable argument, the Commission observes that the history of policing is littered with individual cases which have seriously undermined public confidence in policing. WAPOL is not, and has not been historically, immune from this.

[334] For this reason the Commission believes that its comments about inadequacies stemming from an apparent lack of will to conduct thorough WAPOL investigations, inadequacies in WAPOL investigations into high risk allegations and quality assurance by IAU are timely and valid.

### 6.3 Recommendations

[335] The Commission makes the following recommendations to address the inadequacies identified in this report.

#### **Recommendations**

The Commission recommends that Western Australia Police (WAPOL):

- (1) review its approach to providing apologies to complainants who are genuinely aggrieved with a view to achieving a more effective resolution of their complaints;
- (2) review its approach to dealing with conflict of interest allegations that involve WAPOL officers and alleged unauthorised computer access by WAPOL officers with a view to identifying whether its misconduct management system is at risk of systemic failure in these areas;
- (3) adopt Police Complaints Administration Centre quality assurance processes for all Internal Affairs Unit cases;
- (4) implement and deliver a training course for governance officers covering the principles of Local Complaint Resolution (LCR) and the practical application of those principles, and consider issuing clearer guidelines about the LCR process;
- (5) extend the use of the positive practices identified in this report that have been adopted by some WAPOL districts and units to increase the efficiency of its misconduct management process;
- (6) use the “information only” process for cases that can properly be considered enquiries or requests for information, and does not use that process to resolve complaints alleging misconduct; and
- (7) amend policy documents, guidelines, brochures and its Website to ensure that all complaint and enquiry processes are clearly and accurately outlined.