

REPORT OF THE INTEGRITY COMMISSION

No. 1 of 2016

An audit of Tasmania Police
complaints finalised in 2015



The objectives of the Integrity Commission are to –

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania;
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with; and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

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President
Legislative Council
Parliament House
Hobart TAS 7000

Speaker
House of Assembly
Parliament House
Hobart TAS 7000

Dear Mr President

Dear Madam Speaker

In accordance with s 11(3) of the *Integrity Commission Act 2009* (the Act), the Integrity Commission presents a report to Parliament on an audit conducted in 2016 of Tasmania Police complaints completed during 2015.

Yours sincerely



Aziz Gregory Melick AO SC
Chief Commissioner
On behalf of the Board



Michael Easton
Acting Chief Executive Officer

November 2016

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An audit of Tasmania Police complaints finalised in 2015

Report

November 2016

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Preamble

Under section 88 of the *Integrity Commission Act 2009* (Tas), the Integrity Commission ('the Commission') is empowered to audit 'the way the Commissioner of Police has dealt with police misconduct', and the Commissioner of Police is to provide reasonable assistance to the Commission 'to undertake a review or audit'. This report arises from the Commission's fourth audit of complaints investigated and dealt with by Tasmania Police.

While the Commission does have oversight of misconduct complaints in other Tasmanian public authorities, it views its independent oversight of alleged police misconduct as particularly important. This is because of the extraordinary powers possessed by police officers – such as legal use of force – that are not possessed by most other public officers. The Commission's audits of complaints against Tasmania Police are intended to:

- provide Parliament, the public and Tasmania Police itself with assurance that the agency deals with complaints adequately, and in compliance with legislative requirements and internal policy;
- enhance Tasmania Police systems, practices and procedures around complaint handling by highlighting areas where improvements can be made; and
- encourage Tasmania Police to adopt good practice in their management of complaints about misconduct.

The Commission acknowledges the vital and sometimes difficult role the police perform in our community, and thanks Tasmania Police for its cooperation throughout this audit.

The audit

The scope of the 2016 audit was all complaints finalised by Tasmania Police in calendar year 2015.¹ The aims of this audit were to:

- A. identify the nature of misconduct complaints;
- B. examine the way the Commissioner of Police² has dealt with complaints generally;
- C. collect more in-depth data on issues of particular relevance; and
- D. assess progress in implementation of previous Integrity Commission recommendations.

Commenced at the start of 2016, the audit involved obtaining hard copy complaint files from Tasmania Police, reviewing each file, and responding to a set of 30 questions about each file.

Tasmania Police was provided with a draft copy of this report in September 2016, and given an opportunity to comment. In response, Tasmania Police provided a letter from the Commissioner of Police and a document with comments on specific sections of the report.

¹ The Commission was not able to audit three complaints that fell within scope because they contained material that, according to the *Telecommunications (Interception and Access) Act 1979* (Cth), is not authorised to be disclosed to the Commission.

² Under the *Police Service Act 2003* (Tas), management of misconduct complaints is the responsibility of the Commissioner of Police. Various aspects of this process have been delegated to other officers by the Commissioner. For the purposes of this report, the Commission refers to the complaint handling process as being managed by Tasmania Police.

The Commissioner's letter can be found in the Appendix of this report. A number of amendments were made to the draft report in consideration of the Tasmania Police response.

123 Number of complaints finalised in 2015 and audited by the Commission.

101 Number of Class 1 complaints finalised in 2015 and audited by the Commission.

22 Number of Class 2 complaints finalised in 2015 and audited by the Commission.

Previous Commission recommendations

Over the last three years, the Commission has made seven recommendations to Tasmania Police as part of the annual audit process. Five of those seven recommendations were implemented immediately, with two being agreed to in principle.

In chapter three of this report, the Commission has reported on Tasmania Police progress on the four recommendations made in the 2014 audit of complaints finalised in 2013. Progress on the three recommendations made in the 2015 audit (of complaints finalised in 2014) will be tracked in future Commission audits.

In brief: the Tasmania Police complaint management system³

Complaints may be made by 'any person' about the conduct of a police officer on or off duty.⁴

One complaint may be made about multiple officers, and may contain multiple allegations.

Complaint and conduct management is governed by the *Police Service Act 2003* (Tas) ('*Police Service Act*') and internal policy, most notably the Graduated Management Model for Complaints against Police (GMM).

Subject to certain parameters set out in s 44 of the *Police Service Act*, police are under a duty to accept complaints. Complaints must then be registered on the electronic complaints management database, IAPro.

Each complaint is classified by Tasmania Police as either:

- Class 1, which is less serious and usually handled at a regional level; or
- Class 2, which is more serious and usually handled centrally by Professional Standards Command.

Professional Standards Command oversees and quality assures complaints and conduct management within Tasmania Police.

Tasmania Police is working to implement a new conduct, compliance and complaints policy – known as Abacus – by 1 January 2017. Abacus will replace the GMM, and is the result of a joint review of the GMM undertaken with the Commission.

³ Complaints against police can also be submitted to the Integrity Commission, the Ombudsman Tasmania, and Equal Opportunity Tasmania. For further details on the internal Tasmania Police complaint management system, see Integrity Commission, *An audit of Tasmania Police complaints finalised in 2013*, Report No. 2 (2014) 8–11; Integrity Commission, *An audit of Tasmania Police complaints finalised in 2014*, Report No. 2 (2015) 7–10.

⁴ *Police Service Act 2003* (Tas) s 44(1).

1. Complaints against Tasmania Police

Snapshot

As part of its annual audit process, the Commission collects and reports on general information about complaints of misconduct alleged to have been committed by police officers, and how Tasmania Police handled those complaints.

As part of the 2016 audit of complaints finalised in 2015, the Commission looked at the:

- nature of misconduct allegedly committed by police;
- situations in which police were accused of misconduct;
- findings in relation to alleged misconduct;
- internal complaints of misconduct;
- outcomes of complaints; and
- timeliness of complaint handling.

Complaints finalised by Tasmania Police: 2013–15

The number of complaints finalised annually by Tasmania Police has remained fairly steady over the last three years, with a rise in the number of complaints finalised in 2015. Note that the figures below are on complaints **finalised** by Tasmania Police – not on complaints **received** by Tasmania Police.

In any case, a rise in the number of complaints received should not necessarily be seen as negative. It may be a sign that officers are more aware of their duty to accept complaints,⁵ or a sign that complainants believe that their complaint will be fairly and effectively dealt with. Similarly, a rise in the number of allegations is not necessarily negative – it may simply be that allegations are being more diligently listed on IAPro.⁶

Complaints finalised by Tasmania Police	2015 complaints	Annual average: 2013–15
Total	126	118
Class 1	101	98
Class 2	25	20
Number audited by Commission ⁷	123	112
Number of allegations on IAPro (audited complaints)	398	337
Average number of allegations per audited complaint	3.2	3.0

⁵ See 3.1 Acceptance of complaints.

⁶ See 3.2 Record keeping.

⁷ The Commission may not be able to audit all files finalised in one year for a number of reasons, including that some files are being used by Tasmania Police and are not available for audit, and that some files contain material that, under the *Telecommunications (Interception and Access) Act 1979* (Cth), is not authorised to be disclosed to the Commission.

1.1 Nature of misconduct allegedly committed by police

The least serious form of misconduct that can be committed by a police officer is a breach of the Code of Conduct, which is set out in s 42 of the *Police Service Act*. More serious allegations are classified – either solely or as an alternative – as summary or criminal offences.⁸ It is possible to classify some allegations under more than one of these categories; for instance, an allegation of excessive force may be listed as both a breach of the Code of Conduct and an assault.

Nature of alleged misconduct (as categorised by Tasmania Police)	2015 allegations ⁹	2013–15 allegations
Percentage of Breach Code of Conduct allegations	96%	93%
Percentage of Summary offence allegations	3%	5%
Percentage of Criminal offence allegations	2%	2%
Total number of allegations	398	1,010

The most common alleged Code of Conduct breaches over the last three years were:

- fail to act with care and diligence (314 allegations); and
- bring discredit on the service (301 allegations).

The third most common allegation (183 over three years) was failing to comply with an order in the Tasmania Police Manual, the majority of which were allegations of excessive force.

The three least common allegations were improper use of information, omit to provide information, and victimise or discriminate against an officer reporting a breach – there has been only one of each over the last three years.

⁸ Most summary offences derive from the *Police Offences Act 1935* (Tas), and most criminal offences derive from the *Criminal Code Act 1924* (Tas).

⁹ Most figures in this report have been rounded to a whole number, and as a result some percentages do not amount to 100%.

1.2 Situations in which police were accused of committing misconduct

Most complaints against police are made by members of the public against front line uniformed constables. It is therefore not surprising that many of the complaints finalised in 2015 arose from police attendance and arrests. The table below shows data on complaints finalised in 2015; the Commission did not collect this information in past audits.

Situation	2015 allegations
Police attendance 'Police attendance' covered a variety of situations, such as police attending a property in response to reports of family violence or other complaints from neighbors.	17%
In the process of arrest 83% of the allegations that arose from arrests were allegations of excessive force.	16%
Police investigation of alleged offence/crime	10%
Other Examples of 'other' situations included driving conduct, and police harassment.	10%
During detention (in cell)	9%
Search of premises	6%
During transfer in police vehicle	5%
At police station (other than detention and arrest)	4%
While officer off duty Under <i>Police Service Act</i> s 44(1), complaints may be made about the conduct of police both on and off duty. The percentage of complaints against police while off duty is generally low.	4%
During interview 'During interview' included allegations made against officers interviewing others, and against officers who were themselves being interviewed – for example, that they lied to complaint investigators.	3%
At police station (processing as part of arrest/detention, not in cell)	3%
Phone call	3%
At court	3%
Issuing of infringement notice	2%
Conversation on street	2%
During breath testing	2%
Use of official information/databases	1%
Handcuffing	1%
Social media/email	1%

1.3 Police findings about misconduct

In 2015, Tasmania Police sustained 37 misconduct allegations against 19 officers in 19 complaints (15% of complaints).

Finding for allegations	2015	Annual average: 2013–15
Not Sustained Insufficient evidence to prove or disprove allegation.	27%	24%
Unfounded Allegation is false or not factual.	27%	23%
Exonerated Incident occurred but the officer acted lawfully and properly.	22%	20%
Sustained Sufficient evidence exists to prove the allegation.	9%	16%
Withdrawn Complainant withdrew the allegation and Tasmania Police chose not to pursue it.	6%	6%
Conciliated The allegation was conciliated between the complainant and the officer.	3%	5%
Dismissed Tasmania Police dismissed the allegation from investigation, for example because it was frivolous, vexatious, or it was being dealt with in other proceedings. ¹⁰	4%	4%
No finding Officer resigned prior to a finding being made, or Tasmania Police failed to record the finding on IAPro.	2%	1%

All 37 sustained allegations were for breaches of the Code of Conduct:

- nine were for bringing discredit on the service;
- seven each were for failing to act with care and diligence, and failing to behave with honesty and integrity;
- three each were for failing to comply with an order in the Tasmania Police Manual, and failing to maintain confidentiality;
- two were for conduct prejudicial to the service; and
- one each was for failing to comply with lawful direction/order by senior officer, failing to disclose or avoid a conflict of interest, improper use of information, omitting to provide information, providing false or misleading information, and unlawful access to information.

¹⁰ See *Police Service Act 2003* (Tas) s 46(2).

Most of the sustained allegations were against constables, with under a third being against sergeants, and one allegation (or 3%) being against an inspector. The average length of service of these officers was 12 years, and their average age was 36 years.

Eight per cent of the sustained allegations were against female police officers, who made up 31% of the police service and received 16% of allegations overall.

Fifty-one per cent of the sustained allegations were against front line uniform officers, and 14% were against police working in the Road and Public Order Services (RPOS) unit, which includes both Traffic Police and Public Order Police.

Comparative sustained rates in the different classes of complaints

For complaints finalised in 2015, 3% of Class 1 allegations were sustained, compared to 36% of Class 2 allegations. Of the 1,010 allegations finalised over 2013–15, 7% of Class 1 allegations were sustained, compared to 44% of Class 2 allegations.

Several reasons have been identified as possibly contributing to this difference. The first reason may be that complaints that are vague or possibly vexatious are more likely to be classified as Class 1. Another reason may be that a complaint may be reclassified on the basis of evidence. That is, if there is evidence that shows that a complaint is not as serious as it would appear on its face, it may be classified as a Class 1 complaint.

Case study: Evidence affects classification of complaint

The complainant made several allegations of excessive force/assault during arrest against two officers. The allegations appeared to be serious, and the complaint was initially classified as Class 2.

There was closed-circuit television (CCTV) footage available of the arrest and, on viewing, it became clear that there was no obvious assault on the complainant. The complaint was reclassified as Class 1. All the allegations were determined to be either unfounded or exonerated.

The Commission has also identified that, even where a Class 1 allegation is – or could be – technically sustained, it may be less likely that it will be recorded as such. The rationale for this is usually that the conduct is not believed to have reached the ‘threshold’ of being a Code of Conduct breach. The fact that a breach of the Code could be characterised as a statutory offence is recognised by police,¹¹ and being found to have breached the Code – even though it is at the lower end of misconduct – is viewed as a serious matter.

The Commission agrees that, in some instances, the decision not to list such a matter as a sustained breach is warranted. The current complaints policy is unable to adequately deal with minor transgressions that would be better dealt with outside the Code of Conduct process; it is anticipated that the new policy will fare better in this regard.

However, in some instances, the Commission disagreed with the decision to list a supposedly minor allegation as something other than sustained. This is generally where it appeared that the police were not treating the allegation with the requisite level of seriousness, and/or where the officer’s explanation appeared to be implausible. For

¹¹ Integrity Commission and Tasmania Police, ‘Joint review of the Tasmania Police Graduated Management Model’ (Report, July 2014) 150.

instance, in one complaint it was found that the officer had 'accessed information he was not entitled to', but that this did not amount to a breach of the Code.

Case study: Allegation listed as exonerated, rather than sustained

A mobile telephone was seized from the complainant during arrest to be used in evidence. The complainant made an allegation that the officer had not returned the mobile telephone. The allegation was listed on IAPro as failing to act with care and diligence under the Code of Conduct.

The investigation determined that the officer had justifiably held the mobile telephone for court purposes, but that it was held for longer than was necessary. Guidance was provided to both the officer and their supervisor. The allegation was recorded as 'exonerated' – meaning that the incident occurred but the officer acted lawfully and properly – on IAPro.

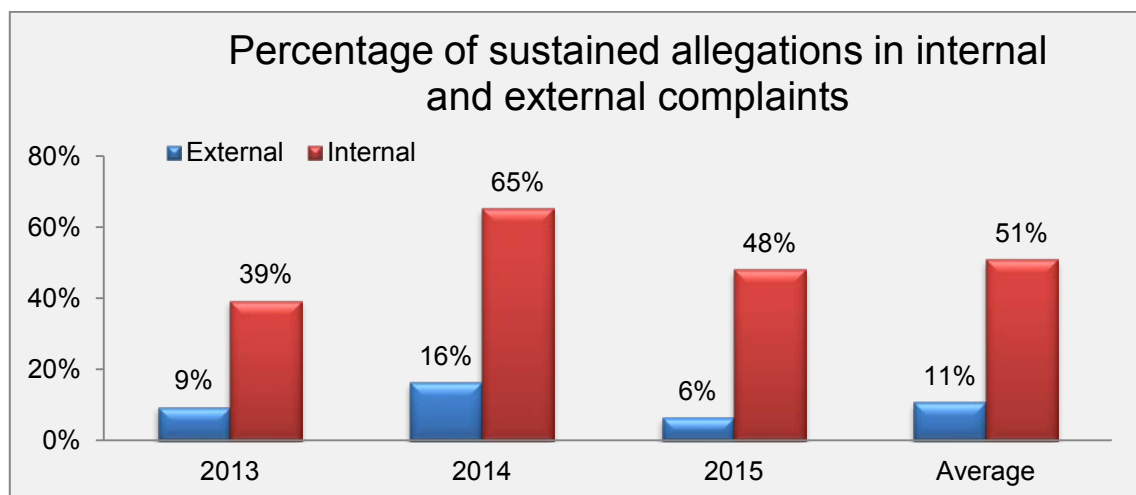
1.4 Internal complaints

A higher percentage of internal misconduct complaints may be a positive sign, and indicate that police officers:

- are aware of, understand, respect and identify with Tasmania Police values and ethical culture;
- recognise and acknowledge the long-term adverse ramifications of misconduct for both the officer/s involved and the police service as a whole;
- trust the system to deal with the misconduct appropriately and effectively;
- do not fear victimisation for reporting misconduct; and
- are aware of their duty, under the Tasmania Police Manual, to report misconduct.

Over the last three years, 10% of misconduct complaints against Tasmania Police officers have derived from internal sources. For complaints finalised in 2015, that figure was 7%.

Internal complaints are more likely to be categorised as Class 2 complaints, and much more likely to be sustained. In 2015, 78% of the internal complaints contained one or more sustained allegation.



The Commission has found no evidence to suggest that the relatively high rate of sustained outcomes in internal complaints is a result of bias on the part of police. A proportion of external complaints are vexatious or not made in good faith, and internal complaints are perhaps less likely to fall into one of those categories. Internal complainants are likely to be better informed about colleagues and procedures, and have 'more to lose' in making a complaint that is not able to be proved, so may be more likely to ensure that they have reliable evidence before they make allegations against another officer.¹²

The higher sustained rate in internal complaints is possibly linked to their classification. Over the past three years, 42% of internal complaints have been classified as Class 2, as opposed to 12% of external complaints being classified Class 2. For a number of reasons, Class 2 complaints are more likely to be sustained (see *Comparative sustained rates in the different classes of complaints* on page 8).

¹² Note that Tasmania Police also has an internal grievance process that is separate to the complaints process.

1.5 Complaint outcomes

Allegations of misconduct may lead to a number of outcomes. Where an allegation is sustained, action ranging from a counselling to termination of employment may be taken under s 43(3) of the *Police Service Act*. Professional development measures such as training and verbal guidance may also be taken; these are not sanctions and may be taken regardless of whether an allegation is sustained. There may also be ‘ancillary outcomes’ that are not connected to a specific allegation.

53 Number of officers for whom there was some form of outcome in relation to their conduct, in complaints finalised in 2015.¹³

In most instances this was verbal guidance (a professional development measure).

42 Number complaints finalised in 2015 in which there was some form of outcome for a police officer.

This amounts to 34% of complaints.

2 Number of officers whose employment was terminated as a result of complaints finalised in 2015.

1 Number of officers who resigned during a complaint investigation finalised in 2015.

This officer was the subject of three separate Class 2 investigations.

Police accused of committing offences

In Tasmania, police have the power to initiate and conduct prosecutions for certain offences – including offences committed by police. However, the more serious a matter is, the more necessary it is for the investigation and the handling of that matter to be independent.

Where an allegation is made that a police officer committed an offence and there appears to be some veracity to the allegation, it is good practice for police to seek the opinion of the Director of Public Prosecutions (DPP) about whether a prosecution should be initiated.¹⁴

Where evidence does not meet the criminal standard of proof or formal court requirements, it may still meet those of a disciplinary investigation. In instances where a prosecution is considered but not pursued, it is good practice for Tasmania Police to consider whether the officer breached the Code of Conduct and to take action accordingly.

For complaints finalised in 2015, police sought the advice of the DPP in relation to the actions of five officers. This resulted in two prosecutions being initiated against two officers for conduct that occurred off duty; both the complaints were externally raised. Neither prosecution resulted in a conviction. Although prosecution was not pursued for the remaining three officers, police did take disciplinary action under the *Police Service Act* (including one termination of employment).

¹³ This includes ‘ancillary outcomes’ that did not directly derive from an allegation, and complaints in which there was an outcome but it was not listed on IAPro. If there were several outcomes for an officer, they were only counted once.

¹⁴ See Evidence to Joint Standing Committee on Integrity, Parliament of Tasmania, Hobart, 22 October 2014, 68 (Scott Tilyard, Deputy Commissioner of Police).

In relation to the actions of a further four police officers arising from four separate complaints, internal legal advice from the Principal Legal Officer was obtained about prosecution; however, none of the officers were prosecuted. In two of the complaints, the police investigator had recommended seeking the advice of the DPP. These two matters were particularly serious: one contained a sustained Code of Conduct breach for excessive force, and the other a sustained Code of Conduct breach for unlawful access to information. Both complaints related to firearms and excessive force. The Commission's view is that, given the seriousness of the allegations and the existence of serious sustained Code of Conduct breaches, Tasmania Police should have sought an independent opinion from the DPP on these two complaints.

Organisational and professional learning

For Tasmania Police, as for all organisations, complaints are an opportunity for organisational and professional learning. In this audit, there were a number of complaints in which the police identified and pursued a procedural issue, and resolved it to the benefit of all parties – including the general public.¹⁵ Although there is always room for improvement,¹⁶ the Commission has consistently found that Tasmania Police takes advantage of opportunities for organisational learning in an effective manner.

The Commission also noted a number of complaints in which police were commended for their actions. For example, in one complaint the actions of an officer that initially appeared to be very suspect were in fact found to have been the complete opposite – they were highly professional and the officer was acknowledged for his performance and integrity. Where commendations are warranted, the Commission is of the opinion that this is an innovative way of ensuring positive learning outcomes are derived from complaints.

There were, however, a number of complaints in which the conduct of an officer appeared to have been overbearing or to have unnecessarily exacerbated a situation. Although this kind of conduct does not always amount to a breach of the Code, the officers in question would have benefited from some feedback on how they could act more professionally in future.

¹⁵ For case studies in previous audit reports, see Integrity Commission, *An audit of Tasmania Police complaints finalised in 2013*, Report No. 2 (2014) 27; Integrity Commission, *An audit of Tasmania Police complaints finalised in 2014*, Report No. 2 (2015) 41.

¹⁶ One example occurred in the case study discussed on page 15, in which it did not appear that a communications failure was acted upon.

1.6 Time taken to deal with misconduct complaints

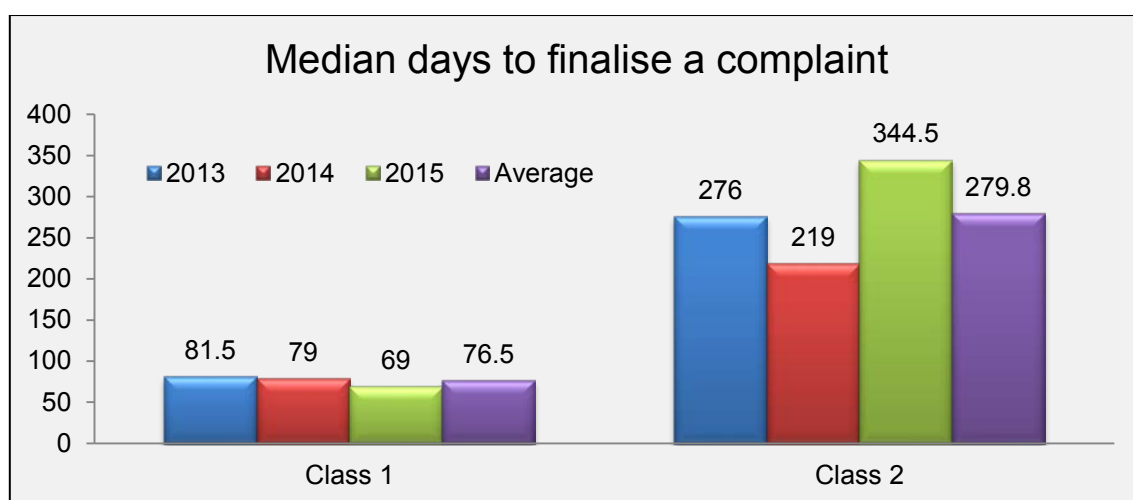
Registration of complaints

Registration of complaints is a requirement under the *Police Service Act*¹⁷ and is taken to have occurred when a complaint is entered into the IAPro database. Over the last three years, there has been a clear improvement in registration timeframes, with average timeframes being reduced from 23 days (for complaints finalised in 2013) to eight days (for complaints finalised in 2015). While 60% of complaints finalised in 2013 had been registered within seven days, in 2015 that figure rose to 90%.

This is likely due to both an increased awareness of the need to register complaints in a timely manner, as a result of the Commission's audits, and the fact that IAPro is now accessible to police outside of Professional Standards Command. Access to a front-line version of IAPro – called 'BlueTeam' – in police districts was introduced in mid-2014, and in the audit this year the Commission noted the use of BlueTeam to register complaints.

Finalising complaints

As can be seen in the graph below, there appears to have been a corresponding improvement in finalisation times for Class 1 complaints. This improvement is possibly also attributable to efficiencies derived from BlueTeam. Unfortunately, there does not appear to have been an improvement in the finalisation times for Class 2 complaints, with the median¹⁸ timeframe in this audit being just under one year.



As suggested by the averages given on page 4, Tasmania Police did finalise more complaints in 2015 than in either of the previous two years. There were, however, some complaints in this year's audit that took a lengthy amount of time to finalise, including four complaints (one of which was a Class 1) that took over two years. In some lengthy complaints, there were obvious extenuating circumstances – including associated court cases – that warranted the time taken to close the file. Yet, in the opinion of the Commission, many complaints could have been finalised sooner. In past audits, the Commission has

¹⁷ *Police Service Act 2003* (Tas) s 45(1).

¹⁸ The median figure has been used rather than the average because, due to the small number of complaints, complaints that were resolved very quickly or very slowly have a disproportionate effect on averages.

identified and reported upon blockages in the timely handling of complaints.¹⁹ Anecdotally, the Commission believes that there have been improvements in some areas. For instance, it was noted that some unreasonable complainant conduct identified in the audit was particularly well (and sensitively) handled by Tasmania Police.

On the other hand, there were two issues that clearly did exacerbate timeframes for complaints finalised in 2015. First, leaving a complaint open pending finalisation of an associated court case affected the timeliness of at least eight complaints.²⁰ The Commission assessed that a number of these complaints could have been closed earlier (as long as Tasmania Police had a reliable system in place to ensure the court case was still tracked). The second issue was slow responses to requests for internal legal advice, which affected at least nine complaints; for example, in the case study on page 15 it took nearly ten months for internal legal advice to arrive.

Tasmania Police has attributed the issues in obtaining internal legal advice to the availability of resources and states that 'advice sought from the Office of the Principal Legal Officer within Tasmania Police may take some time given the pressing demands on that office from an organisational perspective'.²¹

Failing to deal with a matter in a timely manner has an adverse impact on all parties. It is likely to negatively impact on the welfare of the officer being investigated, and is frustrating for a complainant (in serious matters, it also has the potential to negatively impact on their welfare). In terms of the organisation itself, the potential negative impacts are manifold: wasted time and (human) resources; poor public perceptions and potential loss of confidence in police; negative impacts on staff, which in turn causes them to have negative perceptions of the organisation; and less reliable outcomes – records may be lost or destroyed, and memories are less reliable.

The Commission considers that the time taken to finalise both Class 1 and Class 2 complaints could be improved. It is anticipated that the new complaints policy will assist in streamlining internal processes and improving timeliness.

¹⁹ Integrity Commission, *An audit of Tasmania Police complaints finalised in 2013*, Report No. 2 (2014) 36–41; Integrity Commission, *An audit of Tasmania Police complaints finalised in 2014*, Report No. 2 (2015) 48–52.

²⁰ The Commission also commented on this issue in Integrity Commission, *An audit of Tasmania Police complaints finalised in 2014*, Report No. 2 (2015) 52.

²¹ Email from Tasmania Police to Integrity Commission, 1 November 2016.

Case study: Matter takes 996 days to finalise

At a total of 996 days, this matter was the second-most lengthy complaint of those finalised in 2015. It involved a use of force incident in which lives were potentially put at risk by the actions of the officer in question. The matter was initiated internally by Tasmania Police, with Professional Standards officers attending the scene of the incident. The officer had committed breaches of the police Code of Conduct in the past that were similar in nature to the potential misconduct in this matter. Both allegations listed on IAPro in this complaint were (eventually) sustained.

The matter was dealt with under the GMM complaint management policy. One of the central tenets of the GMM is that the level of investigation – and by implication the time taken to investigate – is to be commensurate with the severity of the allegations and likely disciplinary outcomes. It seemed clear from the outset of the investigation that the officer had not acted entirely appropriately, although there were some significant mitigating (and complicating) factors. Most of the evidence was collected within days of the incident.

The first report into the complaint investigation was produced seven months after the incident, by which time the opportunity to prosecute the officer for any alleged minor offences had been lost. Several more internal reports were then produced, and ten months after the incident a request for internal legal advice was made. It then took nearly ten months for that internal legal advice to arrive (bringing the timeline to 19 months after the incident).

The letter to the officer notifying them of the findings and intended outcome of the investigation was written 21 months after the incident. Both allegations were sustained and the sanction initially administered was the least serious action that can be taken for a Code of Conduct breach – a ‘counselling’.²²

In relation to this case study, Tasmania Police submitted that:

... the seriousness of the circumstances and level of force used warranted an investigation and the resources utilised were commensurate with that seriousness. The outcome is reflective of the determination that the level of force used was warranted for self-defence reasons – but the continuation [of use of force after the need for self-defence had passed] was not.

It is acknowledged that this was a complex matter in which opinions diverged as to whether the officer was culpable. However, even given the circumstances, the time taken to get to this point seems excessive. The officer was returned to operational duty immediately following the incident, and reportedly heard no more about the matter for nearly 21 months. People who commit criminal acts may be charged, prosecuted, convicted and serve their entire sentences within a shorter timeframe than it took for this matter to come near to being finalised.

After receiving the counselling, the officer submitted a grievance. This delayed the matter’s resolution for another six months. The investigation and outcome were reviewed by a senior police officer, who concurred with the sustained findings but stated that the sanction of counselling should be withdrawn.²³ This means that there were no disciplinary outcomes for the officer, although there were professional development outcomes.

A further facet of this matter was that there had been an internal communications failure on the day of the incident. Despite the time taken to investigate the misconduct aspect of the matter, there was no evidence in the file to show that the reasons behind the communication failure had been analysed; it did not appear that any steps were taken to ensure that such a failure did not occur again in future.

²² Under *Police Service Act 2003* (Tas) s 43(3)(a).

²³ The recent case of *Rainbird v Bonde* [2016] TASSC 10 has clarified that Tasmania Police cannot withdraw actions taken under *Police Service Act 2003* (Tas) s 43(3).

2. Key issues

Snapshot

For its 2016 audit of complaints finalised in 2015, the Commission chose to collect data on three 'key issues'. The first key issue chosen by the Commission was allegations of 'excessive force', which the Commission views as a high misconduct risk area for Tasmania Police. Excessive force has been a focus of Commission audits in the past, and likely will be in the future.

For the remaining two key issues, the Commission compiled a list of ten potential issues, and sought input from Tasmania Police on which topics it would find of most value. Tasmania Police selected two issues that it thought would assist in the development of education and training, prevention, and early intervention:

- demographics of officers subject to complaint; and
- recurring complaints against the same officers.

2.1 Demographics of officers subject to complaint

For each allegation against an officer listed by Tasmania Police on IAPro for a complaint finalised in 2015, the Commission noted the officer's: length of service with Tasmania Police; age; gender; Tasmania Police division; role (e.g. front line uniform, divisional management); and rank and title. It is anticipated that the data collected will be of assistance to Tasmania Police in developing misconduct prevention and education programs for its officers. Although only a limited amount of data is able to be included in this report, more data has been passed on to Professional Standards Command, which will in turn inform various areas of Tasmania Police and assist with organisational development.

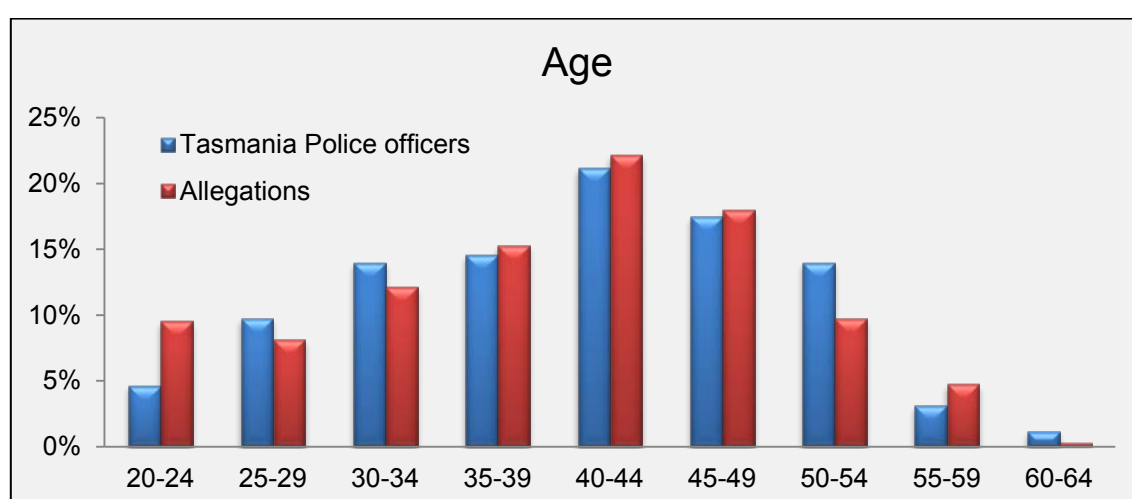
The data below is based on a total of 379 allegations. This is less than the total number of allegations on IAPro in this year's audit because a number of allegations were listed against an 'unknown officer' – that is, the identity of the person complained about was not known.

The comparative data is taken from the mid-2015 data contained in the Department of Police and Emergency Management Annual Report 2014–15,²⁴ or has been supplied directly by Tasmania Police. Given the small number of allegations, the identification of sub-groups within over-represented groups would not be statistically reliable, so for the most part has not been attempted.

Age and length of service

It could be natural to assume that the more experienced and older a police officer is, the less likely they are to be the subject of complaint: a more experienced officer may be presumed to be more likely to be competent at their role and thus less likely to make mistakes. It could also be assumed that experienced officers are more likely to be in an administrative role, and less likely to have regular contact with the public.

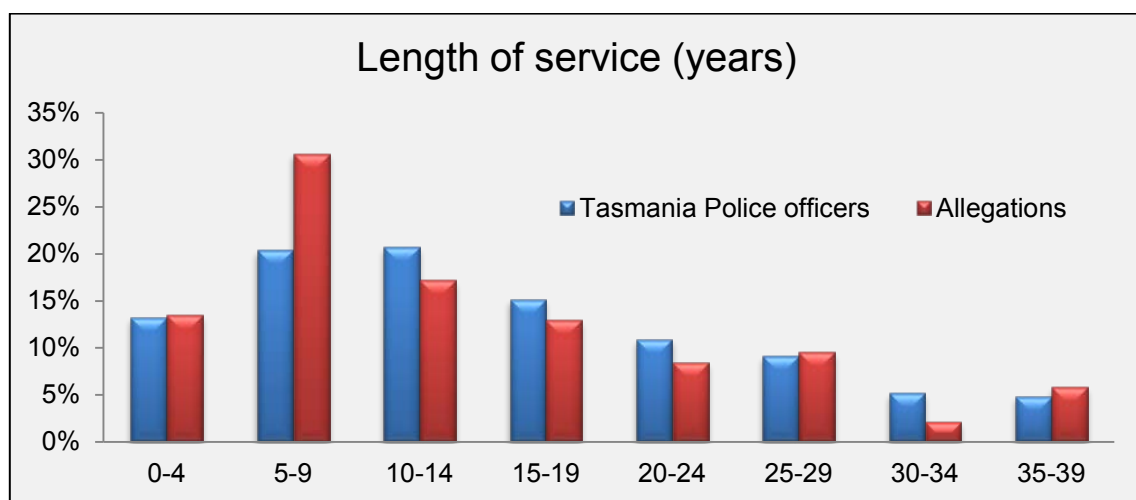
In fact, the average age of officers subject to complaint was 39 years, and the average length of service was 14 years. As can be seen from the graph below, age appears to have very little impact on complaints. For the most part, the proportion of allegations closely aligned with the proportion of officers in each age group.



²⁴ Department of Police and Emergency Management, *Annual Report 2014 - 15* (2015), Appendix J, 45.

In regard to length of service, the number of allegations was also fairly proportionate for most groups. The exception was officers who had between five and nine years' service – these officers, who made up 20% of Tasmania Police, attracted 31% of allegations.

The Commission offers no definitive reason for why this would be the case. Tasmania Police also held no firm views. However, it did suggest that it may be because these officers are likely to be performing front line policing roles, but would be doing so with an expectation of taking a more senior role (leading to decisive actions being taken). This theory appears to be borne out by the data, as 94% of the allegations against this group were against persons in front line policing roles (including Traffic Police). Other demographics on this group of officers were fairly representative, as were most indicators such as findings and districts. The group did, however, attract 42% of the excessive force allegations, and 22% of the allegations were against female officers (which is higher than the percentage of allegations against female officers overall).

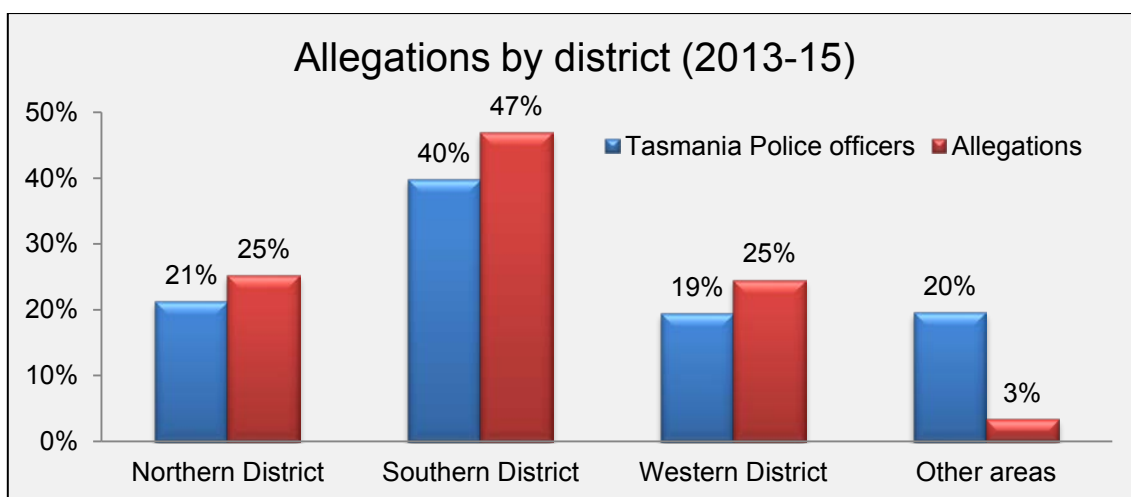


Districts and divisions

Tasmania Police is divided into three geographic districts and a range of other (non-geographic) areas that have been grouped as one district for the purposes of this audit. The graph below shows allegations by district for all complaints finalised between 2013 and 2015.

As the graph shows, the three geographic districts have a higher proportion of complaint allegations than actual officers, while the fourth district ('Other areas') has a much lower proportion of allegations in comparison to police officers. Closer analysis of the data indicates that this is likely due to the under-representation of one unit – Operations Support (which falls within Other areas district) – in complaint statistics.

While some divisions within Operations Support do have frequent contact with members of the public (such as Radio Dispatch Services and Marine and Rescue Services), many are administrative roles with less public contact. It is therefore possible that the under-representation of these officers is due to the fact that a higher proportion of Operations Support officers have roles that support the operations of the police, and do not generally operate on the front line.



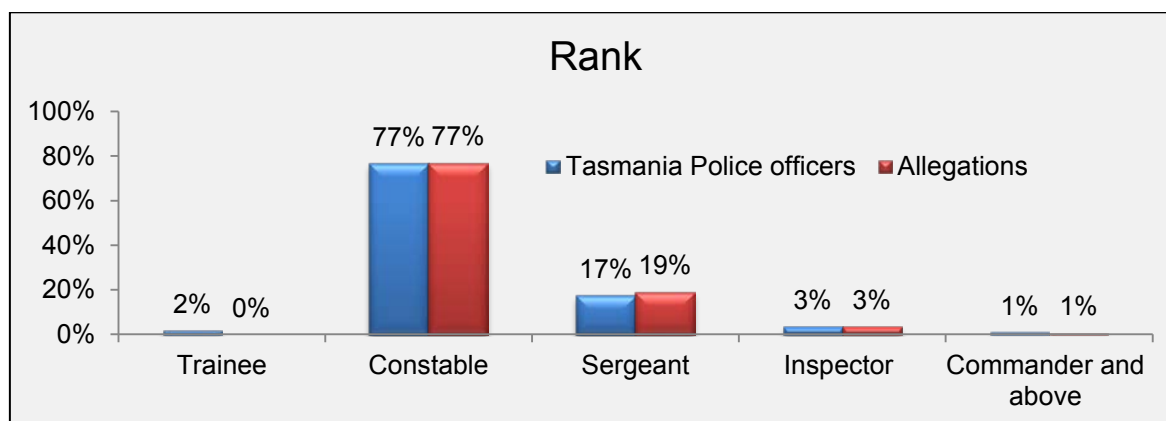
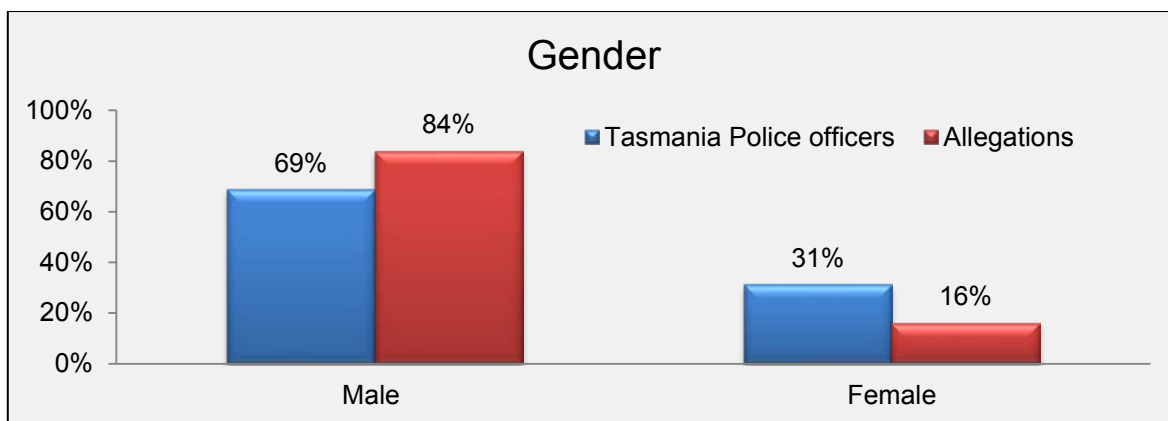
Role, rank and gender

The graphs and table below show the data on gender, rank and roles. Male officers received a higher percentage of allegations than would be expected on the basis of the percentage of male officers overall. However, the allegations against officers of each rank aligned nearly exactly with the proportion of police of each rank. In regard to roles, front line uniform roles were over-represented, which – as stated elsewhere in this report – is to be expected.

Role	Police officers (approx.)	2015 allegations ²⁵
Criminal Investigation	13%	5%
District Support ²⁶	16%	9%
Drug Investigation	3%	3%
Forensics	3%	0%
Front Line Uniform	46%	73%
Management	4%	4%
Marine and Rescue	2%	3%
Other	5%	0%
Prosecutions	4%	3%
Radio Dispatch	4%	0%
Serious and Organised Crime	1%	0%

²⁵ Each role in this table with 0% of allegations attracted one allegation only, which has been rounded to 0%.

²⁶ 'District Support' includes police performing roles such as Traffic, Public Order, Early Intervention and Youth Action, and Firearms and State Community Policing.



**Officers who were acting in a higher rank have been included in their substantive role – for example, an officer who was an acting sergeant at the time of the incident subject to complaint has been included as a constable in the above graph.*

2.2 Allegations of excessive force

Unlike most public officers, police officers have the power to legally use force – up to and including lethal force – on members of the public. Police are trained in a variety of use of force techniques, and are taught to utilise a ‘continuum’ of force which ranges from mere presence up to use of a firearm.

Police may only use force when necessary and proportionate to the circumstances; ‘excessive force’ is force that is unnecessary and/or not proportionate.²⁷ An officer accused of using excessive force may be charged with assault or other offences. Tasmania Police submitted the following statement to the Commission in regard to how it manages allegations of excessive force:

Excessive force allegations may cover a spectrum from very minor (e.g. handcuffs too tight) to very serious (assault). [Tasmania Police] does not question the seriousness of an allegation handcuffs were deliberately over-tightened, however, in determining whether to progress the matter as a disciplinary matter or an offence, the apparent circumstances are examined. In most cases, handcuffs are applied in a dynamic and volatile situation during which bruising and grazing to the wrists is not uncommon in the struggle. An assessment of the apparent circumstances will often guide the decision making as to whether it is a minor or serious matter and whether to advance it under the disciplinary framework or as an offence.²⁸

The Commission’s view is that all allegations of excessive force are serious, even if the alleged force was minor. An allegation that an officer purposefully over-tightened handcuffs is still an allegation that a person’s most basic rights were abused by someone in a position of power.²⁹

The unique power of police to use force – which is not held by most other public officers – is one of the central reasons why the Commission considers its oversight of police to be one of its most fundamental functions. The Commission views excessive force as a high misconduct risk area for Tasmania Police, and undertook to make it a key issue in this year’s audit. It was also a key issue examined in the 2014 audit of complaints finalised in 2013.³⁰

²⁷ Tasmania Police, *Tasmania Police Manual* (2016) National Police Code of Ethics, [10.1].

²⁸ Email from Tasmania Police to Integrity Commission, 26 October 2016.

²⁹ This is a sentiment shared by other Australian integrity entities, see Crime and Corruption Commission, *Annual Report 2015-16* (2016) 53, which states, ‘Excessive use of force by a police officer against a member of the public constitutes a serious abuse of power.’

³⁰ Integrity Commission, *An audit of Tasmania Police complaints finalised in 2013*, Report No. 2 (2014) 60–8.

Allegations of excessive force made in complaints finalised in 2015

The majority of excessive force allegations in this audit – and in all other audits conducted by the Commission – were of ‘hands on’ force, and did not allege that equipment (such as a baton) was used to exert force. A small number of allegations were of excessive force through misuse of handcuffs. There was also one allegation of excessive force involving a firearm – this was the single sustained allegation of excessive force.

108 Number of excessive force allegations listed on IAPro for complaints finalised in 2015.

This amounted to 27% of allegations listed on IAPro for complaints finalised in 2015, and makes it one of the most common allegations.

28 Percentage of complaints finalised in 2015 that contained one or more allegations of excessive force.

This included six complaints in which additional allegations of excessive force were made, but were not listed on IAPro.³¹

50 Percentage of excessive force allegations that arose from an arrest.

Other relatively high percentages occurred from transfer in a police vehicle and detention (in cell), which both attracted 13% of the excessive force allegations.

In complaints finalised in 2013, 28% of excessive force allegations arose from an arrest, 25% from transfer by police, and 20% from handcuffing.

73 Percentage of excessive force allegations that were in Class 1 complaints.

1 Number of sustained allegations of excessive force listed on IAPro for complaints finalised in 2015.

Of the remainder: 38 were unfounded; 32 were exonerated (meaning that Tasmania Police found that force was used but that it was justified and legal); 28 were not sustained; five were withdrawn; and four were dismissed.

In the 2014 audit of complaints finalised in 2013, 7% of excessive force allegations were sustained; there has been a marked drop from that rate in this audit.

The Commission did not analyse whether findings were justified, so it is unable to say with certainty whether more excessive force allegations should have been sustained in complaints finalised in 2015.

2 Number of excessive force allegations that were in internal complaints.

One of these allegations was found not sustained, and the other was the single sustained allegation.

³¹ All of these complaints also contained excessive force allegations that were listed on IAPro.

Demographics of officers subject to excessive force allegations³²

Over 80% of excessive force allegations were made against front line uniformed constables. Although this aligns closely with the percentage of officers that are of constable rank, it is substantially higher than the percentage of front line officers. However, it is not surprising that front line officers receive a disproportionate number of excessive force allegations, as they are the most likely to be placed in a position where they would need to use force.

There did not appear to be any police divisions that attracted a disproportionate number of excessive force complaints (as there was in 2013), apart from one division in which one complaint contained 29 excessive force allegations.

The average age of officers who attracted excessive force allegations was 37, and the average length of service was 11 years. This is in contrast to complaints overall, in which the average age was 39 and the average length of service was 14 years.

Most officers were only accused of excessive force in one complaint – although two officers were accused of excessive force in two separate complaints, and one officer was accused of excessive force in three separate complaints. Together, these three officers received 8% of all excessive force allegations.

Groups over-represented in excessive force allegations	Police officers	2015 excessive force allegations
Role: front line uniform	46% (approx.)	86%
Length of service: 5-9 years	20%	42%
Gender: Male	69%	87%
Age: 20-24 years	5%	13%
Age: 35-39 years	15%	22%
Groups under-represented in excessive force allegations	Police officers	2015 excessive force allegations
Length of service: 10-14 years	21%	13%
Gender: Female	31%	13%
Age: 50-54 years	14%	3%

³² Two excessive force allegations were listed on IAPro against 'unknown' officers. The two allegations have been excluded from the calculations on demographics.

2.3 Recurring complaints against the same officers

Research in other jurisdictions has indicated that a small number of police officers may be the subject of a disproportionately high number of complaints.³³ Identifying and monitoring these officers is important to maintain organisational and professional integrity, by ensuring that – where warranted – they are subject to early intervention strategies. This means that, where the officer is or may be at fault, the organisation works with them to improve their conduct. Tasmania Police has recognised the importance of early intervention and is currently in the process of developing an early intervention system, the implementation of which is a Professional Standards Command business priority for the 2016–17 financial year. The system will apply not only to complaints, but also events such as pursuits.

Given the importance of early intervention, and in consultation with Tasmania Police, the Commission undertook to identify the extent of recurring complaints against the same officers. As the Commission does not have access to the Tasmania Police complaints database (IAPro), it was limited in its research to gathering data on complaints it had audited and which were finalised in 2015 and 2014 and – to a more limited extent due to different data collection methodology – 2013.

Reasons officers attract a disproportionate number of complaints

There are a variety of reasons an officer may attract a disproportionate number of complaints. The obvious instance – where there are multiple sustained allegations against an officer in multiple complaints over several years – is where an officer fails to heed complaint outcomes and continues to behave in an unprofessional manner. In these cases, action taken by Tasmania Police should – and generally does – escalate over time. For example, the conduct of one officer in this year's audit may not have been enough by itself to warrant serious action, but the fact that the officer had been the subject of similar sustained allegations across multiple complaints in the past led Tasmania Police to terminate that officer's employment.

Although examples such as the above are the most obvious, they are not the most common. In fact, most officers that appear in multiple complaints have no sustained allegations against them. However, the Commission believes that – in some cases – even allegations that have not been sustained may indicate that the officer is not acting professionally.

Particularly important in these calculations are allegations that are 'not sustained', as this finding means that Tasmania Police was unable to prove or disprove the alleged misconduct. A series of similar allegations from different complainants that are 'not sustained' may indicate that there is substance to the allegations. Similarly, repeated findings of 'exonerated' and 'unfounded' may, in some instances, be inaccurate: the standard of proof in disciplinary investigations is lower than the criminal standard, and it is also possible for findings to be mistaken. Findings of unfounded and exonerated – especially when mixed with not sustained and sustained findings – for allegations of a similar nature from different complainants may indicate there is more to the story.

³³ For instance, in Victoria the Independent Broad-based Anti-Corruption Commission has identified that 'around five per cent of the total sworn workforce is responsible for over 20 per cent of all complaints made against police', see Independent Broad-based Anti-Corruption Commission, *Special report concerning police oversight* (August 2015) 14 [2.3.4].

Other reasons that officers may attract a disproportionate number of complaints include unreasonable complainant conduct. That is, a person may take a dislike to a particular officer, and submit a string of dubious complaints. It is also possible that – particularly in rural areas – a particular group of people may take a particular dislike to an officer and submit a multitude of complaints.

An officer's role, division and diligence may also impact on the number of complaints they receive. For instance, as is clearly shown in the above statistics, front line officers are more likely to be the subject of complaints. Factors such as the number of arrests an officer makes – which will in part depend on their seniority and division – may also impact on the number of complaints they receive.

In summary, there are many reasons why an officer may attract a disproportionate number of complaints, and some of them are not the fault of the officer concerned. An effective early intervention strategy will therefore need to not only identify officers who have received multiple complaints, but also analyse the actual complaints to determine whether follow-up is warranted.

Data other than complaints also needs to be analysed in order to obtain a full picture. For instance, the second officer whose employment was terminated in 2015 had previously been accused of misconduct similar to that which occurred in one of the complaints against him in 2015, but the accusations had been made in 2007 and had not been subject to a complaint investigation at the time.

The Commission has supplied Tasmania Police with the raw data about recurring complaints against the same officers over the last three years, so that it can carry out further analysis and intervene if warranted. The tables below contain a summary of information collected by the Commission; they relate to complaints **finalised** in each year – they do not relate to complaints **received** each year. The number of complaints finalised against an officer each year may be different to the number of complaints received against an officer each year; complaints finalised between 2013–15 were received over the years 2011–15.

Complaints finalised in 2015

- | | |
|-----------|--|
| 22 | Number of officers who had two complaints against them finalised. |
| 2 | Number of officers who had three complaints against them finalised.
<i>One of these officers resigned.</i> |
| 2 | Number of officers who had sustained findings made against them in more than one finalised complaint.
<i>One of these officers resigned and one had their employment terminated.</i> |

Complaints finalised in 2015 and 2014

- | | |
|-----------|--|
| 41 | Number of officers who had a complaint against them finalised in both years. |
| 1 | Number of officers with sustained findings against them in both years.
<i>This officer's employment was terminated as a result of a complaint finalised in 2015.</i> |
| 7 | Number of officers who were the subject of 'not sustained' findings in complaints finalised in both years.
<i>One officer had not sustained findings made against them in three separate (and similar) complaints.</i> |

Complaints finalised in 2015, 2014 and 2013

- | | |
|-----------|--|
| 13 | Number of officers who had a complaint against them finalised in all three years.
<i>Three officers were the subject of five complaints, and one officer was the subject of six complaints (although these six complaints derived from four complainants).</i> |
| 80 | Number of allegations listed on IAPro against these 13 officers in complaints finalised in the last three years.
<i>This amounts to 8% of all allegations listed on IAPro over the last three years.</i> |
| 3 | Number of sustained allegations against these 13 officers in complaints finalised in the last three years. |

Some of the 13 officers listed in the last table above may simply have been in the wrong place at the wrong time on multiple occasions. However, the Commission's view is that the conduct of some of these officers bears further scrutiny by Tasmania Police, with the potential for early intervention. For instance, one officer has been the subject of multiple 'not sustained' excessive force allegations made by different complainants, along with other excessive force allegations that were determined to be exonerated or unfounded. Another officer was accused by several different complainants of unprofessional conduct of a similar nature – harassment and generally being overbearing – and two of the allegations against him were sustained. This particular officer's conduct has been noted in a previous audit report.

3. Progress since previous audits

Snapshot

This audit – the 2016 audit of complaints finalised in 2015 – is the fourth Integrity Commission audit of complaints finalised by Tasmania Police. Although no recommendations have been made in this audit, the Commission has previously made a total of seven recommendations to Tasmania Police: three in the 2015 audit of complaints finalised in 2014, and four in the 2014 audit of complaints finalised in 2013.

As part of this audit, the Commission tracked progress on the four recommendations made in the 2014 audit. Progress in regard to the recommendations of the 2015 audit will be monitored and reported upon in future audits.

The recommendations of the 2014 audit of complaints finalised in 2013 were aimed at improving:

- compliance with the *Police Service Act*;
- record keeping; and
- consistency.

Tasmania Police reported that it had implemented all recommendations made by the Commission in 2014. The Commission has found progress over the last two years, with some exceptions in relation to record keeping.

The Commission believes that there is still room for improvement and, given their importance, progress in addressing the recommendations will be monitored over the coming years.

3.1 Acceptance of complaints

In its 2014 audit of complaints finalised in 2013, the Commission identified a number of complaints in which the complainants had made multiple attempts to complain, or in which a conduct issue had emerged but not been acted upon until a complaint was received. The Commission made the following recommendation to Tasmania Police.

2014 audit of complaints finalised in 2013: Recommendation 1

It is recommended that Tasmania Police institute an internal program to ensure that members are aware:

- that they are under a duty to accept complaints;
- that Tasmania Police is under a legislative duty to register complaints; and
- of how the complaint process works.

This program should include some awareness-raising about the value of complaints.

How the recommendation was implemented by Tasmania Police

Tasmania Police previously reported to the Commission that this recommendation was implemented with the statewide rollout of IAPro access (BlueTeam) in mid-2014, and associated training provided to officers in the districts and at the Tasmania Police Academy. It also reported that members are subject to disciplinary action or professional development measures if it is identified that they failed to act upon receipt of complaints.

Tasmania Police is currently finalising its new conduct management policy, Abacus. As part of that process, work is being undertaken to clarify members' obligations and ensure that the required procedures are well known, understood and clearly documented.

Findings

There has been clear progress in this area, with not only a lower percentage of complainants having to make multiple complaint attempts, but also Tasmania Police recognition of the failure to follow correct procedure occurring in a higher percentage of complaints.

Complainant made more than one attempt to complain

Complaints finalised in 2014

In **16%** of complaints, the complainant had made more than one attempt to complain.

In **18%** of those complaints, the failure to follow correct procedure was recognised at some stage of the complaint handling process.

Complaints finalised in 2015

In **9%** of complaints, the complainant had made more than one attempt to complain.

In **55%** of those complaints, the failure to follow correct procedure was recognised at some stage of the complaint handling process.

Conduct issue not recognised/dealt with until complaint received³⁴

Complaints finalised in 2014

In **0%** of complaints, there was a conduct issue that was not recognised or dealt with until a complaint was received.

Complaints finalised in 2015

In **6%** of complaints, there was a conduct issue that was not recognised or dealt with until a complaint was received.

In **71%** of those complaints, the previous failure to deal with the issue was recognised at some stage of the complaint handling process.

³⁴ In some of these complaints, the conduct issue had emerged some years before and under different complaint and conduct management systems.

3.2 Record keeping

The Commission has made various findings about record keeping over its last three audits, and has identified that 'record keeping on the case management system IAPro is inadequate'.³⁵ Although it may be perceived as an administrative issue, good record keeping underpins many of the desired outcomes of the complaint handling process.³⁶ For instance, it is impossible to accurately identify officers who require early intervention if the recording of complaints is inadequate.

In its 2014 audit, the Commission made the following recommendation about the Tasmania Police electronic complaints database, IAPro.

2014 audit of complaints finalised in 2013: Recommendation 2

It is recommended that Tasmania Police implement clear and specific guidelines about the use of IAPro. The guidelines should:

- specify that the allegations and subject officers³⁷ listed on IAPro are to accord with those identified in the complaint, and that the findings should match those told to the complainant and the subject officer/s;
- specify that the 'date of receipt' for a complaint is determined by the date that the organisation first became aware of the matter;
- include guidance on the use of 'directives' on IAPro; and
- include guidance on when it is appropriate not to list an allegation next to a subject officer on IAPro (the use of 'non-allegations').

How the recommendation was implemented by Tasmania Police

Tasmania Police has reported to the Commission that:

- IAPro and BlueTeam guidelines have been developed;
- specific instructions have been given to commanders; and
- BlueTeam training has been delivered to the districts.

Further, Tasmania Police reports that quality assurance measures have been taken, and instructions have been given in regard to district registration of complaints. This recommendation is also to be addressed as part of the implementation of the new conduct management policy, Abacus.

Findings

There has been mixed progress in regard to complaint record keeping on IAPro. Accurate listing of complaint receipt dates and use of non-allegations has improved. The Commission also identified very few instances in which complainants or officers were told an incorrect finding. However, there has been no improvement over the last two years in the correct listing of subject officers on IAPro, and the alignment of the hard copy files and IAPro.³⁸

³⁵ Integrity Commission, *An audit of Tasmania Police complaints finalised in 2013*, Report No. 2 (2014) 3.

³⁶ For similar findings in another jurisdiction, see Independent Broad-based Anti-corruption Commission, *Audit of Victoria Police complaints handling systems at regional level* (September 2016) 21–4.

³⁷ 'Subject officers' are police officers who are the subject of one or more allegations contained in a complaint.

³⁸ For a more detailed explanation of why this is important, see Integrity Commission, *An audit of Tasmania Police complaints finalised in 2013*, Report No. 2 (2014) 14.

Subject officers listed on IAPro

In 20% of complaints finalised in 2015, the subject officers listed on IAPro were incorrect in some way. For complaints finalised in 2014, this figure was 19%; there has been no improvement in listing subject officers correctly on IAPro. For the 2015 complaints, the IAPro record was incorrect in the following ways.

- In 12 complaints, a subject officer was missing from IAPro.
- In six complaints, a subject officer was listed as a witness.
- In three complaints, a subject officer was listed on IAPro who should not have been (this includes unknown officers).
- In three complaints, the wrong subject officer was listed next to an allegation.

Allegations listed on IAPro

The table below demonstrates that there has been little to no improvement in the alignment of allegations between hard copy (file) records and IAPro.

Difference between allegations listed on IAPro and allegations dealt with in the file	Complaints finalised in 2014	Complaints finalised in 2015
Allegation/s dealt with in the file were missing from IAPro	23%	20%
Allegation/s listed on IAPro were not dealt with in the file	1%	2%
Allegations were bundled in either the file or on IAPro 'Bundled' means that two or more allegations were listed as one allegation.	11%	11%
Findings for one or more allegations were different	2%	2%
Subject officers are different For complaints finalised in 2015, this was because an 'unknown officer' was actually identified, or because an identified officer should have been listed as unknown.	2%	2%
One or more allegations was categorised differently on the hard or soft copy record 'Categorised differently' means in regard to the kind of misconduct – for instance, on IAPro it was categorised as fail to act as care and diligence, but in the file it was categorised as bring discredit on the service.	3%	0%
Total percentage of complaints in which there was at least one difference	37%	33%

IAPro findings told to complainants and subject officers

For each complaint finalised in 2015, the Commission looked for evidence that each complainant and each subject officer had been told the findings listed on IAPro. The Commission did not require this to be done by formal letter; for instance, a note in a running sheet that it had occurred verbally was sufficient. However, it did require there to be some evidence of the actual 'finding' that was reported to the complainant and the subject officer. A note that they had been told the 'outcome' of the complaint was not sufficient. The Commission did not require the language to be exact – for instance, a report that an officer had been told the finding was 'not sustainable' would be accepted for a 'not sustained' finding.

The Commission found that one complainant in one complaint was not told of a sustained finding listed on IAPro. Four subject officers were told findings different to that listed on IAPro (i.e. incorrect findings) for four allegations, none of which were sustained.

The Commission also noted that, where written notification of complaint findings was given, the letters did not always include all allegations that were listed on IAPro. In these cases, the subject officer or complainant had not been told an erroneous finding, but rather had not been told a finding at all. The allegations in question were usually unfounded or not sustained.

Date of receipt

In 9% of complaints finalised in 2015, the Commission determined that the date of receipt listed on IAPro was incorrect. This represents a clear improvement, as this percentage has reduced from 33% for complaints finalised in 2013 (and 13% for complaints finalised in 2014).

Categorisation of complaints

The phrasing of many sections of the Code of Conduct is general in nature, with broad descriptors being given for the required conduct. Consequently, the categorisation of an allegation under the Code of Conduct often says little about the kind of misconduct alleged – for instance, 'bringing discredit on the service'. In the past, Tasmania Police used a system known as 'directives' to further classify or refine breaches. For example, the directive for an allegation of 'bring discredit on the service' might be 'inaction'.

The Commission previously found that use of directives was not consistent; the practice was subsequently discontinued by Tasmania Police. This means that it is currently not possible to search IAPro to determine – for example – how many allegations of inaction were made in 2015. The one exception to this is excessive force, for which Tasmania Police has recently introduced a new categorisation on IAPro.³⁹

In relation to reimplementation of the use of directives, Tasmania Police advised that:

... the use of directives is problematic due to the extensive range of variables (specifics) and difficulty developing search queries ... Based on the level of reliance placed on data that is skewed, a decision was made to discontinue use of directives until the functionality of IAPro

³⁹ Excessive force is usually listed on IAPro as 'Breach Code of Conduct – Fail to comply with an order in the Tasmania Police Manual'; under the new system, it is listed as 'Breach Code of Conduct – Fail to comply with an order in the Tasmania Police Manual – **Excessive Force**'.

*queries is developed further. At this point, that functionality has not been developed, however, Professional Standards are working with the programme developer on the issue.*⁴⁰

Ancillary outcomes/non-allegations

Complaint investigations may uncover that an officer's conduct has not reached expected standards. These discoveries are not always directly related to allegations made by the complainant, nor do they always warrant an internally identified breach of the Code of Conduct allegation being listed on IAPro. In these cases, the officer generally receives verbal guidance or some other kind of professional development measure, and an 'ancillary outcome' is listed on IAPro instead of an allegation. In its 2014 audit, the Commission found that the listing and use of these ancillary outcomes was not consistent.

In this audit, the Commission noted a definite improvement in the consistency of the use of ancillary outcomes on IAPro. However, there were several other IAPro record keeping errors that the Commission has notified to Tasmania Police.

⁴⁰ Detailed response of Tasmania Police to draft report *An audit of Tasmania Police complaints finalised in 2015*, 23 September 2016.

3.3 Outcomes

In its 2014 audit, the Commission made two recommendations about complaint outcomes. One was relevant to complainants, and one was relevant to subject officers.

Subject officers

Recommendation 3 related to ‘determination notices’, which are notices issued to subject officers when an allegation is sustained.

2014 audit of complaints finalised in 2013: Recommendation 3

It is recommended that, in order to avoid officers viewing non-*Police Service Act* s 43(3) actions (such as professional development measures) as sanctions on their record, the ‘determination notices’ given by Tasmania Police for sustained findings explain that any such actions are not sanctions under the *Police Service Act*.

How the recommendation was implemented by Tasmania Police

Tasmania Police reported that this recommendation has been implemented in full, and that advice and guidance is now a professional development measure and applied consistently. Pro forma wording for determination notices has been disseminated to each command. Tasmania Police also reports that the new Abacus policy has consolidated professional development measures, and that it emphasises that such measures are not sanctions, but rather an opportunity for development.

Findings

There has been a marked improvement since this recommendation was made. For complaints finalised in 2015, only one action in one determination notice – of the 15 issued – was insufficiently explained. By way of comparison, for complaints finalised in 2014, three of the 24 determination notices did not clearly state which outcomes were actions taken under *Police Service Act* s 43(3), and which were other measures.

Complainants

Section 47(3) of the *Police Service Act* imposes a duty on Tasmania Police to inform both the subject officer and the complainant, in writing, of any action taken under s 43(3) of the Act in relation to a breach of the Code of Conduct. Section 43(3) actions may range from a counselling up to termination of employment.

Recommendation 4 of the Commission's 2014 audit was in relation to this duty.

2014 audit of complaints finalised in 2013: Recommendation 4

It is recommended that Tasmania Police institute a systemic check to ensure that complainants are informed of all relevant *Police Service Act* s 43(3) actions.

How the recommendation was implemented by Tasmania Police

Tasmania Police reports that it has implemented this recommendation through a quality assurance process carried out by Professional Standards Command on all complaints.

Findings

Within complaints finalised in 2015, there were nine actions in six complaints of which the complainants should have been informed. The actions were: four counsellings; four reprimands; and one reduction in pay band.

Four of these actions were a result of three complaints made by persons external to Tasmania Police. All external complainants were notified of the action as required.

Five of the actions arose from three internal complaints that had been initiated by police officers. None of these actions were advised to the complainants as required. Tasmania Police disputes that the reporting persons were 'complainants' under the *Police Service Act*, and refutes that it was required to notify them of the actions taken.

The *Police Service Act* states that **any person** may make a complaint about the conduct of a police officer.⁴¹ There is no differentiation in the Act between internal and external complainants, nor is there any requirement for someone to 'formalise' a complaint. It simply refers to a complaint about the conduct of a police officer. In any case, in all three of these complaints, the reporting officers were referred to as complainants throughout the complaint process.

The Commission's view is that the reporting persons were in fact complainants under the *Police Service Act*, and should have been notified of the actions taken.

By way of comparison with previous audits:

- for complaints finalised in 2013, one of seven relevant actions were notified to complainants; and
- for complaints finalised in 2014, five of 10 relevant actions were notified to complainants.

It is therefore clear that, even if the five actions in internal complaints are included, there has been some progress since this recommendation was made.

⁴¹ *Police Service Act* 2003 (Tas) s 44(1).

Concluding comments

Since 2013, the Integrity Commission has undertaken four annual audits of complaints finalised by Tasmania Police in each respective preceding calendar year. Generally, the handling of complaints by Tasmania Police is adequate and professional.

While this year's audit has made no new recommendations, the Commission has found that there is still room for improvement. For instance, if record keeping were improved and records were able to be relied upon with certainty, it would improve complaint outcomes for the organisation, its members, and complainants. There are also improvements to be made, for instance, in relation to timeliness and acceptance of complaints.

The Commission anticipates that some of these improvements will be achieved by the introduction of the new Tasmania Police conduct management policy, Abacus. In particular, it is hoped that Abacus will significantly improve timeframes and shift the focus to organisational and professional development, and to the complainant and their needs.

The Commission intends to continue its oversight of misconduct management within Tasmania Police for the foreseeable future. This is not to infer that Tasmania Police is somehow incapable, and neither does the Commission cast aspersions on the integrity of the organisation or its officers.

The reason for the Commission's close oversight is that police possess powers unique within our society. In other Australian jurisdictions, there have been calls for police complaint handling processes to be managed entirely outside of the respective police service. The Commission's oversight provides a layer of independence and transparency to the complaints process within Tasmania Police; it is one means of assuring the Parliament, the general public and Tasmania Police itself that the service is conducting itself appropriately and with integrity.

Appendix: Tasmania Police response

2016/001366

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**Tasmania
POLICE**

23 September 2016

Mr Michael Easton
(Acting) Chief Executive Officer
Integrity Commission
GPO Box 822
HOBART TAS 7001

Michael
Dear Mr Easton

Draft Report: Audit of Complaints Finalised by Tasmania Police in 2015

Thank you for the opportunity to comment on the draft report titled *Audit of Complaints Finalised by Tasmania Police in 2015*.

The draft report, in conjunction with the separate data and comments provided from an organisational learning perspective, is considered to be very informative and balanced. I am pleased that your staff and Tasmania Police Professional Standards staff have clearly worked collaboratively towards agreed objectives and eliminated the need for further discussions and exchanges after the draft report was made available. I am advised that the additional information and data is considered to be very helpful and will be promulgated with a view to informing education, training and organisational learning.

I arranged for the Deputy Commissioner and Commander Bonde, Professional Standards, to review the draft report and provide advice. Commander Bonde has authored the attached summary of comments which is also available electronically from Professional Standards. The comments are suggestions and requests for amendments, however, they are not significant in nature. I ask that the Commission gives them due consideration in finalising the report.

Should you wish to seek clarification or more information in respect of the Tasmania Police position or any of the detailed comments, please direct them to the Commander of Professional Standards.

In closing, I thank you once again for the opportunity to review the draft report and I assure you that these comments are made for accuracy purposes only and in a spirit of mutual respect for the distinct and separate roles and functions of our respective agencies.

Yours sincerely

D L Hine
D L Hine
COMMISSIONER OF POLICE

> Integrity > Equity > Accountability

INTEGRITY
COMMISSION

