

REPORT OF THE INTEGRITY COMMISSION

No. 2 of 2014

An audit of Tasmania Police
complaints finalised in 2013



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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This report and further information about the Commission can be found on the website

www.integrity.tas.gov.au

GPO Box 822,
Hobart
Tasmania 7001

Phone: 1300 720 289

Email: integritycommission@integrity.tas.gov.au

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The Hon James Wilkinson MLC
President
Legislative Council
Parliament House
Hobart TAS 7000

The Hon Elise Archer MP
Speaker
House of Assembly
Parliament House
Hobart TAS 7000

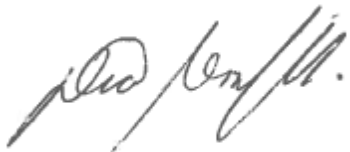
Dear Mr President
Dear Madam Speaker

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 2014 of Tasmania Police complaints finalised during 2013.

Yours sincerely



The Hon Murray Kellam AO
Chief Commissioner, on behalf of the Board



Diane Merryfull
Chief Executive Officer

6 November 2014

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An audit of Tasmania Police complaints finalised in 2013

Report

November 2014

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Executive summary

Under the *Integrity Commission Act 2009* (Tas) ('IC Act'), one of the three primary objectives of the Integrity Commission ('the Commission') is to 'enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with'.¹ As part of this objective, under the IC Act, the Commission has the function of auditing the way that the Commissioner of Police has investigated and dealt with complaints about police misconduct.²

The *Police Service Act 2003* (Tas) ('PSA') Part 3 Division 2 provides for the handling by Tasmania Police of complaints made against the organisation and its members. The legislation is supported by internal Tasmania Police guidelines; the current complaints management system is the 'Graduated Management Model' (GMM). Under the GMM, complaints are to be assessed to determine if there has been a breach of the Code of Conduct, which is contained in PSA s 42. The policy specifies that complaints are to be categorised as comprising allegations of Class 1 misconduct (less serious) or Class 2 misconduct (more serious).

This is a report on the Commission's second audit of complaints investigated and dealt with by Tasmania Police under the provisions of the PSA. The objectives of this audit were:

- a) examine the way the Commissioner has dealt with misconduct, in relation to complaints finalised in calendar year 2013
- b) identify if the findings of the last (2013) audit were repeated in regard to timeliness, contact, and record keeping
- c) determine if allegation findings are justified on the evidence
- d) determine if internally raised issues experience higher substantiation rates
- e) identify if 'excessive force' complaints are managed adequately.

Tasmania Police was provided with a draft copy of this report on 15 August 2014, and given an opportunity to comment. In response, Tasmania Police provided both a formal response to the report, and a more detailed document with comments on specific sections of the report. Tasmania Police requested that the formal response be included in full in this report (to view the formal response, see the Appendix of this report). A number of amendments were made to the draft report in consideration of the Tasmania Police response.

The Commission acknowledges and thanks the management and staff of Tasmania Police's Professional Standards Command for the assistance they provided during the course of this audit.

¹ *Integrity Commission Act 2009* (Tas) s 3(2)(b) ('IC Act').

² *Ibid* s 88(1)(c).

Number of complaints subject to audit in 2014

The scope of this audit was all complaints finalised by Tasmania Police in calendar year 2013. Tasmania Police identified that 105 complaints both fell within the scope of the audit and were legally able to be audited by the Commission.³

The 105 audited complaints included 88 Class 1 complaints, and 17 Class 2 complaints.

Key findings

The key findings of the Commission's 2014 audit of complaints finalised by Tasmania Police are:

1. record keeping on the case management system IAPro is inadequate
2. contact with complainants is generally good (especially in conciliated complaints) – except in regard to notification of sanctions applied under PSA s 43(3)
3. the management of complaints is inconsistent in numerous respects.

Recommendations

The four recommendations made by the Commission in this report are aimed at improving:

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

Tasmania Police provided an overall response to the recommendations of this report:

Regarding the findings and recommendations relating to record keeping, inconsistency and timeliness in registration and finalisation of complaints, it is agreed in principle that these are areas of organisational improvement to be achieved by Tasmania Police.

Throughout 2014, these areas of improvement have been addressed by way of state-wide expansion of the IAPro Blue Team complaints management system, delivery of training within the police districts, delivery of training to professional development courses and recruit training, and enhanced quality assurance processes within Professional Standards.

... The Commission's findings and recommendations have a strong nexus to the Graduated Management Model (GMM) review⁴ and subsequent findings and recommendations. Agreed GMM review recommendations, when implemented, will further address the issues identified within this Report.

³ Seven files were identified by Tasmania Police as containing material which, according to the *Telecommunications (Interception and Access Act) 1979* (Cth), is not authorised to be disclosed to the Commission. Thus the Commission audited 105 of the 112 complaints that fell within the audit's scope.

⁴ For more information about this review, see page 8.

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.

Tasmania Police responded to Recommendation 1 as follows:

An internal program has been implemented with [IAPro] Blue Team training and District training 5 week training blocks and Courses at the Academy, such as promotion courses.

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 officers 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').

Tasmania Police responded to dot point one of Recommendation 2 as follows:

Tasmania Police agrees that sometimes an administrative oversight means an officer or allegation may be missed, especially when additional matters have been incorporated during a Class 1 investigation. Recent instructions have been issued to Commanders addressing this issue.

Tasmania Police responded to dot point two of Recommendation 2 as follows:

Excepting instances where the complainant is not the reporting person and enquiries need to be undertaken to contact the complainant and validate the complaint.

Tasmania Police responded to dot point three of Recommendation 2 as follows:

Until the functionality of IAPro queries is developed further, the use of directives will be discontinued.⁵

⁵ This was not the aim of the Commission in making this recommendation about directives; in the opinion of the Commission, directives are of value and their use should be continued. For more information, see pages 17–19.

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*.

The Commission has taken the Tasmania Police response to the draft recommendation into account and adopted as a recommendation the measure suggested by Tasmania Police in its response to the draft audit report.

Tasmania Police responded to Recommendation 3 as follows:⁶

It is the view of Tasmania Police that verbal advice and guidance amounts to a professional development measure, whether linked to a sanction or not. If the allegation is sustained then any verbal advice / guidance forms part of the outcome for future records – and will not be separated from sustained matters. ... It is agreed, though, the practice should be applied consistently. It is also agreed that professional development measures that are linked to a Code of Conduct breach and reflected in a determination notice should clearly demonstrate they do not form part of the sanction. ... It is noted that the need exists to explain specifically in the determination notice that they are not receiving a sanction under the act, but are receiving verbal guidance / direction as a professional development measure.

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.

Tasmania Police responded to Recommendation 4 as follows:

This is now reinforced through training and reports. Where administrative resources permit, these will be quality assured at [Professional] Standards. ... [T]he rationale for Recommendation 4 and the recommendation have been incorporated into recent instructions to commanders and will be reviewed (administrative capacity permitting) at [P]rofessional [S]tandards to ensure compliance and consistency.

⁶ In its formal response to this report, Tasmania Police stated that the Commission does not view verbal guidance/direction as a professional development measure. This is not an accurate representation of the Commission's opinion; rather, the Commission agrees with Tasmania Police that verbal advice/guidance/direction is a professional development measure.

Introduction

In every Tasmanian public authority, responsibility for managing misconduct in the agency lies with the principal officer. In the case of complaints of misconduct against police, that responsibility rests with the Commissioner of Police.

Under the *Integrity Commission Act 2009* (Tas) ('IC Act'), the Integrity Commission ('the Commission') is empowered to audit 'the way the Commissioner of Police has dealt with police misconduct', and the Commissioner is to provide reasonable assistance to the Commission 'to undertake a review or audit'.⁷ In 2013, the Commission undertook its inaugural audit of complaints against police that had been received and finalised by Tasmania Police; the report on that audit was laid before Parliament in September 2013.⁸ This report is about the Commission's second audit of complaints managed by Tasmania Police, and its scope was all complaints finalised by Tasmania Police in calendar year 2013 (see below for more information on the complaints that were subject to audit).

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. The audits are also designed to enhance Tasmania Police systems, practices and procedures around complaint handling by highlighting areas where improvements can be made. The audits are to encourage Tasmania Police to adopt 'best practice' in their management of misconduct, in relation to complaints. It is anticipated that, over time, improvements made as a result of these audits will result in gains not only for complainants and 'subject officers',⁹ but ultimately the organisation itself – and consequently the broader community.

The Commission reiterates that this process is a performance audit, aimed at ensuring that Tasmania Police is handling complaints adequately and appropriately – it is not an audit of police misconduct or police integrity. However, it should also be noted that if complaints are being mishandled, this may directly impact on the integrity of the organisation, and could potentially allow more widespread misconduct to get a 'foot in the door'. If the organisation is not maintaining adequate records, for example, it is difficult – if not impossible – to tell if decisions about misconduct allegations are soundly based.

Method and number of complaints subject to audit in 2014

In January 2014, the Commission prepared a draft project outline which included the proposed scope, objectives and criteria¹⁰ of the audit. In early February 2014, the Commission forwarded to Tasmania Police drafts of the audit's project outline and project plan, as well as the Commission's internal standard operating procedures on audits of complaints against police. An 'opening interview' was then held with Tasmania Police on 19 February 2014 to discuss these documents; the audit criteria were discussed in detail.

⁷ IC Act s 88(2)(a).

⁸ Integrity Commission, *An audit of Tasmania Police complaints finalised in 2012*, Report No. 2 (2013).

⁹ 'Subject officers' are police officers who are the subject of one or more allegations contained in a complaint.

¹⁰ 'Criteria' are the specific questions asked about each complaint – for instance, 'What were the allegations identified in this complaint?'

Subsequently, the Commission finalised its project outline and an 'audit instrument',¹¹ and these documents were sent to Tasmania Police at the commencement of the audit fieldwork. The audit instrument contained 26 criteria and was applied to every audited complaint file.

Tasmania Police identified that 112 complaints fell within the scope of this audit. For legal reasons, the Commission was only able to audit 105 of those complaints.¹² Those 105 complaints included:

- 88 Class 1 (less serious) complaints
- 17 Class 2 (more serious) complaints.

During February and March 2014, Tasmania Police forwarded to the Commission 105 relevant hard copy¹³ complaint files, along with their IAPro¹⁴ summary record. Tasmania Police also provided spreadsheet lists (divided between Class 2, Class 1 Northern District and Operations Support District, Class 1 Southern District, and Class 1 Western District) of all complaint files that were made available for the audit.

After the finalisation of fieldwork, an 'exit interview' to discuss the audit's preliminary findings was held with Tasmania Police on 10 July 2014. Tasmania Police was then provided with a draft copy of this report on 15 August 2014. In response, Tasmania Police provided both a formal response, and a more detailed document which included comments on specific sections of the draft report. Where the Commission has deemed it relevant, sections of both Tasmania Police's formal and its more detailed response have been quoted or referred to in the text of this report. The formal response has, at the request of Tasmania Police, been included in full in this report (see the Appendix).

Audit objectives and criteria

The objectives of the Commission's 2014 audit of complaints finalised by Tasmania Police were:

- a) examine the way the Commissioner has dealt with misconduct, in relation to complaints finalised in calendar year 2013
- b) identify if the findings of the last (2013) audit were repeated in regard to timeliness, contact, and record keeping
- c) determine if allegation findings are justified on the evidence
- d) determine if internally raised issues experience higher substantiation rates
- e) identify if 'excessive force' complaints are managed adequately.

A total of 26 criteria were applied to each audited file, as well as a number of standard questions on matters such as the date of receipt and the date of finalisation. These 26 criteria related directly to the five objectives of the audit, and were finalised in consultation with Tasmania Police.

¹¹ The 'audit instrument' is the list of the criteria to be asked of each complaint file.

¹² The files were identified by Tasmania Police as containing material which, according to the *Telecommunications (Interception and Access Act) 1979* (Cth), is not authorised to be disclosed to the Commission.

¹³ The Commission does not yet have direct access to Tasmania Police's electronic complaint case management database, IAPro.

¹⁴ IAPro is Tasmania Police's electronic case management database for complaints.

Background – applicable legislation and policy

The manner in which Tasmania Police is to handle complaints about its members is determined primarily by both the relevant legislative provisions, and by the internal complaint handling policy.

Legislation – the PSA

Two divisions of the *Police Service Act 2003* (Tas) ('PSA') are relevant to the handling of complaints against police. The first – 'Part 3 Division 2 – Complaints' – provides for the handling of complaints made to Tasmania Police against the organisation and its members. The second is 'Part 3 Division 1 – Code of conduct', which contains both the Code of Conduct itself, and a section titled 'actions in relation to breaches of code of conduct'.

Broadly speaking, the process provided for in the PSA is that complaints are to be registered by Tasmania Police,¹⁵ then investigated.¹⁶ A determination is then to be made on whether the Code of Conduct was breached.¹⁷ If there is a determination that the Code of Conduct was breached, certain actions may then be taken against the subject officer.¹⁸ Under the PSA, complaints may also – for various reasons – be dismissed entirely,¹⁹ or be dismissed from investigation so that they can be resolved through a conciliation process.²⁰

Internal policy – the GMM

Internal police guidelines on complaint handling expand on the process provided for under the PSA. The current Tasmania Police complaints management system is named the 'Graduated Management Model' (GMM). Introduced in 2010, the GMM was intended to be a graduated model of handling complaints – that is, more serious or repeat complaints are to be escalated in terms of the breadth of the investigation, the rank of the investigator, and the sanction (if any) imposed. One of the main objectives of the GMM was for investigations and outcomes to be proportionate to the severity of the allegations.

Under the GMM, complaints are divided into Class 1 and Class 2. In practice, Class 1 complaints are those which, even if proven, will only result in internal disciplinary measures (not dismissal).²¹ Class 2 complaints generally involve 'allegations of the commission of an offence or a crime by a police officer'.²² A complaint may shift between classes if an investigation reveals it is more or less serious than initially indicated.²³ Class 2 complaints are usually handled by Professional Standards Command, while Class 1 complaints are usually handled by the relevant police district.

In 2012, Tasmania Police invited the Commission to undertake a joint review of the GMM. The Commission was pleased to take part in this review, and it was undertaken throughout 2013-14. The review's ultimate report, complete with wide-ranging recommendations, was

¹⁵ *Police Service Act 2003* (Tas) s 45 ('PSA').

¹⁶ *Ibid* ss 43(1), 46(1).

¹⁷ *Ibid* s 43(2).

¹⁸ *Ibid* ss 43(3), 47.

¹⁹ *Ibid* ss 44, 46(2).

²⁰ *Ibid* ss 46(2)(d), 47(1).

²¹ Tasmania, *Parliamentary Debates*, Legislative Council, 5 June 2013, 128 (Darren Hine). Although this general rule may be disallowed where there are aggravating circumstances – for instance, an officer may be dismissed if they have been the subject of a series of Class 1 complaints.

²² *Ibid*.

²³ Tasmania Police ('TasPol'), *Graduated Management Model for Complaints Against Police Implementation protocols* (2010) 5.

finalised in July 2014. It is anticipated that the review will result in substantial changes to the current Tasmania Police complaints management policy.

Tasmania Police structure

Tasmania Police is divided into three geographic districts – Southern, Western and Northern – as well as two non-geographic districts – Operations Support and Other areas.²⁴ Those districts are further split into 32 divisions.²⁵ Professional Standards Command falls under ‘Other areas’.

Aside from managing Class 2 complaints, Professional Standards plays a key role in the complaints process – it is the internal complaint oversight and audit body. All complaints are sent to Professional Standards for registration on the complaint management database, IAPro, and Professional Standards can also modify the outcome of Class 1 complaints. It is also responsible for all entries on IAPro – although recently certain sections of the database have been opened up to other areas of the organisation.

Each complaint has both a hard copy file and an electronic IAPro record. All hard copy Class 2 complaint files are held at the office of Professional Standards Command, and Class 1 files are held in the relevant district or divisional office.

Complaint handling procedures under the PSA and the GMM

Complaints may be submitted to Tasmania Police by many means, including in writing via email or letter, and in person at a police station.²⁶ Furthermore, under the Tasmania Police Manual, officers have a duty to accept complaints.²⁷ Complaints may also be submitted ‘internally’ (i.e. one police officer may make a complaint against another police officer); indeed, the Tasmania Police Manual places members who become ‘aware of another member committing a breach of the Code of Conduct, or an offence or crime’ under a duty to ‘report the matter immediately to a senior officer’.²⁸

If a complaint is received by an area other than Professional Standards, the receiving officer is to complete an ‘*Early Notification Form for Alleged Misconduct*’ (‘ENF’) form and send it to Professional Standards.²⁹ On receipt of a complaint – either via ENF or directly – Professional Standards is to register it on IAPro. Registration of all complaints is a legislative requirement under PSA s 45.

At the registration stage, Professional Standards undertakes an assessment of the complaint and determines whether it is to be classified as Class 1 or Class 2.³⁰ After registration,

²⁴ ‘Other areas’ is not considered a district by Tasmania Police itself; the Commission is using this term for the sake of brevity. To see a breakdown of the complaint numbers from each district, see the table on page 66.

²⁵ The structure of Tasmania Police has changed since the last audit undertaken by the Commission. For more information on the three geographic districts and their divisions, see Department of Police and Emergency Management, *Annual Report 2012 - 13* (2013) 9–10.

²⁶ PSA s 44(2)(a) stipulates that complaints must be submitted to Tasmania Police ‘in writing or in a manner approved by the Commissioner’. Under the GMM, many methods of submitting complaints have been approved by the Commissioner.

²⁷ Tasmania Police, *Tasmania Police Manual* (2014) [13.1.2].

²⁸ Ibid [13.1].

²⁹ Note that with the recent roll-out of IAPro this process has changed – although it was still in place for all complaints subject to this audit.

³⁰ Note that this centralised classification process conflicts with GMM policy, which indicates that classification is primarily to be decentralised, with Professional Standards playing an oversight role, see TasPol, *GMM protocols*, above n 23, 4, 10–1. The centralised classification process is a contributing factor to timeliness problems experienced by Tasmania Police, see page 37. In its response to the draft audit report, Tasmania Police stated, ‘In the first instance the districts determine the classification which is then reviewed by Prof Standards during registration.’ In the opinion of the Commission, this statement does not reflect what it has observed of Tasmania Police practices.

Professional Standards may also determine to dismiss the complaint because, for example, it is vexatious or trivial.³¹ Complaints may also be dismissed if they are not ‘made within 6 months after the conduct became known to the complainant’³² and there are no ‘special circumstances’.³³ There is no policy on exactly what ‘special circumstances’ entails and this decision is made on a case-by-case basis.

Complaints that are classified Class 1 are forwarded to the relevant district to deal with; the referral letter from Professional Standards usually includes ‘indicative sanctions’³⁴ for the subject officer – these may be applied if the allegations contained in the complaint are sustained.³⁵ The assigned investigator then undertakes an investigation, unless the complainant and the subject officer/s are receptive to ‘conciliation’. Under the PSA, complaints may be dismissed from investigation and resolved by a process of conciliation. This means that there is no need for an investigation or a determination on whether the Code of Conduct has been breached.

If the complaint is not conciliated, the investigator will complete a report³⁶ and make a ‘finding’ on each of the allegations. The four findings that are made under the GMM are sustained, not sustained, unfounded and exonerated. A complaint may contain more than one allegation, and those allegations may also be against more than one officer. The extent of the investigation and the report is supposed to be dependent on the severity and complexity of the allegations, and the potential outcomes.

Where allegations are found to be ‘sustained’ – that is, where the investigator finds that, on the balance of probabilities, the Code of Conduct was breached – there may be a punitive outcome for the subject officer under PSA s 43(3). These punitive outcomes can be anything from a ‘counselling’ to a termination of employment. In serious cases, the officer may also be charged with an offence. Whether they are subject to an action under s 43(3) or not, officers found to be in breach in the Code of Conduct are to be issued with a formal ‘*Code of Conduct – Determination Notice*’, which will outline both the breach and the action to be taken. Regardless of the finding, Tasmania Police may determine that some form of professional development measure is warranted, and this can include things such as verbal guidance/direction³⁷ or training.

Class 2 complaints are dealt with in a similar manner, although usually the investigation is more extensive and there is more likely to be a sanction (or a criminal charge) if the complaint is sustained. They are also rarely, if ever, conciliated.

Throughout this process, the investigator is to maintain contact with the complainant,³⁸ and the GMM stipulates that the complainant is to be formally notified (usually in writing) of the

³¹ PSA s 46(2).

³² Ibid s 44(2)(b).

³³ Ibid s 44(3)(a).

³⁴ The GMM policy states that, prior to a complaint investigation, the subject officer is to be advised of the ‘penalty range if the complaint is investigated and sustained’, see TasPol, *GMM protocols*, above n 23, 3. These ‘indicative sanctions’ are given by Professional Standards on the basis of both the contents of the original complaint, and the officer’s history on IAPro.

³⁵ As highlighted by Tasmania Police in its response to the draft of this report, after ‘investigation/consultation it may be determined that a sanction other than the indicative sanction is more appropriate’.

³⁶ This report is generally sent to any necessary senior officers for approval and/or Professional Standards. A report is usually completed for conciliated complaints as well.

³⁷ The terms ‘verbal guidance’ and ‘verbal direction’ are used interchangeably by Tasmania Police.

³⁸ As a matter of procedural fairness, both the complainant and the subject officer should be given an opportunity to be heard about the matter. This may involve an email or phone call, or it may be a more formal statutory declaration, or, in serious cases, a recorded interview. In the case of police officers, interviews may be ‘directed’ – that is, they are required to answer questions and do not have a right to silence, see PSA s 46(3)(a)(ii).

outcome.³⁹ Notification to the complainant of the outcome of the complaint is not, however, a requirement under the PSA – unless a punitive action is taken against the subject officer under PSA s 43(3). Where a relevant action is taken under PSA s 43(3), identifiable complainants must be informed in writing of the relevant action.⁴⁰

Complainants may also decide to withdraw their complaint, and Tasmania Police has a formal process in place for this to occur. However, even if withdrawn, Tasmania Police may still choose to investigate the matter. Generally this occurs where the alleged conduct is relatively serious and the allegations appear to be legitimate.

The GMM specifically recognises that complaints may contribute to organisational learning and the identification of systemic issues, and allows for audits to be undertaken by Professional Standards.

Notification to the Commission of certain complaints

In addition to internal complaint processes, under the terms of a Memorandum of Understanding (MoU) between Tasmania Police and the Commission, Tasmania Police is to notify the Commission:

- if a complaint has been received about a designated public officer (an officer of the rank inspector or above) or it is reasonably suspected that such an officer has engaged in misconduct or serious misconduct; and
- if a complaint has been received, or where it is reasonably suspected, that an officer has engaged in serious misconduct (as defined in IC Act s 4).

³⁹ TasPol, *GMM protocols*, above n 23, 10.

⁴⁰ PSA s 47(3)(a). As highlighted by Tasmania Police in its response to the draft of this report, this legislative requirement does not extend to 'other managerial action such as verbal guidance, training, etc. While it may be good practice, it is not a legislative requirement.'

Findings

Objective A: examine the way the Commissioner has dealt with misconduct, in relation to complaints finalised in calendar year 2013

Internal complaint management policy: the GMM

As revealed by the joint GMM review, the current Tasmania Police complaint handling policy lacks clarity and detail. The highest risk identified by this audit was the lack of a clear and adequate internal complaint handling policy and requisite guidelines. The Commission considers that nearly all of the most critical findings of this report are directly attributable to the lack of an adequate policy regime. The outcome of the joint GMM review – which recommends broad-ranging policy changes and clear articulation of the policy – should therefore go some way to resolving many of the problems identified in this report.

Registration of complaints

Registration of complaints is a legislative requirement under s 45(1) of the PSA. In 12% of the audited complaints (13 complaints), it was clear that the complainant had previously attempted to lodge a complaint, but had been unsuccessful in doing so – or that an internal issue had been raised but not recognised or dealt with until a complaint was received.

In eight of these 13 complaints, it was not recognised by those dealing with the complaint that an officer had failed to set the complaints process (or any other internal process) in motion when the matter first arose. This issue may be wider than the complaints identified by this audit, as the Commission only has access to complaints that are eventually registered.

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
- of how the complaint process works.

This program should include some awareness-raising about the value of complaints.⁴¹

Tasmania Police responded to Recommendation 1 as follows:

An internal program has been implemented with [IAPro] Blue Team training and District training 5 week training blocks and Courses at the Academy, such as promotion courses.

⁴¹ For example, see Richard Simmons and Carol Brennan, *Grumbles, gripes and grievances: The role of complaints in transforming public services* (Nesta, 2013), which highlights the benefits that an organisation can derive from complaints.

Case study 1 – initial complaint not registered or dealt with

A complainant sent a letter of complaint directly to a police officer (Officer T) sometime in December 2012 (an exact date of receipt could not be determined from the file – the letter is dated 11/12/2012). Officer T showed the letter to her supervisor, but no further action was taken by her supervisor.

The complainant subsequently wrote to the Ombudsman. This letter incorporated all of the allegations contained in the initial letter of complaint (in fact it included a copy of the initial letter of complaint), as well as at least one additional allegation. An officer from the Ombudsman's office advised the complainant to write to Professional Standards, which she did. The complainant's letter to Professional Standards included copies of the letters to both the Ombudsman and Officer T. On IAPro, the date of receipt for the complaint is 8 February 2013 – the date this third letter was received at Professional Standards. There is no information in the file suggesting that the subsequent investigation included an examination of why Officer T's supervisor had not notified Professional Standards of the initial letter of complaint.

Case management system: IAPro

The audit found that record keeping in hard copy complaint files could be improved. However, record keeping on the electronic case management database, IAPro, was of greater concern. IAPro is important as it is the database used to, amongst other things, record and access information on all complaints and misconduct allegations (sustained and otherwise), and it also provides statistical reporting. For example, entries on IAPro are considered in determining whether to grant awards to members. Where a complaint is sustained, a member's IAPro record is used to determine the sanction (if any) to be applied – the more past misdemeanors of a similar nature listed on IAPro, the heavier the sanction is likely to be.

The Commission's audit was hampered by inaccurate recording on IAPro, including by:

- not listing all allegations – either as made by the complainant, as initially identified by Professional Standards, or as identified by the investigator (including those identified during the investigation);
- being inconsistent in how allegations are listed;
- bundling a group of allegations into a single allegation;
- not listing all the allegations for which findings were made;
- listing allegations against the wrong officer;
- not listing relevant officers at all, or listing them as officer witnesses;
- listing findings that were different to those arrived at in the investigation;
- listing findings that were different to those told to the complainant;
- not listing actions taken in regard to subject officers e.g. verbal guidance;
- entering incorrect dates of receipt, and inconsistently determining milestone dates e.g. the date of finalisation; and
- incorrectly listing allegations.

The inaccurate recording of information on IAPro results in:

- possible breaches of procedural fairness and natural justice for subject officers and complainants;
- an inability to identify early warning signals in officers and some organisational/systemic issues;
- inaccurate member records; and
- an inability to obtain accurate statistics on complaints and/or misconduct.

In about half of the 105 complaints audited this year, the allegations listed on IAPro did not accord with either the complainant's original complaint and/or the investigator's report (e.g. allegations were completely missing or 'bundled'). In about a quarter of the complaints, the subject officers had been wrongly listed (e.g. they were not listed at all, or the wrong officer was listed next to the allegation). This includes a number of IAPro records which Tasmania Police amended during the audit fieldwork, following a query from the Commission about their accuracy.

As far as the Commission is aware, Tasmania Police changed the IAPro records of 15 complaints during the course of the audit (after a query from the Commission). This represents about 35% of the complaints that the Commission made any kind of query about.

Due to time constraints, the Commission was not able to inquire about many of the identified inaccuracies. The Commission considers that this audit indicates that some of the information held on IAPro may be of limited use, and this frustrated the audit process.

The value of statistics drawn from IAPro records is therefore also of limited value. However, as it is the database used by Tasmania Police, the Commission determined to use IAPro records as much as possible. It should be noted that where the Commission has drawn on IAPro statistics in this report, they will not necessarily reflect the reality of what happened in any given complaint, but they will reflect the reality of Tasmania Police records.

Case study 2 – incorrect allegations listed on IAPro

A Class 2 complaint involved several allegations of excessive force. The excessive force allegations (against four officers) examined in the Internal Investigations Unit (IIU)⁴² report included that the complainant:

1. was kned to the ground during arrest
2. was kicked in the chest while on the ground
3. had his handcuffs tightened intentionally
4. was slammed against the police vehicle.

Only one excessive force allegation against one officer (Officer A) was listed on IAPro; it was determined to be 'unfounded'. The three allegations not listed on IAPro were all found to be 'exonerated' by the investigator. In total there should have been at least five⁴³ allegations of excessive force listed against four subject officers – yet there was only one allegation of excessive force listed against one officer.

Conversely, Officer C has a 'not sustained' allegation of 'Breach Code of Conduct – Bring discredit on the Service – Incivility' listed next to his name on IAPro. This allegation (that Officer C pushed the complainant into a chair at the police station) was not examined at all in the IIU report, but is dealt with as an additional (i.e. fifth) allegation of excessive force in the subject officer interviews.

A total of three subject officers are listed on IAPro for this complaint – officers A and C, and another officer (who was not accused of excessive force, but was accused of other forms of misconduct). There were two other officers who should also have been listed (as they were accused of excessive force). One of these two was not listed because he resigned to take up a position in another (interstate) police agency. No reason could be identified for not listing the fifth officer.

The complainant was informed that all of the allegations of excessive force were determined to be 'exonerated', apart from one allegation, which was 'unfounded'. This 'unfounded' allegation is the single excessive force allegation listed on IAPro. A letter addressed to Officer A also states that all allegations of excessive force were 'exonerated', apart from one allegation, which was 'unfounded'. There is no information in the file suggesting that Officer C was informed of the finding for the 'Breach Code of Conduct – Bring discredit on the Service – Incivility' allegation listed against his name on IAPro.

⁴² The IIU falls under Professional Standards Command and is responsible for, amongst other things, the investigation of most Class 2 complaints.

⁴³ This includes the allegation against Officer C that was not dealt with in the IIU report – see the remainder of *Case study 2* above.

Case study 3 – incorrect subject officers listed on IAPro

A Class 1 complaint concerned police action on two separate days. The complainant accused Officer D and Officer E of lying on documents served on the complainant, and accused Officer F and Officer G of trespass.

The allegations listed on IAPro were correct. However, they were all listed against officers D and E. Officers F and G were not on IAPro at all.

On inquiry from the Commission about the accuracy of the IAPro record, Tasmania Police amended the record to include officers F and G, listed the trespass allegations against them, and removed those allegations from officers D and E.

Date of receipt

At the commencement of the audit the Commission intended to use the date of receipt for each complaint as listed on IAPro. It was agreed between the Commission and Tasmania Police that the accurate date of receipt of a complaint is the date it is received by any police member – not the date, for example, that it is received by Professional Standards.

However, the Commission found that a significant number of the complaints had the incorrect date of receipt listed on IAPro. For example, in one complaint the IAPro date of receipt was 30 December 2012. However, the initial complaint had been received – and the notification form completed by the receiving officer – on 26 December 2012. 30 December 2012 was the date a more detailed statement was obtained from the complainant. During the audit fieldwork, the Commission found that 33 complaints⁴⁴ had the wrong date of receipt. In five other complaints the Commission suspected that the date was wrong, but inconsistent record keeping meant that the actual date of receipt could not be determined. In the 33 complaints where a more accurate date – based on the information in the file – could be found, the Commission determined to use that date instead of the date listed on IAPro. The difference between the actual date of receipt and the date listed on IAPro ranged from only one day to 111 days.⁴⁵

The Commission urges Tasmania Police to ensure the entry of an accurate date of receipt – i.e. the date the complaint is actually received by police – on IAPro records. Otherwise, not only will timeliness statistics drawn from IAPro be inaccurate, it may also be more difficult for Professional Standards to monitor complaints for which finalisation has been delayed.

Date of finalisation

In regard to the date of finalisation for complaints, the Commission determined to use the date as listed by Tasmania Police on IAPro. This contrasted to the practice of the Commission in last year's audit, in which the date of finalisation was determined to be the latest date that could be found in the hard copy file. However, there was a lack of consistency in how the date of finalisation was determined by Tasmania Police.⁴⁶

⁴⁴ This includes some of the complaints mentioned previously in which the complainant had attempted to lodge a complaint more than once.

⁴⁵ In two of the complaints, the date of receipt listed on IAPro was actually before the complainant submitted their complaint.

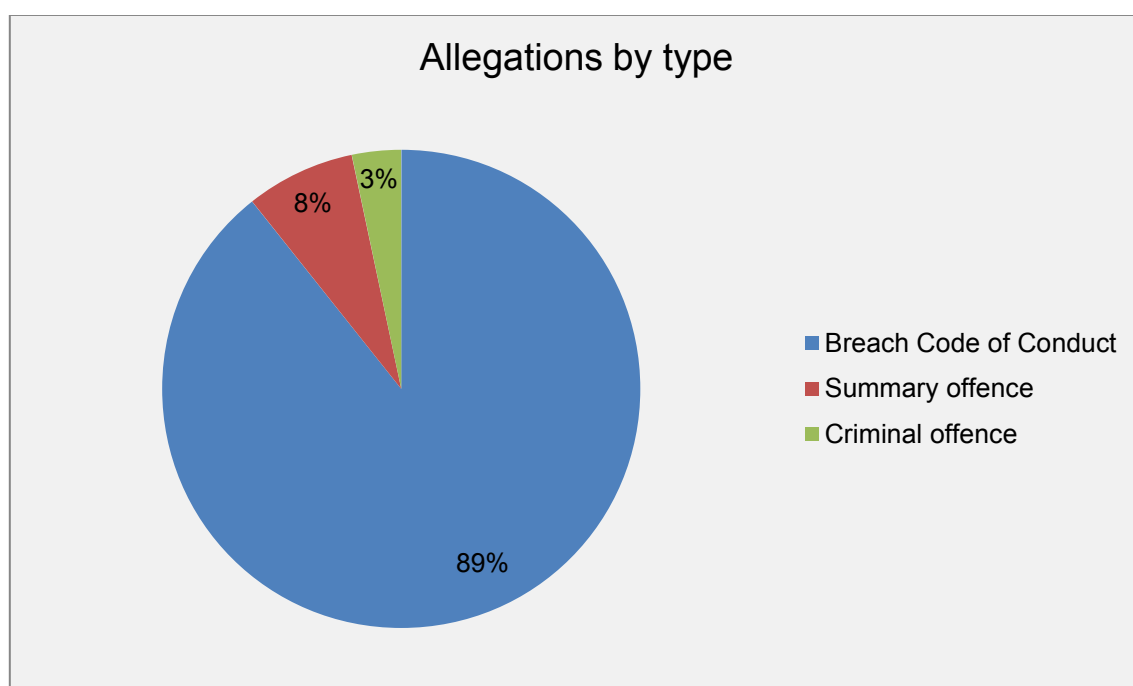
⁴⁶ Furthermore, on query from the Commission (sometimes about other matters), Tasmania Police changed the date of finalisation in three complaints during the course of the audit. In a further three complaints, the Commission noted that the date of finalisation seemed to bear little relevance to information in the hard copy file.

Nature of misconduct alleged in complaints finalised in calendar year 2013

In collecting information about the nature of misconduct alleged by complainants (both internal and external), the Commission relied on allegations listed by Tasmania Police on IAPro. As noted above, these frequently did not align with the actual allegations contained in the complaint file.

On IAPro, Tasmania Police divide allegations into three different types:

1. Breach Code of Conduct [the Code of Conduct is PSA s 42]
2. Summary [offence]
3. Criminal [offence – from the *Criminal Code Act 1924*].



These broad categories are then broken down further. Examples are:

1. Breach Code of Conduct – Fail to act with care and diligence [derived from a specific section of PSA s 42 – in this case, PSA s 42(2)]
2. Summary – Damage/Injury to Property [derived from a specific ‘summary’ offence, usually from the *Police Offences Act 1935* (Tas)]
3. Criminal – Perjury [derived from a specific *Criminal Code Act 1924* (Tas) offence].

Many allegations are then broken down further still into a ‘directive’; for example, ‘Excessive Force’, ‘Inaction’, or ‘Driving Conduct’.

For the 105 audited complaints, Tasmania Police had listed 271 allegations on IAPro. The 17 Class 2 complaints contained a total of 58 allegations (21% of total allegations), and the 88 Class 1 complaints contained a total of 213 allegations (79% of allegations). Two-hundred and one (201) of those allegations had a directive.

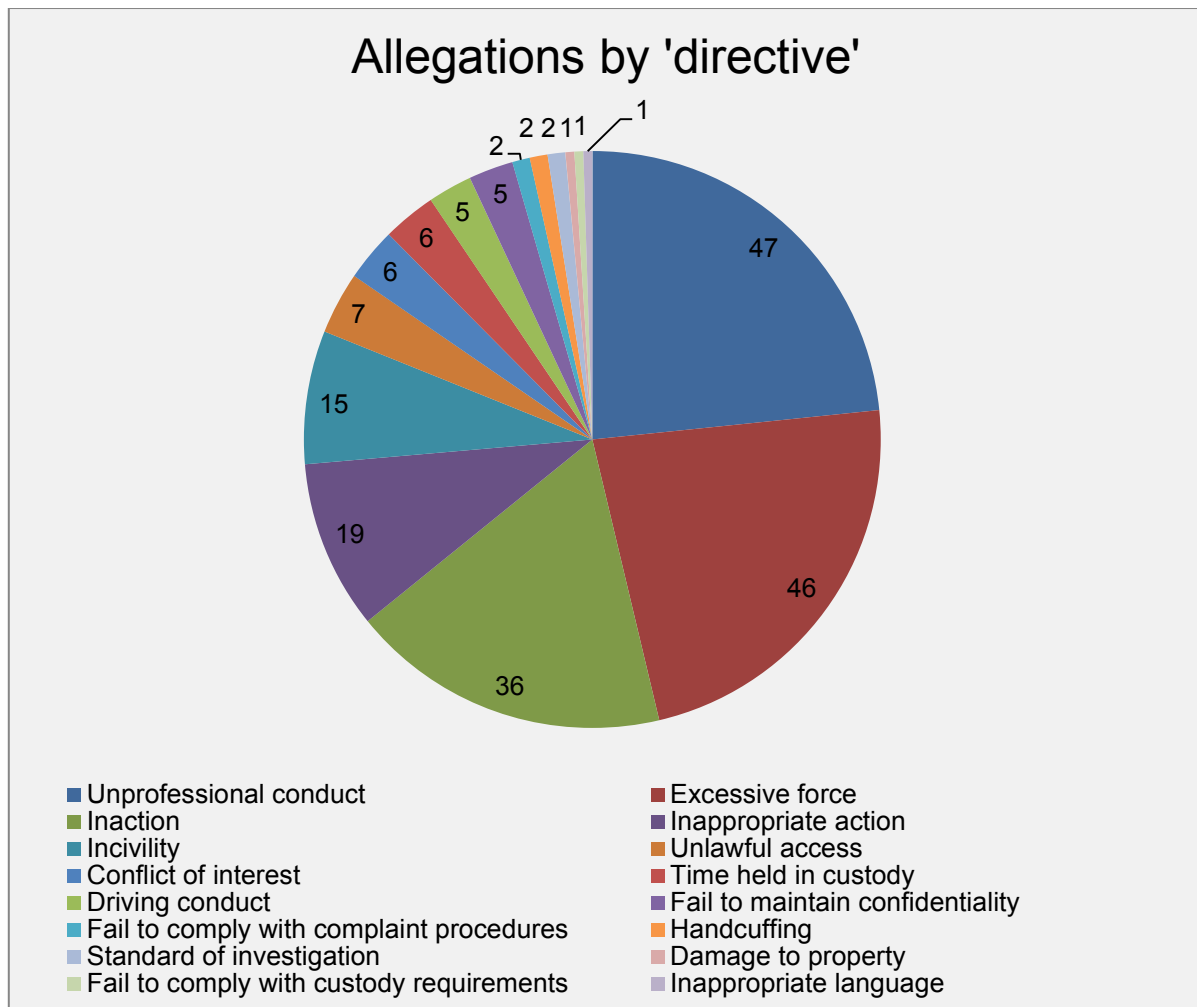
Of the 213 allegations identified in Class 1 complaints, there were:

- 204 allegations of Breach Code of Conduct

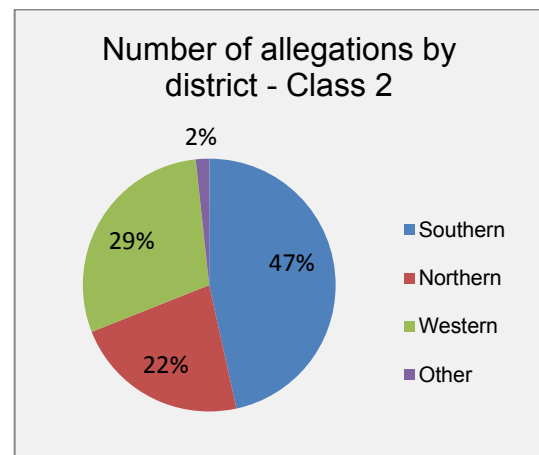
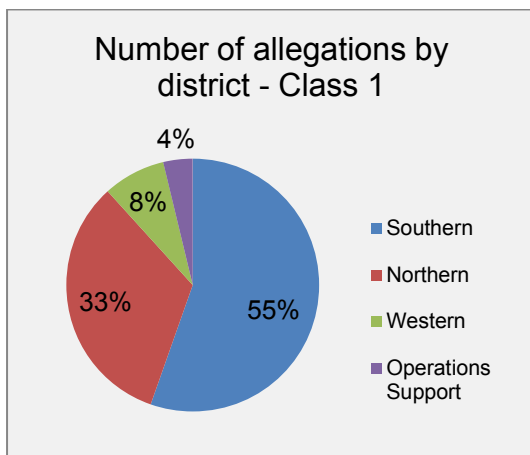
- 9 allegations of summary offences.

Of the 58 allegations identified in Class 2 complaints, there were:

- 38 allegations of Breach Code of Conduct
- 11 allegations of summary offences
- 9 allegations of criminal offences.



Note that 70 allegations listed on IAPro did not have a 'directive'.



Compliance with internal policy: classification of failure to act with honesty and integrity allegations

Under Annexure A of the GMM, a complaint containing an allegation of 'Breach Code of Conduct – Fail to behave with honesty and integrity' is, *prima facie*, to be classified Class 2. In the audited complaints, there were eight identified allegations of fail to behave with honesty and integrity, contained in seven complaints. Only two of those seven complaints were Class 2 – of the eight fail to behave with honesty and integrity allegations, six were contained in Class 1 complaints.

All other complaints containing allegations which automatically warrant Class 2 classification were correctly classified (at least in regard to allegations actually listed on IAPro).

Consistency in application of 'directives'

Tasmania Police was sometimes inconsistent in its use of directives i.e. a single directive was used across multiple allegation types; for instance:

- the directive 'Unprofessional Conduct' was spread across four Code of Conduct breach allegation types: Bring discredit on the Service, Fail to behave with honesty and integrity, Fail to act with care and diligence, and Fail to maintain confidentiality;
- the directive 'Driving Conduct' was listed under two Code of Conduct breach allegation types: Bring discredit on the Service, and Fail to act with care and diligence.

Use of some directives was, however, generally consistent:

- aside from criminal allegations, all bar one of the 44 'Excessive Force' directives were listed under Breach Code of Conduct – Fail to comply with order in the Police Manual (the other was under Breach Code of Conduct – Bring discredit on the Service);
- all 15 'Incivility' directives were listed under Breach Code of Conduct – Bring discredit on the Service.

The Commission notes that, due to the system's limitations, Tasmania Police is currently not able to run searches on IAPro at the 'directive' level, and that directives are therefore not used for official reporting purposes. This is disappointing as, in the opinion of the Commission, directives provide a clearer picture of the nature of misconduct allegations made against police than the broader allegation categories derived from the Code of Conduct (such as 'Breach Code of Conduct – Fail to act with care and diligence'). The Commission notes that Tasmania Police is seeking to add this functionality to IAPro.

In its response to this report, Tasmania Police indicated that it would discontinue the use of directives. This was not the aim of the Commission in making these observations about directives. The Commission encourages Tasmania Police to continue to use directives, but to put in place some basic internal guidelines about their use. An internal policy on the use of directives would improve consistency, and this would assist in obtaining a more accurate statistical picture of the nature of misconduct allegations made against Tasmania Police officers.

Use of 'non-allegations'

In eight instances Tasmania Police listed a 'non-allegation'⁴⁷ against a subject officer on IAPro; this included:

- four instances in which the (same) subject officer was actually the investigator of the complaint, and that investigator failed to satisfactorily handle the complaint – in two of the complaints, the allegation is listed as 'Ancillary Outcome' (see *Case study 4* below);
- two instances of 'Ancillary Outcome' against two more senior officers (in the same complaint) who failed to handle a complaint against a more junior officer appropriately in the first instance;
- one instance of an 'Ancillary Outcome' as the officer in question had failed to submit a use of force report; and⁴⁸
- one instance of an 'Ancillary Outcome' because it was 'considered more a management issue than a breach of the code of conduct'.⁴⁹

Additionally, one complaint had no subject officers or allegations listed on IAPro at all.

The Commission does not consider any of the above eight instances of 'non-allegations' necessary. Aside from the four instances covered in *Case study 4*, the other four instances were unnecessary because:

- failure to adequately manage a complaint and failure to submit a use of force report are breaches of the Tasmania Police Manual; and
- the management issue was actually the subject of a complaint, the officer's supervisor had noticed the same issue, the officer received verbal guidance and the complaint was conciliated.

In the complaint in which no subject officers or allegations were listed on IAPro, multiple subject officers and allegations were identified in the investigation report; the Commission considers that these should have been listed on IAPro.

⁴⁷ This meant that although there was a subject officer listed on IAPro, there was no allegation listed next to their name. Often this meant that the officer had 'Ancillary Outcome' listed in place of an allegation.

⁴⁸ The 'finding' for this ancillary outcome was listed as 'Training & Development'. However, neither the ancillary outcome nor its finding were originally not listed on IAPro – they were added during the course of the audit after a query from the Commission about the complaint. It appears from the contents of the file that what the officer actually received was 'verbal guidance', not 'training and development'.

⁴⁹ This officer was added on query from the Commission about his absence from IAPro.

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 officers 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').

Tasmania Police responded to dot point one of Recommendation 2 as follows:

Tasmania Police agrees that sometimes an administrative oversight means an officer or allegation may be missed, especially when additional matters have been incorporated during a Class 1 investigation. Recent instructions have been issued to Commanders addressing this issue.

Tasmania Police responded to dot point two of Recommendation 2 as follows:

Excepting instances where the complainant is not the reporting person and enquiries need to be undertaken to contact the complainant and validate the complaint.

Tasmania Police responded to dot point three of Recommendation 2 as follows:

Until the functionality of IAPro queries is developed further, the use of directives will be discontinued.

Case study 4 – inconsistency in use of IAPro, imposition of sanctions

In four of the audited complaints, Inspector A was given verbal guidance for failure to finalise each of the Class 1 complaints in a timely manner, including:

- one instance of not requesting statutory declarations from the subject officers until 14 months after the complaint had been received;
- one instance of completing the investigation in a relatively timely manner, but then taking 12 months to submit a report; and
- two instances of completing the investigation in a relatively timely manner, but then taking nine months to submit the reports.

No allegations are listed on IAPro against Inspector A, yet the Inspector is listed as a subject officer in each of the four complaints – although in two of these complaints that occurred only after query from the Commission about inconsistency with the other two complaints.

It is questionable, given the repeated failure to finalise complaints in a timely manner, whether the verbal guidance was effective.⁵⁰ In any case, for the sake of easy identification of similar issues in future, an allegation should have been listed on IAPro. Moreover, it would be better practice to raise the mishandling of a complaint as a separate (internal) complaint, rather than simply adding the investigator as a subject officer to the original complaint (which is current Tasmania Police practice).⁵¹

These complaints were inconsistent with another complaint in which Sergeant A failed to deal with a Class 1 complaint in a timely manner. In this complaint, Sergeant A did not submit the *Early Notification Form* – the notification to Professional Standards about the complaint – until ten months after the complaint had been received. Not only was an allegation of ‘Breach Code of Conduct – Fail to act with care and diligence – Inaction’ listed next to the Sergeant’s name, but he was also subject to a reprimand under PSA s 43(3) – which, as opposed to verbal guidance, is a sanction. Although arguably this case was worse than the four listed above because of the complete lack of notification, the repetitive nature of the breaches and the higher rank of Inspector A suggest to the Commission that the Inspector should have at least been subjected to the same treatment as Sergeant A.

During the course of the audit, the review identified that officers of higher seniority and rank appeared, at times, to be treated more leniently than other more junior officers; this is contrary to how the system is supposed to work. An officer of higher rank has greater responsibility and should be held to a higher standard (see page 31 for further discussion of this issue).

The case involving Sergeant A is also a good illustration of the issues involved in finalising complaints in a timely manner. Although Sergeant A was reprimanded for the late submission of the form, this reprimand did not come until 14 months after the form had been submitted – which was longer than the time taken to submit the form in the first place. The sanction was therefore completely undermined by its tardy imposition, especially as it was supposed to be for tardiness in the first place (see pages 36–41 for further discussion of these issues).

⁵⁰ In one of the four complaints, the ‘finding’ for the Ancillary Outcome is listed as ‘Training & Development’. However, this ‘finding’ was added after a query from the Commission about Inspector A’s absence from the IAPro record of this complaint. There is no information in the file suggesting that the Inspector received formal ‘Training & Development’ – instead, it appears that Inspector A received verbal direction, which is also listed on the IAPro (as an action taken in regard to the Inspector).

⁵¹ Tasmania Police provided the following comment on this statement: ‘This would result in significant duplication of records and effort and current resources do not allow for this approach. To do so would also unreasonably inflate figures.’

Notification to the Integrity Commission of certain complaints

The Commission and Tasmania Police have a MoU which imposes mutual obligations on each organisation. Under the MoU, Tasmania Police is to notify the Commission of certain types of complaints:

- if a complaint has been received about a designated public officer (an officer of the rank inspector or above) or it is reasonably suspected that such an officer has engaged in misconduct or 'serious misconduct'; and
- if a complaint has been received, or where it is reasonably suspected, that an officer has engaged in 'serious misconduct' (as defined in IC Act s 4).

The IC Act defines 'serious misconduct' as:

misconduct by any public officer that could, if proved, be –

- (a) *a crime or an offence of a serious nature; or*
- (b) *misconduct providing reasonable grounds for terminating the public officer's appointment;*⁵²

The Commission identified that, of complaints resolved in calendar year 2013, 29 complaints (28% of all audited complaints) required notification to the Commission under the terms of the MoU:

- 13 of those complaints were Class 1
- 16 of those complaints were Class 2.

The Commission received notification from Tasmania Police of 17 of these 29 complaints – 15 of the 16 Class 2 complaints that it considered required notification, and two of the 13 Class 1 complaints that it considered required notification. The Commission does understand that notification is not based on a complaint's classification under the GMM; rather, the Commission assesses notification, as per the MoU, as being required on the basis of the nature of the complaint ('serious misconduct'), or who it is made against (a 'designated public officer').

Notification of relevant Class 2 complaints has improved since the last audit, which identified that four relevant Class 2 complaints (21% of notifiable Class 2 complaints) had not been notified. This audit only found one relevant Class 2 complaint (6%) that had not been notified.

Of the 12 complaints which were not notified:

- seven were complaints which, despite the seriousness of the allegations, had been categorised Class 1 due to doubts about the veracity of the allegations;
- two were Class 1 complaints which involved inspectors (one of whom was an acting inspector at the time of the incident);⁵³
- two were Class 1 complaints which involved serious instances of alleged unlawful access to/use of a computer and posed potentially serious reputational risks to Tasmania Police; and

⁵² IC Act s 4(1).

⁵³ The two notified Class 1 complaints also involved allegations against inspectors (not serious misconduct).

- one was a Class 2 complaint which Tasmania Police assessed 'did not reach the threshold of the making of a 'complaint', or amount to a 'reasonable suspicion' of serious misconduct'.

Under the terms of the MoU, the two Class 1 complaints against inspectors were notifiable. In regard to the Class 2 complaint which was not notified, given the serious nature of the allegations and the extensive investigation undertaken, it clearly did involve a reasonable suspicion of serious misconduct, and thus, in the Commission's view, was notifiable.

The Commission wrote to Tasmania Police requesting comment on all other Class 1 complaints (nine in total) mentioned above which were not notified. At the finalisation of fieldwork, Tasmania Police had responded in regard to three of these complaints, maintaining that notification was not required. No response had been received on the remaining six complaints.

The Commission considers that complaints – regardless of their apparent veracity – which include allegations of serious misconduct are notifiable under the terms of the MoU (one of those complaints is discussed in *Case study 16*). The Commission also considers that allegations of serious unlawful acts in regard to access to/use of computers amount to allegations of 'serious misconduct'; it is certainly the opinion of the Commission that termination/charging of the officers involved in these complaints could have been considered (one of those complaints is discussed in *Case study 8*).

Adequate level of investigation – pursuit of relevant lines of inquiry

In the Commission's opinion, on the basis of information contained in the files, in 31 complaints (30% of all audited complaints) one or more relevant lines of inquiry had not been pursued, and there was no justifiable and/or recorded rationale for not doing so. It should be noted that:

- as with other findings in this report, this is the opinion of the Commission; and
- it is possible that, in at least some of these complaints, the fault was with the record keeping about the investigation, rather than the overall investigation (i.e. the line of inquiry may have been pursued but there is no record of police doing so).

Six of these 31 complaints were Class 2, thus 35% of Class 2 complaints appeared, from the records, to consist of an overly narrow investigation in which one or more relevant lines of inquiry had not been pursued. For Class 1 complaints, this figure was 28%. As Class 1 complaints are generally dealt with by the relevant district – not by Professional Standards – the Commission also divided these complaints into districts. Overall, Northern District performed the best, in that it had the highest percentage of complaints in which all relevant lines of inquiry were pursued.

Case study 5 – relevant lines of inquiry not pursued

A Class 1 complaint investigation uncovered that two police officers had not appeared in court, despite being summoned to appear as witnesses. The complainant had originally alleged that the matter had been 'dismissed' due to police action. The police officers' non-attendance in court resulted in a charge being dismissed, and the prosecutor having to negotiate a settlement. Although a sustained finding was made against the officers on the basis of the complaint, a decision was made not to sanction the officers (in the form of a counselling under PSA s 43(3)(a)) as the incident had occurred around two years before the complaint had been submitted.

There is no information in the file suggesting that either of these two subject officers was contacted until after the investigation was completed, and the 'determination notices' for the sustained findings were issued. It is a matter of procedural fairness that all subject officers – especially those against whom allegations are sustained – be given the opportunity to be heard before a matter is finalised. Although the officers in this case were not subject to a sanction under s 43(3), they were still the subject of a sustained finding (which is listed on their IAPro record) and an official determination notice.

Additionally, there was no evidence in the file to indicate that any inquiries had been made into determining why the officers were not spoken to/disciplined at the time of the incident. It is evident from the file that the Officer in Charge of Northern Prosecution Services had been informed of their non-appearance in court at the time.

Unbalanced investigation: irrelevant lines of inquiry pursued

In a number of the audited complaints, there was material suggesting that one or more apparently irrelevant lines of inquiry had been pursued; often this was in relation to certain aspects of the complainant's statements and/or their behaviour, and at times was indicative of an unbalanced investigation. In particular, it was noted that in four of the complaints where relevant lines of inquiry appear not to have been pursued, irrelevant lines of inquiry were pursued. According to the Commonwealth Ombudsman, considering the 'intentions of the complainant in making their complaint ... could be perceived as a bias against the complainant'.⁵⁴

Aside from giving the appearance of an unbalanced investigation, pursuing irrelevant matters is a waste of both time and resources, and exacerbates the timeliness issues experienced by Tasmania Police in finalising complaints.

Case study 6 – irrelevant line of inquiry pursued, and relevant lines of inquiry not pursued

An internally raised Class 2 complaint investigation was instigated after a magistrate cast doubt on the truthfulness of statements made by a number of police officers in court. Tasmania Police undertook to investigate whether the police officers had, amongst other things, committed perjury.

The file contains the reasoning of a different court case in which the same magistrate made adverse findings about police evidence. The excerpt appears to have been obtained because one of the subject officers made allegations that the magistrate was 'anti-police'. The Commission considers that this line of inquiry was irrelevant to the complaint at hand.

Moreover, two minor relevant lines of questioning, which may have added some weight to validating findings against the officers, do not appear to have been analysed by the investigation.

⁵⁴ Commonwealth Ombudsman, *Annual report on the Commonwealth Ombudsman's activities under Part V of the Australian Federal Police Act 1979 for the Period 1 July 2012 to 30 June 2013* (September 2013) 11.

Systemic issues

The Commission was impressed that, in a number of complaints, systemic/organisational issues were identified and pursued by Tasmania Police; unfortunately, it is often not possible to tell if recommendations about such issues are followed through.

The Commission did identify, across a number of complaints, that there appeared to be some 'information blockages', particularly in regard to firearms licenses and restraining orders. In at least two files, officers had been unaware (or unable to establish) if a member of the public had a restraining order against them/had the right to obtain a firearms license. In another complaint, two officers attended a house to speak to a child about allegations the child had been suffering sexual abuse. The police officers were allegedly under the mistaken impression that the allegations had been made by the girl's father; in fact, they had been made *against* the girl's father.

It is not clear where these information blockages are occurring (other agencies were involved in these matters), and why officers are sometimes given the wrong information and/or are not able to access accurate information. In at least one of these files, it appears as though the 'blockage' was identified by Tasmania Police – although it was not clear whether it had been recognised as a recurrent problem across files. If there is a broader systemic issue at play, however, given the nature of the matters involved (generally involving some form of domestic violence), it could possibly warrant further inquiry on the part of police.

Case study 7 – organisational issue identified

A complaint was made by a mother who alleged, amongst other things, that two police officers illegally took her four-year old child in a car without a booster seat. The child was in the company of her teenage sibling, whom the officers wanted to question.

It was established that the officers had in fact taken the child in a car without a booster seat, and that they had done so under the mistaken belief that they were exempt from the relevant legislative provision. The matter eventually resulted in a new departmental policy in relation to transportation of children, and thus effectively reduced the possibility of a similar incident happening in future. The Commission was impressed by the identification and management of an organisational issue in this Class 1 complaint.

Actions taken in relation to subject officers

Action taken in relation to subject officers can be punitive (generally under PSA s 43(3)), or involve some form of personal/professional development or other measure (e.g. verbal guidance, training). It can also be a combination of these actions.

In six complaints involving five subject officers where action might otherwise have been taken, no action was taken because the officer resigned (although that resignation was not necessarily due to the complaint).⁵⁵

The actions referred to below are those listed by Tasmania Police on IAPro.

Punitive action under the Police Service Act

Thirteen instances of PSA s 43(3) action were taken against a total of 11 subject officers in 11 of the audited complaints. Every single action was taken against an officer with one or more sustained allegations made against them. The s 43(3) actions listed on IAPro included:

- seven counsellings under s 43(3)(a)
- three reprimands under s 43(3)(b)
- one transfer under s 43(3)(f)
- one probation under s 43(3)(g)
- one termination under s 43(3)(i).

Of these 11 officers, six were also the subject of one or more concurrent non-PSA s 43(3) action. Only one officer had more than one s 43(3) action taken; that officer (who was found guilty of an assault charge – see below) received probation, a reprimand, and a transfer (as well as being prohibited from higher duties allowance and undergoing psychiatric counselling).

Five of the 11 complaints in which officers received s 43(3) action were Class 2.

Non-punitive and other actions

There were a total of 57 other (i.e. non-section 43(3)) actions listed on IAPro as being taken in regard to 51 officers across 33 complaints.⁵⁶ There were, however, a number of complaints in which some form of action was taken (usually verbal guidance) and it was not listed on IAPro; Tasmania Police made amendments to the IAPro records of some of these complaints during the audit fieldwork as a result of inquiries by the Commission. The non-s 43(3) actions listed on IAPro included:

- 46 instances of verbal guidance/direction;
- six instances of training;
- one direction (a written order from a senior officer to do/refrain from doing something);
- one litter infringement notice;
- one instance of psychiatric counselling;
- one prohibition from higher duties allowance (HDA); and
- one suspension.

⁵⁵ This does not include the officer who resigned that was mentioned in *Case study 2*.

⁵⁶ Six of these officers also received punitive action under PSA s 43(3).

Verbal guidance/direction and training were the most common non-s 43(3) actions:

- all six recorded⁵⁷ instances of training were used in Class 1 complaints, and four of them had been used in regard to officers with sustained findings against them; and
- 40 of the 46 instances of verbal guidance/direction were taken in Class 1 complaints.

Neither verbal guidance/direction nor training are sanctions under s 43(3); they are professional development measures and should be looked upon (by both the subject officer and the organisation) as an opportunity for improvement. In a number of files, however, the language of the 'determination notice' of a sustained finding and/or of the investigation report indicated that these two actions were seen as having some kind of punitive element – for example, in a number of cases it appeared that the investigator was reluctant to recommend verbal guidance/direction, due to this perceived punitive element.

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*.

The Commission has taken the Tasmania Police response to its draft recommendation into account and adopted as a recommendation the measure suggested by Tasmania Police in its response to the draft audit report.

Tasmania Police responded to Recommendation 3 as follows:

It is the view of Tasmania Police that verbal advice and guidance amounts to a professional development measure, whether linked to a sanction or not. If the allegation is sustained then any verbal advice / guidance forms part of the outcome for future records – and will not be separated from sustained matters. ... It is agreed, though, the practice should be applied consistently. It is also agreed that professional development measures that are linked to a Code of Conduct breach and reflected in a determination notice should clearly demonstrate they do not form part of the sanction. ... It is noted that the need exists to explain specifically in the determination notice that they are not receiving a sanction under the act, but are receiving verbal guidance / direction as a professional development measure.

In its formal response to this report, Tasmania Police stated that the Commission does not view verbal guidance/direction as a professional development measure. This is not an accurate representation of the Commission's opinion; rather, the Commission agrees with Tasmania Police that verbal advice/guidance/direction is a professional development measure.

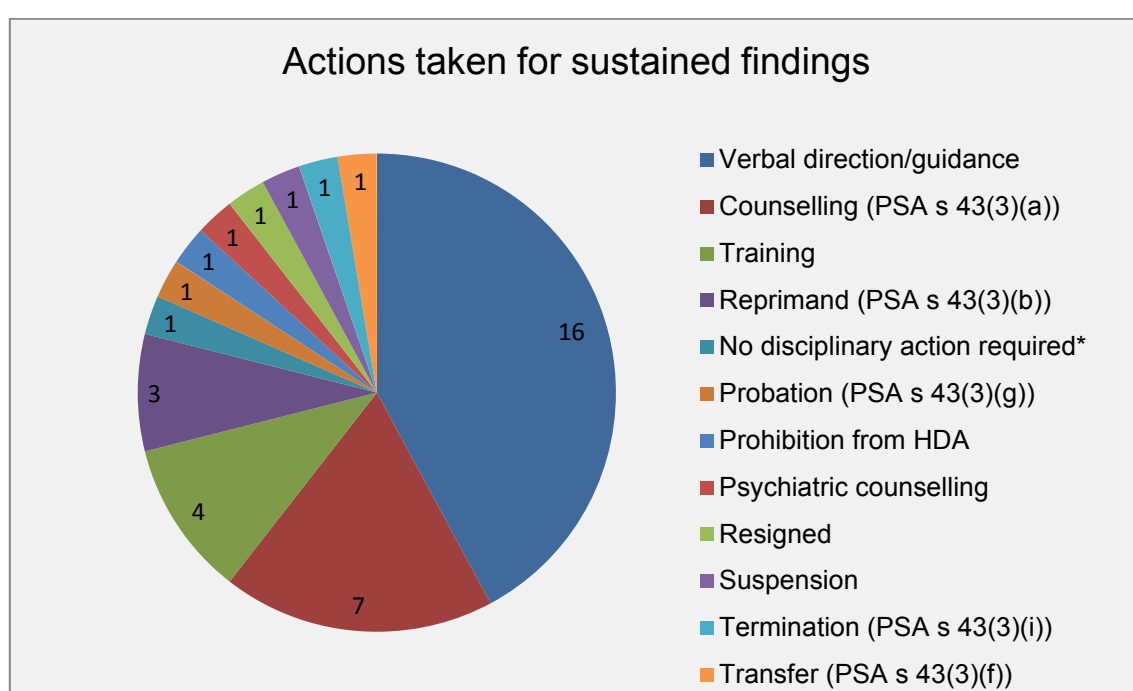
⁵⁷ In two complaints, after query from the Commission about various matters, Tasmania Police listed 'Training & Development' as the 'finding' for three 'Ancillary Outcomes' against three subject officers. It appears from the contents of the files, however, that what the three subject officers actually received was 'verbal direction/guidance'.

Correlation with sustained findings

About half of all actions taken by Tasmania Police were taken in relation to officers with sustained findings made against them. There were a total of 44 sustained findings, from 20 complaints, listed on the IAPro summaries of the audited complaints (see pages 47–50 for further discussion on this).

These 44 sustained findings were made against 26 officers, who were the subjects of 36 actions. Two of those officers had no action taken against them; in one case, this was because the officer resigned prior to any disciplinary action being taken. The other officer has 'No disp action required' marked on their IAPro record – however, it does appear from the hard copy file that this officer did receive verbal guidance.

Ten of these 26 officers were the subject of more than one action, although 11 received only verbal guidance.



**From the contents of the hard copy file, it appears that the officer with 'No disciplinary action required' on his IAPro record actually received verbal guidance/direction.*

Action in relation to more senior officers

In a number of the audited complaints, Tasmania Police appeared to have been more lenient with officers of a higher seniority, rank or experience. For example, in the comparable complaints of *Case study 4*, an inspector appears to have been given a lesser sanction than a sergeant. This also extended to complaints in which officers of differing seniority/experience were involved in the same incident; for an example, see *Case study 8*.

The Commission urges Tasmania Police to ensure that officers are held to a standard commensurate to their rank, seniority and/or experience.

Case study 8 – more senior/experienced officer not listed on IAPro, disciplined

A complaint stemmed from an incident in which a constable's (Officer H) ten-year old child (Child A) was allegedly hit by a 13-year old child (Child B) at school. The school managed the incident but decided not to suspend Child B. No assault complaint was submitted to Tasmania Police.

Subsequently, Officer H used Tasmania Police resources to research Child B's residence, and then attended the residence on duty and in uniform, in a marked police vehicle, with a first class constable (Officer I) who was also on duty and in uniform. Officer H spoke to Child B without the presence of a responsible adult, parent or guardian.

Child B's mother made a complaint. Both officers readily admitted to the incident, although the exact nature of the discussion they had with Child B was disputed.

The Commission views this as serious misconduct which could justifiably have resulted in criminal charges⁵⁸ and/or termination of the officers' employment. Tasmania Police appeared to disagree with this assessment of the severity of the matter – it was classified Class 1 and was not notified to the Commission.

Two sustained allegations were listed against Officer H on IAPro:

- Breach Code of Conduct – Fail to disclose or avoid a conflict of interest
- Breach Code of Conduct – Unlawful access to information.

As a result, Officer H received verbal guidance and further training; no sanction was imposed.

Officer I was a 'first class' constable and more experienced than Officer H (who was a constable). However, Officer I was not listed on IAPro (not even as an officer witness), no adverse findings were made, and no action was taken in relation to Officer I's conduct. The Commission is of the opinion that Officer I had a responsibility not only to prevent the incident occurring, but also to report it when it did occur. Officer I effectively condoned the actions of Officer H, and was therefore also in breach of the Code of Conduct. At a minimum, Officer I should have been listed as a subject officer on IAPro.

⁵⁸ Perhaps most relevantly, for unauthorised access to a computer under s 43C of the *Police Offences Act 1935* (Tas), which can result in a hefty fine or imprisonment of up to two years.

Criminal charges

One of the 105 audited complaints led to an officer (Officer Z) being charged; the complaint had been internally raised. Officer Z was charged with various matters, including assault and negligent driving, and was found guilty on one count of assault. Officer Z was also subject to Tasmania Police disciplinary measures, including:

- reprimand (PSA s 43(3)(b))
- probation (PSA s 43(3)(g))
- transfer (PSA s 43(3)(f))
- prohibited from higher duties allowance
- psychiatric counselling.⁵⁹

Officer Z had also been charged (although was found not guilty) over another, separate alleged assault in 2009, and had an extensive IAPro history of similar (though not sustained) excessive force allegations, accumulated over a number of years. There was no articulation in the file as to why Officer Z's employment had not been terminated. Not terminating Officer Z's employment appears to be inconsistent with another two complaints involving one subject officer (Officer J). In one of those complaints, charges were also considered, but were not able to be laid because the statute of limitations had already passed. In the other, the case was sent to the Director of Public Prosecutions (DPP), but it was returned with the reasoning that the matter was better dealt with under the PSA. Despite no charges being laid, Officer J – who was the subject of a total of three largely sustained Class 2 complaints finalised in 2013⁶⁰ – had their employment terminated.⁶¹

A further three of the audited complaints were sent to the DPP for consideration. This was generally done where the nature of the allegations reached a certain level of severity, and it was felt that the independent opinion of the DPP on whether charges should be laid was of some value. The Commission agrees that this is good practice, and should be maintained by Tasmania Police.

The Commission has no comment to make on the outcome of one of those three complaints. However, comment needs to be provided in relation to the other two complaints, one of which is examined in *Case study 9*. The other involved historical allegations of rape against an officer; the alleged acts occurred while the officer was a teenager, years before becoming a police officer. The Commission's view is that this matter should not have been dealt with as a complaint against police. The allegations were of criminal conduct wholly unconnected with the officer's role as a police officer and they should have been dealt with as outright criminal allegations (and not as a complaint against police involving criminal allegations).

⁵⁹ These were all imposed after the finalisation of the court case. Measures imposed prior to the outcome of the court case and the finalisation of the complaint were not listed on IAPro (this was inconsistent with other complaints).

⁶⁰ Only two of these were subject to audit by the Commission. Aside from these three complaints, Officer J had no other allegations of excessive force on his IAPro record.

⁶¹ The Commission is not necessarily arguing that Officer Z's employment should have been terminated; instead, it is highlighting inconsistency with another case and the fact that there was no articulation in the file as to why the matter did not warrant terminating Officer Z's employment.

Case study 9 – criminal and disciplinary matters not recognised as different

An internally raised Class 2 complaint concerned a ‘capsicum spray’ incident. On the day in question, the ‘complainant’ had been locked inside a cell after being searched twice (including for a firearm) by officers; Constable K had been directly involved in both searches. The complainant was drunk and had possibly taken the illicit drug ‘ice’ (crystal methamphetamine). While Officer K was standing outside the complainant’s cell, the complainant threatened to shoot Officer K. Officer K responded by spraying the complainant with capsicum spray. The matter was first raised as a concern by a Tasmania Police sergeant and, when interviewed, the complainant stated that he did want to make a complaint about the incident.

Officer K stated that he had believed – despite the previous two searches – that the complainant could have had a ‘pen gun’. According to police consulted by the investigator,⁶² as far as they were aware, pen guns have not yet been found Tasmania. Moreover, while the complainant was treated appropriately for the capsicum spray, he was not searched again to find out if he actually did have a pen gun.

The file was sent to the DPP for advice on whether Officer K should be charged. The DPP considered that Officer K would be able to mount a case for self-defence. On the basis of this advice, Tasmania Police found Officer K ‘exonerated’, including on any breaches of the Code of Conduct.⁶³ No actions – including advice, guidance, and training – were taken in relation to Officer K’s behaviour.

The standard of proof in criminal matters – beyond reasonable doubt – is different to that of disciplinary matters, where ‘balance of probabilities’ is used. Moreover, the rules of evidence applied to criminal cases do not apply to disciplinary investigations and findings. Thus, where a criminal charge is unlikely to be successful, an adverse disciplinary finding may still be made. In the Commission’s view, this should have been considered in this case.

⁶² This included Officer K, an officer witness, and an officer that had worked for a substantial number of years in the Ballistics Section of Forensic Services.

⁶³ One allegation – ‘Summary – Assault (POA)’ – is listed against Officer K on IAPro.

Conciliation

Sections 46(2)(d) and 47(1) of the PSA allow for complaints to be finalised by conciliation, which means there will be no need for an investigation or a determination on whether there has been a breach of the Code of Conduct.⁶⁴ Conciliation is a form of alternative dispute resolution which is suitable for minor matters where disciplinary findings are not warranted, but the complaint still needs to be dealt with. For Tasmania Police, conciliated complaints generally involve measures such as 'an apology, direction, guidance, training and mentoring'.⁶⁵ However, it is essential – by the very nature of the process, and under Tasmania Police policy⁶⁶ – that the complainant and the subject officer both agree to the process. This year, the Commission determined to audit, in regard to complaints with a 'conciliated' outcome, whether both parties had agreed to the complaint being conciliated prior to its finalisation.

Fifteen of the 105 audited complaints were conciliated; all of these complaints were Class 1. In all 15 of these complaints, the complainant had agreed to the process prior to finalisation. The Commission was impressed with the conciliation process from the complainant's perspective, and considers that Tasmania Police performed well in this area.

In five of these complaints, however, the subject officer was not consulted about the conciliation prior to finalisation of the outcome (and sometimes was not even aware that this was the outcome).⁶⁷ This is contrary to both internal policy and best practice. It also means that these complaints were not really 'conciliated'.

For most of these five complaints, Tasmania Police advised that although the subject officer had not been aware that the matter had been conciliated, they were now satisfied for that to be listed as the outcome. In one complaint, however, Tasmania Police advised that – after contacting the subject officer – it intended to change the finding listed on IAPro from conciliated to 'not sustained'. The Commission considers this to be a questionable decision, especially as the complainant had been advised that the complaint was 'conciliated'.

The Commission noted that Northern District performed better in regard to conciliated complaints than other districts – in all but one of its seven conciliated complaints, both parties had been involved in the conciliation process prior to finalisation. This compared favorably to statistics from another district which also had seven conciliated complaints.

⁶⁴ TasPol, *GMM protocols*, above n 23, 14–15.

⁶⁵ *Ibid* 15.

⁶⁶ Letter from S A Tilyard, Deputy Commissioner of Tasmania Police, to Tasmania Police commanders, *Conciliation and Withdrawal of Complaints Against Police* (15 May 2012).

⁶⁷ Seven of the conciliated complaints contained no information suggesting that the subject officer had agreed to the conciliation prior to finalisation. As agreed with Tasmania Police prior to the commencement of the audit fieldwork, the Commission contacted the police about every one of these complaints to confirm whether the officer's agreement had actually been absent, or whether it had simply not been recorded. Tasmania Police confirmed that in two of these complaints, the subject officer had reportedly agreed to the conciliation prior to finalisation – it had just not been recorded on the complaint file.

Case study 10 – appropriately conciliated complaint

A Class 1 complaint of incivility was made against two officers who had parked in the complainant's designated parking spot.

The resolving officer in this complaint first spoke to the complainant and obtained advice on the terms under which the complainant would be willing to conciliate the complaint. The resolving officer then spoke to the officers about each of the areas the complainant had listed, at the same time obtaining their agreement to conciliate the complaint. The complainant was contacted again and informed that the officers had been spoken to about the listed matters, and the conciliation was finalised. Thus, the complainant was happy that their concerns had been heard, and the officers had both received a development outcome which would improve their future conduct – not only a benefit to them and the community, but also the organisation.

The record keeping in this file was also faultless, and it was finalised in 17 days – well within the 28 day timeframe set for Class 1 complaints. This complaint was handled efficiently and appropriately in all respects.

Objective B: identify if the findings of the last (2013) audit were repeated in regard to timeliness, contact, and record keeping

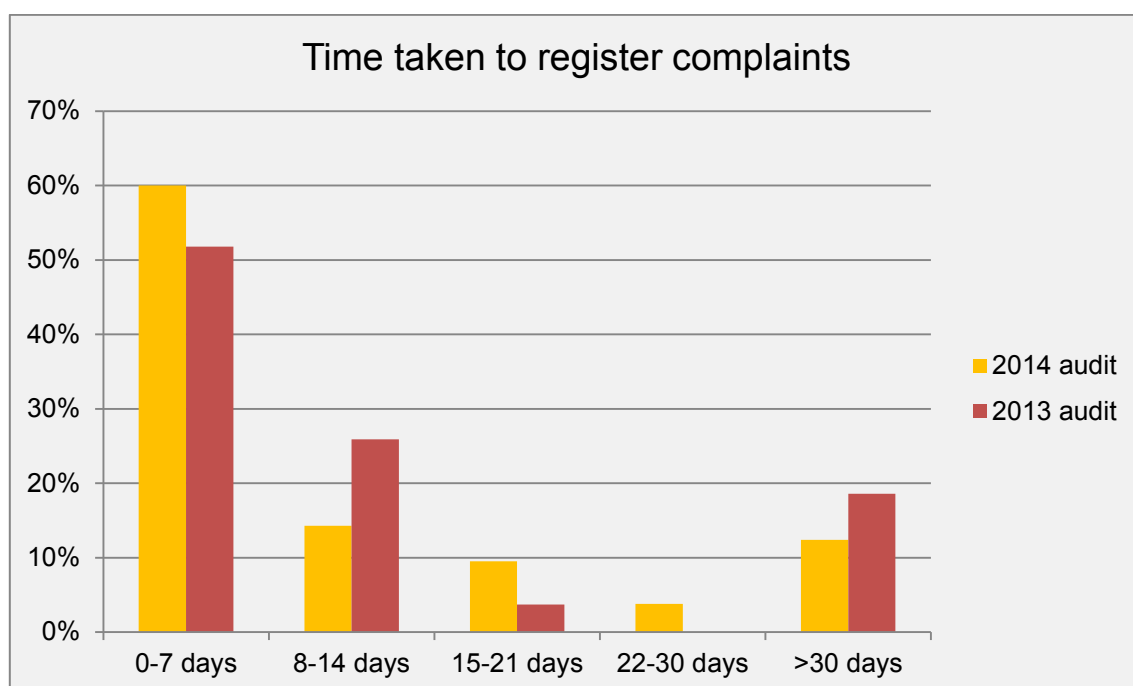
Timeliness

Time taken to register complaints

'Registration' is a legislative requirement under s 45 of the PSA, and it is performed when a complaint is logged on IAPro by Professional Standards Command. The period between a complaint's receipt and its registration should be brief, especially as often no substantive action will be taken until after registration has happened.

Of the 105 audited complaints, 88% were registered within 30 days of receipt. This compares favorably with the findings of the 2013 audit, in which 81.4% of complaints were registered within 30 days.

The Commission's opinion, however, is that any registration which takes longer than seven days is unacceptable. The joint review of the GMM recommended a benchmark timeframe for registration of 48 hours. Sixty percent (60%) of the audited complaints were registered within seven days of receipt. Last year, this figure was 51.8%.



Timely registration was a bigger problem for Class 2 complaints – 41% were registered within seven days. For Class 1 complaints, this figure was 64%. Complaints which contained one or more sustained finding also took longer to register, with only 30% being registered within seven days.

A protracted registration is not only unfair on the complainant, it can also adversely affect the outcome of any subsequent investigation (for instance, memories may have faded) and dilute the effect of any professional development measures or sanctions. In one of the audited complaints, the delayed registration meant that the investigator was unable to obtain

relevant (and previously available) CCTV footage of the alleged incident. The Commission was pleased to note, however, that the investigator did pursue this issue and tried to ensure that it would not happen again in future.

Time taken to finalise complaints

As suggested by *Case study 4*, Tasmania Police struggled to finalise the majority of complaints in a timely manner. This issue is not unique to Tasmania Police, and is a problem common to police agencies throughout Australia.⁶⁸ However, the complaint investigation in *Case study 11* demonstrates that it is possible to resolve complaints – even relatively complex ones – in a timely manner.

The relevant timeframe to use in assessing timeliness is from receipt to finalisation of the complaint – not from registration to finalisation. This is primarily because complaints can take some time to be registered, and it is unfair on all parties – but most especially the complainant – to use the registration date in an assessment of timely finalisation.

Of the complaints finalised in 2013, not one was finalised within seven days of receipt (including dismissed complaints). The centralised classification and registration process practiced by Tasmania Police – which is actually contrary to the GMM policy – does appear to contribute to the timeliness issue.

For Class 1 complaints, Tasmania Police has a benchmark timeframe for finalisation of 28 days. Tasmania Police has previously noted that, for many complaints, this timeframe is unrealistic, and the organisation is awaiting the finalisation of the joint GMM review before deciding on modifications to this benchmark timeframe.

The Commission also noted that, in some Class 1 complaints which took longer than 28 days to finalise, the investigator applied for (and was granted) an extension of time. Only nine of the 88 audited Class 1 complaints (10%) were finalised within 28 days of receipt. Even if the measurement for finalisation were to be taken from registration, only 13 Class 1 complaints (15%) would have been finalised within 28 days. This suggests that it may not generally be the slow registration process which is preventing Tasmania Police from meeting this benchmark timeframe – it appears that the investigation process is taking too long.⁶⁹

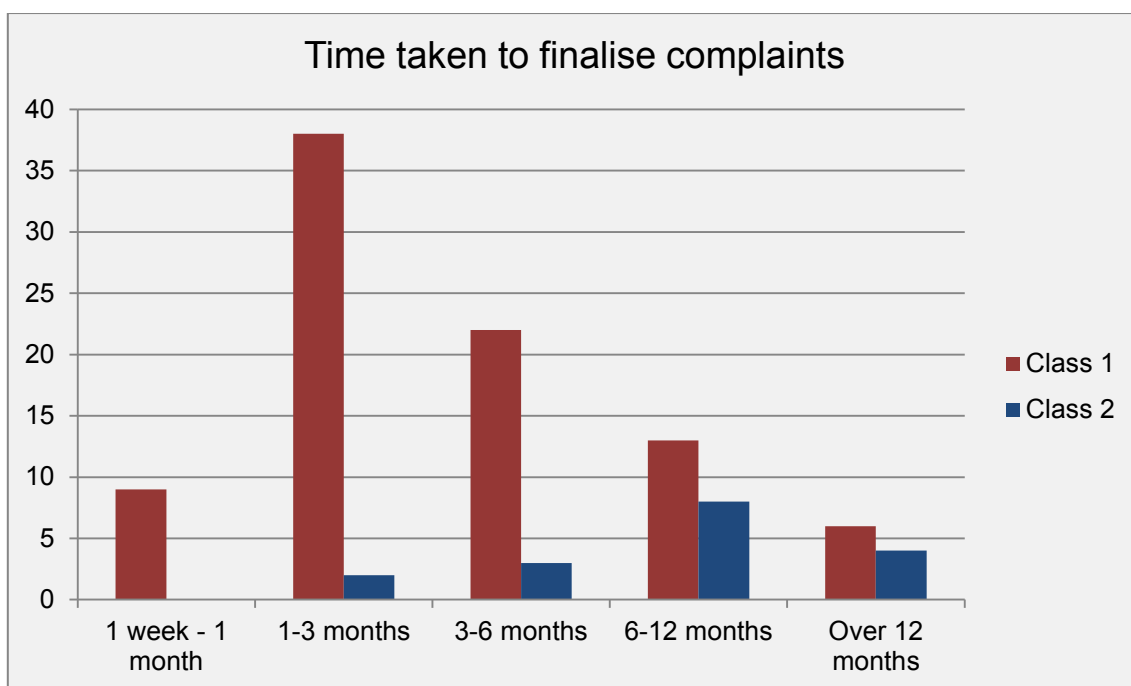
Under the GMM, there is set no timeframe for the finalisation of Class 2 complaints.

Overall, from receipt to finalisation, it took an average of 152 days to finalise complaints, and a median of 100 days:

- from receipt to finalisation, it took an average of 123 days to finalise Class 1 complaints, and a median of 81.5 days;
- for Class 2 complaints, it took an average of 302 days, and a median of 276 days.

⁶⁸ For example, similar comments have been made by review bodies in Queensland (see Independent Expert Panel, *Simple Effective Transparent Strong: An independent review of the Queensland police complaints, discipline and misconduct system* (May 2011) 70), and Victoria (see Office of Police Integrity, *Improving Victoria Police discipline and complaint handling systems: A progress report* (June 2011) 28).

⁶⁹ Although note that it can take some time for a complaint to be assigned to an investigator, even after registration.



Common problems in complaints which took too long to finalise included:

- over-investigation of relatively minor complaints, including writing lengthy investigation reports, preparing multiple reports for one complaint, and following irrelevant lines of inquiry and/or contacting irrelevant ‘witnesses’;
- in some ‘over-investigated’ complaints, allowing the complainant to drive the extent of the investigation – that is, the level of ‘fuss’ the complainant was willing to make (as opposed to the severity of the matter), in some cases, determined the extent of the investigation;⁷⁰
- the slow internal correspondence process, which is exacerbated by the organisation’s rank structure;
- hard copy complaint files being lost when sent internally between commands – it could take over one month before the loss is even noticed, then more time for a replacement file to be sent; and
- leave taken by the subject officer and/or the investigator.

The Commission is hopeful that the recent roll-out of IAPro to the districts – allowing them to directly access certain parts of the system – will go some way to remedying some of these issues.

⁷⁰ The joint review of the GMM recommended that, if possible, Tasmania Police officers should receive training and guidance on dealing with unreasonable complainant conduct, and that the agency should make greater use of the Tasmanian Ombudsman publication *Guidelines for Managing Unreasonable Conduct by Complainants* (January 2013). This was because this conduct can and does cause an unnecessary and unwarranted drain on Tasmania Police resources.

Case study 11 – efficient and effective management of complex Class 1 complaint

A relatively complicated complaint with multiple allegations made against multiple subject officers took 35 days to finalise. Given its relative complexity, in the Commission's view, its finalisation marginally outside the 28 day timeframe for Class 1 complaints was justified.

The length of the investigator's report is proportionate to the number and complexity of the allegations, and the investigator did not follow irrelevant lines of inquiry (or report on them). All relevant lines of inquiry were pursued. The report is succinct and summarises the responses of the subject officers – rather than (as some other reports do) simply 'copying and pasting' responses. Contact with the complainant and the subject officers appears to have been satisfactory.

The file includes a running sheet which appears to be comprehensive, and which includes a summary of the initial telephone conversation with the complainant. The file also includes copies of emails sent to, for example, the subject officers. The file has indexed tabs and is easy to navigate.

There were, however, a number of small issues with the IAPro record for this complaint: first, the date of receipt was incorrect by four days; second, an allegation initially made by the complainant but later withdrawn was not listed; third, correspondence in the file indicates that all allegations were found 'not sustained' – yet on IAPro, there are eight 'unfounded' allegations, and nine 'exonerated' allegations; fourth, a total of six allegations against six subject officers concerned the same incident, yet five are listed on IAPro as 'exonerated', and one is listed as 'unfounded'.

Overall, this was an example of a well-handled complaint – there were many less complex and less serious complaints that took a great deal longer to finalise, and which included much lengthier investigation reports. In the Commission's opinion, this complaint was handled both efficiently and effectively.

Case study 12 – over-investigation of a Class 1 complaint

A Class 1 complaint derived from an event in late 2009, when the complainant was allegedly assisted by two police officers after a motorbike accident. The complainant subsequently decided to take civil legal action in relation to the accident. The action was not against the police, but the complainant nonetheless required the police report to build the legal case. The complainant first attended the police station in November 2009; the police could find no record that any officer had stopped to assist the complainant and so raised a new incident report. Over the next several years, the complainant wrote at various times requesting the same information (the reports from the police officers who had assisted following the accident). Numerous officers attempted to find these reports, to no avail.

Eventually the complainant's letters reached a certain threshold which led Tasmania Police to determine that a complaint had been submitted – the IAPro date of receipt is 9 January 2013. The assigned investigator undertook an extensive investigation which involved determining all police who could possibly have been present on the night in question, assessing them against the complainant's description of the officers, and requesting all potential officers to report on what they were doing that night. The investigator met with the complainant ten times and interrogated numerous databases searching for the information. The police then attempted to finalise the complaint several times, yet the complainant kept responding; two letters in the file formally advise that 'the matter is now finalised'. It took 197 days to finalise this Class 1 complaint (from 9 January 2013).

While the investigator was obviously and understandably sympathetic to the complainant in this case, at times it must be accepted that problems cannot always be resolved to everybody's satisfaction – especially where complainants display unreasonable complainant conduct. The amount of time and resources put into dealing with this rather minor complaint ultimately took time and resources away from other police work.

Case study 13 – slow internal correspondence, leave

A complaint was received via letter on 16 October 2012.⁷¹ It was registered on IAPro the next day, and the investigator received notification via email that same day (17 October 2012). The investigator immediately contacted both the complainant and the subject officer. Later, the subject officer submitted a statutory declaration about the matter, dated 4 November 2012. The investigator's report is dated 12 November 2012. The investigator's commander approved the report and returned the complaint to Professional Standards for filing on 13 November 2012.

However, sometime between that date and 28 February 2013 (the correspondence is not in the file), Professional Standards replied, asking for a more accurate explanation of the formal disposition of the complaint – i.e. the report was not sufficiently clear about the findings. On 28 February 2013, the commander replied to Professional Standards, apologising and stating that the file had been returned to the investigator, but that the subject officer was on sick leave; the complaint, the commander wrote, would be finalised when the subject officer returned from sick leave. On 18 March 2013 the investigator submitted his second report to the commander. The commander referred this on to Professional Standards – it was received there on 22 March 2013. This is also the date of finalisation on IAPro. This Class 1 complaint – which was eventually listed as 'conciliated' on IAPro – took a total of 157 days to finalise.

⁷¹ The IAPro date of receipt was 17 October 2012, but the complainant's letter was stamped received by the police on 16 October 2012.

Case study 14 – lost documentation

A complaint was made about a Triple Zero call on 12 August 2012. The complainant initially attended a police station to lodge a complaint, and was 'referred' to the Ombudsman. There is no explanation for this in the file – police have a duty to take complaints and there is no reason to 'refer' them to the Ombudsman.

The complainant then submitted a written complaint to the Ombudsman on 25 September 2012. An Ombudsman officer referred the matter back to Tasmania Police. A report in the file states that the complaint was referred on 3 October 2012 – yet the IAPro date of receipt is 5 October 2012. The date that the complainant first attended the police station is not included in the file, nor is the complainant's letter of complaint to the Ombudsman, nor the referral letter from the Ombudsman.

The complaint was registered on IAPro on 5 October 2012. Professional Standards then sent notification to the relevant area, asking for an investigation into the matter. However, this documentation was somehow lost. It took some time for this to be uncovered and replacement documentation to be prepared and sent. An investigator was not assigned to the complaint until 11 December 2012. The investigator's report was dated 17 December 2012, the notification letter to the complainant was dated 27 December 2012, and the complaint's finalisation date on IAPro is 8 January 2013. From 5 October 2012, this Class 1 complaint therefore took a total of 95 days to finalise – despite the investigation itself only taking seven days. This also does not include the time delay between the complainant's initial approach to police and the receipt of the referral from the Ombudsman.

While there were clearly some flaws in the handling of this complaint, the Commission does note that the investigator made excellent contact with the complainant. To finalise the matter, verbal contact was made, followed by a tactful final notification letter which included an outright apology for the delay. The opportunity for organisational learning presented by this case was also explored efficiently by the investigator.

The Commission noted that there was some difference between police districts in the overall time they took to finalise complaints. The table below compares the average and median times taken to finalise Class 1 complaints in each district, both from receipt to finalisation, and from registration to finalisation. The period from registration to finalisation may be the more accurate figure in regard to measuring timeliness of complaint investigations in the districts, as it is Professional Standards that register complaints – although at times the districts do play a role in this process (i.e. where they receive the initial complaint then have to forward it to Professional Standards). Class 2 complaints are not included in this analysis as Professional Standards handle most of those complaints.

Districts – time taken to finalise Class 1 complaints				
District	Time (days) – receipt to finalisation		Time (days) – registration to finalisation	
	Average	Median	Average	Median
Northern	98	44	81	37
Operations Support	119	112	112	103
Southern	144	99.5*	123	77.5*
Western	90	92	81	76

**Averages on this table have been rounded to whole days; medians have not.*

Contact with parties to the complaint

This year, the Commission determined to narrow its examination of Tasmania Police's contact with relevant parties. The focus in this audit was on their legislative duty, under PSA s 47, to inform both the subject officer and the complainant, in writing, of any action taken under PSA s 43(3).⁷² Section 47 specifies:

47. Determination of complaints

...

(2) *On finalisation of an investigation of a complaint, the Commissioner may determine to take any action under section 43(3) if satisfied that a breach of a provision of the code of conduct has occurred.*

(3) *The Commissioner, by notice in writing, is to notify the determination to –*

- a. the complainant if the complainant is identifiable; and*
- b. the police officer who is the subject of the complaint if the police officer is informed of the complaint.*

...

The Commission considers that the above provision requires notification, to both the complainant and the subject officer, in writing, of the exact PSA s 43(3) action that will be taken – that is, a counselling, a reprimand, and so on.

Complainants

In the complaints subject to audit, seven PSA s 43(3) sanctions were imposed (against seven subject officers) where complainants should have been informed of the sanction. This excludes the six other instances of s 43(3) action taken within the audit period, as they derived from internally identified issues.

In only one of the seven instances was there evidence that the complainant had been informed of the action taken under PSA s 43(3). The Commission notes that, in some complaints, this may actually be a record keeping issue.⁷³ However, notification of a s 43(3) action is a legislative requirement and it is important that Tasmania Police complies with such obligations, and that it does not mislead complainants about the outcome of their complaint.

⁷² This includes: a counselling; a reprimand; a fine not exceeding 20 penalty units; a reduction in remuneration; reassignment of duties; transfer; probation (non-commissioned officer); demotion (non-commissioned officer); termination (non-commissioned officer); and, in the case of a commissioned officer, recommend termination, demotion or probation to the Minister.

⁷³ In some of the complaints, it was *not* a record keeping issue as the letter sent to the complainant was in the hard copy file (and it did not contain notification of the PSA s 43(3) action); in other complaints, there was simply no record of final contact with the complainant and so it was impossible to determine if the issue was of record keeping, or of lack of notification.

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.

Tasmania Police responded to Recommendation 4 as follows:

This is now reinforced through training and reports. Where administrative resources permit, these will be quality assured at [Professional] Standards. ... [T]he rationale for Recommendation 4 and the recommendation have been incorporated into recent instructions to commanders and will be reviewed (administrative capacity permitting) at [P]rofessional [S]tandards to ensure compliance and consistency.

Case study 15 – complainants not adequately informed of a s 43(3) action

A couple made a complaint against two officers, Officer Q and Officer R. There is one sustained allegation listed against each officer on IAPro, and both officers were issued with determination notices for breaches of the Code of Conduct.

On IAPro, the actions listed are verbal direction for Officer Q, and a counselling under PSA s 43(3)(a) for Officer R. Officer R's determination notice also refers to 'verbal guidance and direction'; this action is not listed on IAPro.

In this complaint, the complainants did receive a letter about the outcome. The relevant excerpts from the letter are (emphasis added):

*... the two constables involved in this matter did not take appropriate action when dealing with you both concerning your complaints of assault. The investigation ... determined that the constables did not act dishonestly in any [sic]. However, they exercised poor judgement ... As a result of this investigation, **both constables have been provided with verbal guidance** by a senior officer regarding their failures in this matter ...*

Not only does the letter not mention the counselling given to Officer R, it also misleads the complainants in that it suggests that the same action was taken in relation to both subject officers.

While the Commission did not undertake to audit any further aspects of Tasmania Police's contact with complainants, it did note that generally contact seemed to be of an acceptable standard – and in some cases was excellent (see, for example, *Case study 14*).

Tasmania Police does, however, need to be wary of giving complainants notification of the outcome – be that a PSA s 43(3) outcome or otherwise – too soon. In a number of complaints, notification was sent to the complainant before advice of the outcome was conveyed to the subject officer and/or before it was confirmed with Professional Standards.⁷⁴ Subject officers can dispute complaint outcomes and this can lead to a change in the findings; likewise, Professional Standards may also change/seek clarification on findings. In some complaints, this meant that the notification given to the complainant was erroneous, in that it had subsequently been changed and a different finding listed on IAPro and/or in the file.⁷⁵

⁷⁴ This included at least one of the complaints in which a PSA s 43(3) action was not adequately notified to a complainant.

⁷⁵ In one complaint, after sending notification to the complainant and Professional Standards, the district changed the finding for two of the allegations. It duly re-sent notification to the complainant, and updated Professional Standards. However, Professional Standards did not change the IAPro record to reflect the changed outcome.

Subject officers

Within the audit period, there were a total of 13 instances of PSA s 43(3) action taken against 11 officers. There was evidence that 10 of those 11 subject officers were given notification in writing of the action, in accordance with PSA s 47. The single instance in which there was apparently no written notification involved the termination of the subject officer's employment. It is obvious from a subsequent court case concerning this subject officer that there had, in fact, been a termination letter.⁷⁶ The Commission therefore presumes that this was a record keeping issue.

The Commission did not audit other aspects of Tasmania Police contact with subject officers. Nevertheless, it was noted that, in at least some of the conciliated complaints, the subject officers seem to have been completely unaware of the finding that had been listed on IAPro. The Commission urges Tasmania Police, as a matter of procedural fairness, to ensure that subject officers are informed of all allegations and findings listed on IAPro under their names.

The Commission also noted that in a number of complaints 'indicative sanctions'⁷⁷ were not given to subject officers, for various reasons. This appeared to make no difference whatsoever to the officers' response – that is, indicative sanctions do not appear to have encouraged admissions. This is important because one of the main reasons for giving indicative sanctions is that they supposedly encourage admissions, and thereby reduce the number and extent of complaint investigations.⁷⁸ The Commission could find no evidence of this in the audited complaints, and that finding supports the recommendation of the joint GMM review to abolish the practice of giving indicative sanctions.

⁷⁶ There is some legal argument on whether the termination of this officer was under PSA s 43(3)(i), or another provision of the PSA. On the basis of the two complaints against this subject officer, and given that there was no copy of the actual termination letter in either of the files, the Commission therefore has presumed, for the purposes of this audit, that the termination was made under PSA s 43(3)(i).

⁷⁷ The GMM policy states that, prior to a complaint investigation, the subject officer is to be advised of the 'penalty range if the complaint is investigated and sustained', see TasPol, *GMM protocols*, above n 23, 3. These 'indicative sanctions' are given by Professional Standards on the basis of both the contents of the original complaint, and the officer's history on IAPro.

⁷⁸ TasPol, *GMM protocols*, above n 23, 3. The Commission agrees with the response of Tasmania Police that, '[a]nother primary reason is for consistency of outcomes, determinations and sanctions/organisational learning'.

Record keeping – hard copy files

As noted above, record keeping on IAPro was inadequate. Record keeping in hard copy files could also be improved. For instance, relevant information, such as correspondence, was clearly missing from a number of the audited files (for example, see *Case study 13*).

Checklists for investigators

The Commission noticed that at a point in early 2013, Northern District commenced a practice of sending checklists to its investigators. This required the investigator to identify if they had/had not performed certain parts of the complaint process, and their findings. The Commission considers this is an excellent technique, and that it likely assisted Northern District to achieve the consistently better results – in comparison to other Tasmania Police districts – that were seen throughout this audit, especially in regard to timeliness in finalising complaints.

The Commission does acknowledge that the checklist may not be as useful under the new complaint management process, or that it may need to be revised to suit the new system. However, the Commission does suggest its use, at least as an interim measure until the new complaint policy is settled.⁷⁹

Draft letters

Draft letters (usually to complainants) were found in many complaints. There is no need to preserve drafts and such letters should be disposed of. At times, it was hard to discern the draft and the actual final letter – especially as not all letters were stamped ‘sent’. This is a simple record keeping practice which could easily be remedied. The Commission urges Tasmania Police to ensure that draft letters are not included in files, and that actual letters are marked with a dated ‘sent’ stamp.

Organisation of files

It is standard administrative practice to maintain hard copy files in reverse chronological order. However, this does not appear to be Tasmania Police practice. The lack of an appropriate or (at times) intelligible order in files often made them difficult to understand – especially in terms of chronologies – and to audit. Most of the correspondence in relation to each complaint was generally inserted in an ad hoc manner, often at the front of the file. Often certain types of correspondence (usually the initial complaint) were kept separate to other correspondence. The Commission suggests that Tasmania Police adopt a policy for organising its hard copy files. Under that policy the files should be reasonably easy to navigate for any independent person (from Tasmania Police, the Commission or any other organisation); the policy should be applied consistently across all complaint files. The Commission does not make any recommendations or suggestions on the ultimate form of this policy; this should be an internal Tasmania Police decision.⁸⁰

⁷⁹ It would be useful to make at least one amendment to the checklist, however, and that is the addition of the requirement to add the running sheet to the file.

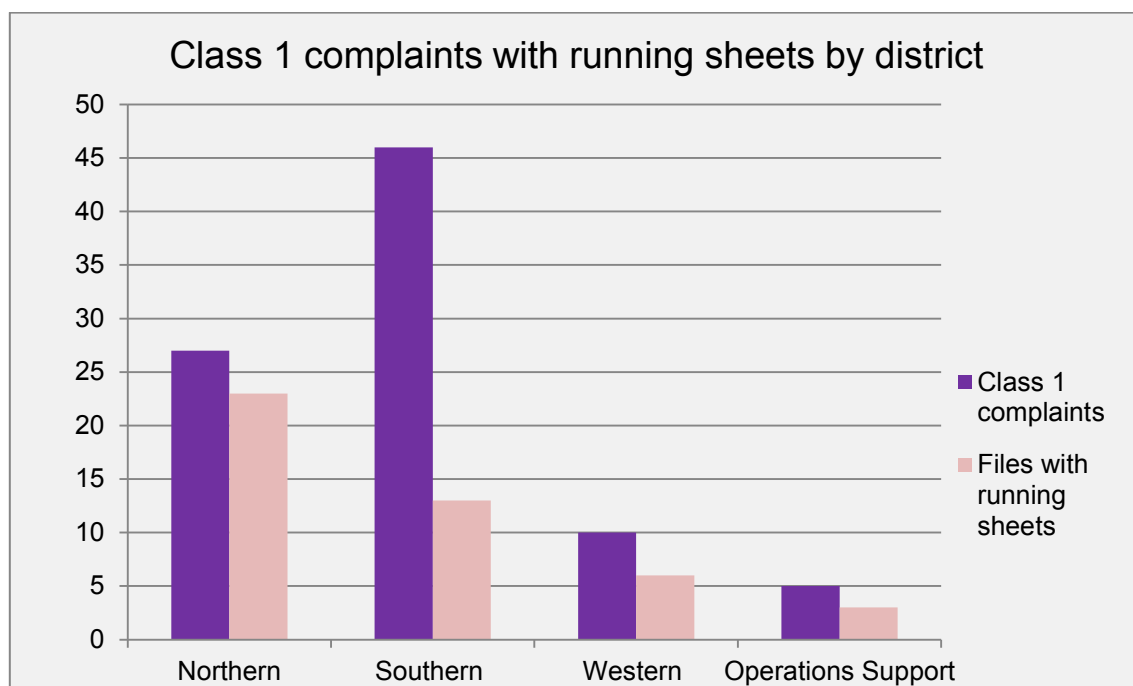
⁸⁰ One example of a good alternative hard copy filing technique was found in one of the Tasmania Police files – this file is discussed in *Case study 5*. Although there were aspects of this complaint investigation that could be improved, the Commission did note that the file was organised in a manner (by tabs that accorded with the allegations) which – despite the relative complexity of the complaint – made it easy to navigate. Additionally, the investigator’s report in this file was well written and succinct.

Running sheets

The value of running sheets was noted in the last audit undertaken by the Commission, and on 13 August 2013 Tasmania Police issued an internal directive that all complaints are to have a running sheet. The Commission therefore determined that it would assess the number of complaints which contained running sheets, satisfactory or otherwise. The Commission further undertook, at the request of Tasmania Police, to assess the effect of the internal directive.

Of the audited complaints, 51% (54 complaints) contained a running sheet. However, in 17 of those complaints the running sheet was deemed not satisfactory, in that it covered only a small portion of the investigation.⁸¹ For instance, in one complaint which took 58 days to finalise, the running sheet only had four entries, and they were all on the same date. In the Commission's view, 35% of complaints contained a satisfactory running sheet. Only 18% of Class 2 complaints (where in theory they are more useful due to the relative extent of the investigation) contained a satisfactory running sheet, as opposed to 39% of Class 1 complaints. The Commission did find a marked improvement in running sheets for complaints registered after 13 August 2013: 60% contained a satisfactory running sheet.⁸²

The Commission also noticed a difference between the districts in terms of their running sheets.



The graph only includes data on Class 1 complaints, as Professional Standards deal with most Class 2 complaints.

⁸¹ Even amongst complaints in which the running sheet was deemed to be satisfactory, the quality varied. For instance, one file in which the original investigator went on leave part way through the investigation contains an excellent running sheet which was completed seamlessly by both investigators; in other files the running sheet, although apparently complete, was scrawled and hard to read. At times, the Commission suspected that information was missing from the running sheet, but was unable to confirm or deny that suspicion from the file, so deemed the running sheet to be 'satisfactory'.

⁸² Another 5% contained a running sheet which was not satisfactory – thus, of complaints registered after 13 August 2013, 65% contained a running sheet.

Objective C: determine if allegation findings are justified on the evidence

Findings – as listed on IAPro

Under the GMM, four main findings can be made for each allegation contained in a complaint:

- unfounded: complaint is false or not factual
- exonerated: incident occurred but the member acted lawfully and properly
- not sustained: insufficient evidence to prove or disprove complaint
- sustained: sufficient evidence exists to prove the complaint.

On IAPro, the outcome of allegations may also, amongst other things, be listed as 'withdrawn', 'conciliated', or 'dismissed'.

Although these findings may appear straightforward, in reality they can be confusing. It was apparent that not only did some police officers not know what the four GMM findings above meant, but that, in some cases, they also did not know what that they were (e.g. they would state that an allegation was 'unsubstantiated', as opposed to 'not sustained' or 'unfounded').⁸³ In particular, the difference between 'exonerated' and 'unfounded' can often be an exercise in semantics. Complicating 'unfounded' findings is the descriptor, which seems to preclude making a finding 'on the balance of probabilities',⁸⁴ when in fact that is the standard of proof to be used in disciplinary matters.

Also of concern was that the findings on IAPro did not always accord with the findings listed in the hard copy file.⁸⁵

The joint GMM review recommended an overhaul of the approach to findings, and it is hoped that this will streamline the process and provide greater consistency.

The findings made against the 271 allegations listed on IAPro for the complaints audited this year were:

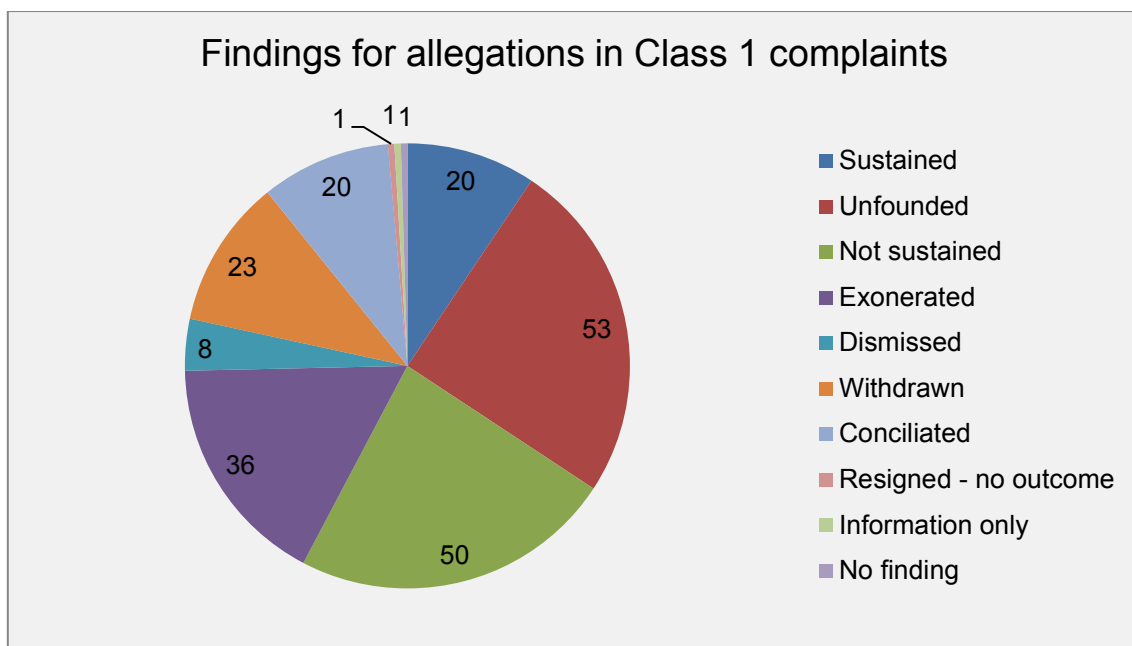
- 70 allegations unfounded (26%)
- 59 allegations not sustained (22%)
- 44 allegations sustained (16%)
- 39 allegations exonerated (14%)
- 23 allegations withdrawn (8%)
- 20 allegations conciliated (7%)
- 10 allegations dismissed (4%)
- 4 allegations 'Resigned – no outcome' (1%)
- 1 allegation 'Information only' (<1%)
- 1 allegation with no finding (<1%).⁸⁶

⁸³ Northern District's checklist for investigators seemed to assist with this.

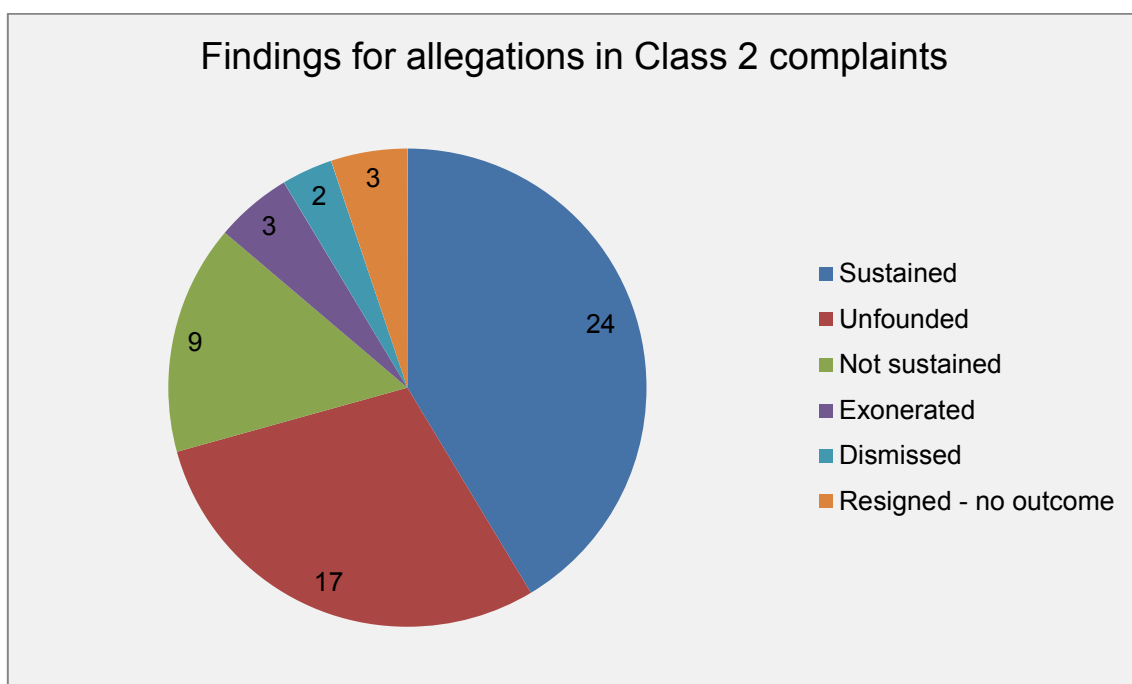
⁸⁴ In that it sounds like absolute proof is needed – something along the lines of the criminal standard of proof of 'beyond reasonable doubt'.

⁸⁵ For example, see *Case study 11*.

⁸⁶ Most percentages given in this report have been rounded to a whole number, so will not necessarily total 100%.

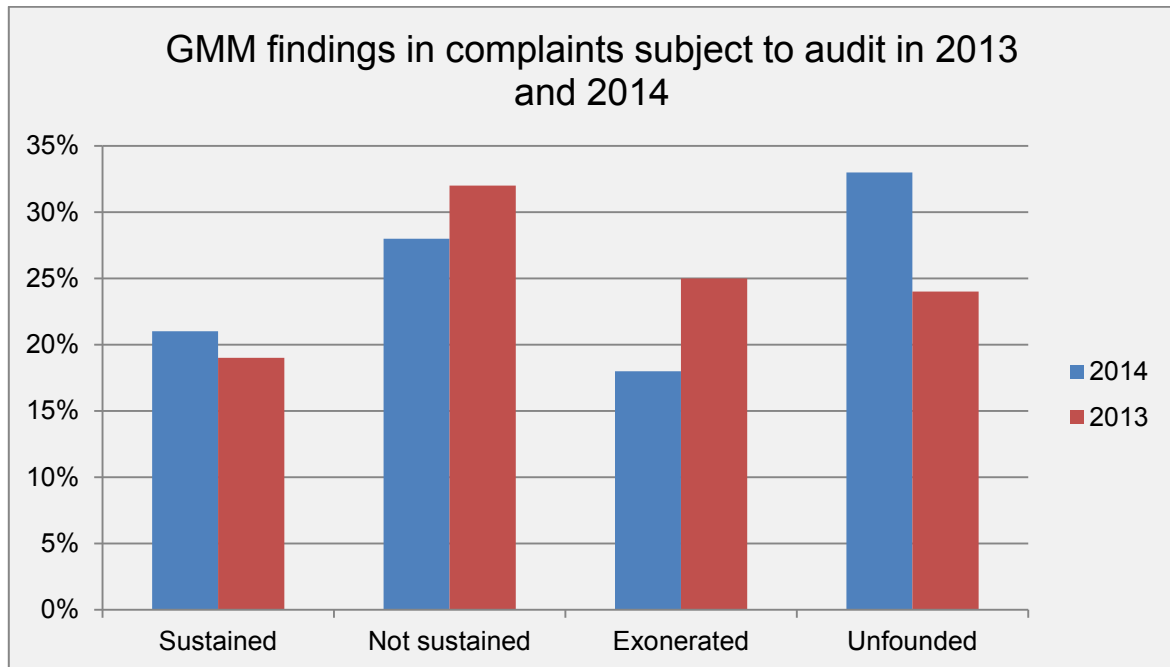


The percentage of sustained allegations in Class 2 complaints (41%) is significantly higher than in Class 1 complaints (9%). As noted below, some potential Class 2 complaints were 'downgraded' to Class 1 due to doubts about the veracity of the complaint, and this may have had an impact on the relative percentages of sustained and unfounded findings in the different classes of complaint.



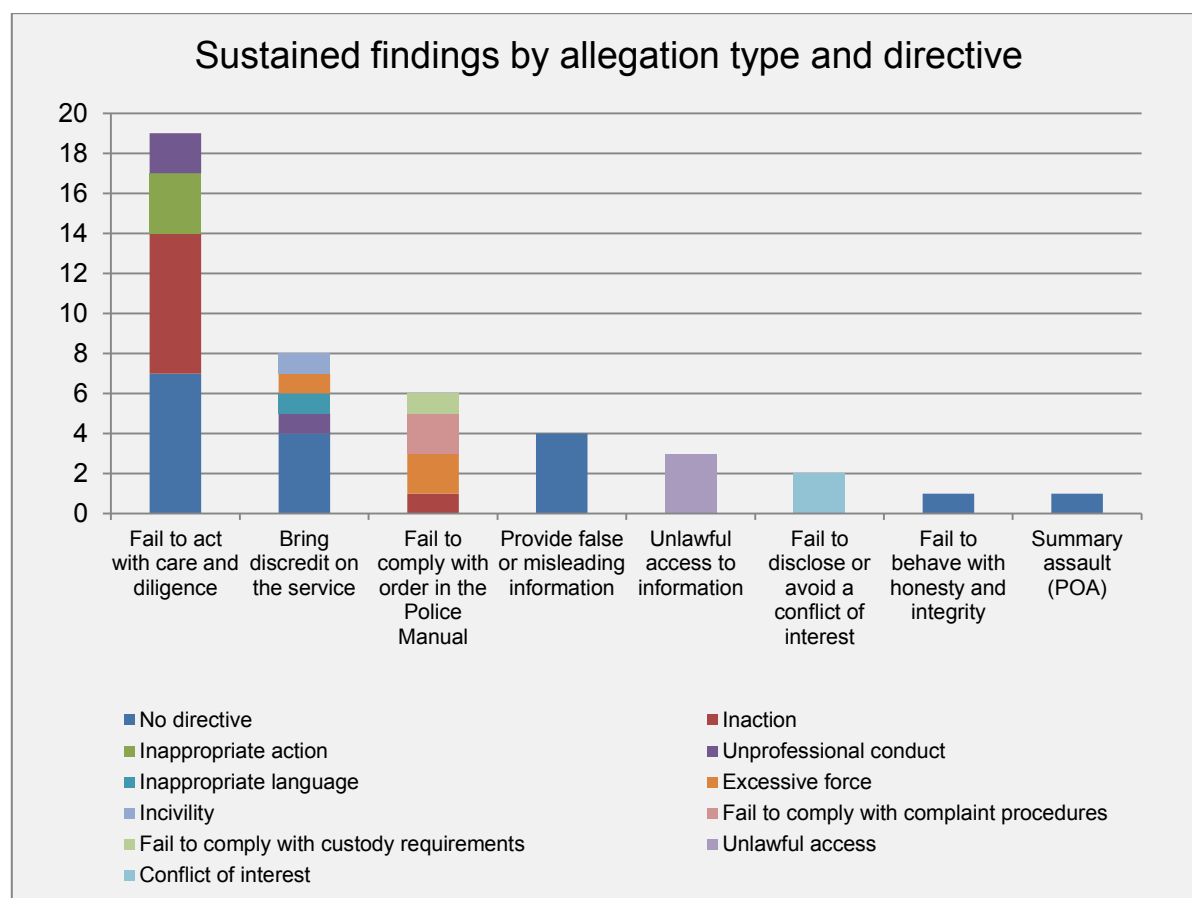
Comparison to findings in 2013 audit

Last year, the Commission only collected statistics on the four 'core' GMM findings of exonerated, sustained, not sustained and unfounded. The chart below shows a percentage comparison of the 212 core GMM allegations listed on IAPro for the complaints audited this year, in comparison with the percentages from the last audit.



Sustained allegations

The chart below shows the nature of the 44 allegations which were found to be sustained in complaints finalised in 2013.



The horizontal axis shows the allegation types. All are breaches of the Code of Conduct, apart from 'Summary assault (POA)', which is an offence under the Police Offences Act. The coloured bands represent the directives listed on IAPro for each allegation.

Findings justified on the evidence contained in the file

The Commission made a judgment on whether each of the 270 findings⁸⁷ was justified on the basis of the evidence or explanation contained in the hard copy file. It was not intended, as part of the audit criteria, to determine what the finding actually *should* have been (in cases where the finding was not justified on the evidence).

As there is little policy in the GMM in relation to findings, each of these decisions represents the opinion of the Commission. A determination by the Commission that a finding was not justified does not necessarily mean that it was the wrong finding – just that there was no evidence and/or justified rationalisation in the records audited to support that particular finding.

The Commission reiterates that, for a number of findings that were found not to be justified on the evidence, this ‘criticism’ could have been avoided had police provided an adequate reason (or in some cases, any reason at all) for that finding. It is good practice to record the reasons for decisions, and it is also a requirement of procedural fairness and natural justice.⁸⁸ The fact that some of the findings listed on IAPro were different to those contained in the file – often because allegations were ‘bundled’ when listed on IAPro – also impacted on the number of findings which, in the Commission’s view, were not justified on the evidence.

It is the Commission’s view that, of the 270 allegation findings:

- 204 were justified on the information in the relevant file (75%)
- 66 were not justified on the information in the relevant file (25%).

A total of 43 complaints (41% of complaints) contained one or more finding that was not justified. Overall, 24% of Class 1 findings were not justified, and 26% of Class 2 findings were not justified. In regard to the districts, a greater percentage of Southern and Operations Support findings – as opposed to Northern and Western findings – were not justified on the evidence contained in the file.

A determination by the Commission that a finding was not justified on the evidence does not necessarily mean that the allegation in the complaint should have been sustained. However, at the post-audit fieldwork stage and at the request of Tasmania Police, the Commission did undertake to determine an approximate figure for the number of these 66 findings that, in its view, should have been sustained. Of the 43 complaints which contained one or more finding which was not justified on the material in the file, approximately eight could/should have had one or more (additional) sustained finding.⁸⁹ *Case study 16* provides an example of this.⁹⁰ These figures, however, include a number of files in which the Commission considered more investigation was required to make a definitive decision on the finding, and it also includes one file in which the findings listed on IAPro were ‘Resigned – no outcome’. Moreover, these figures only apply to findings that were actually listed on IAPro; in a number

⁸⁷ Although 271 allegations were listed on IAPro, one had no finding.

⁸⁸ It is also Tasmania Police policy that the conclusion, and therefore the findings, ‘can only be drawn from the available evidence contained in the file’, see Tasmania Police, *Graduated Management Model for Complaints Against Police Annexure ‘E’ – Internal Investigation Report Model Aide Memoir* (2010) 5.

⁸⁹ The remainder contained allegations that should, for example, have instead been found exonerated, not sustained and so on.

⁹⁰ In the opinion of the Commission, in *Case study 16*, allegation A3 as listed on IAPro (‘Breach Code of Conduct – Fail to act with care and diligence – Inaction’) should have been found sustained. If it had been listed on IAPro as an allegation of stealing (which is what the complainant actually alleged), it would have been justifiable to find it ‘not sustained’.

of complaints, allegations which should have been/were found sustained were not listed on IAPro at all.⁹¹

It should also be noted that, in some⁹² cases, a finding of ‘sustained’ as opposed to ‘exonerated’ is a judgment call that can only be made by Tasmania Police itself – that is, it is the only organisation which can determine exactly what level of conduct it is prepared to find acceptable.

Factors used in determining that a finding was not justified

Note that the Commission’s conclusions do not mean that any of these findings should necessarily have been ‘sustained’; rather, they mean that the evidence on the file did not justify the particular finding that was made.

1. ‘Unfounded’ findings

In the Commission’s view, 22 of the 70 ‘unfounded’ findings (31% of unfounded findings)⁹³ were not justified on the material contained in the file. This was because:

- there was no evidence collected
- the allegation was not analysed in the file
- there was no evidence to either prove or disprove the allegation – usually it was the word of the subject officer against the complainant
- the evidence did not disprove the allegation
- the conduct (which was the subject of the allegation) did happen
- allegations listed on IAPro were ‘bundled’ and not all of them could have been characterised as unfounded.

2. ‘Not sustained’ findings

In the Commission’s view, 17 of the 59 ‘not sustained’ findings (29% of not sustained findings) were not justified on the material contained in the file. This was because:

- the evidence indicated that the conduct did happen
- the evidence indicated that the conduct did not happen
- the complaint was conciliated
- there was sufficient evidence to make a judgment
- there was an erroneous application of the criminal law requirement to show ‘intent’.

3. ‘Exonerated’ findings

In the Commission’s view, 12 of the 39 ‘exonerated’ findings (31% of exonerated findings) were not justified on the material contained in the file. This was because:

- the conduct in question had not actually occurred (or the evidence was contested)
- the allegation was listed against the wrong subject officer

⁹¹ See, for example, allegations A7–A10 in *Case study 16*.

⁹² For instance, allegations of low-level incivility.

⁹³ A number of unfounded findings were justified simply because they should never have been listed on IAPro in the first place – that is, they were listed against an officer whom the allegation had not been made against, thus the conduct clearly did not happen and the allegation was validly found to be ‘unfounded’.

- allegations listed on IAPro were ‘bundled’ and not all could have been characterised as exonerated
- the allegation was not analysed in the file
- in the Commission’s view, the conduct in question was not proper.

4. ‘Conciliated’ findings

In the Commission’s view, 6 of the 20 ‘conciliated’ findings (30% of conciliated findings) were not justified. In each case, this was because the subject officer had not had an opportunity to agree to the conciliation prior to finalisation of the complaint.

5. ‘Dismissed’ allegations

In the Commission’s view, the decision to dismiss 4 of the 10 ‘dismissed’ allegations (40% of dismissed allegations) was not justified on the material contained in the file. This was because:

- allegations were bundled on IAPro and not all of the allegations had a rationale for dismissal explained in the file
- the conduct did occur and was dealt with
- the allegation was an ‘alternative’ for another allegation which had a different finding.

Correspondence received from Tasmania Police during the course of the audit indicated that it does not consider it necessary to link a decision not to investigate to a specific section of PSA s 46(2)⁹⁴ – that is, it does not have to provide a reason for dismissing a complaint. The Commission disagrees with this assessment, and thus where there was no reasoning given (and there was no obvious reason), the Commission found the decision to dismiss an allegation not justified.

6. ‘Resigned – no outcome’ findings

For four allegations (from two complaints but against the same subject officer), the finding was listed as ‘Resigned – no outcome’. In the Commission’s view, these findings were not justified because:

- they conflicted with other complaints in which the subject officer resigned – all other such complaints have findings for the allegations made against the relevant subject officer
- despite the subject officer’s resignation, the police already had enough evidence to make findings on the allegations
- listing findings on IAPro would ensure that, should the officer attempt to reapply to the police⁹⁵ – or if Tasmania Police were requested to act as referees – the organisation would immediately (by reference to IAPro) be fully informed.

⁹⁴ PSA s 46(2) states: In determining whether to dismiss the complaint without an investigation, the Commissioner may take into account the following: (a) what action has been or is to be taken to remedy the subject matter of the complaint; (b) whether the complaint is frivolous, vexatious or not made in good faith; (c) whether the subject matter of the complaint is trivial; (d) whether the subject matter of the complaint is able to be resolved by conciliation; (e) whether there was or is an alternative and satisfactory means of redress available to the complainant; (f) whether the subject matter of the complaint is being, is to be, or has been, dealt with in other proceedings; (g) any other matter the Commissioner considers appropriate.

⁹⁵ In fact, this subject officer did attempt to reapply for employment as a police officer with Tasmania Police.

7. 'Information only' finding

One finding was listed as 'Information only'. In the Commission's view, this finding was not justified because the conduct did occur and the subject officer received verbal guidance. If Tasmania Police did not consider that the conduct breached the Code of Conduct, the finding should have been listed as 'exonerated'.

Case study 16 – findings not justified on the evidence

A complex complaint contained a number of serious allegations; it required an extensive investigation.⁹⁶ The Commission assessed that – due to the severity of some of the allegations and its complexity – this complaint should have been classified as Class 2 and notified to the Commission. It was actually classified Class 1 and not notified. It appears the classification was because of 'inconsistencies in [the complainant's] version of events'. However, the Commission noted that these 'inconsistencies' were minor and largely did not reduce the severity of the allegations, and certainly did not reduce the complexity of the investigation.

The complaint stemmed from a driving incident in which police, after noticing the complainant flashing his car lights at them, pulled the complainant over. Police suspected he was intoxicated⁹⁷ and attempted a breath test. The complainant became agitated and violent; it was necessary for police to arrest him. Some force was needed to affect the arrest, and a number of police officers attended the scene.

The complainant later made a series of allegations against police officers. For the most part, the complainant was not able to specify which officers did what and thus the officers most likely to have been involved were determined from the information in the file.

Allegation #	Allegation	Officer likely involved	Listed on IAPro as	Finding	Was the finding justified?
A1 – allegation made by complainant	Police broke the complainant's glasses	Officer L	Officer L: Breach Code of Conduct – Fail to act with care and diligence – Unprofessional Conduct	Not sustained	Yes
A2 – allegation made by complainant	Police assaulted the complainant, who was allegedly driven face first into the ground and 'bashed all over'	Officers M and N	Officer M: Summary – Assault (POA)	Unfounded	No
			Officer N: Summary – Assault (POA)	Unfounded	No
A3 – allegation made by complainant	Police stole around \$250 from the complainant	Unknown	Officer L: Breach Code of Conduct – Fail to act with care and diligence – Inaction	Not sustained	No
			Officer M: Breach Code of Conduct – Fail to act with care and diligence – Inaction	Not sustained	No
			Officer O: Breach Code of Conduct – Fail to act with care and diligence – Inaction	Not sustained	No
A4 – allegation	Police damaged a valuable model vehicle	Probably officer L	Officer L: Breach Code of Conduct	Not sustained	Yes

⁹⁶ Including eight transcribed interviews.

⁹⁷ The complainant later said in interview that, over the course of the day, he had consumed 'something like' 24 'stubbies' of Wild Turkey and had also smoked cannabis.

made by complainant	that had been in the complainant's possession at the time of his arrest	M or N	– Fail to act with care and diligence – Unprofessional Conduct Officer M: Breach Code of Conduct – Fail to act with care and diligence – Unprofessional Conduct Officer O: Breach Code of Conduct – Fail to act with care and diligence – Unprofessional Conduct	Not sustained Not sustained	Yes Yes
A5 – allegation made by complainant	Police unlawfully moved the complainant's vehicle after his arrest	Officer M	Unknown officer: Breach Code of Conduct – Fail to act with care and diligence – Inappropriate Action	Unfounded	Yes
A6 – allegation made by complainant	Police left his vehicle unlocked and as a result it was burgled and three 'throwing stars' were stolen from it	Officer M	Unknown officer: Breach Code of Conduct – Fail to act with care and diligence – Inaction	Unfounded	No
A7 – uncovered by police investigation	The complainant was unlawfully/inappropriately detained	Officers M, L, O and P	Not listed	n/a	n/a
A8 – uncovered by police investigation	The complainant's clothing had not been adequately searched	Officers M, L and O	Not listed	n/a	n/a
A9 – uncovered by police investigation	The responsible searching officers had failed to sign the charge record	Officers M and O	Not listed	n/a	n/a
A10 – uncovered by police investigation	The throwing stars taken from the complainant's car were not entered into the property book	Officer M	Not listed	n/a	n/a
A11 – uncovered by police investigation	An officer had refused to take the complainant's complaint	Officer P	Officer P: Breach Code of Conduct – Fail to act with care and diligence – Inaction	Not sustained ⁹⁸	No

Neither of the 'unfounded' findings for A2 can be justified because some force was clearly used by these two officers during the arrest; there was little evidence to prove whether this was excessive force or whether it was justified in the circumstances. A finding of 'exonerated' or 'not sustained' would have been more appropriate.

None of the 'not sustained' findings for A3 can be justified because the allegation actually listed on IAPro was 'Breach Code of Conduct – Fail to act with care and diligence – Inaction' (not 'stealing', as originally alleged by the complainant). The investigation showed that, due to the officers' inadequate searching of the complainant's clothing and poor record keeping on the night, they *were* actually unable to account for the complainant's cash. This allegation (as listed on IAPro) should have been found 'sustained'.⁹⁹

The 'unfounded' finding against an 'unknown officer' for A6 cannot be justified because there was no evidence that the police had, or had not, locked the car (it was, however, found that the throwing stars had *not* been stolen – but had been taken by police who had failed to inform the complainant). As it was Officer M who dealt with the complainant's vehicle, it is not clear why this allegation is listed against an unknown officer rather than Officer M.

⁹⁸ Tasmania Police commented on this as follows: '[T]his is an IAPro recording error. The documentation on file reflects the officer failed to act upon the complaint.'

⁹⁹ Had the allegation been listed on IAPro as stealing, it would have been justifiable to find it 'not sustained' for all three officers.

The 'not sustained' finding against Officer P in A11 cannot be justified because CCTV footage clearly established that the officer refused to take the complainant's complaint. The Commission is at a loss to explain this 'not sustained' finding.¹⁰⁰

It is interesting to note that only one of the allegations uncovered during the course of the investigation is listed on IAPro – particularly because actions were taken in relation to these allegations (there were no actions taken in relation to the allegations made by the complainant). This included:

- Officer L – training
- Officer M – verbal guidance/direction
- Officer O – training
- Officer P – verbal guidance/direction.

The initial 'indicative' sanction for these breaches of the Code of Conduct was a reprimand under PSA s 43(3)(b). The investigator argued that, as none of these officers had previously been found in breach of the Code of Conduct, a reprimand was not suitable. That may be, however the allegations should have been listed on IAPro – otherwise, in the event of future incidents involving the same officers, the organisation will have no record that they have ever previously breached the Code of Conduct.

The investigator also considered that the level of the complainant's intoxication and aggression were mitigating factors. For many of the allegations, this fact appears to be largely irrelevant, and certainly did not mitigate police responsibility in regard to lawful detention.¹⁰¹

It also took an inordinate amount of time to finalise this complaint, especially given that it was supposedly a Class 1 complaint. One of the reasons for this was that the Internal Investigations Unit took over a month to get the complaint to the investigator. This was because the IIU undertook a 'preliminary investigation', which involved writing two separate reports. All up, from the time the complainant first attempted to lodge this complaint with Officer P to the date of its finalisation as listed on IAPro, the complaint took 459 days to finalise. Class 1 complaints are supposed to be finalised within 28 days.

Finally, Officer O complained (through his superior) about 'issues relating to procedural fairness regarding the time it has taken to complete this investigation and the unfair treatment and stress caused to the attending members due to the lateness of this investigation'. Officer O further stated that the outcomes were only notified to the subject officers after Officer O had pursued the matter with Professional Standards.

¹⁰⁰ Tasmania Police commented on this as follows: '[T]his is an IAPro recording error. The documentation on file reflects the officer failed to act upon the complaint.'

¹⁰¹ Tasmania Police commented on this as follows: '[The Commission] has failed to take into account the complexity, difficulties and mitigating circumstances about the level of the complainant's aggressive behaviour. These views are again subjective and whilst it is acknowledged that there have been oversights, the position of this office is that the review has not adequately taken into account the above factors.'

Withdrawn allegations

In the Commission's view, all allegations listed as 'withdrawn' were justified – that is, there was sufficient evidence in all the relevant complaints to demonstrate that the complainants did want to withdraw their complaints.

However, it was of concern to the Commission that the investigator of one complex Class 1 complaint stated in his report (emphasis added):

*Upon receipt of the file I contacted [X] in an attempt to conciliate **or have the matters withdrawn** and was informed that [X] wished the matters to be fully investigated and that [X] would not be withdrawing or participating in a conciliation process.*

This complainant had submitted the complaint with the assistance of her mental health advocate at Advocacy Tasmania.

Under no circumstances should complainants ever be encouraged or pressured by police to withdraw complaints.¹⁰² It is of equal concern that none of the police officers who read the investigator's report appear to have noticed the attempt to obtain a withdrawal from this complainant. The Commission therefore suggests that Tasmania Police remain vigilant of such matters and ensure, as far as is possible, that no police member ever pressures or suggests to a complainant that they should withdraw their complaint.

Charging complainants with 'false report to police' on the basis of the complaint

As part of its objective to determine if findings are justified, the Commission undertook to ascertain whether cases in which the complainant was charged with making a false report to police were based on at least one justified 'unfounded' finding.¹⁰³ In looking at this matter, the Commission did not take a view that such charging was desirable or otherwise; rather, it was simply seeking to ascertain whether in fact it was occurring or not.

A total of 94 of the audited complaints were relevant to this criterion – the remaining complaints were either internally instigated or made by anonymous complainants. In one of these 94 complaints, the complainant was charged with making a false report to police.¹⁰⁴ In the Commission's view, all three of the unfounded findings made in that complaint were justified.

In a further three complaints, there was evidence that Tasmania Police had considered charging the complainant with false report to police, but decided against it. This decision was made in two complaints because of concerns about the complainant's mental health, and in one complaint because the statute of limitations had passed.

¹⁰² If a complaint is completely baseless, a more appropriate course of action would be to register then dismiss it, or to make 'unfounded' or 'exonerated' findings as appropriate.

¹⁰³ The Commission notes that a higher standard of proof (beyond reasonable doubt) is needed in such cases – as opposed to purely disciplinary cases (on the balance of probabilities).

¹⁰⁴ This matter is still before the courts and the outcome is not yet known.

Objective D: determine if internally raised issues experience higher substantiation rates

Number of internally raised complaints

In the Commission's view, nine of the 105 audited complaints were 'internally raised'. This finding appears to be contrary to information gleaned during the joint GMM review, which had indicated that a large number of internal matters were being funneled through the GMM.

Additionally, an academic paper released in 2011 led the Commission to expect that a higher number of internal complaints were being dealt with under the GMM.¹⁰⁵ The outcomes of this audit signify that this trend – if indeed there was one – *may* have now reversed.

The Commission intends, in future audits, to monitor trends in relation to internal complaints.

Districts

Despite the difference between overall complaint numbers from the three geographic Tasmania Police districts of Western, Southern and Northern, each generated three internally raised complaints.

Substantiation rates in internally raised complaints

Four of the 20 complaints with one or more sustained findings were generated from internal complaints. This means that although only 9% of complaints were internally generated, 20% of complaints in which sustained findings were made were internally generated. Four of the nine internally generated complaints are Class 2. For two examples of internally raised Class 2 complaints, see *Case study 6* and *Case study 9*.¹⁰⁶

There are a total of 28 allegations listed on IAPro for the nine internally raised complaints:

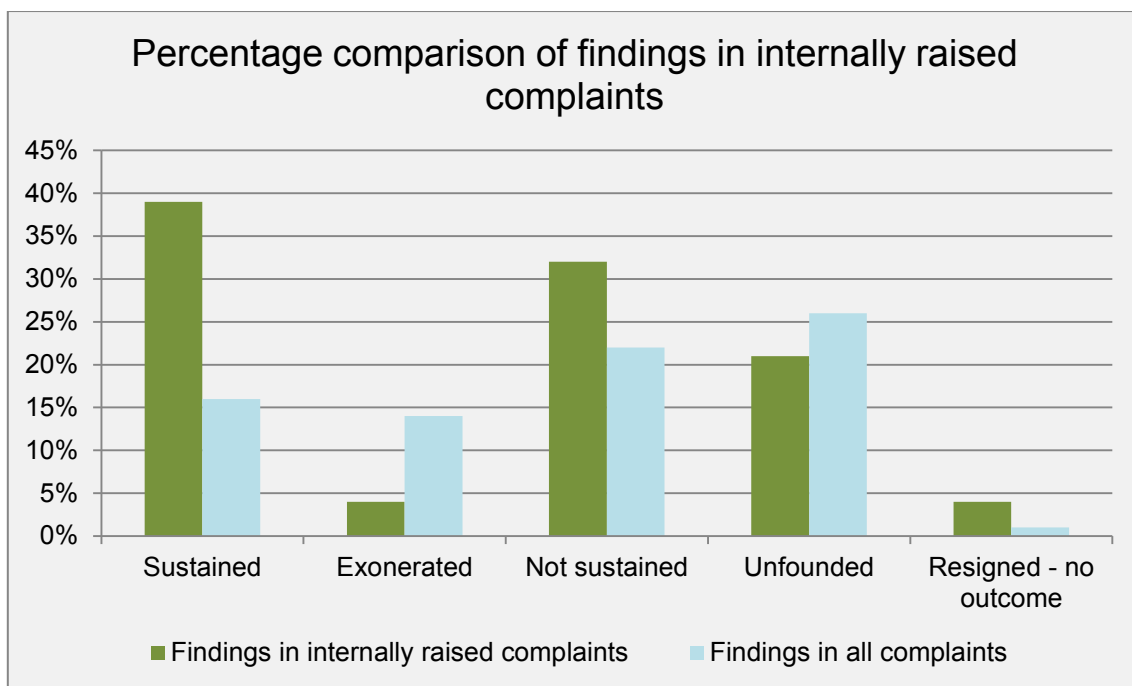
- 21 breaches of the Code of Conduct
- four criminal offences (all perjury)
- three summary offences (one 'DUI',¹⁰⁷ and two assaults under the *Police Offences Act 1935*).

Overall, as seen in the graph below, it does appear that internally generated complaints experience higher substantiation rates.

¹⁰⁵ Louise E Porter, Tim Prenzler and Jenny Fleming, 'Complaint reduction in the Tasmania Police' (2012) 22 *Policing and Society: An International Journal of Research and Policy* 426, 437.

¹⁰⁶ The complaint mentioned on page 32, in which Officer Z was found guilty of assault, was also an internally initiated Class 2 complaint.

¹⁰⁷ 'Driving under the influence'.



Confidentiality

In one of the internally generated (Class 1) complaints, the complainant ended up being listed on IAPro. The Commission questions this decision, however, more concerning was the lack of confidentiality afforded to the complainant. This concern extends to other internally generated complaints, but in this complaint it was explicitly stated that, as a result of the complaint and its outcome, the complainant 'now fears victimisation and questioning of [the complainant's] professionalism amongst ... peers'.

The Commission also noted that in a number of complaints the police appear to have given the subject officer the complainant's entire statutory declaration. Police should be wary of this practice in regard not only to the complainant's confidentiality, but also that of other officers named in the same complaint.

The Commission urges Tasmania Police to ensure that an appropriate level of confidentiality is afforded to all complainants – both internal and external.

Objective E: identify if 'excessive force' complaints are managed adequately

As stated in the consultation paper released during the joint review of the GMM:

*A police organisation and its officers hold unique powers of coercion and use of force in a democratic society. It is therefore important to guarantee that the use of these powers is adequately monitored to ensure that they are not abused in a manner which would be contrary to the values of society ...*¹⁰⁸

The Commission therefore undertook to audit, for the first time, the handling by Tasmania Police of complaints which involved an allegation that an officer has abused that 'unique' use of force power.

Findings for excessive force allegations listed on IAPro

Fifty-eight of the 271 allegations listed by Tasmania Police on IAPro were about the application of force (one of those 270 allegations had no finding). These 58 allegations derive from 29 complaints and included allegations which were listed as:

- Breach Code of Conduct – Fail to comply with an order in the Police Manual – Excessive Force
- Breach Code of Conduct – Bring discredit on the service – Excessive Force
- Summary – Assault (POA).¹⁰⁹

All of these have been characterised as allegations of 'excessive force' for the purposes of the audit.

However, in a number of complaints that contained allegations of excessive force, the allegation was missing from IAPro, characterised as something else, or bundled with other allegations.¹¹⁰ Where possible, the Commission determined to collect statistical information on all allegations of excessive force – not just allegations listed on IAPro as such.

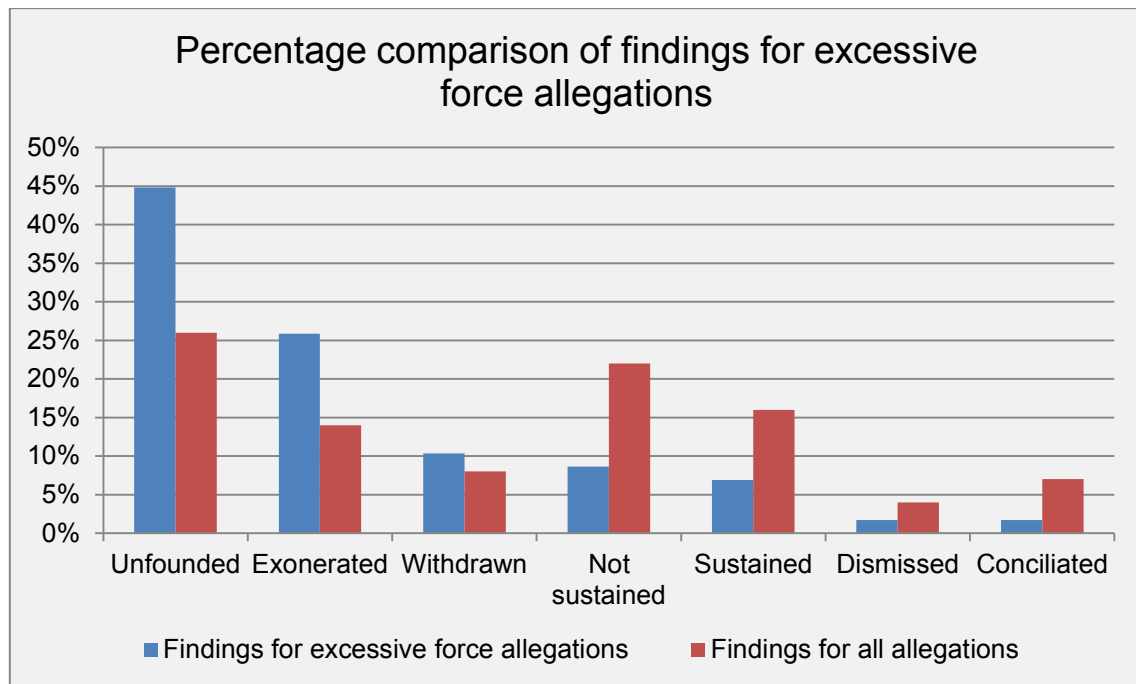
In the Commission's view, 36 of the 105 complaints contained one or more allegations of excessive force. This contrasted to IAPro records, which indicate that 29 complaints contained one or more allegations of 'excessive force'. The Commission also believed that there were at least 69 allegations of excessive force made in the 105 complaints subject to audit. Where, in the remainder of this section, the Commission refers to 69 allegations of excessive force in 36 complaints, note that these do not correspond exactly with the 58 allegations in 29 complaints that are listed on IAPro.

¹⁰⁸ Integrity Commission and Tasmania Police, 'Joint review of the Tasmania Police Graduated Management Model' (Consultation paper, August 2013) 18 (citations omitted).

¹⁰⁹ Two of the allegations listed on IAPro as 'Summary – Assault (POA)' also had the directive 'Excessive Force' – the rest of these allegations had no directive. There was an additional complaint which contained two allegations of 'Criminal – Assault (CC)' against two subject officers. 'CC' is the *Criminal Code Act 1924* (Tas). However, these 'assault' allegations involved deprivation of liberty, and so were not considered as 'excessive force' allegations (for the purposes of this section of the audit) by the Commission. Neither of these two allegations, nor the complaint, have been included in figures listed in this section of the report.

¹¹⁰ For an example of this, see *Case study 2*.

The chart below shows the findings for the 58 allegations of excessive force which were actually listed on IAPro. Of these 58 findings, the Commission's opinion was that 19 of them were not justified on the basis of the material contained in the file.¹¹¹



¹¹¹ This does not necessarily mean that these 19 allegations should have been sustained.

Case study 17 – allegations of assault not handled appropriately

A complaint was made via a mandatory report submitted through the Department of Health and Human Services (DHHS) – that is, the complainant had told a counsellor about the incident, and the counsellor had reported it to police.

The complainant was a youth of mid-teenage years who had a history of violence and behavioural problems. It was not the first complaint that the youth had made against the officer (Officer S), who was the partner of the youth's mother.

The investigation report commences with an 'introduction' which goes into some detail about the investigating officer's efforts to track down the complainant's counsellor. There is no explanation as to why this is relevant to the complaint. The difficulty the investigator experiences in tracking down the counsellor leads him to conclude that there was some reluctance and sensitivity around revealing the identity of the counsellor, because – as eventually revealed by Officer S – the complainant's mother had made a complaint against the counsellor. It is difficult to determine the relevance of this section of the report, other than to draw into question the reliability of the counsellor (and consequently the complainant); this leads to the perception of an unbalanced investigation.

The complaint included two parts: first, that on one particular occasion Officer S had given a back-handed slap to the youth (while being driven by Officer S in a police vehicle) and, second, that domestic violence had been ongoing for two years, with about 20 hits being delivered to the complainant over that time.

The second part of the complaint appears not to have been explored at all in the Class 1 file.¹¹² No persons who could have provided background information on the allegation of ongoing violence – other than the complainant and Officer S – were contacted. For instance, the mother of the youth was never contacted (including, it appeared, in relation to the previous complaints from the same complainant). This was ostensibly because she was not in Australia,¹¹³ but the Commission notes that in other complaints complainants located outside of Tasmania have been contacted. At the very least, e-mail contact could have been made.

Police handling of this complaint (and previous complaints submitted by the same complainant) appears not to have been in compliance with the 'pro-intervention' domestic violence policy prescribed in the Tasmania Police Manual. For instance, a report into one of the earlier complaints states that Officer S' report 'reveals that [the complainant] was the aggressor'.

Furthermore, this matter was registered on IAPro the day before it was finalised – some 146 days after receipt.

In the Commission's view, the two 'not sustained' findings listed on IAPro for this complaint were justified; however, the Commission did note that not all of the complaint was considered as part of that investigation.

¹¹² Two allegations were listed on IAPro: 'Summary – Assault (POA)' and 'Breach Code of Conduct – Bring discredit on the Service – Unprofessional Conduct'.

¹¹³ She was in Australia at the time of the previous complaints.

Classification of complaints involving one or more allegations of excessive force

As noted above, in the Commission's calculation, 36 of the 105 audited complaints contained one or more allegations of excessive force (amounting to 34% of all complaints finalised in 2013). Tasmania Police classed 25 of those complaints as Class 1.

In the Commission's opinion, eight of those Class 1 complaints were incorrectly classified – that is, under the GMM, they should have been classified as Class 2.¹¹⁴ Due to the paucity of information within the GMM about the classification process, the Commission highlights that, in each of these complaints, this was a judgment made by the Commission (albeit that GMM directions were taken into account). For an example of one of these eight complaints, see *Case study 16*.

In coming to the view that these eight complaints were misclassified, the Commission did not solely examine the allegation of excessive force – in fact, in some complaints it was not the allegation of excessive force itself that meant the complaint warranted classification as Class 2. Instead, the Commission considered:

- the complexity of the complaint¹¹⁵
- the extent of the investigation undertaken¹¹⁶
- the severity of all the allegations¹¹⁷
- the possible sanction which would have been imposed on the subject officer had the allegations – as stated by the complainant – been sustained¹¹⁸
- whether the complaint included an allegation which warranted automatic classification as a Class 2 complaint.¹¹⁹

Under the GMM, 'complaints should be dealt with at a level commensurate with the seriousness of the allegation and likely sanction that may be imposed if a complaint is sustained'.¹²⁰ In every one of these eight complaints,¹²¹ which were all externally generated, it appeared that the classification had been downgraded due to concerns about the legitimacy (usually related to the veracity) of the complaint. However, the GMM is silent on utilising the apparent veracity or legitimacy of a complaint to classify it.¹²² Instead, it highlights that more complex complaints should be subject to a higher level of investigation – three of these complaints were complex, and the extent of the investigation was comparable to many Class 2 complaint investigations.

Additionally, the Commission considers that the GMM policy indicates that even where a complaint is *prima facie* unfounded or exaggerated, it should still be registered and then

¹¹⁴ Note that the Commission did not audit the classification of complaints which did not contain at least one allegation of excessive force.

¹¹⁵ Under GMM policy, this is relevant to the 'level of investigation and report writing', see TasPol, *GMM protocols*, above n 23, 14.

¹¹⁶ Under GMM policy, the 'level of investigation and report writing' is to be commensurate with 'the nature, seriousness and complexity of the allegation, coupled with the likely penalty that may be imposed if a complaint is sustained', see *ibid* 14.

¹¹⁷ Under GMM policy, categorisation of a complaint 'will be predicated on the nature or seriousness of the allegation and the likely penalty, sanction or other decision imposed', see *ibid* 4.

¹¹⁸ Under GMM policy, categorisation of a complaint 'will be predicated on the nature or seriousness of the allegation and the likely penalty, sanction or other decision imposed', see *ibid*.

¹¹⁹ *Ibid*; Tasmania Police, *Graduated Management Model for Complaints Against Police Annexure 'A' – Categories of Misconduct* (2010).

¹²⁰ TasPol, *GMM protocols*, above n 23, 2.

¹²¹ Seven of these eight complaints are also mentioned in regard to the lack of notification to the Commission of an allegation of 'serious misconduct' against a police officer, see pages 23–4.

¹²² Conversely, the new complaint management system designed jointly between Tasmania Police and the Commission does give some scope for the complaint's apparent veracity to be taken into account in determining its classification.

classified in accordance with the severity of the allegations; only then may it be dismissed or dealt with in another manner under the PSA (including, after an initial assessment, by reclassifying it).

The classification of these matters as Class 1 was inconsistent with the treatment of at least one other complaint in which there were serious (and justified) doubts about the veracity of the complaint – yet it was classified Class 2 and notified to the Commission.

The Commission also noted that some of the letters from Professional Standards to district commands requesting an investigation specifically state that ‘no judgment has been made in respect of the allegation or its veracity’.¹²³ In at least some of the complaints, a judgment had in fact been made about the veracity of the allegations as part of the classification process.

All of these eight complaints were from Southern District. The Commission draws no conclusions in this regard, but does note that this district has a higher population base and also registered a higher percentage (in comparison to its number of complaints) of complaints of excessive force than other districts.

Relevant lines of inquiry and findings justified on the information in the file

In four of the eight complaints (50%) that, in the Commission’s view, were misclassified, the Commission’s opinion was that one or more relevant lines of inquiry had not been pursued (compared with a percentage of 30% in all complaints).

The eight complaints contained a total of 26 allegations on IAPro, as well as two ‘non-allegations’ listed as ‘Ancillary Outcome’.¹²⁴ None of the allegations had been found ‘sustained’. The Commission judged that 13 of the 26 findings (50%) made in relation to the allegations were not justified on the basis of the material or explanations contained in the file¹²⁵ (compared with a percentage of 24% across all complaints).

¹²³ Including in one of the eight misclassified complaints. Anecdotally, it seemed that the sentence had been left out of letters in more recent complaints.

¹²⁴ One complaint also had no subject officers or allegations listed on IAPro.

¹²⁵ This does not necessarily mean that these 13 allegations should have been sustained.

Location of officers against whom allegations of excessive force were made

As part of this audit, the Commission determined to ascertain if any one division¹²⁶ of Tasmania Police is more prone to excessive force complaints. The table below provides information on complaints and allegations of excessive force by district and division.

The 69 allegations of excessive force identified by the Commission were made against 51 individual police officers (who were identified as subject officers by Tasmania Police on IAPro).¹²⁷

Seven officers had allegations of excessive force made against them in two complaints;¹²⁸ one officer was the subject of allegations of excessive force in three complaints.¹²⁹

¹²⁶ Due to an organisational restructure, the districts and divisions of Tasmania Police were altered in 2012/13. This affected a number of the files subject to audit in that, at the time of the incident, the subject officer belonged to a division that now no longer exists. Where this occurred, the Commission determined which division that subject officer would now fall under (e.g. on the basis of the police station they were stationed at), and listed them under that division. For instance, an officer who was stationed under the former Bellerive division in the former Eastern District would have been listed under South East Division in Southern District.

¹²⁷ Note that, for the most part, the Commission did not collect information about allegations of excessive force made against officers who were not listed on IAPro as subject officers. As such, one of these 69 excessive force allegations (which is analysed in regard to characteristics of the allegation later in the report) which derived from a complaint in which there were no subject officers or allegations listed on IAPro is not included in the 51 officers cited here.

¹²⁸ Two of those officers (who had excessive force complaints against them in two complaints) were accused of excessive force in the same two complaints – that is, in each of their two instances of alleged excessive force, they were working together.

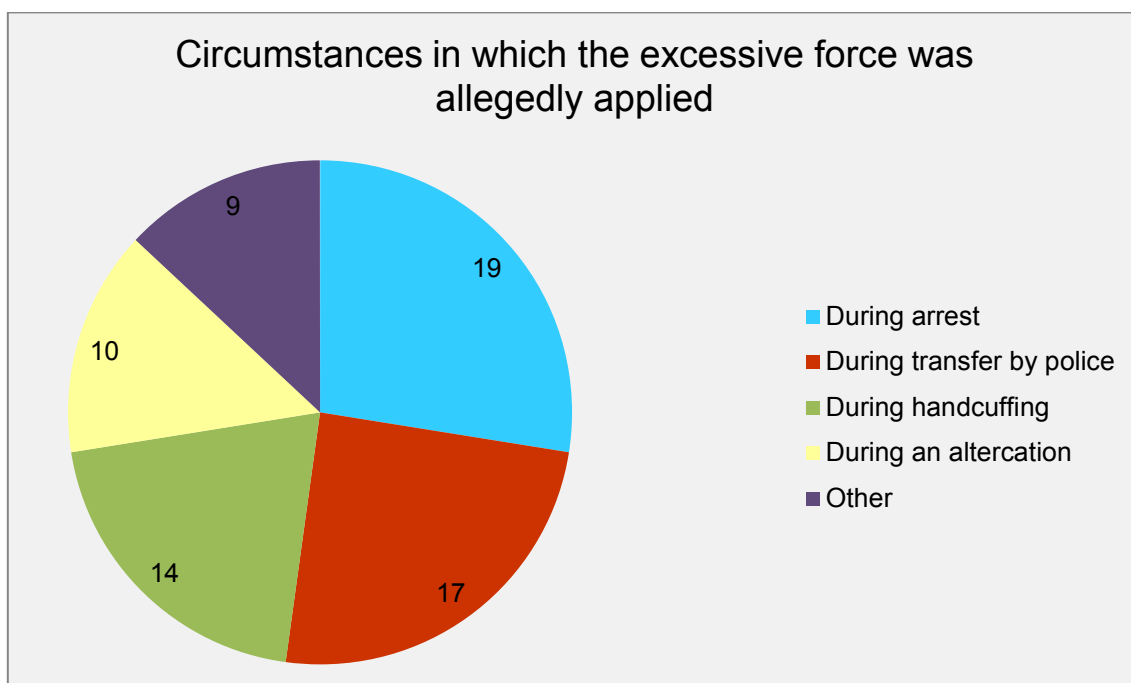
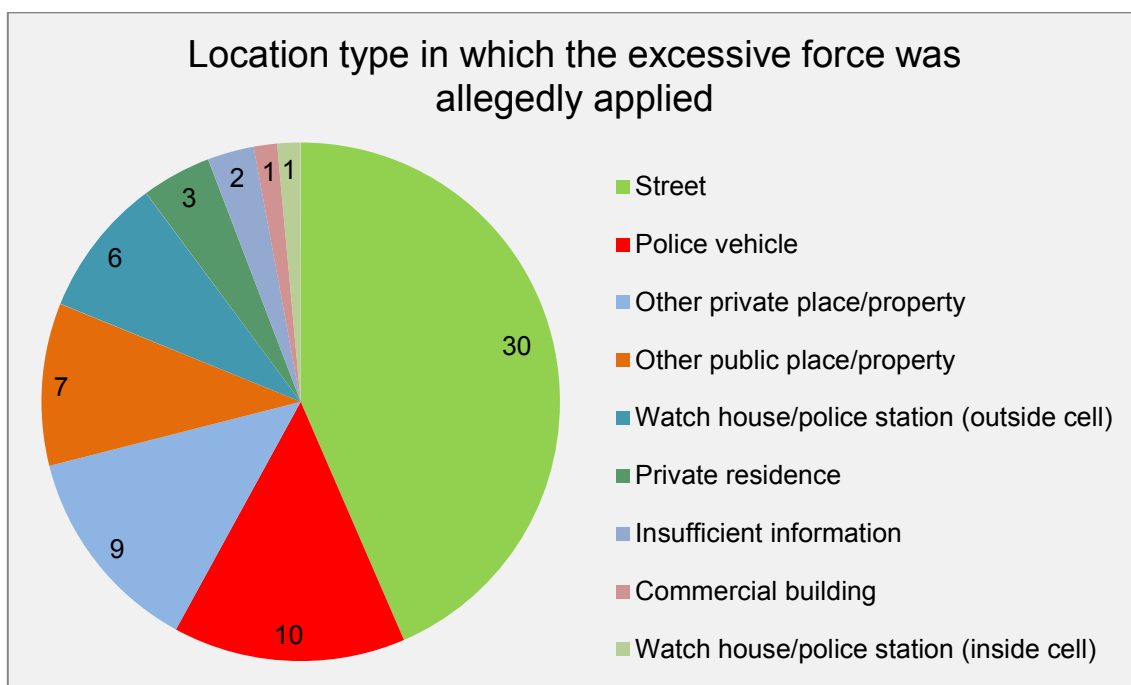
¹²⁹ Another of the seven officers accused of excessive force in two complaints was involved (i.e. also was the subject of an excessive force allegation) in two of the three complaints in which a single officer was the subject of allegations of excessive force.

Complaints and excessive force allegations by district and division								
District/division	# of complaints (C1 and C2) finalised in 2013	%	Complaints involving allegations of excessive force	%	# of officers (as at 27/9/2013)	%	Officers against whom complaints of excessive force were made (at time of incident)	%
Southern District	51	49	25	69	450	40	46	77
Hobart					69	6	9	15
South East					67	6	8	13
Glenorchy					49	4	17	28
Bridgewater					44	4	3	5
Kingston					31	3	5	8
Southern Support					75	7	3	5
Southern CIB/ Drugs/CMU					85	8	1	2
Prosecution/Coroners					26	2	0	0
Southern Admin					4	0	0	0
Northern District	33	31	6	17	243	22	8	13
Launceston					79	7	6	10
Deloraine					28	3	0	0
North East					37	3	1	2
District Support					53	5	1	2
Northern CIB/Drugs/CMU					43	4	0	0
Northern Admin					3	0	0	0
Western District	15	14	5	14	225	20	6	10
Burnie					55	5	2	3
Queenstown					24	2	1	2
Devonport					64	6	3	5
Western CIB/Drugs/CMU					39	3	0	0
District Support/Prosecution					40	4	0	0
Western Admin					3	0	0	0
Operations Support	5	5	0	0	145	13	0	0
Investigative & Intell Support					38	3	0	0
Forensic Services					31	3	0	0
Marine & Rescue Services					24	2	0	0
RDS					46	4	0	0
Firearms Services					4	0	0	0
Ops Support Admin					2	0	0	0
Other	1	1	0	0	57	5	0	0
Human Resources (Employee Services, Staff Support, Training)					21	2	0	0
Professional Standards					8	1	0	0
Executive Support					14	1	0	0
Special Response and Counter Terrorism Unit					7	1	0	0
Administration (Commissioner's Office)					7	1	0	0
TOTAL	105		36		1120		60*	

**The total number of officers against whom allegations of excessive force were made was 51, however, seven officers were accused of excessive force in two separate complaints, and one officer was accused of excessive force in three separate complaints.*

Characteristics of allegations of excessive force

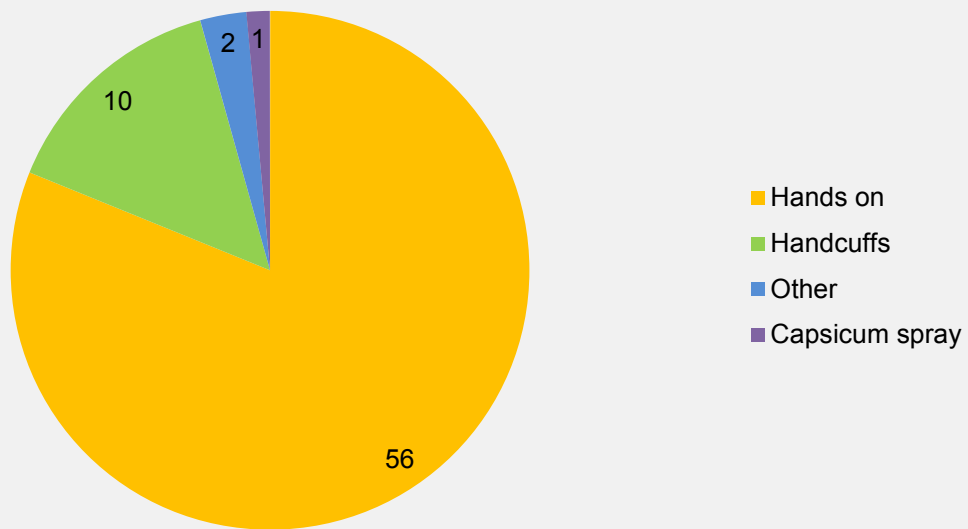
The Commission collected information on the characteristics of the 69 allegations¹³⁰ of excessive force made against Tasmania Police officers – although note that many of the allegations analysed in this section were not sustained. This information could potentially assist Tasmania Police in delivering training on ‘use of force’.¹³¹



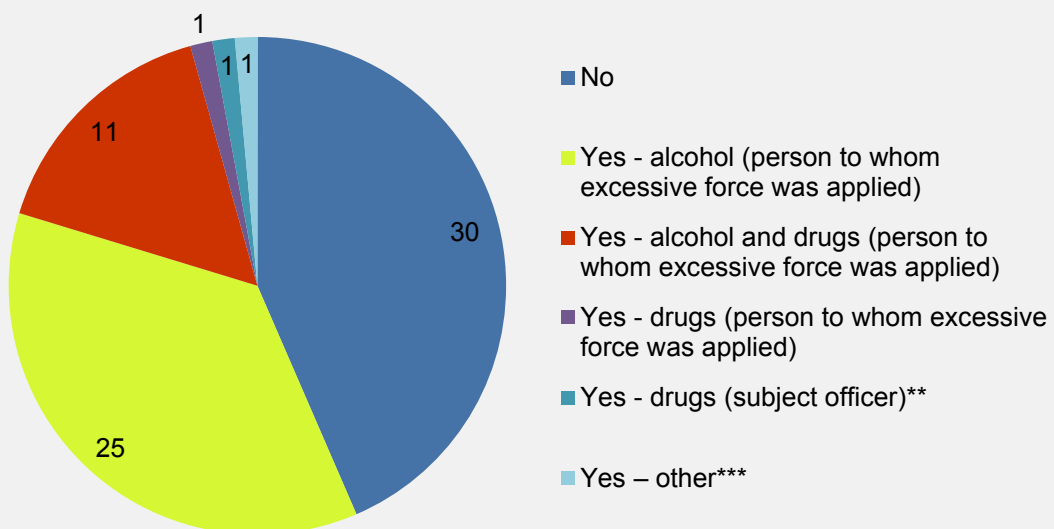
¹³⁰ As discussed on page 60, this figure does not accord with the number of excessive force allegations listed by Tasmania Police on IAPro.

¹³¹ For instance, the data includes statistical information on where an officer is most likely to use force/be accused of using excessive force.

Nature of excessive force that was allegedly applied



Evidence that drugs* and/or alcohol were involved in the alleged excessive force incident



*This includes prescription medication.

**This officer subsequently resigned from Tasmania Police.

***In this complaint, both the police officer (off duty) and the other party were intoxicated.

Conclusion

The multiple references to lack of consistency and ineffectual use of IAPro throughout this report have led the Commission to conclude that **record keeping** on IAPro is inadequate.

Overall, the level of **contact** with complainants appears good. However, Tasmania Police does need to ensure it is aware of, and complies with, its obligations under the *Police Service Act* in regard to notification to complainants of certain actions.

Inconsistency was a recurrent theme in this audit. This was not only in regard to record keeping practices and standards, but also in regard to classification of complaints, how complaints are dealt with, the breadth of investigations in certain type of complaints, the outcomes of complaints, and how subject officers are dealt with.

Timeliness in both registration and finalisation of complaints could be improved. It is hoped that the new complaint management system will assist with improvements in this area.

Some complaint investigations appeared to lack **balance**, in that irrelevant lines of inquiry were followed, relevant lines of inquiry were not followed, and/or findings were made without any apparent justification.

Tasmania Police responded to the conclusion of the report as follows:

The conclusion findings are not disputed. Elements of the case studies and a number of the subjective views of the auditing officer are disputed in terms of accuracy and assumptions, however it is acknowledged that there is improvement to be made in the identified areas.

Appendix: Tasmania Police response

Below is the full formal Tasmania Police response to the draft audit report. Note that, as this response was taken into account in finalising the report, some of the comments made in the response may now not correlate with the final version of the report (for example, the response may refer to information subsequently removed or amended).

A14/111245

Summary of the Tasmania Police Responses to the 2014 Integrity Commission Audit of Complaints Finalised by Tasmania Police.

Note: Tasmania Police has identified numerous matters within the report that warranted correction or clarification of matters of fact. These have been individually identified to the Integrity Commission.

- **Findings and recommendations.** Regarding the findings and recommendations relating to record keeping, inconsistency and timeliness in registration and finalisation of complaints, it is agreed in principle that these are areas of organisational improvement to be achieved by Tasmania Police.

Throughout 2014, these areas of improvement have been addressed by way of state-wide expansion of the IAPro Blue Team complaints management system, delivery of training within the police districts, delivery of training to professional development courses and recruit training, and enhanced quality assurance processes within Professional Standards.

- **Graduated Management Model Review.** The Commission's findings and recommendations have a strong nexus to the Graduated Management Model (GMM) review and subsequent findings and recommendations. Agreed GMM review recommendations, when implemented, will further address the issues identified within this Report.
- **Allegation findings.** The Integrity Commission asserts that the allegation findings in 43 complaint files (41%) were not justified on the information available. A number of examples and instances are represented within the document in support of the claim, including a case study (Case Study 16).

Tasmania Police have identified to the Integrity Commission a number of individual points within that case study that are inaccurate or require clarification.

The claims by the Integrity Commission relating to 'unjustified findings' do not clearly identify that the remaining 35 complaint files therefore have variances in the allegation findings that can only be unsustainable, unfounded or exonerated; but none of which in the view of the Commission ought to have been sustained.

Tasmania Police points out that only *eight (7.6%) of the total complaint files audited had findings where in the subjective view of the Integrity Commission sustained findings should have been found and were not.*

- **Case Studies.** The case studies presented in this report contain statements and views that are largely inaccurate or require clarification. Many are not solid examples by the Integrity Commission demonstrating their claims.

One such example is Case Study 8 (more senior officer not listed on IAPro, disciplined). The study is relied upon as an example demonstrating an assertion that officers of a higher rank are dealt with more leniently, yet the case study relates to two officers of the same rank, i.e. Constable. Additionally, mitigating circumstances appear not to be taken into account when forming an opinion. The Integrity Commission failed to identify that the designation of 'First Class

Constable' relates to the rank of constable and is indicative of either a promotion qualifying status or time in the service – but is not a higher rank. The mitigating circumstances relate to the fact the officer's son suffered from a medical condition of the eye in which it was alleged he was punched, which affected the officer's judgement.

Regarding corrections or clarification of facts within the case studies, they have been individually identified to the Integrity Commission.

- **'Directives'**. 'Directives' are the further breakdown of allegations within the IAPro complaint management system. For example, the allegation of *"Bring discredit upon the Police Service"* breach of Code of Conduct may reflect that 'incivility' was the alleged behaviour. The 'incivility' element is the 'directive' referred to by the Integrity Commission. Another example is an allegation of 'failing to comply with an order within the Tasmania Police Manual' breach of Code of Conduct relating to the use of 'excessive force'. The 'excessive force' is the 'directive'.

The use of directives is problematic due to the extensive range of variables (specifics) and difficulty developing IAPro search queries, therefore directives are not heavily used nor relied upon by Tasmania Police for organisational reporting purposes. The Integrity Commission was notified of this situation during the audit.

- **Receipt of Complaints.** The Integrity Commission's view is the date of receipt of a complaint is the date on which the matter is first raised to the attention of Tasmania Police. The Tasmania Police position is the relevant date is when the complaint is actually made or (if reported by a third person) validated by the complainant. For example, the Commission identified instances where there was in their view an unacceptable variance between the date of receipt on IAPro and the evident date within the complaint file. The complaint, however, in several of those files was raised through a third party or identified internally. The date of receipt in those instances was when the complainant was contacted by police and formally validated or endorsed the complaint. It is noted that in accordance with the Police Service Act 2003, a complaint must be in writing. Whilst not applied literally, Tasmania Police does require the complaint to be validated or endorsed by the actual complainant.

The Commission identifies that in 13 files (12% of the total files) it was clear that the complainant had previously attempted to lodge a complaint. Further, in eight of those files it was not recognised that an officer failed to set the complaints process in motion when the matter first rose. The Commission comments 'This issue is likely to be wider than the complaints identified by this audit, as the Commission only has access to complaints that are eventually registered.'

It is the view of Tasmania Police that the claim the issue is likely to be wider is questionable and not based on a reasonable hypothesis.

- **Professional Development Measures & Verbal Advice and Guidance.** The Commission does not view 'verbal advice and guidance' as a 'professional development measure', whereas the Tasmania Police position is that it is clearly a professional development measure. Further, the Commission asserts that professional development measures ought not be linked to determinations of Code of Conduct breaches and reflected in the Determination Notices, whereas the position of PS is that professional development measures that are linked to

determinations of Code of Conduct breaches form part of the determination and will be incorporated within the Determination Notice.

It is agreed, though, the practice should be applied consistently. It is also agreed that professional development measures that are linked to a Code of Conduct breach and reflected in a determination notice should clearly demonstrate they do not form part of the sanction.

- **Notifications to the Integrity Commission.** Regarding notifications to the Commission, the Integrity Commission asserts Tasmania Police is *'rarely considering notification for Class 1 complaints.'* The Integrity Commission adds that their agency *'assesses notification as being required on the basis of the nature of the complaint, and who it is made against, rather than its classification under the GMM.'* A footnote (57) notes the definition of Class 2 misconduct under the GMM and 'serious misconduct' under the *Integrity Commission Act 2009* are, for all intents and purposes, the same. The assertions by the Commission, by virtue of their omission of the Memorandum of Understanding (MOU) (Integrity Commission and Tasmania Police) notification arrangements, are not fully considerate of the notification arrangements..

The *Integrity Commission Act 2009* and the MOU between the Commission and Tasmania Police identifies that notification is required in those instances where Commissioned Officers (as designated public officers) are the subject of a complaint, where a Commissioned Officer has engaged in 'misconduct' and where any officer has engaged in 'serious misconduct' under the Integrity Commission Act 2009.

'Serious Misconduct' under the Integrity Commission Act 2009 amounts to complaints of a crime or an offence of a serious nature; or providing reasonable grounds for terminating the public officer's appointment.

Class 1 complaints rarely (if at all) comprise crimes or offences of a serious nature or provide reasonable grounds for dismissal.

- **Breakdown of allegation findings.** At pages 48 & 49, the Commission provides a breakdown of where, in the agency's view, allegation findings were not justifiable. In each instance, the Commission does not identify what the alternative finding should be and the reader is left with an impression the alternative should have been sustained.

In fact, the alternatives would in many instances be an 'unsustained' finding, for example, unsustained instead of unfounded, unsustained instead of exonerated, exonerated instead of unfounded. Further, the claims included dismissed complaints and matters in which the subject officers resigned and there were no outcome findings. The view of the Integrity Commission is that those matters where the subject officer resigned ought to be advanced to determination stage and finalised with an outcome finding even though the officer resigned, ostensibly for the purpose of providing information to other law enforcement agencies in the event the subject person seeks re-employment as a police officer.

The Tasmania Police position is that it is an unnecessary commitment of resources once the officer has resigned and law enforcement agencies would be provided with relevant information to inform employment decision making.

- **False report to police.** The Commission remarked on the absence of complaints where charges of 'false report to police' ought to have been pursued. The Commission does not appear to have adequately considered the requisite standard of proof required to prosecute such matters, being 'beyond reasonable doubt' for a summary or indictable offence as compared to 'on the balance of probabilities' for disciplinary offences.

The Tasmania Police position is that persons will be prosecuted where the sufficiency of evidence reaches the requisite standard for criminal or summary offences, including False Report to Police.

- **Inconsistency in determination of matters involving criminal charges.** The Integrity Commission questions apparent inconsistency in the determination and action taken in relation to two separate matters of a similar nature involving criminal charges where one officer was dismissed and the other officer was not. The Integrity Commission's rationale is questionable and does not adequately identify the fact that the prior and current complaint history of the dismissed officer was significantly more extensive and serious than the other officer quoted in the example.

Regarding this matter, the full history of both officers has been individually reported to the Integrity Commission.

- **Complainant confidentiality.** The Integrity Commission remarked on concerns held relating to the lack of adequate management of complainants' confidentiality. The remarks are not considerate of the complexities of internal investigations, involved officers' entitlements, the 'Right to Information' legislation and the *Internal Investigations File Disclosure Policy*.

Tasmania Police is not aware of any reported instances where allegations or information regarding mismanagement of confidentiality have been raised or a police complainant has subsequently been subjected to victimisation.

INTEGRITY
COMMISSION

