



REPORT OF THE INTEGRITY COMMISSION

No. 2 of 2013

**An audit of Tasmania Police complaints finalised in
2012**

September 2013

The objectives of the Integrity Commission are –

- 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 Commission Website at www.integrity.tas.gov.au

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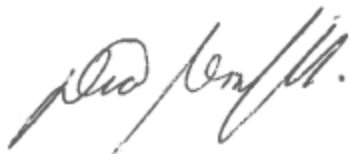
Dear Mr President
Dear Mr Speaker

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 2013 of Tasmania Police complaints completed during 2012.

Yours sincerely



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



Diane Merryfull
Chief Executive Officer

25 September 2013

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Executive summary

Under s 88(1) of the *Integrity Commission Act 2009*, the Commission has the function of auditing the way that the Commissioner of Police has dealt with complaints about police misconduct.

In February 2013, the Commission commenced its first audit of Tasmania Police complaints. For this audit, the Commission aimed to look at all complaints finalised by Tasmania Police in 2012. Nearly 90 complaints of varying degrees of seriousness were subject to the audit. The Commission undertook the audit by looking at the hard copy records of Tasmania Police complaint files in accordance with an audit instrument which it applied to all files inspected. This instrument and the project plan (which included details of the audit focus and objectives), were provided to Tasmania Police for comment prior to the audit commencing. Tasmania Police raised no objections to the conduct of the audit or the proposed methodology, and the audit was undertaken with the full cooperation of Tasmania Police.

Overall, the audit found that Tasmania Police is managing its complaints system well. Complaints were appropriately classified, good contact was made with complainants, investigations were adequately undertaken and possible systemic issues were identified. The audit noted that there was room for improvement in record keeping and timeliness of complaint finalisation.

Because the results of the audit will be considered in the current joint Tasmania Police/Integrity Commission review of police protocols in relation to complaint handling (known as the 'Graduated Management Model'), no recommendations were made in this report.

The work of the Commission in undertaking this audit and publishing the results will help ensure public confidence that complaints against police will be dealt with appropriately.

Introduction

In every Tasmanian public authority, responsibility for managing misconduct within the agency lies with the principal officer. In the case of complaints of misconduct against police officers, the responsibility rests with the Commissioner of Police.¹

The Integrity Commission's role in relation to police misconduct – as set out in Division 2 of Part 8 of the *Integrity Commission Act 2009* (IC Act) – envisages that the Commission will 'audit the way the Commissioner of Police has dealt with police misconduct'.² Further, the Commissioner of Police is required to provide assistance to the Commission 'to undertake a review or audit'.³

To give effect to the legislative provisions, the Commission and Tasmania Police entered into a memorandum of understanding (MOU) specifying the following:

The [Commissioner of Police] agrees to notify the [Integrity Commission] CEO in writing, as soon as practicable, if a complaint has been received by Tasmania Police about a designated public officer,⁴ or it is reasonably suspected that such an officer has engaged in misconduct or serious misconduct.⁵

The [Commissioner of Police] agrees to notify the CEO in writing, as soon as practicable, if a complaint has been received by Tasmania Police, or where it is reasonably suspected, that an officer has engaged in serious misconduct.

This report is about the Integrity Commission's inaugural audit of the way in which the Commissioner of Police responds to complaints of misconduct against police officers.

The Commission's audit was wide in its scope, covering all complaints of police misconduct dealt with and finalised by Tasmania Police during calendar year 2012 (i.e. 1 January – 31 December 2012 – the audit period).⁶

Being the first audit, the results provide a benchmark for future comparison and analysis. It is proposed that the Commission will conduct audits of this nature at least annually, although future audits are likely to be undertaken on a sampling basis and may focus specifically on issues such as allegation types or allegations by police district or work unit.

Similar processes are undertaken by police oversight bodies in other Australian jurisdictions, and assist in ensuring the transparency and effectiveness of the processes by which allegations of police misconduct are internally dealt with in the respective jurisdictions.⁷

¹ The terms 'misconduct' and 'police misconduct' are defined in section 4 of the *Integrity Commission Act 2009* (Tas) (IC Act). 'Police misconduct' means misconduct by a police officer.

² IC Act s 88(1)(c).

³ IC Act s 88(2)(a).

⁴ In simple terms, a 'designated public officer' is a commissioned police officer – that is, of the rank of inspector or above, see IC Act s 6.

⁵ 'Serious misconduct' means misconduct by a public officer that could, if proved, be a crime or an offence of a serious nature, or misconduct providing reasonable grounds for terminating the public officer's appointment, see IC Act s 4.

⁶ This included complaints initiated in 2011 which were finalised in 2012.

⁷ See for example *Crime and Misconduct Commission Act 2001* (Qld) s 47(1)(b) (CMC auditing and review of Queensland Police complaint handling); *Australian Federal Police Act 1979* (Cth) s 40XA(2) (Ombudsman review of AFP complaint handling).

Tasmania Police internal complaint handling system

Tasmania Police deals with allegations of misconduct against its officers in accordance with a set of protocols known as the 'Graduated Management Model' (GMM).⁸

Historically, a complaint of misconduct against a Tasmania Police officer was investigated by the (then) Internal Investigations Unit (now Professional Standards Command), with the final determination being the responsibility of the Deputy Commissioner of Police. This process often resulted in protracted delays as formal inquiry lines and reporting procedures were adhered to. The GMM was designed to be a departure from that process, with devolution of responsibility for dealing with the investigation and resolution of complaints to lower (and more appropriate) levels of command.

Underpinning the GMM is the concept that complaints against police should be dealt with at a level of command, and with a level of investigation, that is commensurate with the seriousness of the allegation and the likely sanction in the event that the complaint is sustained. The level of categorisation dictates which area of command should be tasked with investigating or resolving the matter in question.

Tasmania Police accepts complaints about its officers via most means.⁹ The GMM provides that a police officer receiving a complaint must, by the end of that officer's shift, complete a nominated form, and send the form via e-mail to his or her divisional inspector, district commander, and to Professional Standards.

Upon receipt, some complaints may be dismissed. Section 46(2) of the *Police Service Act 2003* (PS Act) sets out the factors which may be taken into account in determining to dismiss a complaint. Section 47 of the PS Act allows for the complaint to be resolved by 'conciliation' at any stage. Conciliation may involve measures such as an apology, direction, guidance, training and/or mentoring.¹⁰

Under the GMM, complaints are classified into two categories: 'Class 1 misconduct' or 'Class 2 misconduct'. If a complaint is not dismissed under section 46(2) of the PS Act or conciliated, a divisional inspector is to decide how the complaint should be categorised. If in doubt, Professional Standards is to be consulted.

As a general rule, Class 2 matters are more serious, and are subject to investigation by Professional Standards or by personnel as directed by the Deputy Commissioner of Police. Class 2 complaints will generally involve allegations of the commission of an offence or a crime by a police officer.

Class 1 complaints are those which, even if proven, are likely to result only in internal disciplinary measures – not dismissal. Complaints categorised as Class 1 will be managed by a district commander or a divisional inspector. In each case, the actual investigation may be further delegated to a lower rank, but the commander or inspector retains supervisory responsibility for ensuring the investigation is completed competently and that appropriate

⁸ Tasmania Police, *Graduated Management Model for Complaints Against Police* (2010).

⁹ Complaints may be made in person at a police station, by telephone, e-mail or by post.

¹⁰ For conciliation to occur, the complainant and the subject officer must agree to the process. An investigation will proceed if the subject officer denies the allegations and refuses conciliation. GMM guidelines provide that a subject officer is to be contacted and informed of possible outcomes if the complaint is found to be true (although a subject officer is not to be informed of a complaint if doing so could harm the investigation).

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action is taken when warranted. When an investigation and/or resolution of a complaint is found to be deficient, the officer responsible for the management of the matter (i.e. the commander or inspector) will be held accountable.

The GMM lists 21 types of behaviour, drawn from the Code of Conduct in section 42 of the PS Act, which may be categorised as Class 1 or Class 2 misconduct, depending on the circumstances in each case. These types of behaviour run the gamut from ‘breach of policy’, to ‘incivility’ and ‘excessive force’. On the other hand, the GMM also lists behaviour which must always be classified as Class 2 misconduct – for example, ‘corruption’, ‘crime’, ‘drug use’ or ‘drug distribution’, and (breach of) ‘honesty and integrity’.

Upon completion of an investigation into a complaint of police misconduct, the Commissioner of Police (or, in practice, the relevant commander) must decide whether there has been a breach of the Tasmania Police Code of Conduct.¹¹ If there has been a breach, disciplinary action may result; this might extend from counselling to dismissal.¹² If there has not been a breach, other corrective action may still be taken where warranted.

A complaint may ‘shift’ between categories if evidence emerges revealing it is more or less serious. Professional Standards has the final say on the categorisation of a complaint. One purpose of the Commission’s audit was to determine the accuracy of such categorisations.

The GMM also offers some limited direction on the progression of complaints, from initial receipt and recording to investigation. It also provides some guidance as to timeframes for the progression of investigations. Part of the audit’s focus was to determine the level to which investigating officers met those requirements.

Tasmania Police comment

The GMM commenced in 2010. Because the audit focused on all complaints finalised in 2012, complaints received in 2011 (some in the early months of 2011) were subject to audit. As a result, Tasmania Police said that some officers involved in the investigations were likely not involved in investigations under the GMM previously, and thus likely ‘lacked familiarity with its requirements’ and that investigative standards in these matters ‘may not necessarily be representative of today’s investigative standards’.

Review of GMM

Early in 2013, Tasmania Police and the Integrity Commission agreed to conduct a joint review of the GMM. The terms of reference for that review contemplated some form of audit of complaints. Because of the review, expected to be finalised in late 2013, no recommendations have been made in this report. However, the results of the audit will provide valuable information about how the GMM is operating in practice and will inform any recommendations for change arising from the review.

¹¹ *Police Service Act 2003* (Tas) s 43(2) (PS Act).

¹² Refer PS Act s 43(3). Under GMM guidelines, where an allegation of Class 2 misconduct has been sustained, the relevant commander is to recommend an outcome to the Deputy Commissioner. Where that recommendation is for demotion or termination, the Deputy Commissioner is to consult with the Commissioner.

Number of complaints audited

During the audit period, Tasmania Police finalised twenty (20) Class 2 complaints.

Of the 20 files provided, 19 were subjected to the audit process. One file could not be located.¹³

For the same reporting period, Tasmania Police forwarded to us seventy-six (76) Class 1 complaints as being finalised in 2012. One file was identified as containing material which, according to the relevant legislation,¹⁴ is not authorised to be disclosed to the Commission. As a result, that file was set aside and was not audited.

Two file numbers were associated with a single file received by the Commission. As a result, this case was counted as two separate files by Tasmania Police, but was audited as one by the Commission. Additionally, two further complaint files arose out of largely similar facts. The Commission determined to also audit these two files as one. In the course of the audit, one file was returned to Tasmania Police as it was required for further investigation purposes. A further two files were not audited as the Commission was of the view that they were finalised outside of the audit period. For these reasons, the Commission audited a total of 70 Class 1 complaints.

In total, the Commission audited 89 files, containing 148 allegations of police misconduct.¹⁵

For the purposes of the statistical data referred to in this report, the percentages are taken as a proportion of the total allegations identified.¹⁶ This provides a more accurate picture of complaint handling procedures, as often a single complaint file would contain numerous allegations, occasionally against multiple subject officers.

Objectives of audit

The objectives of the audit were to:

- examine the adequacy of the complaint handling processes;
- examine the timeliness of complaint handling;
- ensure that Tasmania Police is complying with its legislative obligations regarding complaint handling;
- identify any failings or systemic issues in the management of complaints; and
- highlight any areas where improvements can be made.

Focus of audit

In order to achieve these objectives, the Commission focused on specific issues:

- complaint classification - whether Class 1 and Class 2 misconduct complaints were properly categorised;
- timeliness - whether the Commission had been notified of Class 2 complaints and when;

¹³ A copy of the IAPro (the Tasmania Police complaint case management system) printout was provided, however it contained insufficient information to conduct a satisfactory audit of the file (C2: 1112-017).

¹⁴ *Telecommunications (Interception and Access Act) 1979* (Cth).

¹⁵ One complaint file did not identify any allegation of misconduct.

¹⁶ Unless otherwise stated.

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- timeliness - whether the receipt of the complaint by Tasmania Police was recorded promptly, and how long it took to investigate the complaint;
- customer service - whether there was adequate contact with complainants;
- compliance - whether there was compliance with the legislative requirements of ss 45, 46 and 47 of the PS Act in relation to the registration, investigation and determination of complaints;
- adequacy - whether the investigation was adequate given the level of seriousness of the allegations, including:
 - whether relevant witnesses were interviewed;
 - whether relevant evidence was gathered;
 - whether the analysis of evidence was logical; and
 - whether the outcome reached was reasonable and appropriate; and
- reporting - whether the Tasmania Police complaint management system is adequate to identify and report on relevant issues.

Method

On 24 January 2013, the Integrity Commission provided to Tasmania Police a copy of the proposed draft audit instrument and project plan, which referred to the audit objectives and focus set out above. On 8 February 2013, the Commissioner of Police advised that Tasmania Police had no objection to the audit, asked that sufficient time be allowed for comment on any draft report, noted the difference in treatment between Class 1 and Class 2 complaints, and referred to the use of the audit in the proposed GMM review.

Tasmania Police made no comment on, nor raised any objections to, the objectives or focus of the audit or the proposed audit instrument.

On 8 July 2013, Tasmania Police was provided with a draft copy of the audit report and its comments were received on 16 August 2013. The response was lengthy (19 pages) and therefore is not attached in full, but, where necessary, reference is made to the comments and to any relevant Integrity Commission response.

Complaint numbers

As might be expected, the number of Class 1 complaints outnumbered Class 2 complaints.

Class 1 complaints

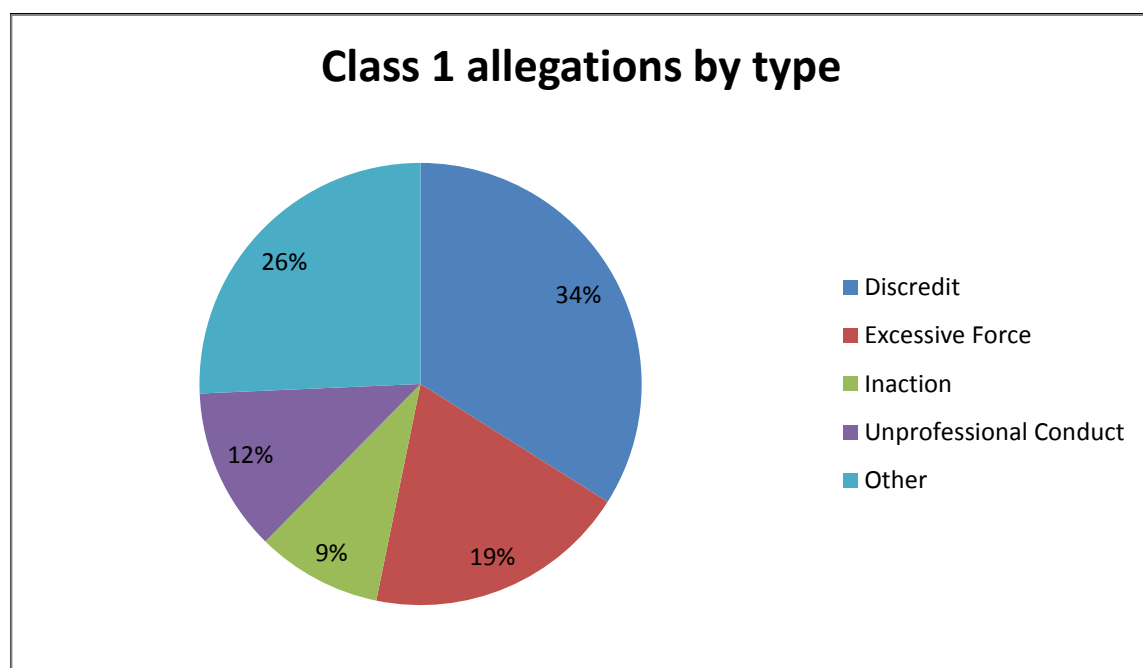
The Class 1 complaint files subjected to audit contained a total of 110 separate allegations.

The three most common Class 1 allegations were:

- bringing discredit to Tasmania Police ('discredit') - 34% of allegations;
- using excessive force ('excessive force') - 19% of allegations; and
- displaying unprofessional conduct ('unprofessional conduct') - 12% of allegations.

The chart below provides a breakdown of all Class 1 allegations by type.

It should be noted that the complaints do not cover the full spectrum of possible allegation types. In other words, some allegation types did not feature in 2012.



Class 2 complaints

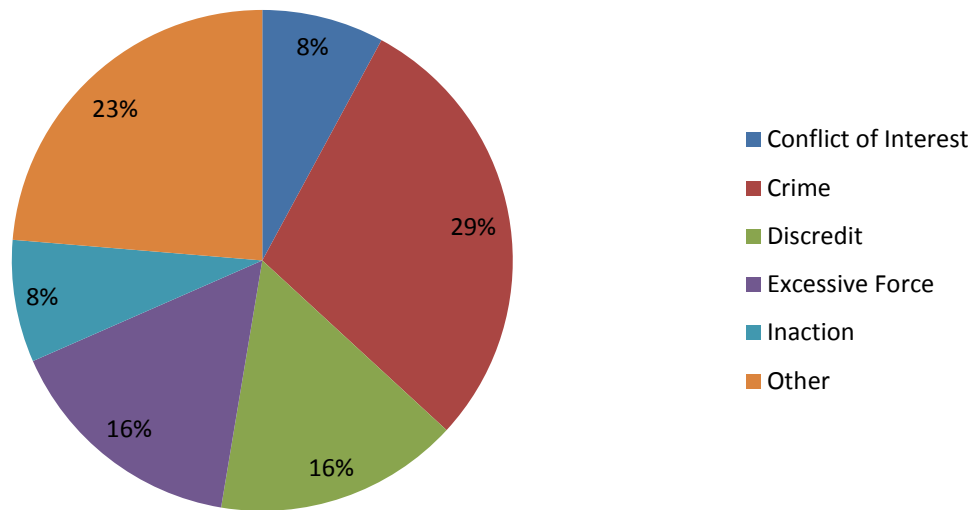
The 19 Class 2 complaint files subjected to audit contained 38 separate allegations. The three most common allegations identified were:

- criminal conduct ('crime') - 29% of allegations;
- discredit¹⁷ - 16% of allegations; and
- excessive force - 16% of allegations.

The chart below breaks down the identified Class 2 allegations by type.

¹⁷ Section 42(11)(b) of the PS Act provides that a police officer must not, at any time, conduct himself or herself or act in a manner that is likely to bring discredit on the Police Service.

Class 2 allegations by type

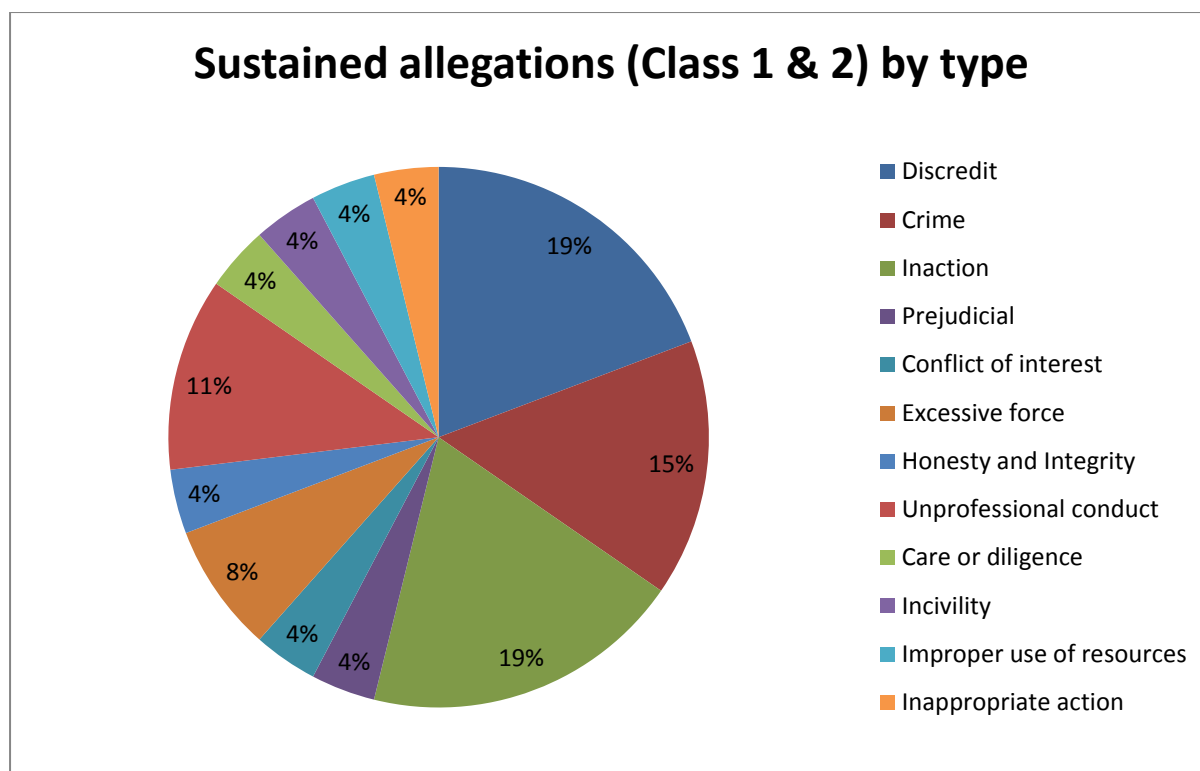


As noted above, some allegations, such as excessive force, can be classified as either Class 1 or Class 2 misconduct. The actual classification depends on the nature and seriousness of the conduct in question.

As with Class 1 matters, some Class 2 allegation types did not feature in 2012.

Sustained complaints/allegations

The audit identified a total of 26 allegations (from 21 separate complaint files) that were found to have been 'sustained'. This included both Class 1 and Class 2 complaints.



As evidenced in the chart, the three most commonly sustained allegations overall in 2012 involved 'inaction'¹⁸ (19% of sustained allegations), 'discredit' (19%) and 'crime' (15%).

In terms of the classification of sustained allegations, nearly half (12 allegations) were Class 1, and just over half (14 allegations) were Class 2.

The most commonly sustained Class 1 allegation was 'inaction' (three allegations from three complaints), and the most commonly sustained Class 2 allegation was 'crime' (four allegations from four complaints).

¹⁸ Section 42(2) of the PS Act provides that a police officer must act with care and diligence in the course of his or her duties in the Police Service.

Key findings

Complaint classification

The audit revealed that 98% of complaints had been correctly categorised by Tasmania Police in the first instance. Of the remaining three complaints (or two percent), one did not identify any allegation of misconduct, and another had been (correctly) re-classified from Class 1 to Class 2 by Professional Standards. The remaining matter was assessed by the investigator to lack the threshold requirements of a 'complaint'.¹⁹

Timeliness

Two primary issues were examined with respect to timeliness:

- whether the Integrity Commission had been notified of the matter in accordance with the MOU;²⁰ and
- the length of time taken to complete the complaint process.²¹

Time taken to notify the Integrity Commission

The current MOU between the Integrity Commission and Tasmania Police does not specify any exact timeframe requirements on notifying the Commission. It is only necessary that the Commission be notified 'as soon as practicable' of complaints amounting to serious misconduct or misconduct by designated public officers.

From all of the Class 2 complaint files where a notification to the Commission was identified, 57.1% recorded a notification being made within 30 days of receipt of the complaint.

Tasmania Police comment

In its comments on the draft report, Tasmania Police stated that it was appropriate to audit its performance against the GMM and the PS Act requirements. However, given that notification to the Commission pursuant to the MOU is not required under legislation, the obligations under the MOU are inherently different to those under the PS Act. Additionally, the MOU imposed mutual obligations on the Commission and the police. For these reasons, Tasmania Police claimed that it was not appropriate for this audit to assess notifications from Tasmania Police to the Commission pursuant to the MOU.

Further, Tasmania Police stated that notifications under the MOU related to serious misconduct and it was not necessarily the case that all matters classified as Class 2 complaints would have amounted to serious misconduct.

The Commission does not accept these assertions by Tasmania Police for two reasons.

Firstly, the project plan which was provided to Tasmania Police for comment prior to the audit clearly indicated that the audit would look at the 'notification to the Integrity Commission of Class 2 complaints'. No objection was made at that time about the

¹⁹ The complaint file on this matter shows a determination that it did not in fact satisfy the definition of a 'complaint' against police.

²⁰ In accordance with the MOU, Tasmania Police is required to notify the Commission of complaints against designated public officers (officers with a rank of inspector or above) as well as any complaints about serious misconduct.

²¹ The GMM stipulates timeframes for the completion of Class 1 matters but not Class 2.

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appropriateness of including notifications to the Commission in the audit, nor to the plan that the audit would look at Class 2 complaints in this regard.

Secondly, while in theory there is a difference between Class 2 and 'serious misconduct' complaints, in practice they are the same. It was the Commissioner of Police who recently publicly confirmed that Class 1 complaints are those which, even if proven, will only result in internal disciplinary measures (not dismissal), and that Class 2 complaints generally involve 'allegations of the commission of an offence or a crime by a police officer'.²²

Under the MOU, Tasmania Police is to notify the Commission of any complaint of misconduct by a commissioned officer and any complaint of serious misconduct. Under the IC Act, serious misconduct is a crime or an offence of a serious nature, or misconduct providing reasonable grounds for terminating the public officer's appointment.

Time taken to register complaints

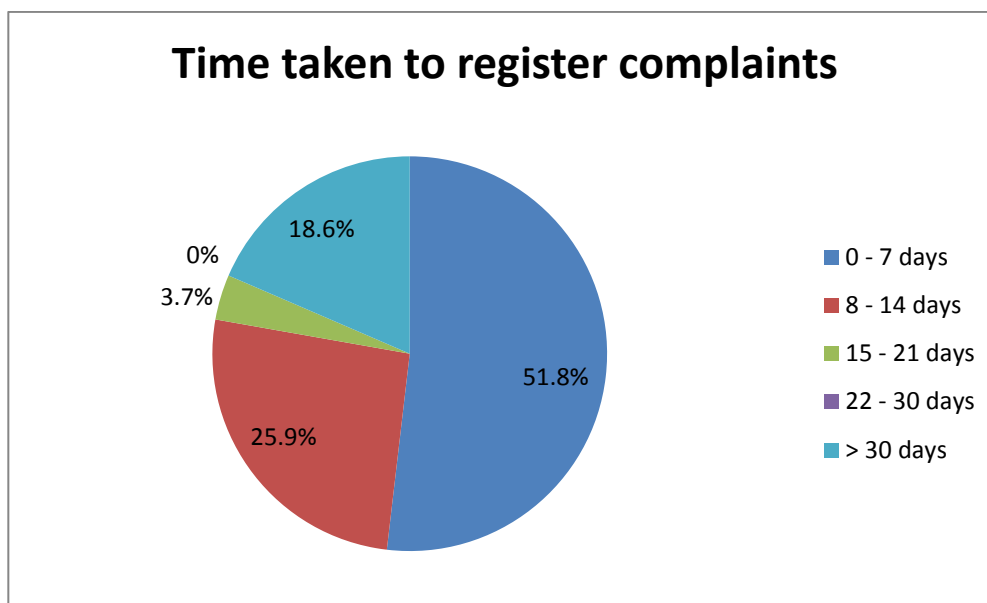
The PS Act requires that, on receipt of a complaint, the Commissioner must enter the details in a register of complaints. Tasmania Police uses an electronic case management system, 'IAPro', to record and track the investigation of complaints against its officers. Entries recorded on IAPro assisted the Commission to identify relevant dates.

To measure the timeliness of registration of Class 2 complaints, the audit focused on the period between initial receipt of a complaint and the date on which it was registered on IAPro. Each Class 2 file provided to the Commission contained a printout from the IAPro system, containing the specific date of registration for each complaint.

So far as Class 1 complaints were concerned, this information was rarely available because Class 1 complaint files did not include an IAPro printout. Where possible, the audit therefore used the first date that appeared on a file referencing an action taken in response to the complaint as the registration date.

Using this method, a date was identified for a total of 27 files (Class 1 and 2) comprising 56 separate allegations. A breakdown of the time taken to register complaints with regards to these 27 files is shown in the chart below.

²² Tasmania, *Parliamentary Debates*, Legislative Council, 5 June 2013, 128 (Commissioner 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.



In summary, 81.4% of the above mentioned 27 complaints were registered within 30 days, but a significant proportion (18.6%) were registered more than 30 days after receipt. This number is taken only from a portion of the overall pool of complaint files. Most files, as explained above, did not contain sufficient information with which to determine how long the registration process had taken.

Tasmania Police comment

Tasmania Police stated that it had extracted data from IAPro for all audited complaints which indicated that only 10.5% of complaints were registered more than 30 days after receipt. As noted above, this data was not available from the files examined by the Commission during the audit.

Furthermore, Tasmania Police was of the view that, because the Commissioner has delegated his complaint registration function to the Commander, Professional Standards, the PS Act obligation to register a complaint does not arise until the file has been received by Professional Standards. Thus the more relevant measure would be the time taken to register the complaint from that point.

The Commission disagrees. The reason for measuring from the time the complaint is first made is to ascertain how long complaints take to 'get into the system' and to help identify if there are any blockages on the way. Additionally, a complainant would rightly expect that their complaint would be appropriately recorded and processed from the time that it is made, not from some indefinite time in the future when it makes its way to some part of the organisation tasked with undertaking its registration.

Tasmania Police also objected to the description of the 18.6% of complaints, which the audit assessed as taking longer than 30 days to be registered, as a 'significant proportion', on the basis that it was subjective terminology which should be acknowledged as such.

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All of the Commission's observations in this audit report are, of course, the Commission's and, to that extent, subjective.

Time taken to complete investigations

The GMM stipulates that, unless exceptional circumstances exist, all Class 1 complaints are to be finalised within 28 days. There is no similar limit for Class 2 complaints, which are more complex in nature and thus could be expected to take longer to deal with.

The audit revealed that Class 1 complaints took an average of 83 days to complete (58% were finalised within 28 days), while Class 2 complaints took an average of 241 days. The average complaint investigation process (from receipt of complaint to finalisation) took 117 days.

Although the majority of Class 1 complaints were finalised within the 28 day timeframe set out in the GMM, the audit indicates that a significant proportion were not. Appropriate timeframes for finalisation of complaints will be addressed in the review of the GMM.

Tasmania Police comment

It was noted that finalisation of Class 1 complaints within 28 days can be difficult, exacerbated in recent times by reductions in human resources. Tasmania Police also noted that Professional Standards tracks outstanding Class 1 investigations. Moreover, it is intended that IAPro will be expanded to provide access to all police districts, thereby permitting greater oversight and monitoring of complaint investigations.

Case study 1 **Timeliness**

A written complaint received by Tasmania Police on 11 February 2011 raised allegations about the behaviour of two officers responding to an alleged crime.

The complaint file indicates that a preliminary investigation was already in progress when the written complaint was received, and the matter was subsequently delegated for investigation as possible Class 1 misconduct.

Despite the fact a body of work had already been done to resolve the complaint, finalisation did not occur until 19 June 2012 – nearly 16 months after the initial receipt of the matter. No reason for the delay is apparent from the file.

The delay in this case was unreasonable. Indeed, it was a cause for such concern that it prompted the relevant Commander to issue a formal direction to the investigating officer to have the matter finalised. An unreasonable delay in conducting such an investigation can itself amount to a breach of the Code of Conduct.

Contact with complainants

The GMM provides that a letter is to be sent by Tasmania Police to a complainant acknowledging receipt of the complaint and stating which district will deal with the matter. The officer to whom the complaint is allocated is to contact the complainant within 24 hours of receiving the complaint file; furthermore, best practice dictates that a complainant should be notified of an outcome.

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The level of contact with complainants was first measured by determining whether such contact had in fact occurred, then by considering what opportunity existed for such contact. Finally, the audit looked at the notification provided to the complainant about the investigation outcome. All three issues went to determining whether the level of customer service given to complainants by police was adequate.²³

The audit revealed that in 75.6% of complaints there was some level of contact with the complainant(s). Of the remaining 24.4% of matters, most evidenced some attempt by police to contact the complainant – albeit that the attempts were ultimately unsuccessful. One investigation involved 14 separate, but unsuccessful, attempts to make contact with the complainant.

Only one file failed to contain any explanation as to why a complainant had not been contacted.

Further, in 66.4% of matters, the complainant had been provided with an opportunity to discuss and clarify the complaint, and in 81.7% of matters the outcome was communicated to the complainant. Of the remaining matters where complainants were not made aware of the investigation outcome, the Commission noted that the circumstances were such that contact was not possible.

In most cases where contact with a complainant was made, that contact was in the form of an interview, acquisition of a statutory declaration, or telephone conversation. In many cases, contact occurred on more than one occasion.

Case study 2

Contact with complainant

An incident occurred in August 2011 where Tasmania Police officers applied force to affect an eviction notice. The person evicted alleged that police had used excessive force, but did not lodge a 'formal' complaint until February 2012, after about six months had passed. Prior to the lodging of the formal complaint, there had been efforts to conciliate the issue.

Upon its receipt, the written complaint was assigned to an investigating officer. Within 24 hours of receipt, the complainant had been contacted via telephone and a further conversation had been organised.

Ten days after receiving the file, the investigating officer met with the complainant to discuss the complaint. A further meeting, again to attempt conciliation, was organised.

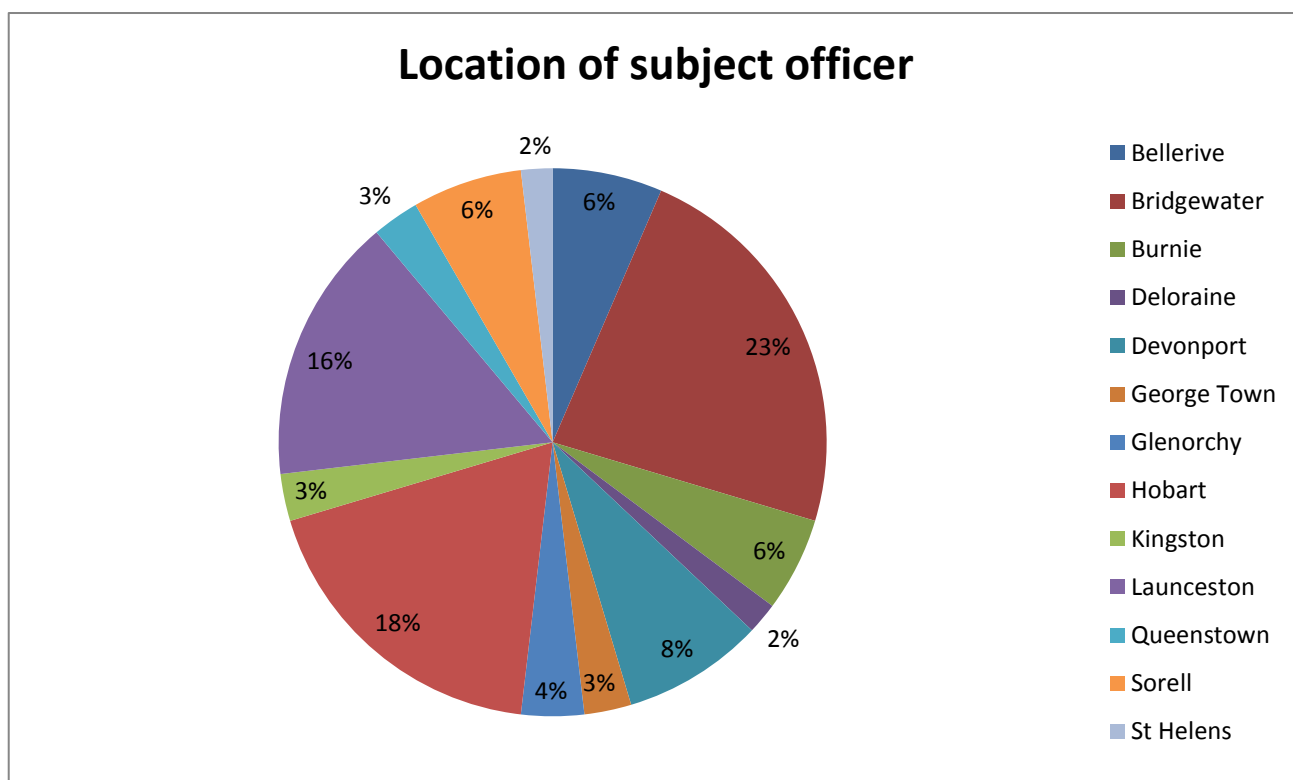
Another meeting was held two weeks later, at which the complainant was given the opportunity to discuss the matter with an officer who had been present at the eviction in August 2011. Yet further communication followed, but efforts to conciliate the matter were not successful.

Despite the failure to achieve a conciliated outcome, this case demonstrates that considerable effort was invested in attempting to address the complainant's concerns. The ultimate outcome was that the complaint was found to lack substance, but the investigating officer was still able to conclude communications with the complainant on amicable terms.

²³ These statistics do not include allegations arising from internally generated 'complaints'.

Contact with subject officers

The chart below shows the divisional location of each subject officer (in matters where it was possible to identify the subject officer). All thirteen Tasmania Police divisions were the subject of at least one complaint, with the three largest divisions in terms of subject officers being Bridgewater (23%), Hobart (18%) and Launceston (16%).



The audit examined whether there had been compliance with the requirements of procedural fairness for subject officers. This was achieved by testing whether there had been contact with subject officers. Additionally, the PS Act requires that each subject officer be notified of the outcome of an investigation where a determination has been made to take action for a breach; this was also assessed.²⁴

In most instances, subject officers were interviewed or provided statutory declarations or internal reports to the investigating officer.

Of the complaint files subjected to audit, the subject officer was identified in almost all allegations. The remaining files featured allegations against Tasmania Police generally, or a complaint against police in a specific work area.

Similarly, it appeared that the subject officer was notified of the determination to take action for a breach of the Code of Conduct in most matters. However, two files involved

²⁴ PS Act s 47(3)(b).

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determinations to take action for a breach, and did not include evidence of notification to that effect to the subject officers.²⁵

Best practice with respect to procedural fairness indicates that subject officers should be notified in writing of the outcome of an investigation, regardless of the nature of that outcome. The audit noted that 31 complaint files - including the two mentioned above - contained no evidence of notification to the subject officer.

Evidence gathering

The process by which Tasmania Police gathered evidence in internal investigations was examined to see if relevant lines of inquiry were pursued, whether relevant witnesses were contacted, and whether findings were made on an appropriate evidentiary basis.

Lines of inquiry

In 93% of matters (134 allegations contained in 81 files), it appeared that all reasonable lines of inquiry were pursued. Therefore, in 7% of matters some relevant inquiries had not been made.²⁶

Three files (containing four separate allegations) did not contain sufficient information for a determination to be made as to whether all reasonable lines of inquiry had been pursued.

Tasmania Police comment

The subjective nature of assessing if all relevant evidence was gathered or lines of inquiry pursued was commented on at length by Tasmania Police.

While such judgements are indeed subjective, oversight agencies can and do make such assessments about the adequacy of police investigations.²⁷

²⁵ The reason for the lack of notification in one file may have been that the subject officer admitted to the conduct constituting the breach and was provided verbal guidance as a result. The admission and verbal guidance may have occurred at the same time, thereby negating the requirement for written notification.

²⁶ In general terms, this meant that a particular witness had not been approached, or that an obvious evidentiary matter had not been addressed.

²⁷ See, for example, Corruption and Crime Commission, *Report on the Management of Misconduct by Western Australia Police* (2 September 2011) ; 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 2011 to 30 June 2012* (November 2012).

Case study 3

Contact with witnesses

One complaint concerned an allegation that police had used excessive force in making an arrest. The complainant had been detained by security officers at a music festival and subsequently arrested by police.

The alleged misconduct took place in a police vehicle as it transported the complainant to a police station, but events surrounding the complainant's interaction with police at the time of arrest were also in issue and were relevant.

It was noted in the complaint file that witnesses to the complainant's arrest at the festival were not interviewed because they would not have witnessed the alleged assault in the police vehicle. The security officers, however, were interviewed. Witnesses to the complainant's arrest may not have seen events unfold in the police vehicle, but would have assisted investigators to test the complainant's account of interaction with police at the time of the arrest.

In the Commission's view, it was not appropriate to draw a distinction between the security officers (who were interviewed) and other witnesses to the complainant's arrest (who were not contacted).

Interviewing the other witnesses would have been a relatively simple line of inquiry, and would have given the investigative process greater transparency.

Tasmania Police comment

In its response, which disagreed with the Commission's view of this case, Tasmania Police provided contradictory reasons for the decisions it made about who to interview. On the one hand, it was asserted that the complaint was about conduct that had occurred en route to the police station and thus that conduct was not visible to persons present where the complainant was taken into custody (and so it was not relevant to interview bystanders). On the other hand, the security officers were said to have been interviewed because 'they were directly involved in the circumstances leading to the complainant being taken into custody and would have been very closely positioned to observe any police misconduct'.

Case study 4 Narrow scope

A Class 2 investigation was conducted into an allegation that a police officer had been present when drugs were purchased by a criminal offender.

The initial allegation was determined to be unfounded. While this appears to be an appropriate outcome based on the evidence, the investigation established that the police officer otherwise had an association with a person involved in the supply of drugs and unlawful activity.

The audit showed that the offender involved in the alleged drug transaction was not interviewed, that the police officer downplayed his association with the criminal, and that no intelligence analysis was attached to the file.

Aspects of the police officer's association appear suspicious and reflect more than 'poor judgment' on the part of the officer; further enquiries were warranted.

Tasmania Police comment

The Commission's reference to the person associated with the police officer as a 'criminal' was described by Tasmania Police as 'unwarranted'. It stated that, 'Whilst the individual in question has some drug convictions, they are minor in nature, were dealt with in the lower courts and occurred some time previously. He has no criminal convictions.'

The Integrity Commission is unaware of 'drug convictions' (or indeed any 'convictions') which would not be appropriately described as 'criminal convictions'.

Tasmania Police further advised that the police investigation also identified the concerns raised by the Commission, and an order was issued to the officer to immediately 'cease to associate, either directly or indirectly, with the person in question'.

Contact with relevant parties

In the interests of transparency, it is important that all relevant parties to a complaint are contacted and, where appropriate, formally interviewed. The audit focused on this issue by asking whether such contact had occurred and, where it had not, whether the complaint file recorded why that was so.

Of the files audited, 79% contained a record of contact with all relevant parties (this generally included the complainant, subject officer and witnesses). The remaining files (21%) included two complaints that had been withdrawn soon after being submitted, and two others that contained insufficient information to determine whether contact had occurred.

Evidence

In terms of the adequacy of evidence gathering, it was important that the audit examine the use to which evidence was put. This is because complaint outcomes should be based solely upon relevant and cogent evidence.

Encouragingly, almost all files indicated that determinations had been based on the evidence obtained.

Case study 5 Findings based on evidence

The Commission examined a complaint in which the conclusion was considered not to be justified on the basis of the evidence obtained in the course of investigation. Ironically, the complaint in question involved an allegation that a police officer had failed to conduct an adequate investigation. The internal investigation appeared to the Commission to lack clarity, yet had nonetheless concluded that the allegation was 'not sustained'.

This conclusion was in spite of comments from a supervisor, included in the file, stating that the investigation 'could have been handled better' and that 'there were some investigative techniques and procedural issues which should have been undertaken'. In the Commission's view, these comments were at odds with the conclusion that the allegation was not sustained.

Tasmania Police comment

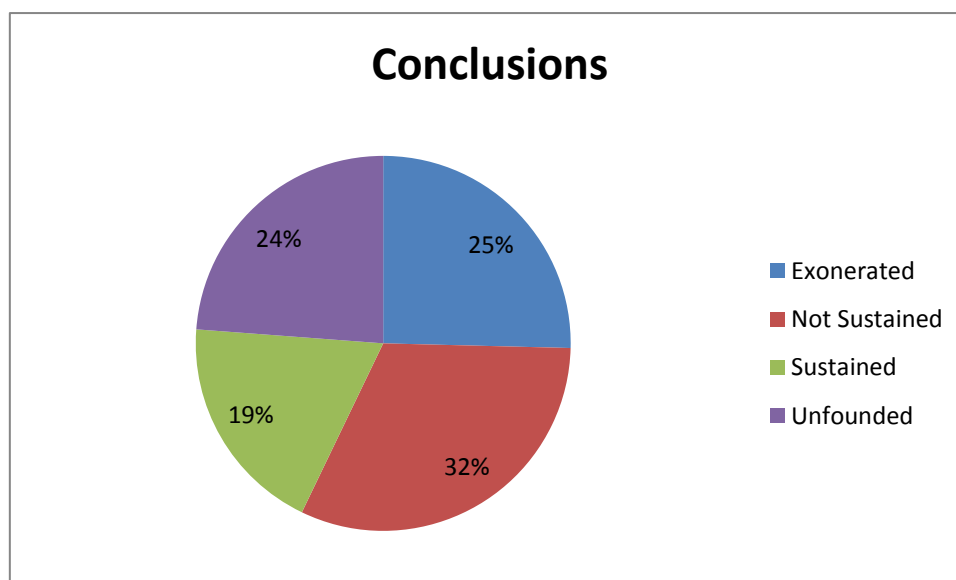
Tasmania Police disagreed with the Commission's view of this matter.

Outcomes of investigations

The GMM provides that complaints against police should be concluded as being exonerated, not sustained, sustained or unfounded, described as follows:

- exonerated: the allegation is true but the behaviour was lawful;
- not sustained: there is insufficient evidence to prove or disprove the allegation;
- sustained: evidence proves the allegation; and
- unfounded: the allegation is false or not factual.

Below is a breakdown of allegation conclusions in the audited files. Note that some complaints had several allegations with different conclusions.



Not included in the above chart were 17 complaint files (containing 20 allegations) that did not register a conclusion. Of these files, six (with eight allegations) were conciliated (with no

‘conclusion’ as such). The remainder were either withdrawn or otherwise did not document an outcome.

The audit determined that almost all of the recorded conclusions were appropriate.

Case study 6

Investigation conclusions

One complaint concerned an allegation of unauthorised disclosure of confidential information. In the process of investigation, two potential exculpatory explanations were put forward in the investigation report, but neither had any evidentiary basis and both were entirely speculative.

The outcome was a finding of ‘unfounded’. This was despite the fact that the evidence did not prove the matter one way or the other.

In the Commission’s view, a finding of ‘not sustained’ would have been more appropriate.

Tasmania Police comment

Tasmania Police disagreed with the Commission’s view of this matter. It noted that (some time after the complaint investigation was closed) the allegation had been withdrawn by the person who made it, and that the stated reason for making the false allegation was consistent with one of the speculative explanations advanced by the investigator.

The Commission remains of the view that whatever may have later been revealed, neither the speculative explanations nor the outcome were warranted based on the evidence available at the time.

Systemic issues

The audit considered whether the internal investigation process was able to identify systemic issues that emerge from complaints or during an internal investigation.

Tasmania Police identified three allegations (from three separate complaints) as raising systemic issues; each matter involved internal procedures that required clarification or amendment. Of the remaining 98% of complaints, the Commission could find no matters in which a systemic issue had definitively emerged but had not been identified.

However, two complaints (comprising three allegations) were identified as raising *possible* systemic issues. Both complaints concerned a failure to adhere to established internal procedures, and may have warranted further inquiries to address the possibility of a wider inadequacy.

Case study 7

Systemic issue: emergency calls

An officer received a call on the Triple Zero emergency line that did not satisfy the criteria for an emergency call. A complaint was later received about the officer's conduct, with an allegation that the officer had failed to act with care and diligence.

The internal investigation concluded that the officer had followed the existing procedures for dealing with Triple Zero calls and the matter was concluded as 'not sustained'. Notwithstanding the finding, the subject officer received guidance in respect of poor customer service.

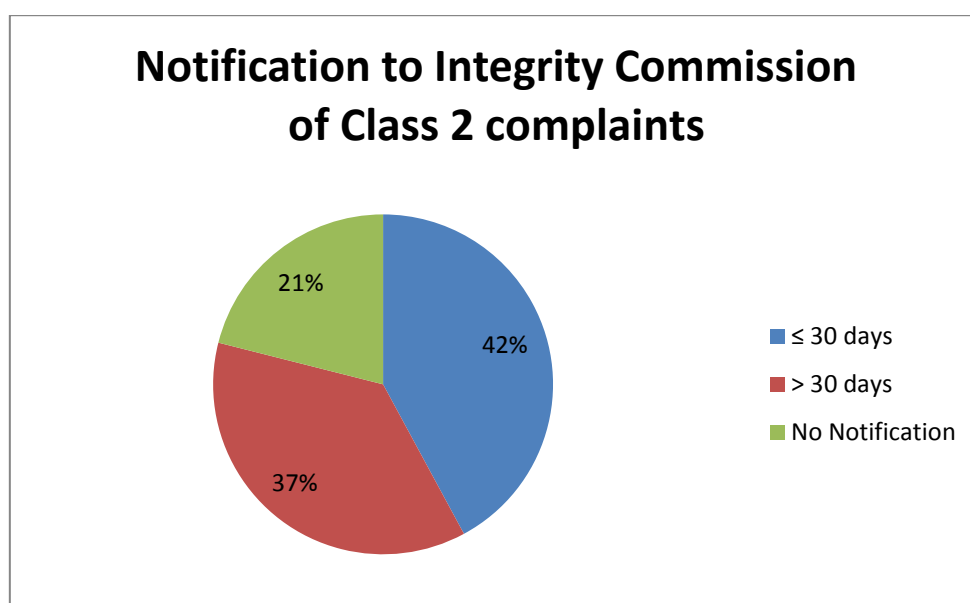
The complaint file shows that there was disagreement between senior officers as to the preferred outcome. The investigation highlighted inadequacies in the procedures surrounding Triple Zero calls, and the investigating officer was ultimately tasked with developing improved procedures to accommodate similar situations in future.

This case demonstrates that the internal investigation process is capable of identifying a possible systemic issue and the steps necessary to address it.

Notification to the Integrity Commission

As previously stated, an MOU between Tasmania Police and the Integrity Commission provides that the Commissioner of Police will notify the Commission of any complaint against a designated public officer, or any allegation of serious misconduct.

The audit therefore examined the notification process for Class 2 complaints. The following chart shows how long it took for the Commission to be notified of each complaint.



It should be noted that the MOU does not specify a timeframe with respect to notifications, providing only that a notification should be made 'as soon as practicable'.

The 21% of matters in which no notification was made to the Commission included four complaint files.

Case study 8

Notifying the Integrity Commission

An inspector (i.e. a designated public officer) was formally counselled and reprimanded by a commander pursuant to s 43(3)(b) of the PS Act for failing to act with care and diligence in the discharge of his duties. The matter appears to have involved an ongoing issue and to have been caused, at least in part, by health issues experienced by the Inspector.

The matter was first raised in January 2012 and finalised by February 2012.

This was a complaint of misconduct involving a designated public officer in which the Integrity Commission has an interest, yet the Commission learnt of the matter only as part of the audit process.

Tasmania Police comment

Tasmania Police advanced reasons for the failure to notify the Commission in this case, including that this complaint did not arise in the usual way, and that it had occurred early in the appointment of a new Professional Standards commander.

Record keeping

The audit identified issues with respect to the adequacy of complaint file management, with some records missing and others suggesting an inadequacy in record keeping.

The paucity of information contained in some files (both Class 1 and 2) made it impossible to assess decision making processes and timeliness.

Further, in some cases the lack of documentation pointed to a lack of compliance with the GMM and/or the PS Act. One example was the lack of documented notifications to subject officers of the outcomes of investigations. Such a notification is a legislative requirement under the PS Act,²⁸ as well as being essential in ensuring procedural fairness. Even where there was no statutory obligation to notify (because no determination to take action had been made), there were a number of instances of the investigation report recommending the subject officer be notified of the outcome, and the complaint file lacking evidence of any such notification.

²⁸ Where it is determined to take action for a breach, see PS Act s 47(3)(b).

Case study 9 **Record keeping**

One file concerned a complaint alleging that a police officer had brought discredit to Tasmania Police. The file contained no record of a finalisation date (causing some difficulty in determining whether, in fact, the file should have been included in the audit), no obvious record of the registration date, and it was not clear whether the subject officer had been notified of the investigation outcome.

From the material available on the complaint file, this matter appears to have related to a relatively minor complaint that was ultimately withdrawn. Nonetheless, the lack of documentation made it difficult for the audit to make accurate determinations, particularly as to the adequacy of the investigation.

Although much of the record keeping was sufficient to allow auditors to navigate through files, the adoption of a uniform process would be useful. Several complaint files included well-documented running sheets, while others lacked such a document. Running sheets allowed for easier navigation through complaint files, and offered positive evidence of the investigating officer's decision making process.

Case study 10 **Record keeping**

An acting inspector was tasked with investigating a complaint alleging unprofessional conduct. The acting Inspector made extensive use of a running sheet to trace attempts to contact relevant parties and to record the receipt of documents. The complaint file accurately recorded the investigative process and filed all necessary documents in an easy-to-read fashion.

Not only did this allow for the auditor to quickly and accurately examine the contents of the file, the well-organised file ensured transparency.

Tasmania Police comment

In relation to record keeping, Tasmania Police drew attention to the difficulties arising from: the number of related files which are required to be kept separate from complaint investigation files (e.g. court prosecution files, ministerial correspondence files); the combination of hard copy files (kept by Professional Standards in relation to Class 2 investigations, and within districts for Class 1 investigations); and electronic files being held across two IT systems (IAPro and TRIM). It noted that a move to greater utilisation of IAPro across the organisation would enhance record keeping in future.

Miscellaneous findings

Some issues, whilst not extensive throughout the audit pool, are worthy of note.

Quality assurance

The audit revealed that Tasmania Police is operating a relatively well functioning complaints system. Several files evidenced high levels of oversight on the part of senior officers in Tasmania Police. The complaint file referenced in Case study 1 indicated a willingness on

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the part of commanders to deal effectively and robustly with an investigating officer to ensure investigations were conducted efficiently. Such an approach encourages public confidence that complaints against police will be dealt with appropriately.

Case study 11
Quality assurance

A Class 2 internal complaint concerned a junior ranking police officer who had been involved in a collision while driving in excess of the .05% blood alcohol limit. The police officer was charged and did not contest the matter. An internal legal review of the disciplinary investigation noted with concern that no attempt had been made by the investigating officer to interview a witness, or to investigate evidentiary discrepancies.

The legal review included recommendations to remedy these deficiencies, which the Deputy Commissioner directed to be implemented.

Scope

The audit revealed some matters in which investigators went about their work with an overly narrow focus, particularly with respect to Class 2 complaints. The Commission considers that some investigations focused on particular issues at the expense of other (in some cases, potentially more serious) issues.

Care needs to be taken to ensure that investigators tasked with Class 2 complaints thoroughly examine every issue of possible misconduct – whether or not the allegation was specifically raised by the complainant.

Investigators should further ensure that an account is obtained from all relevant witnesses, including the complainant.

Case study 12
Investigative scope

A Class 2 investigation was conducted by Professional Standards into an internally generated allegation that a police officer had been paid by a drug offender. Following investigation, the allegation was recorded as ‘unfounded’.

Upon commencement of the investigation, a number of avenues of inquiry had been identified in a document prepared by a senior officer for the Commander Professional Standards.

The audit revealed that many of these suggested lines of inquiries had not been followed, and that there were no records detailing why they had not been actioned.

Tasmania Police comment

Tasmania Police disagreed with the Commission’s view about this matter.

Conclusion

The results of the audit indicate that, overall, Tasmania Police is managing its complaint system well. Complaints were appropriately classified, good contact was made with complainants, investigations were adequately undertaken and possible systemic issues were identified.

There is room for improvement in respect of timeliness of complaint finalisation, particularly because a significant proportion of Class 1 complaints are taking more than 28 days to finalise. Record keeping could also be improved in both Class 1 and Class 2 matters, and the use of a running sheet was noted as a useful tool in this regard.

The timeliness and the occurrence of notification of all relevant complaints to the Integrity Commission could also be improved.