

REPORT OF THE INTEGRITY COMMISSION

No. 2 of 2015

An audit of Tasmania Police
complaints finalised in 2014



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

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President
Legislative Council
Parliament House
Hobart TAS 7000

Speaker
House of Assembly
Parliament House
Hobart TAS 7000

Dear Mr President

Dear Madam Speaker

In accordance with s 11(3) of the *Integrity Commission Act 2009* (the Act), the Integrity Commission presents a report to Parliament on an audit conducted in 2015 of Tasmania Police complaints completed during 2014.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Aziz Melick', with a stylized flourish at the end.

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

A handwritten signature in blue ink, appearing to read 'Michael Easton', with a stylized flourish at the end.

Michael Easton
Acting Chief Executive Officer

18 November 2015

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An audit of Tasmania Police complaints finalised in 2014

Report

November 2015

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Executive summary

Under the *Integrity Commission Act 2009* (Tas), the Integrity Commission ('the Commission') has the function of auditing the way that the Commissioner of Police has investigated and dealt with complaints about police misconduct.¹ This is a report on the Commission's third audit of complaints investigated and dealt with by Tasmania Police under the provisions of the *Police Service Act 2003* (Tas).

The objectives of this audit were to:

- A. identify the nature of misconduct complaints;
- B. examine the way the Commissioner of Police has dealt with complaints;
- C. examine whether systemic/organisational issues are being identified and dealt with; and
- D. assess complaint timeframes.

Tasmania Police was provided with a draft copy of this report in August 2015, and given an opportunity to comment. In response, Tasmania Police provided a letter from the Commissioner of Police, and a detailed document with comments on specific sections of the report. The Commissioner's letter can be found in the Appendix of this report. A number of amendments were made to the draft report in consideration of the Tasmania Police response. Where appropriate, Tasmania Police comment has been included throughout the report in full or summary form.

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

Number of complaints subject to audit in 2015

The scope of this audit was all complaints finalised by Tasmania Police in calendar year 2014. For various reasons, three relevant complaints were not able to be included in this formal audit and will instead be subject to ad hoc review by the Commission. The total number of complaints audited this year was 109, which included 96 Class 1 (less serious) complaints, and 13 Class 2 (more serious) complaints.

Key findings

This year's audit has found that, according to the Tasmania Police complaints database (IAPro), the vast majority of allegations against police fall into the one of two categories: bring discredit on the service, and failure to behave with care and diligence. These two categories also represent the greatest proportion of sustained allegations.

The audit findings indicate that Tasmania Police is, for the most part, using its complaints system to effectively identify and remedy systemic/organisational issues. The Commission has also found that there has been a steady improvement in the timely registration of complaints over the last three years.

¹ *Integrity Commission Act 2009* (Tas) s 88(1)(c) ('IC Act').

The Commission has found that there are a number of opportunities for improvement in regard to adequately and appropriately dealing with complaints. In particular, Tasmania Police policy and practice on the acceptance and registration of complaints is not consistent.

The key findings of the 2015 audit of complaints finalised by Tasmania Police are:

1. Tasmania Police does not demonstrate consistent policy or practice in relation to the acceptance and registration of complaints;
2. record keeping on the case management system IAPro is still inadequate in several respects, although there have been some improvements since the last Commission audit;
3. the majority of systemic/organisational issues that emerge during complaints are recognised and/or dealt with in some way; and
4. timeframes for complaint registration are improving, and it is possible that overall complaint resolution timeframes are also improving.

Tasmania Police response to key finding 1

Tasmania Police and the [Commission] do not agree on the point and manner in which a complaint is received. Pursuant to s 44(2)(a) of the Police Service Act 2003,² a complaint must be submitted in writing before it is accepted – similar to the legislated requirements of the Integrity [Commission] Act 2009 relating to complaints lodged with the Commission. On a case by case basis, the Commissioner (delegated to Commanders) may receive a complaint in another manner. The IC has misinterpreted a flow chart (Annexure D - Recording Process and Management of Documentation) within the Graduated Management Model (GMM) as a general approval by the Commissioner of manners in which a complaint may be received. The difference in interpretation has been identified to the Commission.

The Commission has made some minor changes to the wording of this key finding as a result of the Tasmania Police response. For a detailed reply to this Tasmania Police response, see page 29.

Tasmania Police response to key finding 2

In the concluding comments of this report, the Commission stated record keeping was 'inadequate in several respects'. Tasmania Police state that whilst there are elements that would benefit from improved record keeping, they do not agree with this key finding by the Commission that the record keeping is inadequate. A more balanced finding would be that the record keeping is satisfactory but a number of elements would benefit from improved accuracy.

The Commission has made some minor changes to the wording of this key finding as a result of the Tasmania Police response.

² Police Service Act 2003 (Tas) s 44(2)(a) ('PSA') states that a 'complaint – must be made in writing or in a manner approved by the Commissioner'.

Excerpt of Tasmania Police response to key finding 3³

Tasmania Police does not agree with the finding of the [Commission] that there are 28 'systemic/organisational issues'. Tasmania Police interpretation of systemic/organisational issues is a problem/issue inherent in the overall system rather than individual or isolated factors. Tasmania Police does not agree that the examples provided by the Commission support the finding of 28 such issues.

...

Tasmania Police differs in interpretation of what amounts to 'systemic/organisational issues' and takes the view the Commission's interpretation unreasonably inflates the number of issues.

For a more detailed discussion and response from Tasmania Police on this issue, see page 40.

Tasmania Police did not provide a response to key finding 4.

Progress since the 2014 audit report

The Commission's 2014 audit report included four recommendations.⁴ Overall, the Commission commends Tasmania Police on the action it took to implement these recommendations. In particular, the Commission notes improvements in regard to:

- notifying complainants of determinations to sanction subject officers; and
- ensuring subject officers know which actions are sanctions, and which are professional development measures.

The Commission's 2014 audit report found that the most significant risk posed to the integrity of the Tasmania Police complaints system was the 'lack of a clear and adequate internal complaint handling policy and requisite guidelines'.⁵ Until the new Tasmania Police complaints management system is implemented – currently set for mid-2016 – that finding still stands.

Recommendations

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

- the future conduct of officers and the organisation as a whole;
- record keeping; and
- timeliness.

³ For the sake of brevity and clarity, the section of the Tasmania Police response setting out the Commission's definition of 'systemic/organisational' has been removed from the Tasmania Police response to this key finding. It is instead contained in the text at page 40 of this report.

⁴ Integrity Commission, *An audit of Tasmania Police complaints finalised in 2013*, Report No. 2 (2014) 3-5. There were no recommendations made in the Commission's 2013 audit report.

⁵ Ibid 12.

Recommendation 1

It is recommended that Tasmania Police incorporate into its complaints system a process whereby, if a decision is made to sanction a police officer, consideration is also given to implementing one or more professional development measures in relation to that officer.

Tasmania Police response

Tasmania Police agrees with this recommendation in principle and will refer this recommendation to the Graduated Management Model Review Project Team for consideration. In principle this recommendation has already been introduced by Tasmania Police but is not implemented as a mandatory requirement.

Recommendation 2

It is recommended that Tasmania Police introduce guidance about when actions taken in relation to subject officers should be listed on IAPro. This guidance may be included as part of the new internal complaints management policy scheduled to be introduced in mid-2016. In the opinion of the Commission, it would be preferable for all actions (including minor measures such as verbal guidance/advice) that are in any way related to the complaint, whether taken during or after the investigation, to be listed on IAPro.

Tasmania Police response

Tasmania Police agrees with this recommendation in principle and will refer this recommendation to the Graduated Management Model Review Project Team for consideration. In principle, this action has previously been implemented.

Tasmania Police provided additional detailed comment on this matter, which is set out and addressed by the Commission at page 23.

Recommendation 3

It is recommended that a mechanism be implemented at Professional Standards Command to ensure regular checks are performed to identify (and, where necessary, query) outstanding unresolved complaints.

Tasmania Police response

This recommendation is agreed and will be immediately implemented by Professional Standards.

Introduction

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',⁶ and the Commissioner is to provide reasonable assistance to the Commission 'to undertake a review or audit'.⁷ This report is about the Commission's third audit of complaints investigated and dealt with by Tasmania Police.

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; and encourage Tasmania Police to adopt 'good practice' in their management of complaints about misconduct. 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',⁸ but ultimately the organisation itself – and consequently the broader community.

Audit scope, objectives and criteria

At the commencement of each audit, the Commission drafts the audit's intended scope, objectives and 'criteria'.⁹ An 'opening interview' is then held with Tasmania Police to discuss these proposed audit parameters. Following the opening interview, Tasmania Police are provided with the finalised audit scope, objectives and criteria.

The scope of the 2015 audit was all complaints finalised by Tasmania Police in calendar year 2014. Each successive audit necessarily relates to matters finalised in the preceding year. However, for consistency, this report (which relates to complaints finalised in the 2014 calendar year) will be referred to as the '2015 audit', and the last Commission audit report (relating to matters finalised in the 2013 year) will be referred to as the '2014 audit'.

The objectives of the 2015 audit were to:

- A. identify the nature of misconduct complaints;
- B. examine the way the Commissioner of Police has dealt with complaints;
- C. examine whether systemic/organisational issues are being identified and dealt with; and
- D. assess complaint timeframes.

A total of 52 criteria, designed to provide answers to the four audit objectives, were applied to each audited complaint. Examples of the criteria included: 'What allegations are listed on IAPro?', and 'Did any other potential misconduct become evident during the course of dealing with the complaint?'

⁶ *IC Act* s 88(1)(c).

⁷ *Ibid* s 88(2)(a).

⁸ 'Subject officers' are police officers who are the subject of one or more allegations contained in a complaint.

⁹ 'Criteria' are the specific questions asked about each complaint – for instance, 'What were the allegations identified in this complaint?'

Number of complaints subject to audit in 2015

One-hundred and twelve complaints fell within the scope of this audit. For various reasons, the Commission was only able to audit 109 of those complaints.¹⁰ Those 109 complaints included:

- 96 Class 1 (less serious) complaints; and
- 13 Class 2 (more serious) complaints.

After the finalisation of fieldwork, an 'exit interview' to discuss the audit's preliminary findings was held with Tasmania Police on 10 August 2015.

Background – applicable legislation and policy

The manner in which Tasmania Police is to handle complaints about its members is determined primarily by *Police Service Act 2003* (Tas) ('PSA') Part 3 Division 2. Currently, complaints made under this division are investigated with a view to determining whether the member has breached the Tasmania Police Code of Conduct, or has committed a criminal or summary offence. The PSA also contains the Code of Conduct,¹¹ and provides for actions in relation to breaches of the Code of Conduct.¹²

The legislation is supported by internal Tasmania Police guidelines; the current internal complaints management policy is the 'Graduated Management Model' (GMM). The policy specifies that complaints are to be categorised as comprising allegations of Class 1 misconduct (less serious) or Class 2 misconduct (more serious).

In practice, Class 1 complaints are those which, even if proven, will only result in internal disciplinary measures (not dismissal).¹³ Class 2 complaints generally involve 'allegations of the commission of an offence or a crime by a police officer'.¹⁴ A complaint may shift between classes if an investigation reveals it is more or less serious than initially indicated.¹⁵ Class 2 complaints are usually handled by Professional Standards Command, while Class 1 complaints are usually handled by the relevant police district.

Each complaint has both a hard copy file and an electronic 'IAPro' record. IAPro is the electronic database used by Tasmania Police to manage complaints. IAPro is managed by Professional Standards Command, and there is also limited access to IAPro available to certain police in the districts (known as 'BlueTeam'). All hard copy complaint files are held at the office of Professional Standards Command.¹⁶

¹⁰ The remaining three complaints will be subject to ad hoc reviews by the Commission.

¹¹ PSA s 42.

¹² Ibid s 43.

¹³ 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.

¹⁴ Ibid.

¹⁵ Tasmania Police, *Graduated Management Model for Complaints Against Police Implementation Protocols* (2010) 5.

¹⁶ Until recently, only hard copy Class 2 complaint files were held at the office of Professional Standards Command, and Class 1 files were held in the relevant district or divisional office.

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.¹⁷ Professional Standards Command falls under ‘Other areas’. As Operations Support is smaller than the three geographic districts and therefore receives fewer complaints, for the purposes of this audit, the Commission has reported on Operations Support and Other areas as one district (called ‘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. Professional Standards can modify the outcome of Class 1 complaints, and is responsible for overall maintenance of IAPro records.

Complaint handling procedures under the PSA and the GMM

Complaints may be submitted to Tasmania Police in writing or ‘in a manner approved by the Commissioner’.¹⁸ Furthermore, under the Tasmania Police Manual, officers have a duty to accept complaints.¹⁹ 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’.²⁰

Registration of all complaints is a legislative requirement under *PSA* s 45, and currently this is deemed to be done when a complaint is logged on IAPro. 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. After registration, Professional Standards may also determine to dismiss the complaint because, for example, it is vexatious or trivial.²¹ Complaints may also be dismissed if they are not ‘made within six months after the conduct became known to the complainant’²² and there are no ‘special circumstances’.²³ There is no policy as to 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 assigned investigator then undertakes an investigation, unless the complainant and the subject officer/s are receptive to ‘conciliation’. Conciliation alleviates the 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 report²⁴ and make a ‘finding’ on each of the allegations. This report is generally sent to the district commander for approval, and then to Professional Standards. A complaint may contain more than one

¹⁷ ‘Other areas’ is not considered a district by Tasmania Police itself; the Commission is using this term for a collection of areas, for the sake of brevity.

¹⁸ *PSA* s 44(2)(a). See page 28 for a discussion about the acceptance of complaints by Tasmania Police.

¹⁹ Tasmania Police, *Tasmania Police Manual* (2014) [13.1.2].

²⁰ *Ibid* [13.1].

²¹ *PSA* s 46(2).

²² *Ibid* s 44(2)(b).

²³ *Ibid* s 44(3)(a).

²⁴ A report is usually completed for conciliated complaints as well.

allegation, and those allegations may also be against more than one officer. The extent of the investigation and the report is intended to be dependent on the severity and complexity of the allegations, and the potential outcomes.²⁵

Where allegations are found to be ‘sustained’,²⁶ 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 *PSA* 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*’. This notice outlines both the breach and the action to be taken.

Regardless of the finding, Tasmania Police may also determine that some form of professional development measure is warranted. This can include outcomes such as verbal guidance or training (which does not constitute a punitive outcome).

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 an offence 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,²⁷ and the GMM stipulates that the complainant is to be formally notified (usually in writing) of the outcome.²⁸ Notification to the complainant of the outcome of the complaint is not, however, a requirement under the *PSA* – unless punitive action is taken against the subject officer under *PSA* s 43(3).²⁹ 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.

Implementation of the outcomes of the joint review of the GMM

The GMM was introduced in 2010, and was ‘Tasmania Police’s first significant attempt to reposition the complaints system to align with, and incorporate, modern performance management procedures’.³⁰ In 2012, Tasmania Police invited the Commission to undertake a joint review of the GMM. The review was undertaken throughout 2013-14 and a final report, which recommended an overhaul of the GMM, was completed in July 2014. Tasmania Police have now established a steering committee and a project team to work towards implementation of a new complaints management system. Tasmania Police is aiming to have the new system in place on or around 1 July 2016.

The Commission’s 2014 audit report found that the most significant risk posed to the integrity of the Tasmania Police complaints system was the ‘lack of a clear and adequate internal

²⁵ *Graduated Management Model for Complaints Against Police Implementation protocols*, above n 15, 1-2.

²⁶ See page 15 for details about other findings that may be made.

²⁷ 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 any questions put to them, see *PSA* s 46(3)(a)(ii).

²⁸ *Graduated Management Model for Complaints Against Police Implementation protocols*, above n 15, 10.

²⁹ *PSA* s 47(3)(a); this legislative requirement does not extend to measures that are not listed under s 43(3).

³⁰ Integrity Commission and Tasmania Police, ‘Joint review of the Tasmania Police Graduated Management Model’ (Report, July 2014) 7.

complaint handling policy and requisite guidelines'.³¹ Until the new complaints management system is implemented, that finding still stands.

Progress on implementation of the 2014 audit report recommendations

In the 2014 audit of complaints finalised by Tasmania Police in calendar year 2013, the Commission made four recommendations.³² Overall, the Commission commends Tasmania Police on the action it took to implement the recommendations of the 2014 audit report.

2014 audit report 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 reports that this recommendation was implemented with the statewide rollout of IAPro access ('BlueTeam'),³³ and the associated training provided to officers in the districts and at the Tasmania Police Academy. Tasmania Police also reports that members are 'subject to disciplinary action or professional development measures if it is identified they failed to act upon receipt of complaints'.³⁴

The Commission is pleased to see the action taken in regard to this recommendation. However, the results of the 2015 audit indicate that there is still some way to go before these actions have any great practical effect on the management of complaints (see page 28, *Registration and acceptance of complaints*). The Commission therefore encourages Tasmania Police to continually review and assess its progress on implementing this recommendation.

2014 audit report 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').

³¹ *An audit of Tasmania Police complaints finalised in 2013*, above n 4, 12.

³² Ibid 3-5.

³³ Previous to mid-2014, only Professional Standards Command had access to IAPro.

³⁴ Email from Tasmania Police to Integrity Commission, 10 August 2015.

Tasmania Police reports that IAPro guidelines have now been developed and that specific instructions have been given to commanders, 'which has seen a substantial improvement in record management'. Further, Tasmania Police reports that quality assurance measures have been taken, and instructions have been given in regard to district registration of complaints.³⁵

As noted in the 2014 audit report, Tasmania Police have now discontinued the use of 'directives'.³⁶ Also as previously noted in that report, this outcome was not the aim of the Commission in making the recommendation about directives. The Commission is hopeful that the (consistent) use of directives will again be implemented in the future. Other than in regard to use of directives, the Commission is pleased to see the action taken in regard to this recommendation. The results of this audit indicate that there has been some initial progress made in regard to IAPro records; however, there is still room for improvement (see page 32, *Record keeping: IAPro*). The Commission therefore encourages Tasmania Police to continually review and assess its progress on implementing this recommendation.

2014 audit report 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*.

Tasmania Police reports that this recommendation has been implemented in full, and that '[a]dvice and guidance is now a professional development measure and applied consistently'.³⁷

The results of the 2015 audit indicate that there has indeed been substantial improvement in this area (see page 39, *2014 audit report Recommendation 3: Ensuring subject officers know which actions are sanctions, and which are professional development measures*). The Commission commends Tasmania Police for this result.

2014 audit report 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 reports that this recommendation has been implemented in full, and that '[q]uality assurance processes ensure complainants are notified accordingly'.³⁸

The results of the 2015 audit indicate that there has been improvement in this area (see page 38, *2014 audit report Recommendation 4: Notifying a complainant of a determination to sanction a subject officer*).

³⁵ Ibid.

³⁶ 'Directives' are the third level of categorisation of alleged misconduct on IAPro. For example, IAPro may list the following (with the text in bold being the 'directive'): 'Breach Code of Conduct – Fail to comply with order in the Police Manual – **Excessive force**'. The discontinuance of directives means that, at a statistical level, it is not possible to determine the specific nature of the alleged misconduct, given only broad categories are available. For more information, see page 12.

³⁷ Email from Tasmania Police to Integrity Commission, 10 August 2015.

³⁸ Ibid.

Findings

Objective A: Identify the nature of misconduct complaints

Nature of alleged misconduct – as listed on IAPro

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 documented in other sections of this report, these did not always align with the actual allegations contained in the complaint file and/or the original allegations made by the complainant.

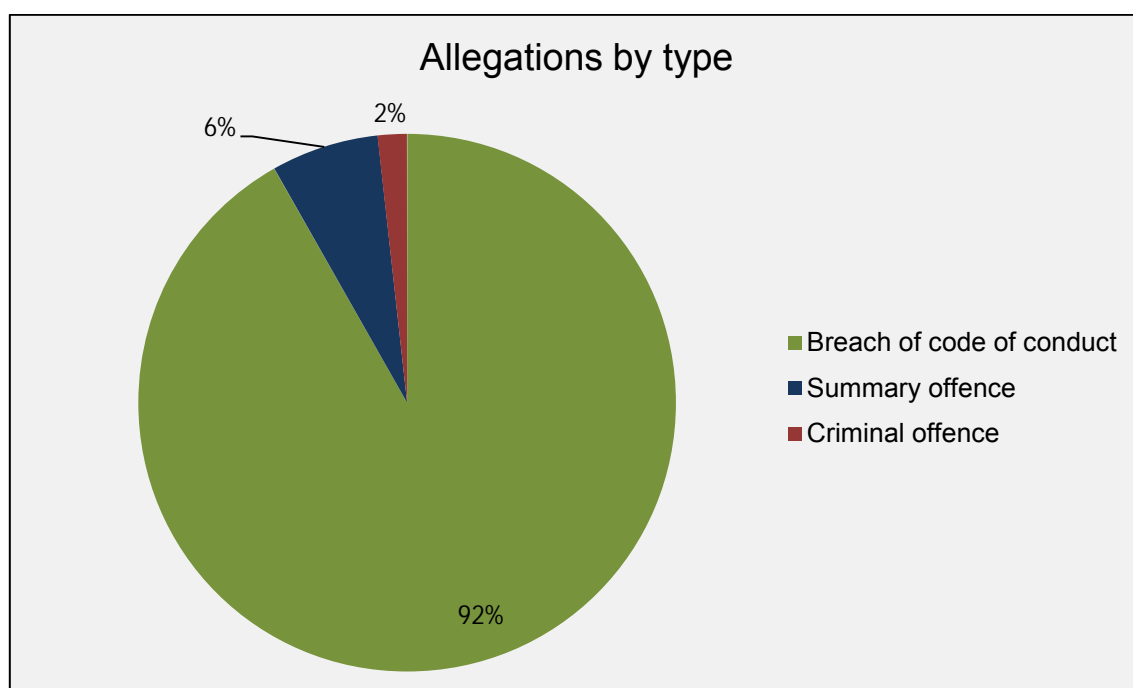
On IAPro, Tasmania Police divide allegations into three different types:

1. Breach Code of Conduct (the Code of Conduct is *PSA s 42*)
2. Summary (offence)
3. Criminal (offence – under the *Criminal Code Act 1924* (Tas)).

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).

For the 109 audited complaints, Tasmania Police had 341 allegations listed on IAPro. This represents a rise in the number of allegations listed on IAPro; in the 2014 audit, 271 allegations were listed on IAPro.



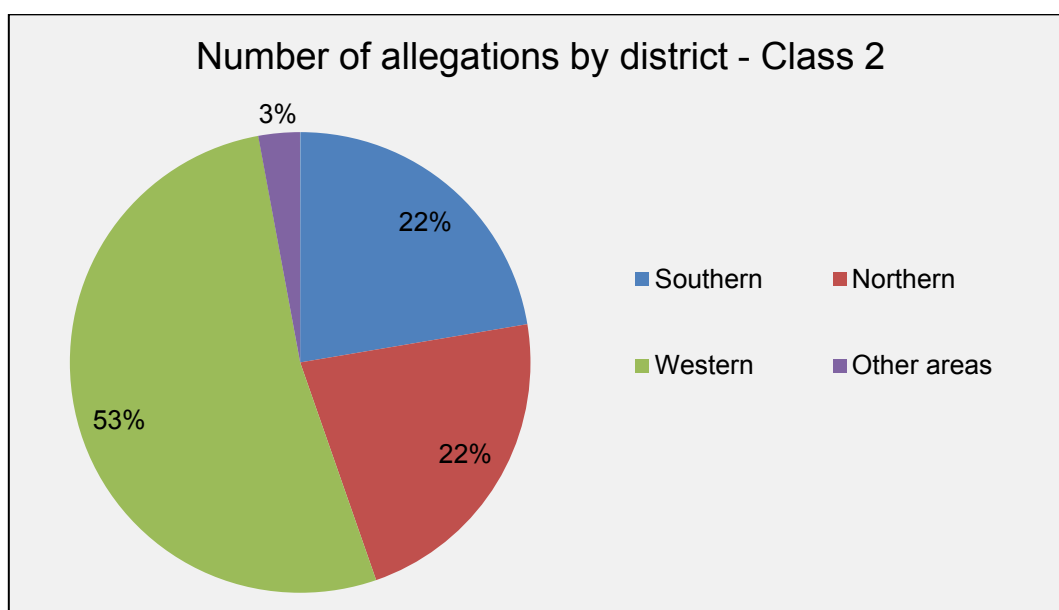
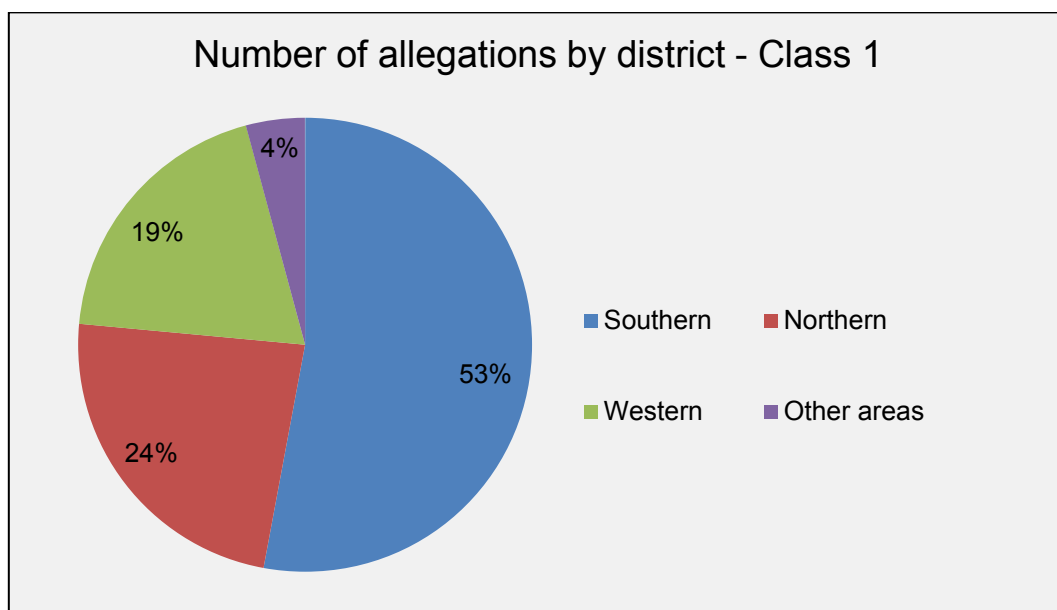
The 13 Class 2 complaints contained a total of 103 allegations (30% of total allegations), and the 96 Class 1 complaints contained a total of 238 allegations (70% of allegations).

Of the 238 allegations identified in Class 1 complaints, there were:

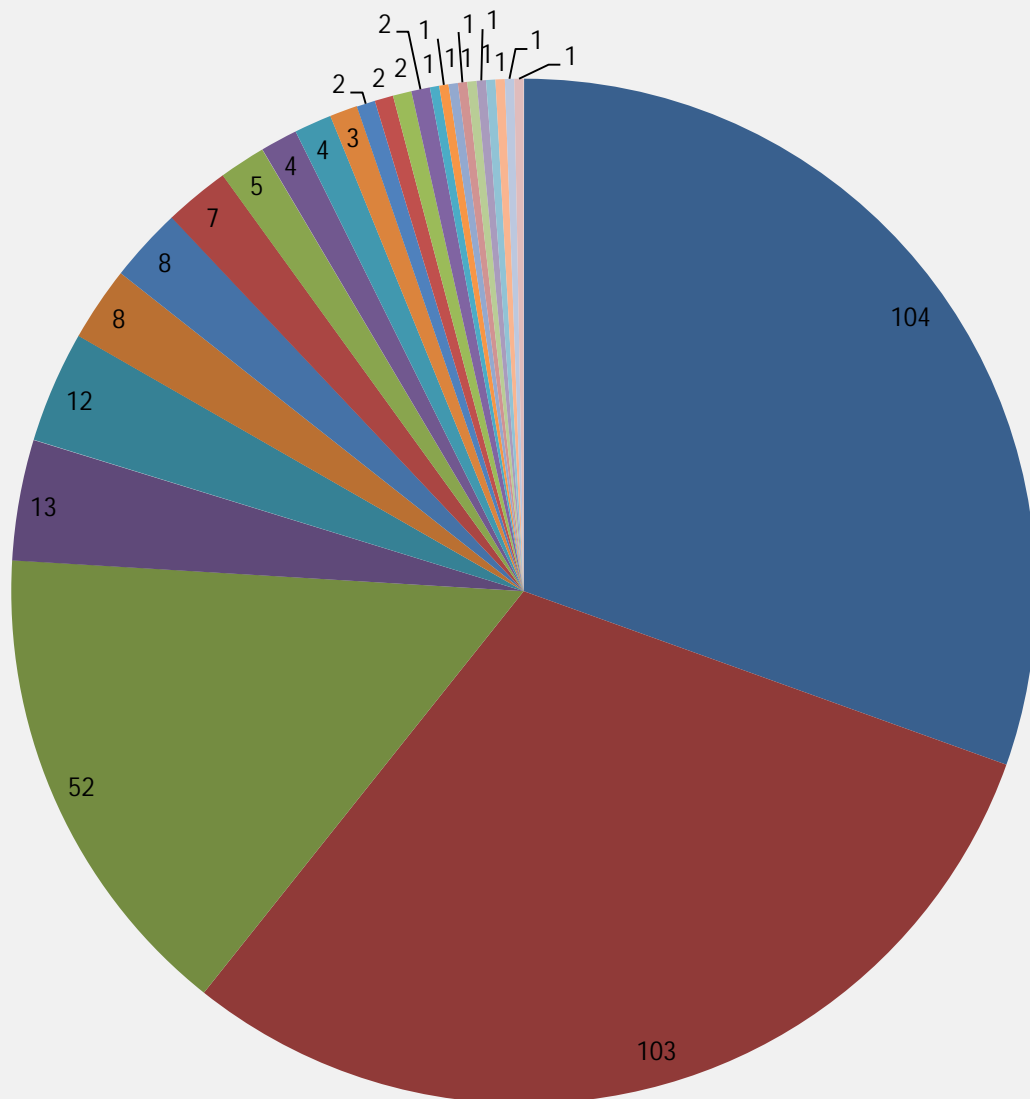
- 233 allegations of Breach Code of Conduct;
- 3 allegations of summary offences; and
- 2 allegations of criminal offences.

Of the 103 allegations identified in Class 2 complaints, there were:

- 80 allegations of Breach Code of Conduct;
- 19 allegations of summary offences; and
- 4 allegations of criminal offences.



Allegations by type (detailed)



- Bring discredit on the Service
- Fail to act with care and diligence
- Fail to comply with order in the Police Manual
- Assault (Police Offences Act)
- Provide false or misleading information
- Fail to behave with honesty and integrity
- Fail to comply with lawful direction/order
- Unlawful access to information
- Fail to disclose or avoid a conflict of interest
- Conduct prejudicial
- Improper use of authority
- Perverting justice
- Fail to maintain confidentiality
- Fail to use police resources properly
- Interfere with official records
- Stealing
- Stalking
- Dangerous driving
- Damaging computer data
- Drugs
- Driving under the influence
- Insert false information as data
- Littering
- Possess dangerous article
- Trespass
- Unauthorised access to computer

Findings – as listed on IAPro

Under the GMM policy, one of 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; and
- sustained: sufficient evidence exists to prove the complaint.

On IAPro, the outcome of allegations may also, among other things, be listed as 'withdrawn', 'conciliated', or 'dismissed'. The findings made for the 341 allegations listed on IAPro for the complaints audited this year were:

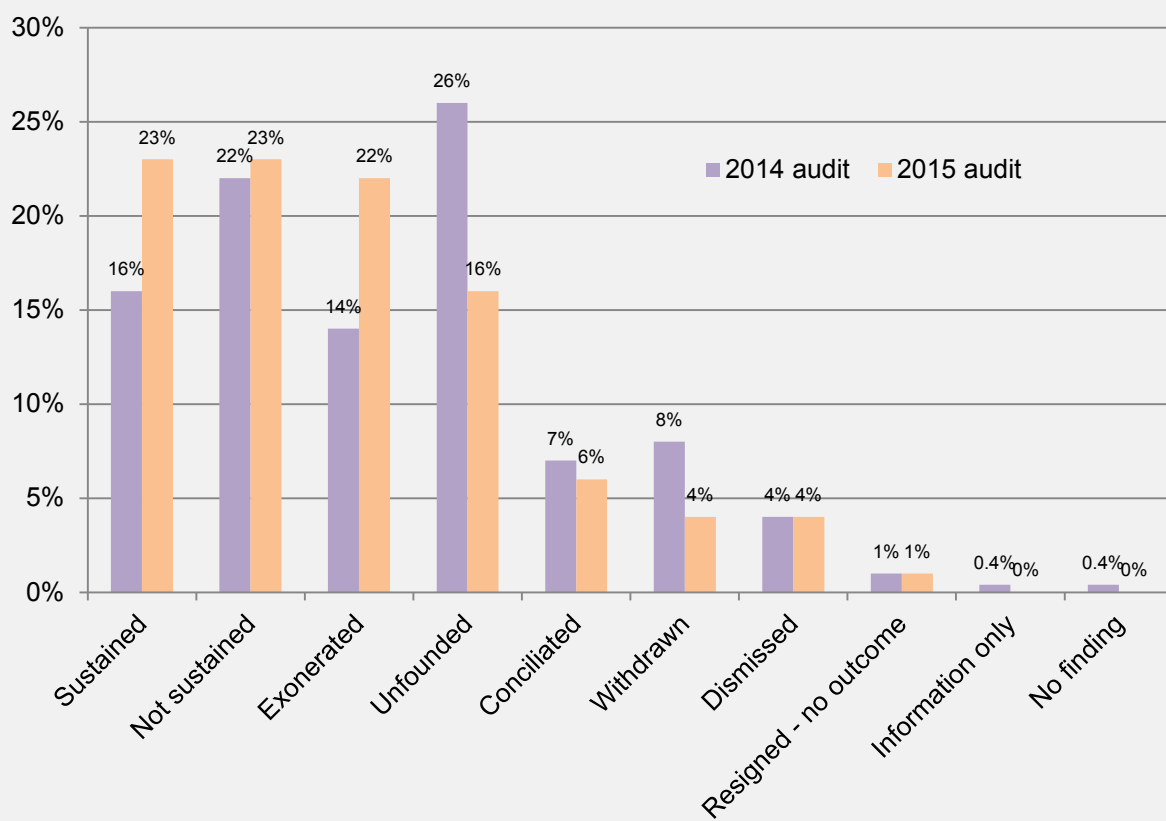
- not sustained: 79 allegations (23%)
- sustained: 78 allegations (23%)³⁹
- exonerated: 76 allegations (22%)
- unfounded: 56 allegations (16%)
- conciliated: 20 allegations (6%)
- withdrawn: 15 allegations (4%)
- dismissed: 15 allegations (4%)
- resigned – no outcome: 2 allegations (<1%).⁴⁰

No allegations in Class 2 complaints were conciliated or dismissed. The graph below shows a percentage comparison of the findings listed on IAPro for the complaints audited this year, in comparison with the percentages from the 2014 audit.

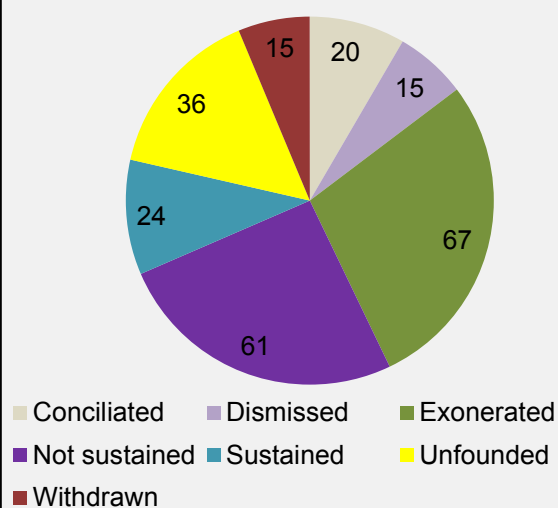
³⁹ Note that 22 of these 78 sustained allegations were made against one subject officer in one complaint.

⁴⁰ Most percentages given in this report have been rounded to a whole number, so will not necessarily total 100%.

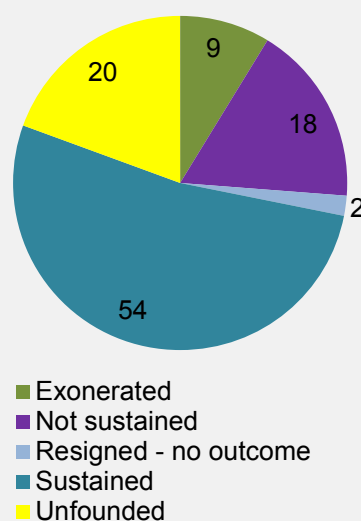
Findings for allegations in complaints



Findings for allegations in Class 1 complaints



Findings for allegations in Class 2 complaints

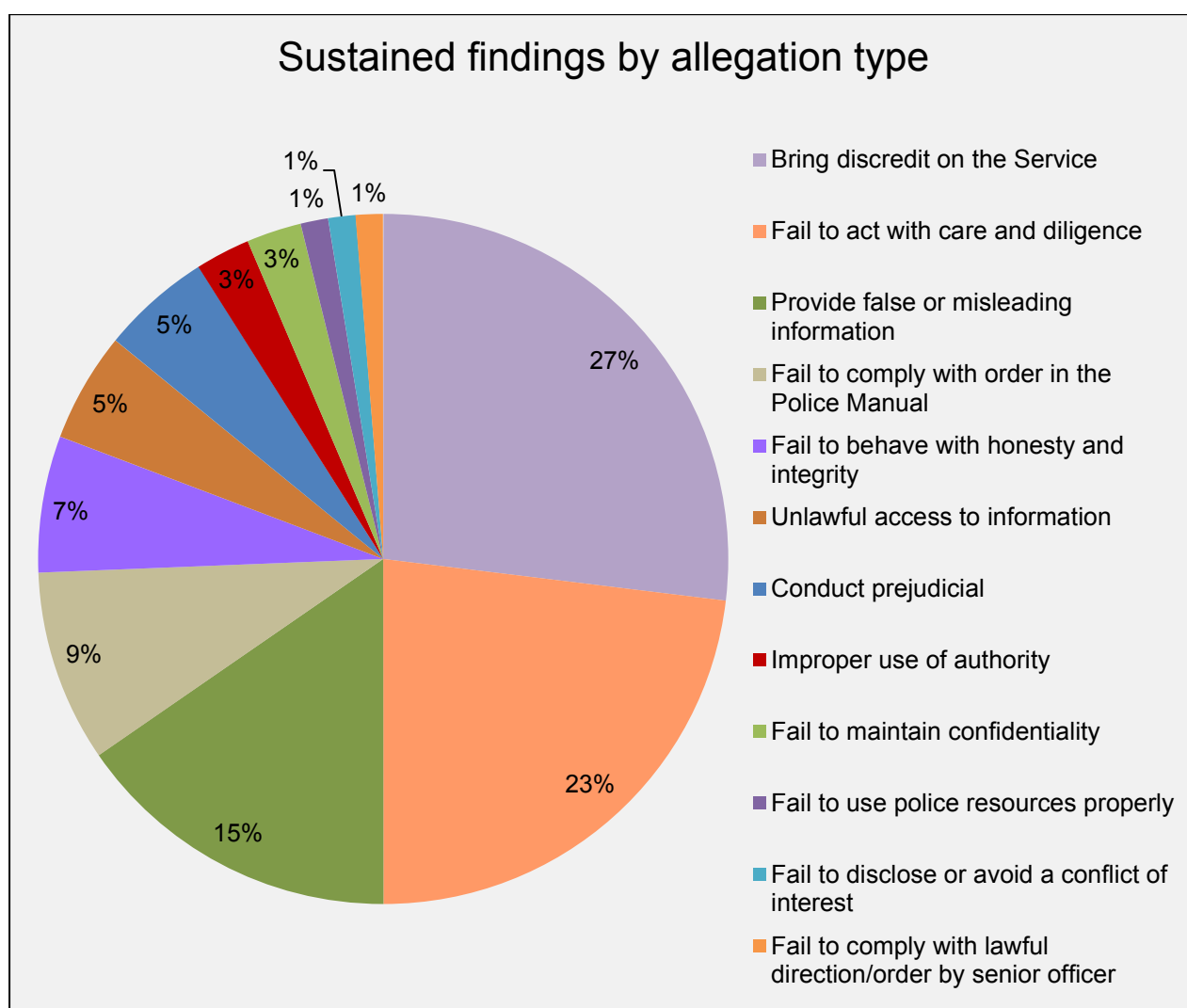


Sustained allegations

The percentage of sustained allegations in Class 2 complaints (52%)⁴¹ was significantly higher than in Class 1 complaints (10%). This reflects the relative percentages from the previous year's (2014) audit, which were 41% of Class 2 allegations sustained, compared to 9% of Class 1 allegations.

Unlike in previous years, there were no sustained summary or criminal offences this year, although in one complaint the subject officer resigned and was subsequently prosecuted.⁴² Twenty-one complaints had one or more sustained finding (19%).

The chart below shows the nature of the 78 allegations that were found to be sustained in complaints finalised in 2014.



⁴¹ Note that 22 of these 78 sustained allegations were made against one subject officer in one Class 2 complaint.

⁴² The matter is still before the courts. There was one other complaint in which a subject officer was charged, but the charges were dismissed and no misconduct findings were sustained.

Internally raised complaints

A higher proportion of internally raised complaints can be a sign of a healthy organisation and complaints system. It shows that officers are aware of, respect, comply with, and promote the organisation's values, ethics and complaints system. A higher number of internal complaints increases the probability that serious and systemic misconduct will be identified.

Sixteen of the 109 audited complaints (15%) were determined to be 'internally raised'. In 2014, 9% of the complaints were internally raised.

Six of the 16 internally raised complaints finalised in 2014 were classified as Class 2. This means that 46% of the total 13 Class 2 complaints were internally generated.

Northern and Southern districts each had five internally raised matters, and Western and Other areas each had three internally raised matters.

Internally raised complaints took an average of 199 days to resolve (from receipt to finalisation); externally raised complaints took an average of 122 days to resolve.

At a Joint Standing Committee on Integrity hearing on 22 October 2014, Tasmania Police gave evidence that '[u]sually 30 to 40 per cent of the complaints we investigate each year are internally generated matters that we inquire into'.⁴³ An academic paper released in 2011 also suggests that there were – at least at one stage – a higher number of internal complaints being dealt with under the GMM.⁴⁴

While the Tasmania Police statement appears to be accurate in regard to Class 2 complaints, it is not accurate in regard to Class 1 complaints. It appears from the audit results that significantly fewer complaints are internally generated than has previously been assumed.

Summary of Tasmania Police response

Tasmania Police indicated that the evidence it gave to the Joint Standing Committee was in reference to Class 2 complaints only.

Substantiation rates in internally raised complaints

There were a total of 46 allegations listed on IAPro for the 16 internally raised complaints:

- 40 breaches of the Code of Conduct; and
- six summary offences (one 'DUI',⁴⁵ one dangerous driving, and four assaults under the *Police Offences Act 1935* (Tas)).

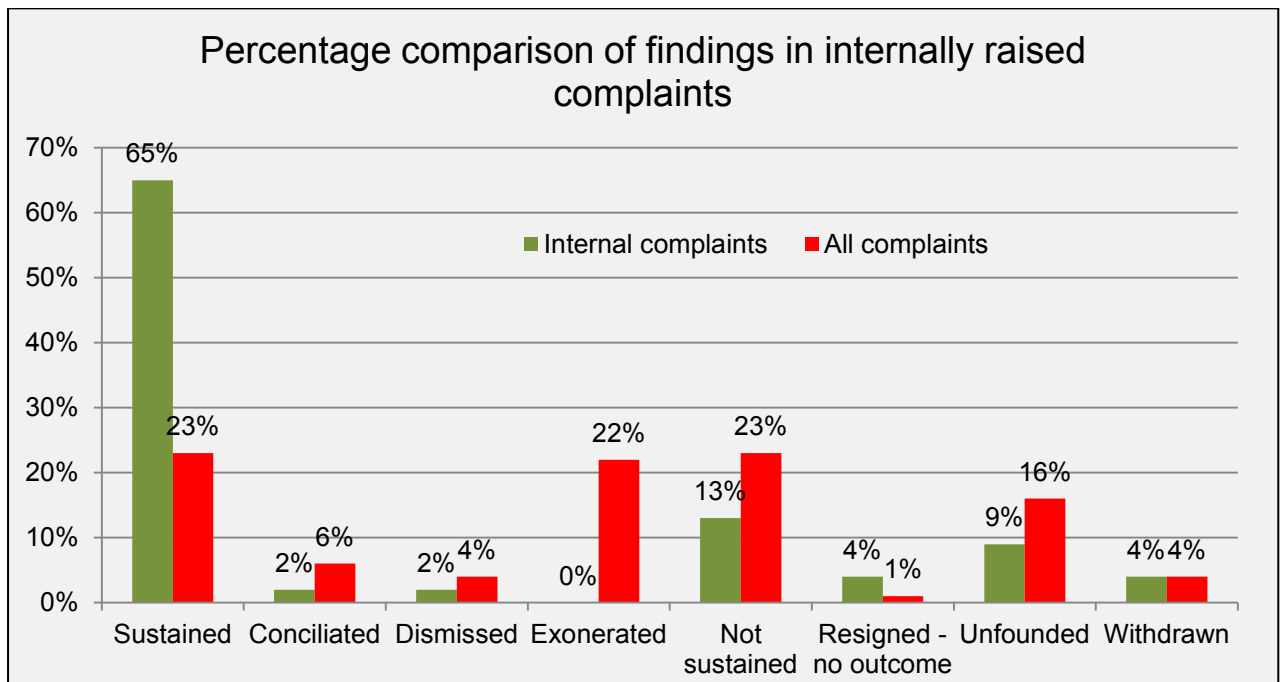
Nine of the 21 complaints with one or more sustained findings were generated from internal complaints. This means that although only 15% of complaints were internally generated, 43% of complaints in which sustained findings were made were internally generated. As was

⁴³ Evidence to Joint Standing Committee on Integrity, Parliament of Tasmania, Hobart, 22 October 2014, 67 (Scott Tilyard, Deputy Commissioner of Police).

⁴⁴ 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.

⁴⁵ Driving under the influence.

found in the 2014 audit, overall it appears that internally raised complaints experience higher substantiation rates.



Actions taken in relation to subject officers – as listed on IAPro

Actions taken in relation to subject officers can be punitive (generally under *PSA s 43(3)*), or involve some form of professional development or other measure (e.g. verbal guidance, training). It can also be a combination of these actions. Actions can be taken regardless of the complaint findings, although punitive *PSA s 43(3)* actions can only be taken in relation to sustained findings.

Except where stated otherwise, the actions referred to below are those listed by Tasmania Police on IAPro.

Punitive action under the Police Service Act

There were no employment terminations arising from complaints this year. However, four subject officers (from four different complaints) resigned following a complaint, but before the complaint was finalised by Tasmania Police. Two of those officers resigned after being issued a 'notice to show cause' why their appointment should not be terminated. In a total of three of those four complaints, some action had been taken in relation to the officer prior to their resignation.

Nineteen instances of *PSA s 43(3)* action were taken against a total of 15 subject officers in 14 of the audited complaints. Five of the 14 complaints in which punitive action was taken were Class 2.

The *PSA s 43(3)* actions listed on IAPro included:

- 12 counsellings under *PSA s 43(3)(a)* (although there was an additional counselling given to a subject officer that was not listed on IAPro);
- four reprimands under *PSA s 43(3)(b)*;
- one transfer under *PSA s 43(3)(f)*;
- one probation under *PSA s 43(3)(g)*; and
- one reduction in pay band under *PSA s 43(3)(d)*.

Ten of these 19 actions were taken in complaints that had been internally generated.

Three officers had more than one *PSA s 43(3)* action taken against them. One officer was given a reprimand, a reduction in their pay band, was transferred, and was placed on probation (all deriving from one complaint). Another officer had one reprimand and one counselling, resulting from two separate complaints. The third officer had two counsellings resulting from two separate complaints.

Unless their employment is terminated or they resign, officers who are subject to sanctions should also benefit from some kind of professional development measure to improve their future conduct (e.g. remedial training or mentoring). According to IAPro, only one of these 15 officers was also the subject of one or more concurrent non-*PSA s 43(3)* actions. That additional non-*PSA s 43(3)* action was actually a prohibition from receiving higher duties allowance, which is not a professional development measure. However, one of the officers who received a counselling did receive some verbal guidance in addition to the counselling, but that action was not listed on IAPro. It does not appear that Tasmania Police are providing professional development actions in relation to sanctioned officers.

Tasmania Police response

Tasmania Police disagrees [that it is not providing professional development actions in relation to sanctioned officers]. Tasmania Police considers the imposition of professional development measures with each sustained finding against an officer but does not apply mandatory professional development measures, due to consideration of matters such as: varying circumstances, mitigation, acceptance of accountability and recognition of errors of judgment by the involved officers.

Also, there are differences in views between the Commission and Tasmania Police regarding 'professional development measures' and 'punitive measures', and the Commission does not recognise some measures as professional development; one example being reassignment of an officer to particular duties to provide better understanding of the issues at hand. On many occasions professional development measures in some way are applied.

Regarding the first part of the Tasmania Police response, records (on IAPro or otherwise) do not support this statement. The Commission was not recommending that professional development measures be mandatory, but that they be strongly considered in all cases in which officers are sanctioned. The Commission also notes that the final report of the joint GMM review proposed that, where a sanction is imposed, it be mandatory to enact some kind of concurrent professional development measure.⁴⁶

In regard to the second part of the Tasmania Police response, it should be noted that reassigning 'the duties of the police officer' can be a measure taken under *PSA s 43(3)*.⁴⁷ Where reassignment is taken under *PSA s 43(3)*, the Commission's assessment is that many officers may view this as a punitive measure (a sanction). In other instances, where reassignment is not taken under *PSA s 43(3)*, the Commission agrees that it generally should not be regarded as a punitive measure. The Commission notes that Tasmania Police records examined in the audit do not support the statement that, where sanctions are given, professional development measures are implemented 'on many occasions'.

Recommendation 1

It is recommended that Tasmania Police incorporate into its complaints system a process whereby, if a decision is made to sanction a police officer, consideration is also given to implementing one or more professional development measures in relation to that officer.

Tasmania Police response

Tasmania Police agrees with this recommendation in principle and will refer it to the Graduated Management Model Review Project Team for consideration. In principle this recommendation has already largely been introduced by Tasmania Police but is not implemented as a mandatory requirement.

⁴⁶ Joint review of the Tasmania Police Graduated Management Model, above n 30, 79–80.

⁴⁷ Specifically, *PSA s 43(3)(e)*.

Non-punitive and other actions

There were a total of 46 other (i.e. non-PSA s 43(3)) actions listed on IAPro as being taken in regard to 40 officers across 32 complaints. These actions included:

- 31 instances of verbal guidance/direction;
- five instances of training;⁴⁸
- three suspensions;
- two 'show cause' notices (this means a notice was issued to the subject officer asking them to explain why their employment should not be terminated – both of these officers resigned);
- two instances of an officer being stood down from duty;
- one instance of targeted alcohol testing;
- one direction (a written order from a senior officer to do/refrain from doing something); and
- one prohibition from higher duties allowance (HDA).

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 do not have a policy which specifies when verbal guidance reaches a threshold sufficient to be listed on IAPro. As a result, the Commission noted that there was some inconsistency among the complaints in terms of whether verbal guidance action was listed on IAPro.

Twenty-four of the 31 instances of verbal guidance/direction were used in Class 1 complaints. Of these:

- nine were taken in relation to sustained allegations;
- eight were taken in relation to not sustained allegations;
- seven were taken in relation to conciliated allegations;
- four were taken as an 'ancillary outcome' to the complaint;
- two were taken in relation to unfounded allegations; and
- one was taken in relation to a withdrawn allegation.

All instances of training action were used in Class 1 complaints. None of the instances of training were used in relation to officers with sustained findings against them. As noted above, the Commission is of the opinion that sanctions should, where possible, be imposed concurrently with one or more professional development measures.

Correlation with sustained findings

Thirty-seven of the total 65 punitive and non-punitive actions taken (and listed on IAPro) were taken in relation to the officers with sustained findings made against them, either before or after that finding was made. Actions taken before a finding is made may include, for example, suspensions from duty, reassignment, or a 'stand down' from duty.

There were 26 officers with one or more sustained findings made against them. Every officer with a sustained finding against them had an action taken in relation to their conduct. Four of

⁴⁸ Note that the Commission assessed that one of these instance of training was actually verbal guidance, and that another was actually an instance of compulsory training that all officers receive – it was not given specifically to the officer because of the complaint (see **Case study 2**, page 57).

these 26 officers were the subject of more than one action; 10 of the officers received verbal guidance only.

Three officers had sustained findings made against them in two separate complaints. One of those officers received a counselling for one matter, and a reprimand for the other; another officer received a counselling in one complaint, and verbal guidance in the other; the third officer received a counselling in both complaints.

There were a number of other actions taken in relation to these officers as a result of the sustained findings that were not listed on IAPro, including:

- two instances of verbal guidance/direction;
- one counselling; and
- one suspension of a planned secondment, and restriction from secondment for six months (for one officer).⁴⁹

It is not clear why these actions were not listed on IAPro. There were also a number of other actions taken in relation to these officers prior to the sustained findings being made that were not listed on IAPro, including:

- one removed from operational duties and one removed from operational duties and training in a specialised police unit;
- two stand downs; and
- one police family violence order (PFVO).

It appeared that these actions may have been omitted from IAPro because the action had been taken before the finalisation of the complaint (i.e. before the sustained finding was made). This record keeping is inconsistent with other complaints in which actions taken prior to finalisation of the complaint were listed on IAPro.

Recommendation 2

It is recommended that Tasmania Police introduce guidance about when actions taken in relation to subject officers should be listed on IAPro. This guidance may be included as part of the new internal complaints management policy scheduled to be introduced in mid-2016. In the opinion of the Commission, it would be preferable for all actions (including minor measures such as verbal guidance/advice) that are in any way related to the complaint, whether taken during or after the investigation, to be listed on IAPro.

Summary of Tasmania Police response

The Tasmania Police response to this section of the Commission's report and recommendation was complex and related to record keeping on IAPro. In regard to the recommendation, Tasmania Police stated:

Tasmania Police agrees with this recommendation in principle and will refer this recommendation to the Graduated Management Model Review Project Team for consideration. In principle, this action has previously been implemented.

⁴⁹ Tasmania Police have advised that the omission of this suspension and restriction from secondment from IAPro was detected as part of a quality assurance process, and that it has now been listed on IAPro.

Tasmania Police, however, states that the examples provided by the Commission do not adequately support the findings and this recommendation. Tasmania Police points out, for clarity of this recommendation, reference to 'Actions' in relation to conduct means those taken pursuant to s 43 of the Police Service Act. Advice and guidance are not 'Actions' under the Act but are recorded as 'Professional Development measures' and may be applied whether a conduct allegation is involved/sustained or not. On that basis, the method of recording on IAPro may differ if it is disassociated with a sustained Code of Conduct breach.

The following are excerpts⁵⁰ from the Tasmania Police response in regard to the broader record keeping issues supporting this recommendation:

As previously mentioned, the position of Tasmania Police is if the guidance is associated with an action pursuant to s 43 of the [Police Service] Act, it should be recorded with the action taken. If it is disassociated from a sustained allegation, it may be recorded in a different manner and not necessarily linked to a sustained allegation.

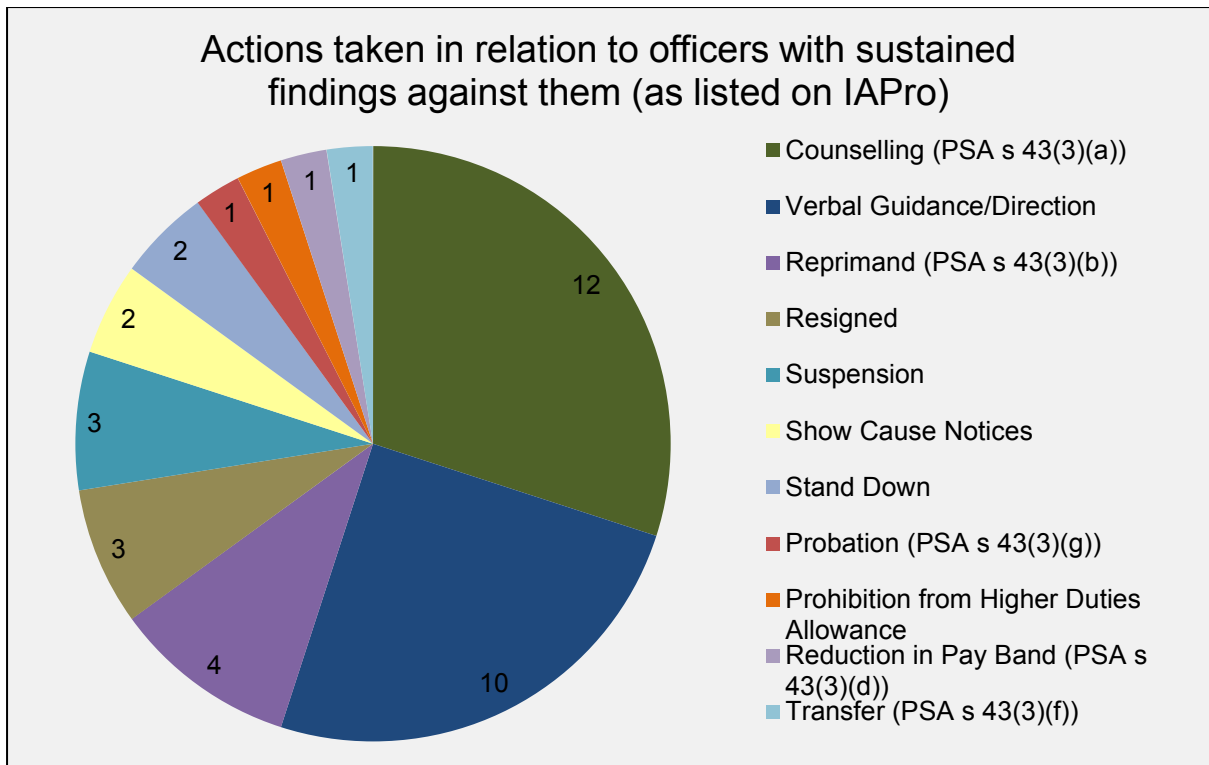
...

Stand downs are not an action taken pursuant to s 43 of the [Police Service] Act. They are an interim measure applied pending finalisation of an investigation and are applicable for a maximum of seven days following which the officer must be suspended or returned to duty.

Given the Tasmania Police response above, it is necessary to clarify the use of the word 'actions' in this report. In this report – and as previously agreed with Tasmania Police – the word 'actions' refers to all measures that may be taken in relation to a subject officer. This includes punitive and non-punitive measures, professional development measures, and PSA s 43(3) actions. 'Actions' also includes all measures taken before and after the finalisation of a matter. This accords with the Commission's use of the word in the 2014 audit report.

This section of the report illustrates that Tasmania Police use of IAPro to record actions (of any type) is inconsistent, and points out those inconsistencies. There are good practice ways in which IAPro could be managed (e.g. by listing all actions taken on IAPro); however, the Commission is drawing attention to the current inconsistencies and apparent lack of policy in this area, rather than explicitly recommending that Tasmania Police tackle the issue in any prescribed manner.

⁵⁰ The sections of the Tasmania Police response addressing specific complaints have not been reproduced in this report. The Commission responded directly to Tasmania Police about these sections of its response.



**There were also two additional instances of verbal guidance, one additional counselling, and one suspension of a planned secondment and restriction from secondment for six months (for one officer) taken in relation to subject officers as a result of sustained findings made against them; these actions were not listed on IAPro. There were two additional stand downs, one officer removed from operational duties and one officer removed from operational duties and training in a specialised police unit, and one police family violence order that were not listed on IAPro and which were taken in relation to officers prior to the sustained findings being made.*

Referring matters to the Director of Public Prosecutions (DPP)

For minor complaints and customer service-type problems, the Commission considers it appropriate for complaints to be handled in a performance management manner by those with immediate supervisory responsibility for the employee. However, as the severity of the alleged conduct increases, so does the need for independent review and oversight of the manner in which the matter was handled.

Some complaints made to Tasmania Police allege potentially criminal conduct or the commission of offences on the part of police officers. As Tasmania Police is the body responsible for investigating crime, it is therefore responsible for investigating allegations of criminal conduct against its own members. In order to safeguard the actual and perceived independence and integrity of this process, it is therefore good practice for Tasmania Police to refer apparently legitimate complaints of this nature to the DPP for independent review of whether charges should in fact be laid. The value of this practice has been acknowledged by Tasmania Police (see the quote below).

In three complaints, each involving a different police officer, Tasmania Police considered charging the subject officer and sent the file to the DPP for consideration. The Commission was pleased to see that these three complaints were reviewed by the DPP.

The good practice standard met by Tasmania Police in dealing with one of these complaints is discussed in **Case study 4** on page 62. In the other two complaints, the subject officers were charged with various offences. In one of the complaints, all the charges were dismissed. Once again in accordance with good practice, Tasmania Police reviewed the file to see if there were any sustained Code of Conduct breaches; none were found. In the final complaint, the subject officer resigned and the matter is still before the court.

In one unfounded complaint, Tasmania Police charged the complainant with making a false report to police, but eventually discontinued the prosecution.

Complaints which should have been reviewed by the DPP

Two complaints that were not sent to the DPP should, in the opinion of the Commission, have been sent to the DPP for independent review. The Commission considered that these complaints involved either unambiguous instances of criminal conduct/offences,⁵¹ or alleged serious misconduct of a nature that warranted independent review (see **Case study 1**, page 53).

Tasmania Police response

Tasmania Police states that in all cases of potential criminal misconduct consultation with the Principal [L]egal Officer and consideration of subsequent advice occurs. During the [audit] Exit Interview, this issue was discussed and the Commission committed to reviewing these two matters to determine if advice was taken from the Principal Legal Officer.

In the first example provided in support of this statement, the [Tasmania Police] assessment was that there was insufficient evidence to establish a prima facie case against the constable in consideration of the application of the criminal standard of proof. Tasmania Police states there is a practice of consulting with the Principal Legal Officer in making a

⁵¹ Stealing handcuffs and capsicum spray from Tasmania Police, and unauthorised access to a computer.

determination regarding potential criminal conduct and these comments should reflect the necessity for the criminal standard of 'beyond reasonable doubt' to be established in relation to potential criminal misconduct as compared to the disciplinary (civil) standard of proof 'on the balance of probabilities'. It is acknowledged [by Tasmania Police] that the [Tasmania Police] records do not clearly reflect that legal advice was taken.

*In the second example [**Case study 1**, page 53], the subject person [complainant] alleged during court proceedings that [they] had been assaulted during [the] police interview, footage was available of the alleged conduct, the alleged conduct involved the subject person being physically restrained when [they] attempted to leave the room, the complainant declined to speak with police and advice was taken from the Principal Legal Officer (reflected in the Running Sheet).*

The Commission's view is that, while there is no issue with Tasmania Police referring matters to its Principal Legal Officer for advice, certain cases may require the independent review of the DPP. The benefits of this practice have previously been acknowledged publicly by Tasmania Police:

... [W]hen there is an allegation that a police officer may have committed an offence, and if the investigation indicates that may have even been the case, the file is referred to the Office of the Director of Public Prosecutions for independent review. The DPP provides advice as to whether or not the police officer should be prosecuted.⁵²

In regard to the first example referred to in the Tasmania Police response, the file indicates that the then Professional Standards Commander assessed that 'the available evidence is not sufficient to warrant criminal prosecution', but that even if 'that assessment were to be incorrect ... prosecution would not be warranted in view of the disciplinary sanctions potentially available and the desirability of matters being collectively dealt with through this process'. Given that this subject officer subsequently resigned and thus was not amenable to disciplinary measures, the basis for that 'desirability' is not immediately obvious. The second example, **Case study 1**, is discussed in the *Case studies* chapter of this report (page 53).

⁵² Evidence to Joint Standing Committee on Integrity, Parliament of Tasmania, Hobart, 22 October 2014, 68 (Scott Tilyard, Deputy Commissioner of Police).

Objective B: Examine the way the Commissioner of Police has dealt with complaints

Registration and acceptance of complaints

Registration of complaints is a legislative requirement under *PSA* s 45(1). Further, the Tasmania Police Manual places individual police officers under a duty to accept complaints and to deal with them in accordance with set protocols.⁵³

In 17 of the 109 audited complaints (16%), it was clear that the complainant had previously attempted to lodge a complaint, but had been unsuccessful in doing so. In 14 of those complaints (13% of all complaints), there was no recognition at any stage of the complaint process that there had been a failure to accept a complaint. This issue was identified as a problem in the 2014 audit, and may be wider than the complaints identified by this audit as the Commission only has access to complaints that are eventually registered.

A number of these complaints involved an apparently intoxicated person who had been arrested and who subsequently – while in custody – made an allegation of excessive force. Police at the time had failed to accept the complaint or take any action. **Case study 4** (page 62) is one such example: the complaint investigation uncovered that police had failed to accept a complaint and dealt with that failure as misconduct. Comparative complaints were not, however, dealt with in the same way.

It is imperative that Tasmania Police ensure its officers are aware of their obligation to act on complaints. Recommendation 1 of the Commission's 2014 audit report was made in response to this issue, and the Commission urges Tasmania Police to continue reviewing and monitoring its progress in implementing that recommendation.

Excerpts⁵⁴ of Tasmania Police response

Tasmania Police and the [Commission] do not fully agree on the point and manner in which a complaint is received. Pursuant to s 44(2)(a) of the Police Service Act 2003, a complaint must be submitted in writing before it is accepted – similar to the legislated requirements of the Integrity [Commission] Act 2009 relating to complaints lodged with the Commission.

On a case by case basis, the Commissioner (delegated to Commanders) may receive a complaint in another manner. The [Commission] has misinterpreted a flow chart (Annexure D – Recording Process and Management of Documentation) within the Graduated Management Model (GMM) as a general approval by the Commissioner of manners in which a complaint may be received. The difference in interpretation has been identified to the Commission.

...

Tasmania Police applies the practice of requiring a written complaint pursuant to s 44(2)(a) of the PSA or in another manner on a case by case basis determined by a Commander or above (delegated) and this approach is applied consistently.

⁵³ *Tasmania Police Manual*, above n 19, [13.1.2].

⁵⁴ Some of this Tasmania Police comment was included in other sections of the report. The Commission has only replicated Tasmania Police comments once within this report.

The Commission notes the Tasmania Police response. In the opinion of the Commission, however, Tasmania Police practice and policy on this issue is not consistent. *PSA* s 44(2)(a) states that a complaint 'must be made in writing **or in a manner approved by the Commissioner**'. There are several elements of Tasmania Police policy that suggest that – at least for any officer below commander rank – members are under a duty to accept complaints that are made in manners other than writing.

First, the GMM policy does not state that complaints must be made in writing. Indeed, Annexure 'D' of the GMM policy consists of a flow chart with a box titled 'complaint received', which is linked to a box which states 'via letter, IIU⁵⁵/District referral/Email/Walk ins/Phone/Interview/DCOP⁵⁶/Integrity Commission/Ombudsman/DPP/Other LEA⁵⁷'.

Second, an order in the Tasmania Police Manual states, 'A member, who **becomes aware** of another member committing a breach of the Code of Conduct, or an offence or crime, must report the matter immediately to a senior officer.'⁵⁸

Third, clause 13.1.2 of the Tasmania Police Manual is titled 'Duties of members receiving a complaint against police'. The clause begins with the sentence '[m]embers receiving a complaint against police, **whether by telephone or otherwise**', and then lists the duties of members receiving complaints. As far as the Commission is aware, there is no mention anywhere in the Tasmania Police Manual of complaints having to be made in writing.

Fourth, the Commission worked closely with Tasmania Police on the joint GMM review, and has also now completed three audits of complaints against police. This is the first occasion on which Tasmania Police has taken this position about complaints having to be made in writing. Recommendation 34 of the joint GMM review, which concerned accessibility for complainants, noted that complainants should be better informed of the 'wide range of complaint submission methods available and how to access them'.⁵⁹ In the 2014 audit report, the Commission stated:

*Complaints may be submitted to Tasmania Police by many means, including in writing via email or letter, and in person at a police station.*⁶⁰

Tasmania Police did not correct the above statement at the time – in fact, its comment on the statement was to add more methods in which complaints may be submitted. A similar statement was also made by the Commission in the 2013 audit report, without comment or correction from Tasmania Police.⁶¹ Moreover, the formal Tasmania Police response to the 2014 audit report stated, '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.'⁶²

⁵⁵ Internal Investigations Unit.

⁵⁶ Deputy Commissioner of Police.

⁵⁷ Law enforcement agency.

⁵⁸ The Commission acknowledges that not all complaints involve allegations of misconduct, a crime, or an offence.

⁵⁹ Joint review of the Tasmania Police Graduated Management Model, above n 30, 129.

⁶⁰ *An audit of Tasmania Police complaints finalised in 2013*, above n 4, 9.

⁶¹ Integrity Commission, *An audit of Tasmania Police complaints finalised in 2012*, Report No. 2 (2013) 3.

⁶² *An audit of Tasmania Police complaints finalised in 2013*, above n 4, 71.

Recommendation 1 of the 2014 audit report also recommended, in part, that ‘Tasmania Police institute an internal program to ensure that members are aware: that they are under a duty to accept complaints; [and] that Tasmania Police is under a legislative duty to register complaints ...’ In responding to this recommendation there was no clarifying statement from Tasmania Police that all such complaints must be in writing.

Fifth, Tasmania Police has previously given evidence to a parliamentary committee that (emphasis added):

*[i]f you are a constable who gets a **telephone call** from someone who says I am not happy because a police officer was rude to me, if you do not document that and put it into our complaint system then you can be subject to disciplinary action yourself. I cannot speak for other agencies but we are very rigorous in enforcing that compliance with our protocols around taking complaints and investigating matters.⁶³*

Sixth, while practice is inconsistent, Tasmania Police does sometimes make sustained findings against, and sanction, police officers for failing to take a non-written complaint. An example of this is contained in **Case study 4** (page 62) of this report. If police are not under a duty to take a complaint that is not in writing, there appears to be no basis for such findings or sanctions.

On the other hand, the requirement that complaints must be made in writing or in a manner approved by the Commissioner is set out in the *PSA*. The Commission is not aware of any explicit policy statement from the Commissioner that he has approved for complaints to be submitted in manners other than writing.

Additionally, the Tasmania Police website states:

Tasmania Police will investigate complaints in accordance with the Act, which stipulates that all complaints must be in writing, and made within six months after the conduct became known to the complainant.

As the Commission has documented in both this report and the 2014 audit report, Tasmania Police practice in regard to acceptance of complaints (in writing or otherwise) is inconsistent. It is fundamental to good complaint handling practice to have a clear, unambiguous and consistently applied policy on the submission of complaints. As it stands, Tasmania Police policy and practice is unfair to complainants, who may have their complaint rejected on an ad hoc basis because it is not in the correct form. It is also unfair on police officers, as they cannot be sure of when they must accept a complaint (and whether they will be sanctioned for not doing so). How the delegation from the Commissioner to commanders is meant to operate in practice has also not been explained; it is unknown how the ‘case by case basis’ system works in practice (there does not appear to be any policy dealing with it).

The Commission also notes that a requirement to submit a complaint in writing would be a barrier for many people in the community, including many who the police interact with on a daily basis.

Finally, comparison to the requirements in the *IC Act* are irrelevant to the issue at hand, which is about inconsistent policy and practice. Moreover, the provisions of the *IC Act* specify that complaints must be in writing – there is no allowance for guidelines to be created

⁶³ Evidence to Joint Standing Committee on Integrity, Parliament of Tasmania, Hobart, 22 October 2014, 66 (Scott Tilyard, Deputy Commissioner of Police).

allowing other methods of complaint submission, as there are in the *PSA*.⁶⁴ The Commission also notes that it is an oversight body that takes complaints against other agencies – it is not managing complaints against its own staff, and its complaints system therefore does not have the same ‘customer service’ focus of the Tasmania Police complaints system.

Given the inconsistent Tasmania Police policy and practice in this matter, the Commission has made no changes to its findings on the basis of the Tasmania Police response. The Commission considers it important that Tasmania Police clarify this issue as soon as possible.

Requiring the complainant to make a ‘formal’ complaint

There is no differentiation (or definition) in either the *PSA* or the GMM between ‘formal’ and ‘informal’ complaints. Nor is there any requirement that a ‘formal’ complaint be made in order for it to be accepted by police and registered on IAPro. In some complaints subject to audit, Tasmania Police delayed acceptance of the complaint or otherwise considered whether the complainant wanted to make a ‘formal’ complaint. Some of these purportedly ‘informal’ complaints were in writing.

Unless there is a policy defining the difference between formal and informal complaints, this practice opens up the complaint process to risk and inconsistency. The risk is that valid complaints will not be dealt with as they should; that organisational issues will not be identified; and that officer conduct will not be improved. Without a policy about ‘formal’ complaints, two complaints which are substantially the same may be dealt with completely differently.

Furthermore, complaints should ideally be seen by an organisation as a method to improve employee conduct, the organisation as a whole, and relations with the broader community. If someone is dissatisfied with the actions of an officer, it would be wise for the organisation to be interested in the reasons for that dissatisfaction – regardless of whether the complainant wants to progress with the complaint process.

⁶⁴ *IC Act* s 33(1).

Record keeping: IAPro

In 2014, the Commission uncovered substantial discrepancies between hardcopy Tasmania Police complaint files and the electronic complaint case management system (IAPro). Recommendation 2 in the Commission's 2014 audit report was made in response to this issue. The problem was examined in more detail in the 2015 audit.

As stated in the Commission's 2014 audit report, it is imperative that IAPro be an accurate and complete record of complaints against police.

Listing the subject officers correctly on IAPro

In the opinion of the Commission, in 21 complaints (19%) the subject officers listed on IAPro were incorrect in some way. This included four complaints that had subject officers listed on IAPro who should not have been listed as subject officers.

There were also 17 complaints that did not have officers listed on IAPro, who should have been listed as subject officers. In some of these complaints, the officers had been treated as subject officers in the complaint file, but were inexplicably missing from IAPro. In other complaints, the Commission assessed that the complaint investigation itself had failed to treat officers against whom allegations were made as subject officers.

Case study 1 (page 53) and **Case study 2** (page 57) are examples of complaints in which the Commission assessed that the subject officers listed on IAPro were incorrect.

Variance between the allegations listed on IAPro and the allegations dealt with in the file

The Commission assessed whether the allegations listed on each IAPro record matched the allegations that had been dealt with in the complaint file.⁶⁵ In the opinion of the Commission, in a total of 40 complaints (37%), the allegations listed on IAPro did not match those dealt with in the file in some way. This included:⁶⁶

- 25 complaints in which one or more allegation/s dealt with in the file were missing from IAPro;
- 12 complaints in which the allegations either in the file or on IAPro were 'bundled' with other allegations (e.g. instead of listing two allegations, only one is listed);
- three complaints in which one or more allegation/s were categorised differently on IAPro and in the file (e.g. the allegation is dealt with as fail to comply with a lawful direction in the complaint, but is listed on IAPro as bringing discredit on the service);
- two complaints in which one or more finding/s listed on IAPro were different to the findings listed in the file;
- two complaints in which one or more subject officer/s listed on IAPro were different to the subject officers that were dealt with in the file; and
- one complaint in which the allegation listed on IAPro was not dealt with in the file.

Case study 1 (page 53) and **Case study 3** (page 60) contain examples of complaints in which the hardcopy file did not match the IAPro record.

⁶⁵ This does not necessarily mean that they matched the allegations originally made by the complainant.

⁶⁶ Note that some complaints had multiple issues in this area, so the total number of issues listed in the dot points is higher than the total number of complaints.

Date of receipt

The correct date of receipt for a complaint is the first date that a member of Tasmania Police becomes aware of the matter. In the 2014 audit, the Commission found that at least 31% of complaints had the wrong date of receipt listed on IAPro. There has been some improvement in this area and, in this audit, the Commission determined that 13% of the complaints had the wrong date of receipt on IAPro.

Summary of Tasmania Police response

Tasmania Police reiterated its comments above that complaints against police must be made in writing.

This response is dealt with at page 29.

Dealing with complaints appropriately and adequately

Dealing with the allegations that the complainant actually made

The Commission found that in 18 complaints (17%), one or more of the allegations that had been made by the complainant had not been dealt with by Tasmania Police. The Commission assesses that this situation is not satisfactory, as any failure to deal with allegations made by complainants may undermine the complaints system. Outlining the allegations that have been distilled from the complaint in the initial letter acknowledging receipt of the complaint might go some way to resolving this issue.⁶⁷

Example one

In this Class 1 complaint, the Commission assessed that, other than a brief letter to the complainant, there was no evidence of an investigation. There was no evidence of contact with the subject officers, no evidence of any attempt to identify the correct subject officer, no correlation between the material in the file and the outcomes listed on IAPro, no basis for the findings, and no evidence of notification to the subject officers. Needless to say, the allegations 'dealt with' in the file were not representative of the allegations that were actually made by the complainant.

Example two

In one Class 1 complaint, aside from the allegations dealt with and listed on IAPro, the complainant also alleged inaction on the part of police, and that police were rude to them. In fact, the CCTV shows one officer telling the complainant to 'shut up' on the night in question. Both of these allegations were ignored in the complaint investigation, and were not listed on IAPro.

Example three

In this Class 1 complaint, the complainant made a string of incivility allegations, and also complained that they had tried in vain to make a complaint on the night of the incident in question. The complaint investigation ignored both the worst of the incivility allegations, and the complaint about failure to accept a complaint, yet they are the only two allegations which were actually captured on CCTV footage. From the CCTV footage, it is clear that the complainant did attempt to make a complaint; however, instead of immediately accepting the complaint, police try to dissuade them from making a complaint. The sergeant is seen telling the complainant that they should be more worried about their sick children (than making a complaint to police). It is also clear from the footage that the complainant's ignored incivility allegation is substantially correct. Neither of these two allegations were dealt with as part of the complaint investigation, or listed on IAPro. The one allegation that is listed on IAPro – 'Breach Code of Conduct – Bring discredit on the Service' – for the other incivility allegations is listed as 'not sustained'.

Potential misconduct uncovered during the course of dealing with a complaint

The Commission examined whether Tasmania Police had appropriately dealt with potential misconduct that emerged during the course of dealing with a complaint (that is, misconduct not originally alleged by the complainant). The Commission found:

⁶⁷ The idea being that the complainant would contact the investigator if any of the allegations were missing.

- 11 complaints with one or more instances in which additional potential misconduct was dealt with and listed on IAPro (10% of all complaints);
- 11 complaints with one or more instances in which additional potential misconduct was dealt with but not listed on IAPro (10% of all complaints); and
- 13 complaints with one or more instances in which additional potential misconduct was not dealt with at all (12% of all complaints).

Case study 1 (page 53), **Case study 2** (page 57), and **Case study 3** (page 60) are all examples of complaints in which additional instances of potential misconduct emerged during the complaint investigation.

Obtaining all relevant evidence

The Commission examined whether, in each complaint, the Tasmania Police complaint investigator had gathered all of the relevant evidence prior to making their findings. This question was assessed in proportion to the gravity of the complaint and the difficulty involved in obtaining the evidence. For example, there should be no need to formally interview a subject officer for an incivility complaint.

The Commission found that there were 29 complaints (27%) in which one or more forms of evidence which should have been obtained, were not obtained. This included:⁶⁸

- 10 complaints in which the contact with one or more witnesses had not been adequate (for instance, a witness was not contacted at all, or a statutory declaration should have been obtained rather than a phone conversation);
- six complaints in which the contact with the subject officer/s was not adequate;
- four complaints in which relevant medical records were not obtained;
- three complaints in which the contact with the complainant was not adequate;
- one complaint in which CCTV was not obtained; and
- 13 complaints in which some other form of evidence was not obtained.

The Commission assesses that this situation is not satisfactory, as it is imperative that complaint findings be made on the basis of all relevant and reasonably obtainable evidence.

Tasmania Police response

Tasmania Police states this is the subjective view of the Commission, noting that amount of evidence required is proportionate to the gravity of the complaint, difficulty in obtaining the evidence AND the level of evidence necessary, sufficient to make a determination.

Example one

In this Class 1 complaint, the Commission assessed that relevant medical records were not obtained as part of the complaint investigation. The complainant was to be detained overnight but, on arrival at the police station, had obvious injuries incurred prior to their interaction with police. The complainant subsequently complained about being denied medical attention, and appears to have asserted that police refusal to provide medical attention aggravated their injuries (the complainant apparently required six to 10 stitches on presentation at hospital the next day). No medical evidence was obtained during the

⁶⁸ Note that some files had multiple issues in this area, so the total number of issues listed in the dot points is higher than the total number of complaints.

complaint investigation about the extent of the complainant's injuries, or whether denial of medical assistance had indeed aggravated the injuries.

Preferring the evidence of one party over another

The Commission looked at complaints in which a finding was made solely on the basis of one party's evidence (for example, the subject officer) against another party's evidence (for example, the complainant). For 15 of the 341 findings (4% of findings) in nine complaints:

- the evidence of the subject officer had been preferred over that of another party; and
- it appeared to the Commission that there was no clear and reasonable basis for this preference.

There were no instances where the Commission determined that the investigator preferred the evidence of someone else other than the subject officer without any clear and reasonable basis for doing so. In fact, in a number of other complaints, the evidence of the subject officer/s had been preferred over the evidence of multiple other parties, without any clear and reasonable basis for doing so. **Case study 1** on page 53 is an example of this issue.

Managing conflicts of interest in complaint investigations

In four complaints, the Commission identified that the Tasmania Police investigator had a conflict of interest and should not have been assigned to investigate the matter. In two complaints, this was because the investigator was the subject officer/s' manager and had been involved in the matter that was subject to complaint. In another complaint, there was a conflict because the investigator was the (internal) complainant. In the final complaint, the investigator had been a witness to the event which was subject to complaint, and used their own evidence to justify making an 'exonerated' finding.

Sustained findings

There were a number of complaints in which the Commission questioned Tasmania Police's decision not to make a sustained finding in relation to the subject officer's conduct. The details of the Commission's opinion in each of these complaints has been communicated to Tasmania Police.

Example one

An officer was called to a disagreement at a house. The homeowner complainant was having trouble with a former partner who had just moved out of the residence. In order to keep the peace, the officer asked the complainant to hand over the house keys for the night. In fact the officer had no lawful authority to seize the keys, and was told as much by a colleague on their return to the station. The complaint investigation found that the complainant 'willingly' handed the keys over and that, even if the complainant was under the mistaken impression that they had to hand the keys over, the complainant could have refused to do so.

The finding for this allegation – which was listed on IAPro as 'Breach Code of Conduct – Fail to act with care and diligence' – was 'unfounded'. In the opinion of the Commission, this allegation would have been more suitably categorised as 'Breach Code of Conduct – Improper use of authority'. Moreover, the finding seems to have been based on an irrational

expectation that members of the public will always question a police officer's authority when told to do something. Although this may sometimes happen in practice, this is unlikely to be the case in the normal course of events.

Case study 2 (page 57) and **Case study 3** (page 60) provide further examples of this kind of issue.

Withdrawn complaints

A total of nine complaints, which included 15 allegations, were listed as 'withdrawn' on IAPro. In the 2014 audit report, the Commission warned against placing pressure on complainants to withdraw complaints. Aside from anything else, complaints can be a valuable source of organisational and individual improvement. Regardless of whether a complainant wants to withdraw a complaint or to proceed with making a complaint, Tasmania Police have a vested interest in their officers behaving appropriately.

Two of the nine withdrawn complaints were internally raised issues. One of these two complaints is discussed in **Case study 2** (page 57). The Commission's opinion is that it is generally not good practice to allow internally generated complaints to be withdrawn. If there is no misconduct, then that should be reflected in the findings, rather than in the matter being withdrawn.

In one of the externally generated withdrawn complaints, after a lengthy meeting with the investigator, the complainant eventually agreed to withdraw the complaint even though they 'disagreed with police powers'. This is despite one of the complainant's allegations about the actions of the subject officer being, in the opinion of the Commission, capable of being sustained.⁶⁹

⁶⁹ The complainant had video footage of the subject officer telling them it was illegal to film. It was not illegal to film a police officer in the circumstances. It is not clear if the video was discussed with the complainant at the meeting.

Contact with parties to the complaint

Anecdotally and on the basis of the statistics, it appears that contact with complainants is generally good, and that there is still room for improvement in regard to contact with subject officers.

Contact with complainants

In 89 of the 96 relevant complaints (93%), there was a record of formal contact with the complainant acknowledging receipt of the complaint (usually a proforma letter from Professional Standards Command).

In 84 of the 90 relevant complaints (93%), it appeared that the investigator had made contact with the complainant at some stage of the complaint investigation.

In 33 of the 64 complaints (52%) in which relevant data was obtainable, the investigator made contact with the complainant either before or within 24 hours of receiving the file for investigation (as required under the GMM policy).

In 90 of the 97 relevant complaints (93%), there was a record of the complainant being informed of the outcome of the complaint.

2014 audit report Recommendation 4: Notifying a complainant of a determination to sanction a subject officer

Police Service Act s 47 imposes on Tasmania Police a duty to inform both the subject officer and the complainant, in writing, of any sanction given to the subject officer under *PSA* s 43(3). In the 2014 audit, the Commission found that only one in seven of the relevant sanctions had been notified to the complainant as required under the *PSA*.

Recommendation 4 of the 2014 audit report was that Tasmania Police implement measures to ensure that it meets its statutory obligations in this regard.

Since the 2014 audit, Tasmania Police has put measures in place to address this issue. Due to the 2014 audit report being released in the latter half of 2014, the Commission did not expect these measures to have had a substantial impact as yet. However, the Commission was pleased to find that there has been some improvement in this area. Of the 10 relevant sanctions, five were notified to the complainant as required under the *PSA*. Although this is certainly an improvement, there is still some progress to be made in this area.

Contact with subject officers

The GMM policy stipulates that, unless there are reasons precluding such contact,⁷⁰ subject officers must be contacted as part of the complaint investigation process. Especially for less serious matters, it is also good practice to involve subject officers in the complaint resolution process.

In 162 of the 172 instances (94%) in which subject officers should have been contacted,⁷¹ it appeared that the subject officer had been contacted at some stage of the investigation.

Regardless of the outcome of the complaint, it is good practice to inform the subject officer of that outcome.

In 73 of the 172 instances (42%) in which subject officers should have been informed of the complaint outcome, there was evidence of that happening.

In 47 of the 172 instances (27%), it appeared from the file that the subject officer had not been informed of the outcome of the complaint at all.⁷²

In all instances of *PSA* s 43(3) action being taken, there was evidence that the subject officer had been informed in writing of the action, as required under the *PSA*.⁷³

In one complaint in which sustained findings were made against two officers, no 'determination notice' was given to either of the subject officers.⁷⁴

In four complaints involving five subject officers, the subject officer was not given an opportunity to make a submission prior to the application of a *PSA* s 43(3) action.

2014 audit report Recommendation 3: Ensuring subject officers know which actions are sanctions, and which are professional development measures

In the 2014 audit, the Commission identified that subject officers issued with 'determination notices' for sustained findings were not being told clearly which actions were:

- sanctions under the *PSA*; or
- non-*PSA* actions, such as training and verbal guidance, to encourage professional development.

Recommendation 3 of the 2014 audit report was that Tasmania Police implement measures to improve its communication with subject officers about what actions are being taken and why. Since the 2014 audit, Tasmania Police has implemented a new policy about how determination notices are to be written. Due to the 2014 audit being released in the latter half of 2014, the Commission did not expect this policy to have had a substantial impact as yet. However, the Commission was pleased to find that, of the 24 determination notices issued during the audit's scope, only three did not clearly state which actions were sanctions and which were other measures.

⁷⁰ For instance, the complaint allegations are serious and there is a possibility the matter will end up in court.

⁷¹ The number of instances is greater than the number of complaints because a complaint can be made against more than one officer.

⁷² In the remaining instances, there were some indications that the subject officer had been informed, but no actual evidence of it happening.

⁷³ *PSA* s 47(3)(b).

⁷⁴ Although sustained findings were made, there were no *PSA* s 43(3) sanctions.

Objective C: Examine whether systemic/organisational issues are being identified and dealt with

Identifying and dealing with systemic/organisational issues

Complaints are a valuable way of identifying systemic and organisational issues in agencies. As part of this audit, the Commission examined whether each complaint raised a potential systemic/organisational issue⁷⁵ and, if so, whether Tasmania Police had recognised and dealt with that issue.

The Commission defines a 'systemic/organisational issue' as any issue which indicates that there may be a problem within a system (not necessarily the complaints system) or the organisation as a whole. A systemic/organisational issue does not necessarily relate to the substance of the complaint, and may emerge as a peripheral matter. The organisational/systemic issues identified in this audit did not necessarily emerge across complaints – one complaint may be capable of showing there is a problem with a system. Moreover, the identification of a systemic/organisational issue within a complaint did not necessarily signify that there was a problem inherent in the overall system, but instead simply that there may be a problem wider than individual misconduct on the part of one officer.

The Commission identified 28 'instances' of systemic/organisational issues across the 109 complaints. These 28 instances derived from 25 complaints. The 'instances' of organisational/systemic issues were bundled; for instance, if a file had three issues, and one was identified and dealt with by Tasmania Police, but two were not identified and not dealt with, this would amount to two 'instances'. Of the 28 instances, there were:

- 15 that were identified and dealt with;
- four that were identified but apparently not dealt with; and
- nine that were not identified.

Noting the Tasmania Police response (below), it should be clarified that the purpose of this section of the report was not to identify systemic/organisational failings within Tasmania Police. No organisation is perfect – there will always be problems with systems and procedures, or simply areas where things could be done better. In an organisation that provides a service to, and has significant and complex interactions with, the public, complaints are a valuable source of intelligence on potential issues within systems and procedures (i.e. 'systemic/organisational issues'). One measure of an efficient, effective and modern organisation is that it seeks to identify these issues, acknowledges and remedies them, and moves forward. The purpose of this section of the report was to determine if Tasmania Police was using its complaints system in that context. In the main, the Commission has found that it is doing so. The two examples below are examples of Tasmania Police following good practice in this area, by identifying and satisfactorily dealing with systemic/organisational issues.

⁷⁵ For the purposes of the audit, the Commission did not characterise failure to accept a complaint as an organisational/systemic issue.

Example one

In this complaint, the district Commander identified that a number of complaints had recently been received about similar matters (which related to 'police conveying respondents to premises, allegedly in contravention of orders'). At the time of writing the letter, a legal opinion had been sought on the matter with the intention to provide it to 'all districts to provide clarity on the issue'.

Example two

In one complaint, the security of confidential personnel files emerged as an issue. As a result, the Human Resources Commander undertook a review of file security and stated an intention to provide advice to staff about the security of sensitive files.

Case study 2 (page 57) is an example of a complaint in which two organisational issues were present, one of which was not identified and not dealt with.

Excerpt⁷⁶ of Tasmania Police response

Tasmania Police and the Commission have differing interpretations of 'systemic/organisational issues'. Tasmania Police interpretation of a systemic/organisational issue is a problem/issue inherent in the overall system rather than individual or isolated factors.

...

Tasmania Police holds the view that the application of the Commission's interpretation of the term has resulted in an expanded number of identified issues and they are not adequately supported by the examples provided in this regard.

⁷⁶ The Commission has removed the Commission's definition of 'systemic/organisational issue' from the Tasmania Police response, as this is now contained in the body of this report.

Complaints arising during arrests for minor matters

The Commission acknowledges that police perform a difficult and important role in our society. To assist them in this role, police are granted powers of arrest and use of force beyond those possessed by the average citizen. Police officers receive training in, and constant reinforcement about, how to professionally and legally use those powers.

It is a serious matter to deprive someone of their liberty – especially if they are under 18 or may have mental health issues – and police should not be making that decision lightly. This is particularly so when the conduct prompting the deprivation is something as minor as objectionable language. Additionally, the *Youth Justice Act 1997* (Tas) places a limit on the power of Tasmania police to arrest youths. Under section 24 of that Act, a:

police officer may only arrest a youth in relation to an offence if the arresting officer believes the offence is serious enough to warrant an arrest and also believes, on reasonable grounds, that –

(a) the arrest is necessary to prevent a continuation or repetition of the offence or the commission of another offence that, if it were committed by the youth, would be sufficiently serious to warrant the youth being arrested in relation to the commission of that offence; or

(b) the arrest is necessary to facilitate the making of a police family violence order, within the meaning of the Family Violence Act 2004, an application for a family violence order under that Act or an application for a restraint order under Part XA of the Justices Act 1959; or

(c) the arrest is necessary to prevent concealment, loss or destruction of evidence relating to the offence; or

(d) the youth is unlikely to appear before the Court in response to a complaint and summons.

The Commission identified that a number of complaints subject to audit this year were made after arrests for minor matters (most commonly, using abusive language towards police). The Commission considers that, based on several examples uncovered in this audit, this could be an organisational issue that may need to be dealt with by Tasmania Police.

At this stage, it does not appear to have been recognised as a problem by the organisation. In such complaints, the investigator should examine whether the decision to make an arrest was really the appropriate decision in the first place (and not just a legally available action). If not, there should be some action taken in relation to the arrest, such as a sanction and/or professional development measure, depending on the circumstances. If a police officer makes a poor decision and there is some mitigating circumstance, this should be taken into account in determining the action to be taken. However, the fact that the decision was poor still needs to be acknowledged (and learnt from) at both an individual and organisational level.

Example one

In this Class 2 complaint, police parked outside the complainant's (W) house to attend a disturbance in the same street. W was not involved in the disturbance. W was drunk, but on their own property. W yelled and swore at the police officers, as W did not like them parking outside W's house. The subject officer moved onto the property and arrested W for abusive language towards police. W subsequently made various allegations of assault against the officer. The allegations of excessive force listed on IAPro against this subject officer were found to be 'not sustained'. The officer was given verbal guidance about 'procedural issues' that were not listed on IAPro (but not in relation to the decision to arrest W).

The subject officer alleged that the arrest was necessary as W 'was not able to be placated and a tactical retreat would not work and [W] would continue to cause a disturbance to the public'. The Commission notes that W was only yelling due to the police presence, and was not causing any disturbance before their arrival.

Example two

In this Class 1 complaint, two police officers attended the complainant's (V) property to speak to V's partner. One officer was speaking to the partner, one to V. V may have had mental health issues. V was apparently having a normal conversation with the officer, when mid-conversation V started yelling and swearing at the officer. The officer advised V to stop and warned V that they could be arrested. V continued to yell and swear at the officer. The officer then attempted to arrest V for abusive language, and various unfortunate events ensued. The allegations of excessive force listed against the two police officers in this complaint were both 'dismissed' on the basis that the charges against V were proceeding to court.

The Commission notes that, in such instances, a withdrawal from interaction may be a more appropriate response than attempting to arrest for abusive language.

Example three

Two Class 1 complaints arose from the same incident that occurred in a rural area. A family were attempting to move a car from one property to a neighbouring property. The car was not operational and had no lights. The family were on the road for a short period of time just after dark moving the car, during which the subject officer happened to drive past. The subject officer and the family were known to each other. The subject officer pulled up immediately in the middle of the road. The situation escalated to the point that three of the family members (including a 17 year old youth) were arrested.

It appeared that one or more members of the family had sworn at the police officer as they emerged from their car. The officer moved to arrest one family member for abusive language by grabbing their shoulder (which had an injury of which the officer was apparently aware). The person resisted and the situation escalated, with other family members attempting to assist. The charges against the family members included: use abusive language to a police officer; wilfully obstruct a police officer; threaten a police officer; injure property; and assault a police officer. The complainants alleged that the subject officer used excessive force against two members of the family, including by kicking one of the siblings and using 'capsicum' spray on one of the parents. The allegations of excessive force listed against the subject officer in each of these complaints were found to be 'exonerated'.

In the Commission's opinion, the escalation of such matters to a point where multiple parties are arrested, and the subject officer accused of assault, is unfortunate.

Example four

An unlicensed sixteen year old youth (U) was allegedly driving an unregistered vehicle unsafely around the streets of a rural town. Ten minutes after U had parked the car at their house, the subject officer arrived to speak to U about it. U swore at the officer, following which the officer attempted to arrest U for using abusive language towards police. U attempted to leave, and, in dealing with the situation, the officer's arms wrapped around U's head. U alleged the officer had tried to strangle them. The officer justified arresting U by

stating that there was a high chance neighbours could have overheard the swearing, and could have observed the youth's behaviour towards the officer. The single allegation of excessive force listed on IAPro against this subject officer was found 'not sustained'.

The Commission notes that the police officer was the professional and the adult in this situation, and that they appear to have arrested a youth because the neighbours may have overheard some 'bad language'.

Objective D: Assess complaint timeframes

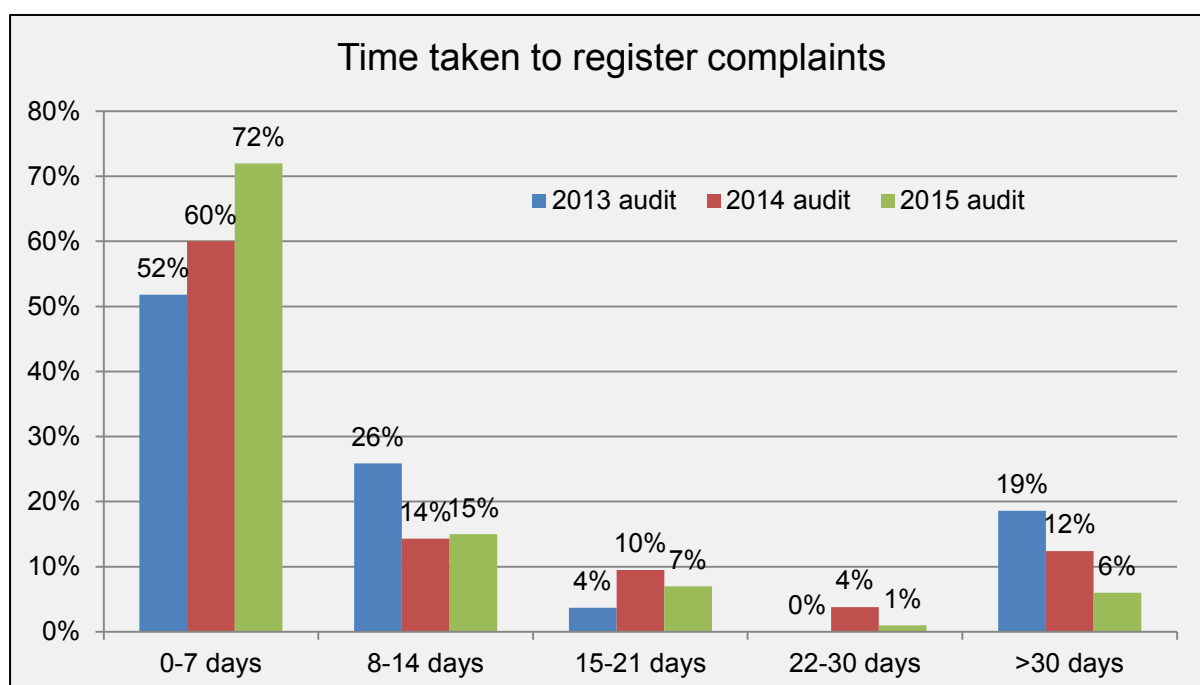
Time taken to register complaints

'Registration' is a legislative requirement under *PSA* s 45, and it is performed when a complaint is logged on IAPro. The period between a complaint's receipt and its registration should be brief.

Of the 109 complaints:

- 103 were registered within 30 days of receipt (94%);
- 78 were registered within seven days of receipt (72%); and
- 37 were registered within two days of receipt (34%).

As can be seen from the bar graph below, there has been a steady improvement in the timely registration of complaints over the last three years.



In the 2014 audit, the Commission found that timely registration of complaints was a bigger issue in Class 2 complaints, with only 41% being registered within seven days (versus 64% for Class 1 complaints). This has improved this year, with 69% of Class 2 complaints being registered within seven days (versus 72% of Class 1 complaints).

Likewise, in the 2014 audit the Commission found that only 30% of complaints with one or more sustained findings were registered within seven days, yet in the 2015 audit that figure rose to 62%.

Time taken to finalise complaints

As in previous audits, the Commission examined how long it took Tasmania Police to finalise complaints. Timeliness is important for complainants (both personally and from a public relations perspective), as well as for the subject officer's wellbeing. The relevant timeframe to use in assessing timeliness is from receipt to finalisation of the complaint – not from registration to finalisation. The finalisation date used for all 109 complaints was the date listed by Tasmania Police on IAPro.

For Class 1 complaints, Tasmania Police has a benchmark timeframe for finalisation of 28 days.⁷⁷ Tasmania Police has previously noted that, for many complaints, this timeframe is unrealistic, and the organisation is awaiting the implementation 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 had applied for (and was granted) an extension of time.

Twelve of the 96 Class 1 complaints (13%) were finalised within 28 days of receipt. If the measurement for finalisation were to be taken from registration, 17 Class 1 complaints (18%) would have been finalised within 28 days.

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 133 days to finalise complaints subject to audit in 2015, and a median of 90 days. This appears to be an improvement on the 2014 audit figures of an average of 152 days, and a median of 100 days.

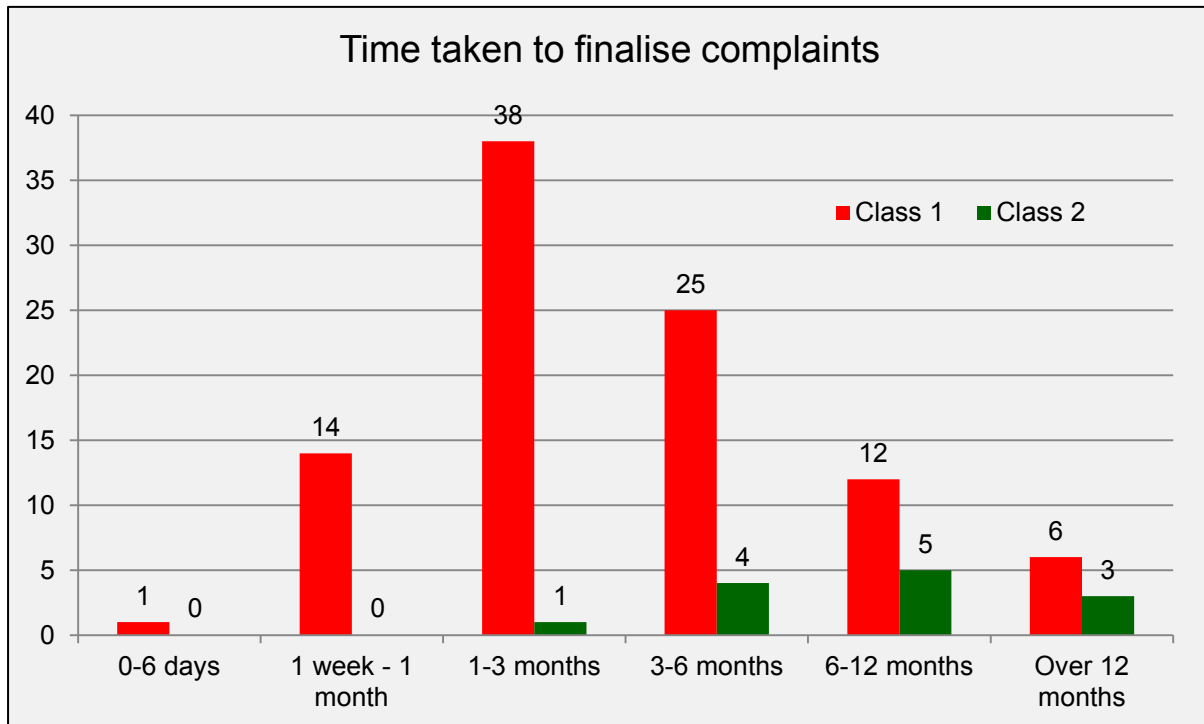
Class 1 complaints are generally assumed to be less complex and less serious than Class 2 complaints; it is therefore expected that they will be quicker to finalise. Overall, in the complaints subject to audit in 2015, Class 1 complaints took an average of 118 days to finalise, and a median of 79 days. In the 2014 audit, Class 1 complaints took an average of 123 days to finalise, and a median of 81.5 days.

In the 2015 audit, the more serious and/or more complex Class 2 complaints took an average of 243 days to finalise, and a median of 219 days. In the 2014 audit, this was an average of 302 days, and a median of 276 days.

There seems to be some improvements in the timely resolution of complaints. The Commission intends to monitor this over the coming audits to ensure that this is a sustained improvement in complaint finalisation timeframes.

Case study 2 (page 57) is an example of a complaint which took too long to resolve.

⁷⁷ *Graduated Management Model for Complaints Against Police Implementation protocols*, above n 15, 10.



*1 week - 1 month is 7-29 days; 1-3 months is 30-89 days; 3-6 months is 90-179 days; 6-12 months is 180 to 365 days; over 12 months is more than 365 days.

Timeliness by district

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. Class 2 complaints are not included in this analysis as Professional Standards handle most of those complaints. The 2014 audit figures are in the square brackets.

Districts – time taken to finalise Class 1 complaints				
District	Time (days) – receipt to finalisation		Time (days) – registration to finalisation	
	Average	Median	Average	Median
Northern	130 [98]*	75.5** [44]	114 [81]	58 [37]
Other areas	54 [119]	29 [112]	47 [112]	22 [103]
Southern	112 [144]	77 [99.5]	103 [123]	76.5 [77.5]
Western	144 [90]	142 [92]	139 [81]	141 [76]

* The 2014 audit figures are in square brackets.

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

Identifying blockages in the timely resolution of complaints

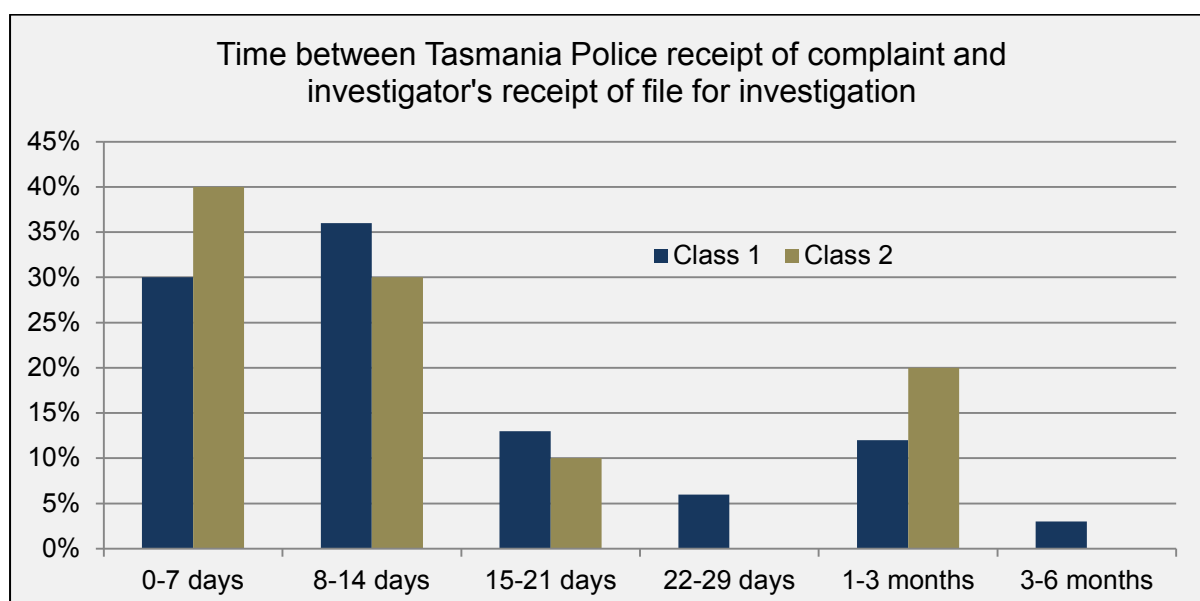
The Commission undertook to attempt to identify where blockages are occurring in the complaint management process. In every complaint where it was possible, the Commission recorded dates for each step of the complaint resolution process. This included, among other dates, the date of:

- receipt;
- registration;
- contact with complainant to formally acknowledge receipt of the complaint;
- the investigator's assignment to the complaint;
- the investigator's receipt of the complaint file;
- the investigator's first contact with the complainant;
- first contact with a witness;
- last contact with a witness;
- first recorded contact with the subject officer;
- the investigator's report;
- approval by the investigator's supervisor (usually the district commander);
- approval by Professional Standards Command;
- the subject officer being informed of the final outcome;
- the complainant being informed of the outcome; and
- completion on IAPro.

From the statistics collected, it appears that blockages may occur at any stage of the complaint process. However, aside from a couple of complaints which were not handled in accordance with normal processes, the most common blockages appear to happen between the date of the investigator submitting their report and the finalisation of the complaint.

Time between receipt of complaint and the investigator receiving the file

The Commission was able to collect data on the time taken between Tasmania Police receipt of the complaint and the investigator's receipt of the file for investigation for 79 complaints. This included 69 Class 1 complaints, and 10 Class 2 complaints.

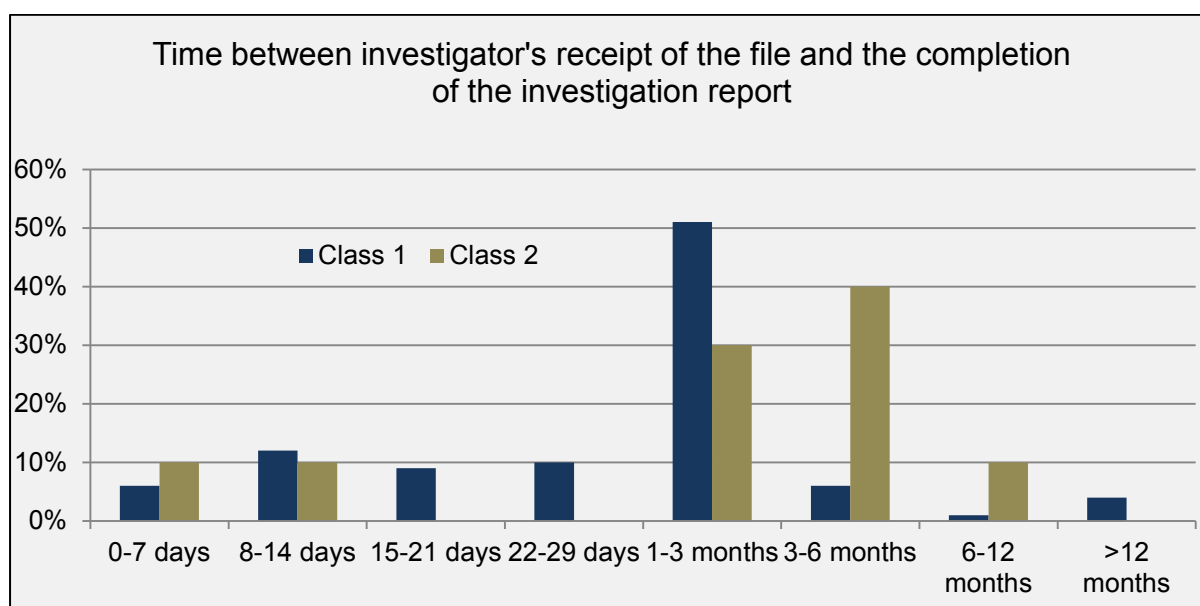


Ideally, depending on the nature and complexity of the matter, the investigator would receive the file within a few days of a complaint being made to Tasmania Police (or immediately for minor matters). The average time between Tasmania Police receipt of the complaint and the investigator's receipt of the file was 18 days; the median was 11 days.

The average time in Class 1 complaints was also 18 days. Given that Class 1 complaints have a benchmark timeframe of 28 days for resolution, taking 18 days to get the file to the investigator would obviously make it extremely difficult to meet that benchmark timeframe to finalise the matter. This is an area that needs streamlining to improve the speedy resolution of minor complaints. The Commission is hopeful that the implementation of 'BlueTeam' – allowing complaint investigators immediate and direct access to complaints on IAPro – will have already gone some way to resolving this issue.⁷⁸

Time between investigator receiving the file and the completion of the investigation report

In the majority of complaints, the investigator completes an 'investigation report' which is submitted to the district commander for review and approval. The Commission was able to collect data on the time taken between the investigator's receipt of the file for investigation and their completion of the investigation report for 78 complaints. This included 68 Class 1 complaints, and 10 Class 2 complaints.



Based on the above figures, in the majority of complaints investigators take one to six months to complete the investigation. The average time was 63 days; the median time was 37 days.

There were three Class 1 complaints in which the investigation took over 12 months, but there were no Class 2 complaints in which this process took over 12 months.⁷⁹ The reason that these Class 1 complaints took so long to investigate was not due to their complexity, or even the severity of the issue involved. In all three of these complaints, the complaint investigator had either forgotten about or ignored the complaint for a substantial period of time. **Case study 2** (page 57) is an example of one of these three complaints.

⁷⁸ BlueTeam was introduced from mid-2014 onwards.

⁷⁹ Class 1 complaints are usually dealt with in the districts, not by Professional Standards Command.

Professional Standards currently does not undertake regular checks to identify if investigators are taking an inadvertently long time to deal with complaints. At the audit exit interview, Tasmania Police stated an intention to commence regular checks to determine the status of open complaint investigations and identify overdue files. The Commission agrees that this would be beneficial.

Recommendation 3

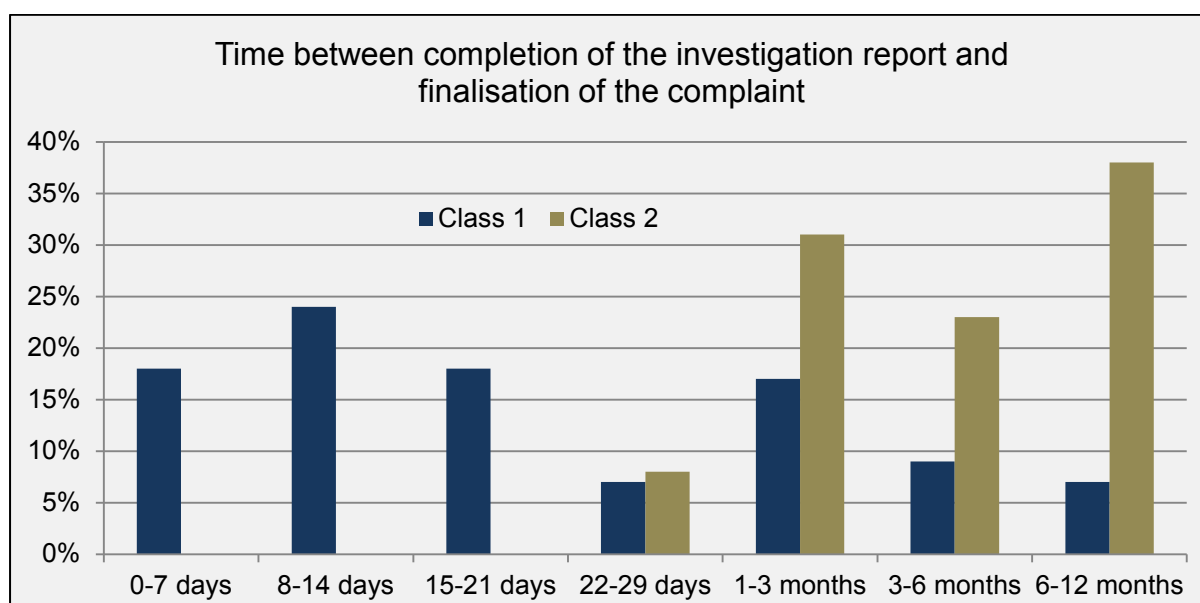
It is recommended that a mechanism be implemented at Professional Standards Command to ensure regular checks are performed to identify (and, where necessary, query) outstanding unresolved complaints.

Tasmania Police response

[Recommendation 3] will be immediately implemented in full by Professional Standards.

Time between completion of the investigation report and finalisation of the complaint

The Commission was able to collect data on the time taken between the completion of the investigator's report and the finalisation date listed by Tasmania Police on IAPro for 101 complaints. This included 88 Class 1 complaints, and all 13 of the Class 2 complaints.



The average time between the date of the investigation report and the finalisation date on IAPro was 63 days; the median time was 20 days. Eleven complaints took between six and 12 months to resolve after the completion of the investigation report. In three of these complaints, the complaint had been left open pending resolution of a court case.⁸⁰ This issue is discussed further below.

There appears to be some blockages at this stage of the complaint process. In theory – for most complaints – the matter should be wrapped up fairly quickly after the investigator has

⁸⁰ In a fourth complaint that took a substantial amount of time to finalise, the complaint was left open while the actions were taken in relation to the subject officers. This was inconsistent with standard Tasmania Police practice.

completed the complaint investigation report. Of course, in some more serious and complex matters, it may take a substantial amount of time to finish resolution of the matter. Subject officers may also appeal adverse findings and/or decisions to take an action in relation to their conduct, which may also delay finalisation. However, for most complaints, two weeks or less would appear to be an appropriate amount of time to finalise a matter.

As this appears to be a problem area, the Commission further examined the timeframes in relation to the time period between submission of the investigation report and complaint finalisation. Given that Class 1 complaints are generally handled in the districts, and Class 2 generally handled by Professional Standards, the Commission has separated the below results into each class.

For the Class 1 complaints in which data was obtainable, the Commission found that the average time between:

- the completion of the investigation report and the date that the investigator's supervisor approved the findings was **22 days**,⁸¹
- supervisor approval and Professional Standards approval was **ten days**,⁸²
- supervisor approval and notification of the outcome to the complainant was **two days**,⁸³
- Professional Standards approval and the finalisation date on IAPro was **21 days**.⁸⁴

It therefore appears that Tasmania Police's priority focus for making improvements in the timeliness of Class 1 complaints should be between:

- the investigator's completion of the report and the approval of their supervisor; and
- Professional Standards approval of the outcome and the marking of the complaint as completed on IAPro.

For the Class 2 complaints in which data was obtainable, the Commission found that the average time between:

- the completion of the investigation report and the date that the investigator's supervisor approved the findings was **33 days**,⁸⁵
- supervisor approval and Professional Standards approval⁸⁶ was **seven days**,⁸⁷
- supervisor approval and notification of the outcome to the complainant was **49 days**,⁸⁸
- Professional Standards approval⁸⁹ and the finalisation date on IAPro was **120 days**.⁹⁰

⁸¹ Data was obtainable for 79 Class 1 complaints. One complaint took over six months.

⁸² Data was obtainable for 66 Class 1 complaints. No complaints took over six months.

⁸³ Data was obtainable for 45 Class 1 complaints. No complaints took over six months.

⁸⁴ Data was obtainable for 70 Class 1 complaints. One complaint took over six months.

⁸⁵ Data was obtainable for 12 Class 2 complaints. One complaint took over six months.

⁸⁶ As most Class 2 complaints are dealt with by Professional Standards, the Commission deemed this to be done, for example, when notice was given by the Professional Standards Commander to the relevant district commander, or when the outcome was approved by the Deputy Commissioner of Police or the Commissioner of Police.

⁸⁷ Data was obtainable for 12 Class 2 complaints. No complaints took over six months.

⁸⁸ Data was obtainable for eight Class 2 complaints. No complaints took over six months.

It therefore appears that Tasmania Police's priority focus for making improvements in the timeliness of Class 2 complaints should be between:

- the investigator's completion of the report and the approval of their supervisor;
- supervisor approval and notification of the outcome to the complainant; and
- Professional Standards approval of the outcome and the marking of the complaint as completed on IAPro.

Awaiting the outcome of an associated court case

In ten complaints, despite the matter being resolved, the actual complaint was left open on IAPro to await the outcome of an associated court case. This included three complaints that took between six and 12 months to resolve after the completion of the investigation report. These ten complaints have no doubt impacted on the overall timeliness statistics documented in this report.

In complaints where the subject officer has been charged, and the resolution of the complaint is somehow dependent on the court outcome, the Commission agrees that the file should be left open on IAPro. However, these ten complaints were not in relation to charged subject officers. Rather, they related to a complainant who had been arrested (or fined) and who made a complaint about the subject officer's conduct during that process.

The Commission agrees that monitoring court outcomes for adverse comments about officers, especially where there has been a complaint, is good practice. However, court processes are slow, and the Commission does not agree that disciplinary matters that have already been resolved should be left open indefinitely. In many (if not all) of these cases, it was unrealistic to expect the subject matter of the complaint to even be raised in court. This is especially true for court cases in which the complainant pleaded guilty.

The Commission also noted that there were two similar complaints which were closed, but in which Tasmania Police had a stated plan to monitor the court outcome. In the opinion of the Commission – as long there is a mechanism to monitor such matters – this is the preferable way of handling these complaints.

There was also one complaint in which the entire matter was dismissed, with the view that the substance of the complaint would be dealt with in court. This was both inconsistent with how all other similar files were dealt with, and wholly unrealistic – especially given that the complainant ended up pleading guilty to the charges.

⁸⁹ As most Class 2 complaints are dealt with by Professional Standards, the Commission deemed this to be done, for example, when notice was given by the Professional Standards Commander to the relevant district commander, or when the outcome was approved by the Deputy Commissioner of Police or the Commissioner of Police.

⁹⁰ Data was obtainable for all 13 Class 2 complaints. Three complaints took over six months.

Case studies

Case study 1

In this Class 1 complaint, the complainant (Z) had been arrested for a range of offences in the small hours of a morning in August 2013. Two police officers, Officer E and Officer F, intended to interview Z at 3.40am. They took Z to the interview room and commenced video recording. From the recording, it is obvious that Z does not want to be interviewed. Z is arguing that they want a solicitor; the police tell Z that Z has been given the chance to call a solicitor, and that Z refused. Z says that, at that time of the morning, Z would be unable to obtain a solicitor.

The police attempt to start the interview. Z stands as if to leave. Officer F jumps out of their chair, grabs Z's collar and pulls Z back into the chair. Officer F tells Z that they are under arrest, and is not free to move around as they please. Z has their hands in the air and is not resisting. Officer F moves back to their chair. A few seconds later, Z again rises as if to leave and opens the door. Officer F jumps from the chair again, grabs Z by the collar, throws Z to the ground, twists Z's arm behind their back and pins Z's face against the wall. Z does not resist at all. Officer E turns off the video as Z's head is pinned against the wall.

Later in the morning, Z complained of a sore arm and requested a doctor. Z was first sent to a bail hearing, where Z told the magistrate that they were assaulted by police. After the hearing, Z was taken by ambulance to hospital, where Z had x-rays. There were apparently no broken bones. Police took no photographs of the alleged injury.

The matter was at first investigated and dealt with at the local level, and Professional Standards was not informed until four months later, in December 2013. The subsequent Professional Standards investigation was then necessarily rushed, as the statute of limitations for the alleged assault by Officer F expired at six months (mid-February 2014).

Z had an extensive criminal history, and both Officer F and Officer E had relatively extensive IAPro histories. Officer F was under investigation for two other assault allegations at the same time as this complaint.

Tasmania Police response

Case Study 1 – should include in the background details that the complainant did not cooperate with investigating police, would not speak to investigating Internal Investigation officers and aside from the allegation made in court the complainant did not make any further comment.

[The case study] [s]hould also include in background details that Professional Standards took advice from the [Tasmania Police] Principal Legal Officer.

Issue 1: Referring matters to the Director of Public Prosecutions

This matter was one of the two complaints which the Commission assessed should have been – but was not – referred to the DPP for independent review. Several police officers seemed to be of the opinion that it was a borderline assault by Officer F.

Although not referred to the DPP, the matter was discussed with the Tasmania Police Principal Legal Officer. It appears that police decided that the matter did not constitute an

assault because Z was a known violent offender, Z should have been in handcuffs during the interview, and because Z had no right to leave the interview room. In the opinion of the Commission, none of this provides justification for what happened. In several places in the file – including the letter which refers to the internal legal advice – it is suggested that there was a ‘struggle’ and that Z was taken to ground because Z was ‘resisting’. This is not supported by the video evidence.

In the opinion of the Commission, the actions of Officer F appeared to be excessive, and Tasmania Police should have sent the file to the DPP for independent opinion.

Issue 2: Potential misconduct uncovered during the course of dealing with a complaint

The Commission assessed that additional potential misconduct that emerged during the course of dealing with this complaint was dealt with in two ways.

First, three potential instances of misconduct were ‘not dealt with and not listed on IAPro’:

1. a custody officer (Officer G) appears to have provided false information on the charge record (see below);
2. Officer F stated that they intended to continue questioning Z even though Z had asked for a solicitor;⁹¹ and
3. a second custody officer failed to take any pictures of Z’s alleged injury.

The Commission found that two potential additional instances of misconduct relating to the investigation of the complaint were ‘dealt with but not listed on IAPro’:

1. the complaint investigation examined whether there had been any procedural failings in police not reporting the matter to Professional Standards for four months; and
2. the investigation detected and examined, to a limited extent, Officer F’s exaggerations/false statements (see below) in their use of force report.

Issue 3: Listing subject officers correctly on IAPro

Only one officer – Officer F – is listed on IAPro for this complaint. In the opinion of the Commission, at a minimum, Officer E should also have been on IAPro as a subject officer. Officer E was present when the alleged assault occurred and did not report it. Officer E’s actions in turning off the video while Z’s head was pinned against the wall were questionable.

Multiple police officers also failed to recognise this as a complaint against police or an issue of which Professional Standards should have been notified. This resulted in Professional Standards not knowing about the matter for some four months after the incident. These officers potentially should have been listed on IAPro.

Finally, the custody officer on the night (Officer G) appears to have provided false information on the charge record for the complainant’s arrest. Custody officers are responsible for the welfare of persons in Tasmania Police custody, and are under a duty to record certain matters on the charge record for each person arrested. The most obvious problem with the charge record in this complaint is that Officer G recorded that they rang the

⁹¹ Police must pause an interview if an interviewee requests a solicitor, see *Criminal Law (Detention and Interrogation) Act 1995* (Tas) s 6(2)(b).

Aboriginal Legal Service (ALS) on behalf of the complainant at 3.59am. Officer G states in the record that Z was not an ALS client but that they took Z's details, and that Z did not wish to speak to the ALS. There is no evidence that this phone call occurred on the CCTV footage (at 3.59am or any other time). Notably, the writing of this phone call on the charge record happened just after the 'interview', during which Z had said they had requested and been denied a solicitor (although there is no evidence of collusion between police about this on the footage either).

After the interview, Z is seen on CCTV 'mouthing off' to police and appears to be trying to wind them up. Z appears to succeed – the custody officer at one stage tells Z to 'shut [your] f**king mouth'. In the opinion of the Commission, this language was unprofessional and unjustified. Police are the professionals in these situations, regardless of how their charges are behaving. The Commission considers that, for the above reasons, Officer G should have been a subject officer who was listed on IAPro.

Issue 4: Variance between the allegations listed on IAPro and the allegations dealt with in the file

The Commission assessed that the IAPro record and the hardcopy file in this complaint did not align in two areas. First, Officer E (who was not listed as such) was treated as a subject officer for much of the complaint investigation, including by being subject to a directed interview.⁹² The investigation report also makes findings on the allegations against Officer E, stating that they are 'unfounded'. Officer E was also given verbal guidance, along with Officer F, about the matter. The IAPro record indicates that Officer E was originally a subject officer, but that a conscious decision was made to switch Officer E to a witness. The Commission assessed that this resulted in the IAPro record not accurately reflecting the file.

Second, the Commission found that an allegation dealt with in the file was missing from IAPro. This was because the complaint investigation examined whether there had been any failings in not reporting this matter to Professional Standards for four months. This is not listed on IAPro as an allegation against any officer.

Issue 5: Preferring the evidence of one party over another

The single allegation listed on IAPro for this matter is against Officer F for 'Breach Code of Conduct – Fail to comply with order in the Police Manual'. Despite Z's statement during the bail hearing (Z had subsequently refused to speak to police about the incident), and the video footage, the investigation accepted contrary police evidence that the use of force was justified. The finding listed on IAPro for the allegation is 'exonerated', meaning that it happened but that it was lawful and proper. Given the evidence of the video footage, the Commission considers that it is difficult to justify this exonerated finding.

Other issues

1. Given the severity of this matter, the Commission is of the opinion that the complaint should have been classified as Class 2. Indeed, some documents in the file suggest that it was initially classified as Class 2. The reason that it was reclassified as Class 1 is not recorded.

⁹² A 'directed' interview is a formal interview in which a police officer is required to answer questions, see *PSA* s 46(3)(a)(ii).

2. Officer F's 'use of force' report⁹³ appears to contain exaggerations and false statements about the incident. For instance, Officer F states that their actions in relation to Z were in 'self defence', and that Z resisted Officer F's actions with a 'grapple'. Neither of these statements are supported by the video evidence. Officer F also states that both they and Z fell to the floor – not that Officer F purposefully took Z to ground, which is what the video suggests happened. The report was reviewed by an inspector who also made exaggerations, by saying that Z had been 'aggressive' towards police immediately prior to the interview. In fact, the CCTV footage shows that Z was not aggressive at any stage (although **after** the interview Z does get 'mouthy').
3. One of the police witnesses in the complaint investigation was an officer who had been assigned to review the use of force report. In their statutory declaration, this officer appears to suggest that they spoke to Officer F and reviewed the use of force report on 16 August. However, the use of force report was not submitted until 21 August.

⁹³ A 'use of force' report must be submitted by a Tasmania Police officer whenever a particular type of force is used, see *Tasmania Police Manual*, above n 19, [10.2].

Case study 2

In this internally generated Class 1 complaint, a police officer (Officer B) was close friends with two police officers (Officer C and Officer D) who were in a relationship. Noticing one night in January 2013 that Officer D had left their email account open on a computer, Officer B proceeded (in consultation with Officer C) to construct and send a highly inappropriate email about Officer C and D's relationship to a number of police officers.

Issue 1: Timeliness; Sustained findings

This was an open and shut case in which Officer B had clearly breached various aspects of not only the Tasmania Police Code of Conduct, but also the organisation's equity and diversity and email use policies. The case was initially handled at the district level but not registered as an internal complaint. However, Officer B was interviewed as if the matter was being dealt with as a complaint, and was given a counselling under the *PSA*.

Over four months after the email, in May 2013, Professional Standards was finally notified of the matter. Due to the matter not being handled in accordance with policy, Professional Standards assessed that another investigation was required. Professional Standards was of the view that a counselling was an insufficient sanction for such conduct. The matter was sent back to the district to re-investigate.

The investigator then did nothing about the matter for 15 months. Eventually the matter was reassigned to someone else, who produced an investigation report in September 2014, some 20 months after the offensive email had been sent. The report recommended that, given the amount of time that had passed since the email was sent, the original sanction be entirely quashed and the complaint 'withdrawn'. Indeed, the one allegation on IAPro for this complaint – 'Breach Code of Conduct – Bring discredit on the Service' – is listed as withdrawn. As recommended by the investigator, the sanction was also quashed.

There are a number of aspects of this matter that are of concern. First, given that:

- Officer B had been given as much of an opportunity to make a submission about the counselling as several other officers in the complaint files subject to audit;⁹⁴
- the counselling, even though it had not been given by Officer B's commander as strictly required, had been approved by the commander; and
- the breach of the *PSA* and at least two internal policies – and possibly the *Anti-Discrimination Act 1998* (Tas) – was so clear;

the Commission can see no reason for the original sanction to have been quashed at all (unless it were to impose a higher sanction). Likewise, the Commission considers that there is no reason that this complaint should have been 'withdrawn'. Second, there appears to have been no effort made to identify why the (second) investigator did nothing with the complaint for so long. In one of the reports, it is stated that the second investigator had been given many extensions of time; however, the third investigator states that they can find no

⁹⁴ Officer B was interviewed, and given the opportunity to comment at the time of being given the sanction. However, the correct procedure is that officers be given 14 days to provide a written submission in regard to an intention to impose a sanction under the *PSA*. As documented in this report, in four other complaints involving five subject officers, the subject officer was not given an opportunity to make a written submission prior to the application of a *PSA* s 43(3) action.

record of this. In some other similar situations, investigators have been the subject of an internal complaint on the basis of their delay.⁹⁵ In this complaint, the issue seems to have been largely ignored.

Within the file, it is noted by a commander that the management of this complaint creates the opportunity for criticism; the Commission agrees with this summation. From the date of receipt to the date of completion, this relatively open and shut matter took a total of 627 days to finalise.

Issue 2: Listing subject officers correctly on IAPro

Only one officer – Officer B – is listed as a subject officer on the IAPro record of this complaint. However, the Commission assessed that the below officers should also have been listed on IAPro (regardless of whether the findings were sustained, not sustained, withdrawn, etc.):

1. Officer C, who assisted Officer B to write the email;
2. a number of the officers who received the offensive email and failed to report the misconduct, as required under the Tasmania Police Manual; and
3. the second investigator, who failed to deal with the complaint as required by their commander.

Professional Standards does identify that the officers listed at points (1) and (2) above had potentially also committed misconduct, and this is dealt with to some extent in the final investigation report. It is inequitable to list Officer B on IAPro and none of these other officers.

Issue 3: Organisational issues

In this complaint, there were two instances of organisational issues identified as part of the audit. The first was that an entire station had clearly not handled the matter appropriately, resulting in Professional Standards not being notified for over four months after the incident. Professional Standards did identify this issue and attempted to deal with it as well as it could.

The second organisational issue concerned a statement made by Officer B in their interview. Officer B told the interviewer that they had seen other officers access email accounts that were not their own and send joke emails. This was not identified as an organisational issue at any stage of the complaint.

Issue 4: Potential misconduct uncovered during the course of dealing with a complaint

Two additional instances of potential misconduct emerged during the course of handling this complaint. The first was that the complaint was initially dealt with erroneously at the local level. The Commission assessed that, due to Professional Standards identifying and dealing with this matter as best it could, this potential misconduct was 'dealt with but not listed on IAPro'.

⁹⁵ Examples of this were given in the 2014 audit report, see *An audit of Tasmania Police complaints finalised in 2013*, above n 4, 22.

The second was the failure of the (second) complaint investigator to deal with the matter for 15 months. As mentioned above, in other complaints this kind of behaviour has been defined as misconduct. This potential misconduct was not dealt with and not listed on IAPro.

Issue 5: Action taken

There is an action listed next to Officer B on IAPro. The action is stated to be 'Equity and Diversity Training'. However, this training was actually compulsory training that all police attend – it was not specific training given to Officer B as a result of the complaint. The Commission therefore considers it was inappropriate to list this as an action taken on IAPro.

Case study 3

In this Class 2 complaint, the subject officer (Officer A) had been the organiser of the police response to a local event. As part of the preparations for the event, Officer A had been in contact with a local security company that was providing security at some event venues. With reference to internal databases, Officer A compiled a list of 'persons of interest' (POI) who were likely to cause trouble at the event. The POI list had detailed information about each person, including photographs, past and present charges, licence details, dates of birth, and home addresses. Officer A gave the list to the head of the security company, suggesting that police would 'move on' any person on the list on sight. Police only have authority to give 'move on' orders in certain situations, and cannot simply hand them out at will.

The complainant (Y) was one of the persons on the list. When Y found out about the list, Y first attempted to speak directly to Officer A and their manager. When that failed, Y made a complaint about: the breach of confidentiality involved in providing the list to the security company; mistakes made on the list about Y's criminal history; the response of Officer A and their manager in denying the existence of the list; Officer A's stated intention to use 'move on' orders without any lawful authority to do so; and that police were harassing Y.

Issue 1: Variance between the allegations listed on IAPro and the allegations dealt with in the file; Sustained findings

The Commission determined that not all allegations dealt with in the file had been listed on IAPro. This included some allegations that were missing entirely from IAPro, and some that had been 'bundled'. There were two allegations listed on IAPro against Officer A:

1. Breach Code of Conduct – Fail to maintain confidentiality (this relates to Officer A's release of confidential information to the security company); and
2. Breach Code of Conduct – Bring discredit on the Service (this relates to denying to Y that Officer A had created the list and given it to the security company).

The allegations dealt with in the file that were entirely missing from IAPro included:

1. Officer A intended to unlawfully utilise police 'move on' powers (this allegation is stated to be 'unfounded' in the final letter to Y's lawyer, so clearly it had been dealt with);
2. some of the information on the list about Y was incorrect (this is also discussed in the final letter to Y's lawyer); and
3. that police in general, and Officer A in particular, were harassing Y (this allegation is stated to be 'unsustained' in the final letter to Y's lawyer).

The allegations that were bundled on IAPro relate to the breach of confidentiality. The investigator uncovered that not only was provision of the list to the security company a breach of the Tasmania Police Code of Conduct, it was also likely a breach of the *Personal Information Protection Act 2004* (Tas) and – given that some of the persons on the list were under 18 years old – a breach of the *Youth Justices Act 1997* (Tas). Instead of listing what should potentially be three sustained allegations on IAPro, only one was listed.

Issue 2: Potential misconduct uncovered during the course of dealing with a complaint

The potential breach of the *Youth Justice Act* only emerged as part of the complaint investigation (it was not originally identified by Y). This additional instance of potential misconduct was dealt with as part of the complaint investigation, but was not listed on IAPro.

It also appeared that Officer A gave false information to the complaint investigator during their formal interview. Officer A's explanation about what they told Y when Y confronted Officer A about the list is not supported by anyone else (including Officer A's supervisor) and makes little sense. The investigator does make a finding that Officer A, on the balance of probabilities, was 'evasive' when confronted by Y. However, this finding is later reversed and a 'not sustained' finding is listed on IAPro for this allegation. Accordingly, the instance of potential dishonesty in giving false information during the complaint investigation is not identified or dealt with by Tasmania Police.

Other issues

1. Officer A was counselled under *PSA* s 43(3) as a result of this complaint. It does not appear that any performance development measures were taken. The Commission considers that Officer A may have benefited from some training or guidance on the importance of, and rules around, confidentiality.
2. It does not appear from the file that Tasmania Police made any effort to recover all remaining copies of the POI list from the security company, and thereby allowed the confidentiality breach to continue.
3. Y informed police that the main outcome they wanted to get out of the complaint was an apology. The Tasmania Police investigator recommends making an apology. However, there was no apology in the final letter to Y's lawyer.
4. The security guard mentioned in their interview that, on receiving the POI list, they rang Officer A to tell them that it was a breach of human rights to give 'move on' orders without cause. This statement is not questioned further by the investigator.
5. The investigation does not appear to have examined whether the two move on directions that were given at the event were legitimate, nor is Officer A queried to any level of depth about those two directions.
6. On a positive note, the contact with Y during this investigation was very good. Y was kept informed at every step of the way by the investigator, and was even told when the investigation report was completed. The running sheet was excellent, and the hardcopy file overall was orderly and thorough.

Case study 4

This Class 2 complaint was made by a youth (X). There were a number of aspects of the resulting complaint investigation that were well handled.

X lived in a rural town and had been drinking with some mates on New Year's Eve. X subsequently went to an eatery with a cousin, where their behaviour led to police being called. When police arrived the youths were in the car park and there were no ongoing issues. It appears that police first approached X's cousin. X subsequently moved to protect their cousin, and this led to X being taken to ground and arrested. X alleged that while they were on the ground, one of the arresting officers – Officer H – punched X in the eye and kned X in the back.

Issue 1: Acceptance of complaints; Potential misconduct uncovered during the course of dealing with a complaint

Several times on the night of the arrest, X complained (verbally) about being punched by Officer H. Despite their obligations under the Tasmanian Police Manual and X's obvious black eye, police on duty on the night did not accept a complaint or take any action. This failure to accept a complaint was identified during the course of the complaint investigation, and as a result sustained findings were made against three officers.

Issue 2: Referring matters to the Director of Public Prosecutions

In accordance with good practice, this complaint was sent to the DPP for independent review of whether Officer H should be charged with assault. The DPP found that there was no reasonable prospect of conviction.

The standard of proof in criminal matters – beyond reasonable doubt – is different to that of disciplinary matters, where 'balance of probabilities' is used. The complex rules of evidence that apply in court are also not necessary in disciplinary investigations. Therefore, as stated in the 2014 audit report, good practice dictates that disciplinary findings may be made in some cases where criminal findings cannot. In this complaint, Tasmania Police applied good practice standards and assessed whether disciplinary findings could be made against Officer H. After analysis, it was decided that a sustained finding of 'breach Code of Conduct' in relation to the excessive force allegations should be made against Officer H.

Other issues

1. As required under the PSA, X (through their mother) was notified in writing of both PSA s 43(3) counsellings given to two subject officers.
2. The running sheet in the hardcopy file of this complaint was excellent.

Conclusion

The Commission's 2015 audit of complaints against police finalised in 2014 has found that Tasmania Police does not have consistent policy or practice in relation to the **acceptance and registration** of complaints. There is also room for improvement in regard to adequately and appropriately dealing with complaints.

Record keeping on the case management system, IAPro, has improved since the Commission's 2014 audit, but the current audit findings demonstrate that it is still inadequate in several respects.

The majority of **systemic/organisational issues** (as identified by the Commission) raised in complaints are being recognised and/or dealt with in some way by Tasmania Police.

Finally, the audit has found a marked improvement in registration **timeframes**, and it is possible that overall complaint resolution timeframes are also improving. This trend will be monitored in future audits.

Appendix: Tasmania Police response

Below is a letter from the Tasmania Police Commissioner in response to the draft audit report. Note that, as this response was taken into account in finalising this report, some of the comments may not correlate exactly with the published version of this report.

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24 September 2015

Ms Diane Merryfull
Chief Executive Officer
Integrity Commission, Tasmania
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Dear Ms Merryfull

INTEGRITY COMMISSION AUDIT OF TASMANIA POLICE COMPLAINTS FINALISED IN 2014

Thank you for the opportunity to comment on the draft report titled *Integrity Commission Audit of Tasmania Police Complaints Finalised in 2014* (the Report). The offer is appreciated as it also affords an opportunity to comment on matters that are not entirely agreed with or warrant clarification.

Regarding the Report's recommendations, Recommendations One and Two within the Report are agreed to 'in principle' on the basis that continual improvement is welcomed and they will be referred to the Graduated Management Model Review Project Steering Committee for consideration. Recommendation Three is also accepted and the action will be implemented immediately by Professional Standards.

I note that the Commission has interpreted Annexure D (*Recording Process and Management of Documentation*) of the *Graduated Management Model for Complaints Against Police* as a general approval by this office as to the manners in which complaints may be lodged. Please be advised that this is not the case and, pursuant to s44(2)(a) of the *Police Service Act 2003*, complaints must be submitted in writing to be accepted, or in another manner approved by this office (delegated to Commanders) on a case by case basis. I would appreciate the Commission's cooperation in amending the Report accordingly and also undertake a review as to whether my advice influences the Commission's findings where relevant.

A key finding in the report is that the record keeping on IAPro is inadequate. I note the concluding comments in the Report reflect that the record keeping on the system is 'still inadequate in several respects'. The two positions differ and advice has been provided to me by the Commander of Professional Standards that the concluding comment is a more accurate representation of situation; that is, the record keeping on IAPro is satisfactory but in several respects record keeping is inadequate and improved accuracy would be beneficial. I would appreciate the Commission's cooperation in amending the key findings of the Report in alignment with the concluding comments and reflecting that in many respects the record keeping on the system is satisfactory.

It is concerning that a key finding of the Commission identified 28 instances of systemic/organisational issues. I am advised by the Commander of Professional Standards that he reviewed complaint file examples referenced by the Commission in support of related

comments. As a result, the Commander sought clarification from the Commission as to the Commission's interpretation of a 'systemic/organisational issue'. I am advised that the following explanation was provided –

'...the systemic/organisational issue identified in each of the relevant complaints does not necessarily relate to the substance of the complaint, and may have emerged as a peripheral matter. The organisational/systemic issues did not necessarily emerge across complaints. Also, the identification of a systemic/organisational issue did not necessarily signify that there was a problem inherent in the overall system, but instead simply that there may be a problem wider than individual misconduct on the part of one officer.'

I am advised that the Commander's view is that a systemic/organisational issue is a problem / issue inherent in the overall system rather than individual or isolated factors and he has briefed me and recommended that I request the Commission to apply a more succinct interpretation. The Commander has also provided advice that he is not in full agreement that the examples provided by the Commission in support of the findings are accurate.

I believe it is the prerogative of the Commission to apply an expanded interpretation and make findings accordingly as provided above, noting that they are subjective and it may also result in an inflated number of issues when compared to the application of the more succinct interpretation. On that basis, I would appreciate the cooperation of the Commission in incorporating the Commission's explanation within the content of the Report where appropriate.

As acknowledged in the last audit, it is noted that the remarks within the Report regarding key findings and comments relating to the complaint files in this audit are a subjective view by the Commission and that a determination by the Commission that a finding was not justified does not necessarily mean that it was the wrong finding - just that in the opinion of the Commission there was no evidence and/or justified rationalisation in the records audited to support that particular finding.

In the attached document titled *'Summary of Comments in Response to the Draft Audit Report of Complaints Finalised in 2014'*, comments have been applied reflecting the position of Tasmania Police where applicable for which I would appreciate your consideration of inclusion within the final Report, either in their entirety or in a summarised form.

For ease of reference, an electronic version is available from Professional Standards in which the linked comments are displayed opposite the relevant highlighted text. The electronic copy of the attached document and detailed comments is available by contacting [REDACTED] Professional Standards.

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

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

Yours sincerely



D L Hine
COMMISSIONER OF POLICE

**Information identifying a Tasmania Police employee has been redacted from the above letter.*

INTEGRITY
COMMISSION

