

Complaint Handling Guidelines



NSW Police Force

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Message

Effective complaint handling is the key to an ethical police force. Any police force that is accountable for the conduct of its police officers must be prepared to deal with complaints openly, efficiently and fairly is more likely to enjoy community confidence than one that is closed to criticism.

Police complaints handling is a highly complex function governed by statutes, regulation and agreements and those involved in the process need guidance on how to work within the complaints handling regime.

These guidelines provide an up to date guide for complaint handling managers to help them manage complaints in a timely and effective manner. They are reflective of the governing legislation and form the basis for NSW Police Force complaint handling policy.

The guidelines are designed to support the practical application of Part 8A of the Police Act, and provide guidance on the statutory administrative requirements governed by the Act.

Complaint handling managers are expected to adhere to the guidelines at all times.

Paul A Carey APM
Assistant Commissioner
Professional Standards Command

Introduction

These guidelines provide instructions for managing a complaint made under *Part 8A of the Police Act 1990* about the conduct of a New South Wales Police Force (NSWPF) sworn officer. Complaints about administrative officers, temporary employees, ministerial employees and contractors are not covered by these guidelines.

Statutory basis of complaint handling

The police complaints system is governed by the *Police Act 1990*, which sets out how complaints are to be addressed and managed by the Commissioner of Police.

The role of the Commissioner of NSW Police Force

Under Part 8A of the Police Act, the role of the Commissioner is:

- (a) to receive and assess complaints
- (b) to take appropriate action on complaints in a timely and effective manner
- (c) to provide information to complainants, police officers the subject of complaint and the Ombudsman.

The Commissioner has delegated his powers and responsibilities under the provisions of Part 8A of the Act to Commanders and Managers to enable the localised management and administration of complaints. Refer to the *'Instrument of Delegation – Police Act 1990 & Police Regulation 2008 - Various Functions - 9 Dec 2010, available of the LAW intranet site.*

The following agencies also have a role in police complaint management:

The NSW Ombudsman

The role of the Ombudsman is:

- (a) to receive and assess complaints
- (b) to monitor the handling of certain complaints
- (c) to determine whether complaints have been properly dealt with
- (d) to investigate certain complaints and related issues
- (e) to provide reports to complainants, the Commissioner and the Minister when appropriate
- (f) to inspect NSW Police Force records with respect to the handling of complaints
- (g) to keep under scrutiny the systems established within NSW Police for dealing with complaints.

For further information on the functions and responsibilities of the NSW Ombudsman refer to Annexure 3 NSW Ombudsman's Functions and Responsibilities.

The Police Integrity Commission (PIC)

The role of the Police Integrity Commission is:

- (a) to receive complaints
- (b) to refer complaints to the Commissioner of Police and the Ombudsman
- (c) to manage and oversee the investigation of certain complaints by NSW Police Force
- (d) to investigate or take over the investigation of certain complaints where it considers it appropriate to do so. (To the extent that the investigation of a complaint is taken over by the Police Integrity Commissioner, the complaint is not to be treated as a complaint for the purposes of Part 8A except as directed by the Police Integrity Commission or as directed by the regulations).

Police Integrity Commission take over of complaints

If the PIC decide to take over the investigation of a Part 8A (Police Act 1990) complaint, the matter is no longer considered to be a Part 8A complaint unless otherwise directed by PIC.

Where the PIC have decided to assume responsibility for the investigation of a police complaint, the Police Commissioner's reporting obligations in under the *Police Act 1990* (Information to be sent to complainant and Ombudsman) no longer apply.

See CPN 11/10 - Suspending complaints where the PIC take over a Part 8A investigation.

PIC monitored matters

On occasions the PIC may notify PSC that the Commission monitoring a NSW Police Force complaint investigation and will acquit its oversighting function based on a review of the final Investigators Report completed by NSWPF.

In these cases, the PSC advises the PIC when the complaint investigation is complete and facilitates the provision of the final report to the Commission. The reporting obligations under s150 of the *Police Act 1990* (Information to be sent to complainant and Ombudsman) do not apply.

For further information on this issue contact PSC External Liaison Unit via PSC Help Desk on eagle net 48370 or email #PSCELU.

General Information

This document provides advice and guidance for complaint handling managers in relation to the requirements of the legislation. The document has been written to assist complaint handling managers with complaint administration. It outlines the action that must be taken when assessing and investigating complaints about police conduct.

The guidelines are divided into five parts reflecting the stages of the complaints management process.

Part I - Complaint Assessment

Part 1 provides information to assist in determining whether a document should be received and managed as a complaint under Part 8A of the Police Act.

Part II - Triage

Part II details the action to be taken during the Triage process. This includes the consideration of information readily available to the NSW Police Force to best determine the most appropriate way to respond to the issues raised within the complaint.

The Triage process includes a decision making process where a determination can be made to decline the investigation of the complaint or refer the matter for investigation. Responsibility for the completion of the Triage process has been delegated to Professional Standards Duty Officers (PSDOs); however, Commanders/Managers retain the Commissioner's delegated authority under the Act.

Part III - Resolution (non CMT managed investigations)

The resolution process is an alternative investigative process developed to allow for a less formal investigation of complaints about police conduct. Matters referred for resolution do not typically warrant the formality, complexity and authoritative decision making associated with evidence based investigations and as such do not require the involvement of the Complaint Management Team (CMT).

This section provides advice for Resolution Managers on the process to be followed when conducting a resolution investigation.

Part IV - Evidence Based Investigation

The purpose of conducting an evidence based investigation is to ensure admissibility of information in criminal court proceedings or other tribunals where reviewable action is likely to be taken against a New South Wales Police (NSWPF) officer. These investigations are subject to instruction and guidance from the Command's Complaint Management Team.

Part IV of the guidelines provides separate information for Complaint Management Teams and Investigators on the legislative and policy requirements associated with evidence based investigations into police complaints.

Part V - Investigative Issues

Part V contains information specific to investigative issues which regularly arise when dealing with Part 8A complaints.

Part VI - Appendices

Part VI contains appendices which provide links to associated documents such as Professional Standards Command (PSC), Complaint Practice Notes (CPNs), which provide guidance on managing specific types of complaints or specific procedures that are outside of the *general* complaint handling process. These documents are also available on the PSC Intranet site.

Key considerations for complaint handlers

Regardless of how a complaint is managed you must give careful consideration to:

- Your role in the management of the complaint e.g. Commander, Executive Officer, Professional Standards Duty Officer (PSDO), Investigator, Resolution Manager, member of CMT. Information specific to each of these roles is provided within the Roles and Responsibilities section in the Triage, Resolution and Evidence Based Investigation (CMT managed investigations) chapters.
- Identifying and avoiding conflicts of interest
- Maintaining confidentiality
- Taking interim risk management action
- Internal Police Complainants (IPCs)
- Affording procedural fairness with respect to disclosing information to relevant parties.
- Managing the expectations of the complainant.

Identifying and avoiding conflicts of interest

All complaints must be managed impartially. As a member of the CMT or as an investigator, you must declare any conflict of interest you may have, or be reasonably perceived to have, in relation to the complaint or persons that are involved in the complaint (i.e. the subject officer /complainant).

It is not always easy to identify a conflict of interest, particularly where the conflict is such that it may produce bias. For example acquaintance with a person involved in the complaint, or the fact that you have worked with that person, whether in a supervisory or other capacity, would not in itself result in a conflict of interest.

However, these factors may give rise to a perception of a conflict which is just as damaging to the complaint management process.

When considering whether you have a conflict that should be declared, ask yourself:

- Do you have a personal or financial relationship with the person who made the complaint, the person who is the subject of the complaint, or anyone identified in the allegations?
- Would you or anyone associated with you benefit unfairly or suffer from any findings made against the person who is the subject of investigation?
- Do you hold any personal or professional biases that may lead others to conclude that you are not an appropriate person to be involved in this matter?
- Are you potentially a witness or otherwise involved in the subject matter of the complaint?

If you answer yes to any of these questions do not proceed until the issues are resolved with the Commander/Manager or the CMT.

If you are in doubt about whether a conflict exists you should seek advice from your PSDO/Triage officer/equivalent or commander and ensure that the process is documented.

Complaint Allocation Risk Appraisal (CARA)

The Complaint Allocation Risk Appraisal (CARA) process assist complaint handling managers determine whether complaints, based on a risk appraisal process, should be managed locally or transferred to another location for investigation or other action. The CARA process involves two steps and contains mandatory requirements for documentation to be included within the complaint records. *Refer to the Complaint Allocation Risk Appraisal (CARA) Guidelines contained on the PSC intranet site under Policy and Guidelines.*

Maintaining confidentiality

Complaint information must be managed so that its physical security is protected at all times. This includes officers treating all information which comes to them in an official capacity as strictly confidential.

Complaint information should be secured. Triage officers should ensure information is provided to resolution managers securely. PSDOs should also monitor security of information handled by resolution managers.

Legislative requirements govern the disclosure of the identity of a complainant (*section 169A Police Act 1990 and Commissioners guidelines*). This is supported by an additional legal requirement that officers treat all information which comes to them in an official capacity as strictly confidential and not divulge it to anyone without proper authority (*clause 75 of the Police Regulation*).

Commanders/Managers are to ensure that systems and procedures for the safe management and storage of complaint information are established and maintained. This may include:

- ensuring that all hard copy complaint related information is stored in a secure area that is only accessible by staff who have a right to access that material. (This includes files, folders, computer spreadsheets, information contained on whiteboards or any other complaint related material)
- ensuring that investigators securely store any complaint related material in either locked cabinets or other secure areas
- holding CMT meetings or other meetings where complaints are discussed in locations where conversations cannot be overheard
- using appropriate methods to deliver confidential correspondence eg. handed personally by the commander or executive officer or using secure mail
- not using computers that are accessible to all staff without taking precautions.
- ensuring that only authorised officers are placed on the access list for complaints on c@ts.i that have a caveat.

For information on local storage, sentencing and disposal of c@ts.i files refer to NSW Police Force c@ts.i file disposal Standard Operating Procedures.

Confidentiality of complainant's identity

The *Police Act 1990* and the *Police Regulation 2008* provide specific statutory protection for people who make a written or oral allegation of police misconduct. The identity of the complainant must not be disclosed unless in accordance with *Section 169A of the Police Act 1990*.

Section 169A of the Police Act 1990 applies where a person has made a complaint in writing and the alleged conduct meets the criteria set out in s122(1) of the *Police Act*. It does not apply to complaints that are classified as s122(2) matters. These types of matters are considered minor and managerial in nature and applying the confidentiality provisions could hinder the effective resolution of the matter.

However, this does not affect the general principal that information concerning the misconduct of police officers should not be disclosed except for a purpose connected with the performance of NSW Police Force functions.

Detailed information in relation to the requirements of s169A is contained within the [Section 169 A Guidelines and Clause 53 authority \(Feb 2010\)](#) Contained on the PSC intranet site under Policy and Guidelines.

Taking interim risk management action

The taking of interim risk management action is authorised under *section 171(2) of the Police Act 1990*. While triage officers and resolution managers may make recommendations on interim risk management, interim risk management action is determined and approved by the Commander/Manager.

Interim risk management action can be taken at any time in relation to a complaint matter until final management action is determined and implemented. It is critical that any action taken is clearly recorded as 'interim risk management action' to differentiate between this action and final management action. Taking interim risk management action does not prevent a commander from taking final management action. The interim management action is taken in response to an identified risk while managing the complaint allegation and is not necessarily reflective of the final outcome.

Risk management action may include; a change of duties, additional supervision, rostering with more experienced staff, securing or restricting access to firearms, rectifying systemic or procedural practices, referring recommendations on organisational issues to responsible commands, suspension and any other management action that appropriately alters relevant risks.

In all these instances the CMT must monitor any change of circumstances during the investigation of the complaint and amend the interim risk management action where required.

The Management Support Unit, PSC is responsible for the provision of and support to local area and specialist commands regarding conduct and performance management. It also advises on approaches and strategies for addressing issues affecting workplace culture. This unit provides advice and support to commands by assisting with conduct and performance plans, including structuring interim risk management plans.

Consult the *Interim Risk Management Guidelines for Police* for further instruction. http://intranet.police.nsw.gov.au/_data/assets/file/0011/253847/Interim_Risk_Management_Guidelines_for_Police_21Mar10_asset_253847.pdf

Internal Police Complainants (IPCs)

All police officers or non sworn employees who make a complaint about the conduct of a NSW Police Force officer are automatically referred to as Internal Police Complainants (IPCs). IPCs involved in evidence based and resolution investigations are also referred to the Internal Witness Support Unit (IWSU).

One of the ways in which a healthy and ethical organisation can be identified is the degree by which its members feel confident to report corrupt and unethical behaviour. Commanders and managers should be proactive in building this confidence by clearly demonstrating that victimisation and harassment of internal police complainants is unacceptable, and that appropriate action will be taken against those responsible for these acts. Increased confidence in both the organisation and in the commander or manager will consequently follow.

Commanders and managers should make it very clear to their employees that any form of detrimental action against an internal police complainant is unacceptable and will not be tolerated. Should a commander or manager be aware that an internal police complainant has been, or is being victimised, harassed or ostracised, immediate action should be taken to address this situation.

Consult the *Internal Witness Support Guidelines* for further instruction.
http://intranet.police.nsw.gov.au/_data/assets/file/0006/267045/Internal_Witness_Support_Asset_267045_updated_7Dec2010.pdf

Procedural Fairness

Where a police officer is the subject of a complaint, and it is determined that a sustained finding will be made, certain procedural fairness requirements must be met.

This means that:

- the allegations (evidence adverse to the officer) and substance of any proposed adverse comment or finding must be disclosed to the subject officer before a final decision is made
- the subject officer is given the opportunity to respond to and comment on allegations (evidence adverse to the officer) and any proposed adverse comment or finding
- decisions adverse to the subject officer may only be made on the basis of relevant and logically probative evidence
- investigations must be impartial and decisions must be made without bias
- investigations must be completed and decisions made without undue delay.

Consult the *Guidelines on procedural fairness and Part 8A evidence based investigations*, located on the PSC intranet site for further instruction.

Managing the Expectations of the Complainant

The complainant should be provided with information about the complaint process at the outset including the requirement under the legislation for consultation prior to finalisation of the complaint (s150 (a) and (b))

Registered sources and role in complaints

Difficulties have arisen, in the past, in relation to complaints when registered sources have become either witnesses or complainants in complaint investigations. In order to adhere to the best practice principles during a complaint investigation, see CPN 07/10, Protection of Registered Sources when involved as either complainants or witnesses in complaint investigations. This CPN provides guidance on the handling of source details in documents and when forwarding documents (section 150 reports) to oversighting agencies.

Part I: Complaint Assessment

When a complaint document is received by NSWPF the first step is to consider if the document constitutes a Part 8A complaint.

A complaint is to be assessed in accordance with Part 8A of the Police Act 1990 and the Memorandum of Understanding made under section 128(2) of the Police Act 1990.

Generally the Professional Standards Duty Officer (PSDO) will conduct the assessment and **must** determine if:

1. the complaint document meets the criteria set out in Part 8A of the Police Act 1990,
2. the document is a duplicate complaint
3. the complaint document is to be recorded on the complaints information system in line with the Memorandum of Understanding made under section 128(2) of the Police Act 1990, between the PIC, NSW Ombudsman and NSWPF (refer pg 15).

Is the document a Part 8A complaint?

A Part 8A complaint must¹:

- **be made in writing**
- **be made** to an investigative authority (NSWPF, PIC or NSW Ombudsman)
 - It is made to the Commissioner of Police if it is
 - delivered to a police officer personally, or
 - received by any member of the NSW Police Force by post, facsimile or electronic mail or
 - addressed to the Commissioner and lodged at the Local Court, or
 - referred to the Commissioner by the Minister, by the Independent Commission Against Corruption or by the New South Wales Crime Commission.

Complaints can also be received by the NSW Ombudsman or the Police Integrity Commission. Under the Police Act, those agencies are required to refer the complaint to the Commissioner. These matters are usually received and assessed as complaints by the Professional Standards Command.

It must also allege or indicate:

- **conduct** of a New South Wales police officer
- **conduct** occurring on or off duty
- **conduct** occurring anywhere

¹ Section 127(1) of the Police Act 1990

Conduct is defined in the Act² as actions or inactions

- (a) that constitutes an offence,
- (b) that constitute corrupt conduct (including, but not limited to, corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988*),
- (c) that constitute unlawful conduct (not being an offence or corrupt conduct),
- (d) that, although not unlawful:
 - (i) are unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
 - (ii) arise, wholly or in part, from improper motives, or
 - (iii) arise, wholly or in part, from a decision that has taken irrelevant matters into consideration, or
 - (iv) arise, wholly or in part, from a mistake of law or fact, or
 - (v) that are of a kind for which reasons should have (but have not) been given,



Documents which do not fall within the criteria set out in Part 8A are not considered Part 8A complaints and do not fall within the scope of these guidelines.

Documents assessed as not meeting the Part 8A of the Police Act 1990 are to be trimmed as a document, appropriately dealt with and filed. Contact should be made with the author and relevant issues dealt with.

- (e) that is engaged in, in accordance with a law or established practice, being a law or practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect.

All documents that meet the above criteria are complaints and must be dealt with in accordance with the provisions of Part 8A of the Police Act. In completing the assessment of a document, you must not take into consideration anything other than which is contained in the complaint.

At this point the complaint should be receipted in c@ts.i (where appropriate)

Section 129(1) of the Act requires that a record of all complaints must be kept by the NSW Police, and as such, unless the complaint is a duplicate or a matter exempted by agreement (see below) the matter **MUST** be receipted within c@ts.i.

The NSWPF time frame for receipting matters onto c@ts.i is 7 days

² S122(1) Police Act 1990

Duplicate complaints

Duplicate complaints should **not** be registered separately on c@ts.i and occur when a complainant (or their representative) lodges a complaint at multiple locations, or sends copies of their complaint to more than one agency (eg NSWPF, PIC and Ombudsman) or there is a data entry error.

Duplicates can be identified by using the '*search for related and duplicates*' hyperlink or '*search*' hyperlink in c@ts.i. You can also conduct a search on the complainant name, subject officer's name or the complaint issues. This function is required in order to ascertain if the complaint you are dealing with has already been registered.

If a letter is identified as a duplicate, the correspondence should be scanned and loaded onto the original c@ts.i record and appropriate notes made within the TRIM record indicating that the correspondence is a duplicate record. No further action is required in relation to the duplicate complaint

Related complaints: A related complaint occurs when it is related in some way to a complaint already on the system. The PSDO may want to link a complaint as related to make reference to the other complaint. Examples of related complaints may be that a complaint was lodged about the same incident/event but may site different individual issues.

Refer to [c@ts.i CMT Stream User Guide - April 2008](#)

Complaints that do not need to be recorded on c@ts.i

Under the Memorandum of Understanding between the Commissioner of Police, Police Integrity Commission and the NSW Ombudsman made under section 128 (2) of the Police Act 1990, certain types of complaints do not need to be registered on c@ts.i. These include;

- reports by NSW Police employees that concern performance management issues that do not allege or indicate conduct that is otherwise notifiable to the Ombudsman, such as reports of unsatisfactory work diligence and output or unsatisfactory completion of a performance agreement.

Conduct or Performance

The line between conduct or performance is often a fine one. The real difference is the extent to which an officer deliberately failed to do what he or she knew was expected. If so, the failure maybe characterised as a conduct issue.

However, to the extent that an officer's actions arise out of incompetence, mistake, poor judgement or lack of understanding of proper procedures the matter is really a performance issue.

- complaints about the issuing of traffic and parking infringement notices that do not raise any additional allegations (for example, rudeness or a specific allegation of a lack of integrity)

-
- legal representations for review of criminal charges, that do not allege or indicate conduct that is otherwise notifiable to the Ombudsman
 - allegations of embellishments in police promotions applications.

Administration

The following information provides guidance on administrative actions which support the assessment process.

[c@ts.i receipt timeframes / date received](#)

From the received date:

- seven days to receipt on [c@ts.i](#)
- three days for receipt on [c@ts.i](#) where an investigation has commenced prior to a complaint being receipted on [c@ts.i](#) (eg. PCA).

The date received is the date on which NSW Police Force received the correspondence i.e. at the command, Commissioner's Office etc. Documents must be date stamped at the time of their receipt. As a general rule, if the complainant has recorded a date on the complaint letter, but there is no way of establishing the received date through phone calls or other means, allow two working days for delivery and record that date.

If the complaint is an internal report, the received date would be the date the report was received by a supervisor or other person to whom the report is submitted.

Part 8A requires that a copy of all complaints **MUST** be registered in [c@ts.i](#) and a copy of the notifiable complaints must be provided to the NSW Ombudsman. It is important that the complaint is registered at the earliest available opportunity. This action allows for:

- PSC to commence monitoring of the complaint and allows for advice and direction to be provided if required
- the commencement of timeliness measures which ensure that Commands manage the time taken to complete a complaint investigation
- the oversight agencies to monitor the progress of the complaint

Do not wait until the end of the resolution/investigation to register the complaint on [c@ts.i](#) and load the documents as this effects the oversight agencies abilities to appropriately monitor the complaint's progress.

In most cases the executive officer will create, update and manage entry of [c@ts.i](#) data. If another person is tasked with entering this data, that person must be suitably trained and have appropriate access.

Correspondence management & TRIM

All complaint letters received are to be date stamped and recorded in TRIM.

Correspondence determined to be a complaint under Part 8A should be receipted through the "non CMT managed stream – LMI." Once the complaint is receipted a TRIM file must be created as follows:

- Title – **Professional Standards – Complaint Management**

-
- Title (free text) – **relevant reference number if available e.g. PIC / Ombo ref no. or complaint ID no.**
 - Classification – **PROFESSIONAL STANDARDS – COMPLAINTS MANAGEMENT – Police Officers – Complaints and Investigations – Matters Not Resulting in Disciplinary / Remedial Action**
 - Access / Security level – **Protected.**

IMPORTANT

At no time is the identity of the complainant, subject officer or any other person associated with the complaint to be included in any TRIM file or document title.

The physical file should remain at the command responsible for managing the complaint. The c@ts.i system is to be updated with the TRIM file number.

Part II: Triage

The NSWPF time frame for completing triage is 21 days from the date received by NSWPF

Purpose

The purpose of triage is to determine the most appropriate way to manage the complaint.

During Triage a decision will be made as to whether:

- the complaint is referred for resolution for completion or for additional inquiries to be conducted
- the complaint is referred to the CMT as a standard referral for the purpose of conducting an evidence based investigation
- the complaint is referred to the CMT as a discretionary referral for the purpose of considering conducting an evidence based investigation.
- The investigation of the complaint should be declined.
- The complaint is notified to the Ombudsman, Workplace Equity Unit or Internal Witness Support Unit.

Refer to Triage Form – Mandatory - P1001.

Roles and responsibilities

Commander/manager

Commanders / managers should be mindful all decisions regarding NSWPF complaints rest with them. The process of triaging a complaint may be delegated to an appropriately qualified senior officer such as a Professional Standards Duty Officer (PSDO), Crime Manager or equivalent.

The role of the commander / manager includes:

- endorsement of decisions made regarding the triaging of complaints
- determining, approving and monitoring applicable interim risk management strategies (for advice and guidance on interim risk management contact Professional Standards Command (PSC) Helpdesk on E/N 48370.

Triage officer (PSDO or equivalent)

The triage process can be performed by a suitably qualified senior officer such as the PSDO, Crime Manager or equivalent and involves:

The Triage Officer will need to consider whether they have any conflicts of interest that may affect their ability to complete the triage of the complaint in an effective and objective manner. The triage officer must disclose any actual or perceived conflicts so that these matters can be appropriately managed. In some circumstances, the

matter may need to be reassigned. For guidance on the types of matters you must disclose refer to the Complaint Allocation Risk Assessment Guidelines.

The role of the Triage officer is to:

- identify the subject officers
- identify the issues raised within the complaint document
- determine if the matter requires notification to the NSW Ombudsman's office, Workplace Equity Unit, Internal Witness Support Unit
- determine if the matter involves an allegation of reportable conduct or an act of violence occurred against, with or in the presence of a child as defined by the Commission for Children and Young People (CCYP) Act 1998 (Refer to CPN 08/01)
- In matters involving potential risks to children, identify and document whether an appropriate risk of harm report was or could have been made (see CPN 11/06). In most cases further collection and evaluation of holdings and readily available information will be required before a decision can be made regarding the management of the complaint
- determine if the matter involves domestic violence and whether a risk of harm report was, or should be made to Community Services or the Police Child Wellbeing Unit.
- make recommendations about how the matter should be addressed, including whether :
 - o the investigation of the complaint can be declined in accordance with section 141 of the *Police Act 1990*
 - o the matter should be referred to the CMT for consideration of an evidence based investigation
 - o the matter be referred for resolution or further inquiry.

The process of identifying and determining the above points will require the triage officer to:

- carefully read the complaint document
- speak to the complainant
- examine existing holdings and consider information readily available, and
- identify lines of enquiry.

The triage officer may use an appropriate officer to assist with triage related enquiries. Action must be taken to complete the Triage Form – Mandatory - P1001

Although the triage officer is responsible for completing the Triage Form – Mandatory - P1001, the ultimate decision regarding the NSWPF complaints rest with the responsible commander / manager.

Executive officer

This position provides executive support to the Local Area, Region or Specialist Commander. This includes managing the administrative procedures relating to police complaint/disciplinary matters from assessment to completion whilst maintaining confidentiality and security.

The role of the executive officer is to:

- Monitor, analyse and review complaint files.
- Ensure that matters referred to the CMT are placed on the CMT agenda.
- Coordinate the operations of c@ts.i - Create, update and manage entry of c@ts.i data and manage TRIM system.
- Prepare responses to the Complainant and Ombudsman, together with various submissions and memorandums in respect of conciliations, preliminary inquiries, line command investigations and declined matters.
- Liaise with appropriate internal and external agencies as required e.g. NSW Ombudsman, Professional Standards Command.
- Ensure complaints assessed as notifiable to the Ombudsman are notified via c@ts.i as soon as practicable

Executive officers must not be delegated the responsibility of conducting the triage.

How to triage a complaint

The following steps should be followed with reference to the Triage Form – Mandatory - P1001.

1. Identify the issues raised within the complaint document
2. Determine if the complaint document requires notification to the NSW Ombudsman in accordance with the Class and Kind Agreement.
3. Identify the subject officer(s) and examine complaint history.
4. Speak to the complainant / victim, if required
5. Examine existing holdings and consider information that is readily available
6. Identify lines of enquiry, consider instructions from oversight agencies
7. Triage Recommendation: Evidence Based Investigation, Resolution, Decline.

1. Identify the issues raised in the complaint document

The complaint document should be examined on face value with all issues identified and ranked in order of seriousness for each subject officer separately. The overall management of the complaint should be governed by the issues raised in most serious allegation, but must also consider other less serious issues. For example, allegations of criminal conduct suggested in the complaint document should be identified and considered and ranked above an issue of rudeness. This provides the

triage officer with a basis to commence evaluating police holdings with a focus on the criminal conduct and will assist triage officers in deciding on a referral to the CMT for the purpose of conducting an evidence based investigation.

Reviewing the material contained within a complaint letter may, on face value, provide the triage officer with enough information to determine an appropriate course of action.

2. Determine if the matter requires notification to the NSW Ombudsman

Notifiable issues are listed in the current **Class and Kind Agreement**. If the issues meet the criteria set out in the Class or Kind Agreement, the complaint is notifiable to the NSW Ombudsman and the matter must be notified through c@ts.i. This electronic notification is usually completed by the Executive Officer within the command through c@ts.i and is an administrative step only. This action **must** occur at the conclusion of Triage in compliance with the Act.

Although this requirement is bound by legislation³, it has no effect on the management of the complaint. Notification is based on the contents of the original complaint document. If a triage officer is unsure whether the complaint is notifiable to the Ombudsman, the triage officer should proceed to notify the matter to the Ombudsman.

Refer to:

- Class and Kind Agreement - This document can be located within PSC policy & guidelines section on the NSWPF intranet.

Disagreement with NSW Ombudsman assessment about whether a complaint is notifiable

Triage officers may receive a complaint from the NSW Ombudsman that has been forwarded by the PSC which the Ombudsman has assessed as a notifiable complaint. If the triage officer questions that assessment, the command must liaise with the nominated NSW Ombudsman contact and discuss the situation.

Triage officers may receive correspondence advising that a complaint that was notified by the NSW Police as being notifiable is no longer notifiable. Ensure that this advice, from the Ombudsman, is loaded onto c@ts.i. No further correspondence with the Ombudsman is required unless new evidence comes to light that would require this matter to be renotified to the Ombudsman.

3. Identify the subject officer/s involved and examine complaint history

Identify the subject officer(s) referred to within the complaint document. A subject officer/s complaint history should be examined at triage and considered during a Part 8A investigation (resolution or evidence based investigation). Complaint histories may reveal patterns of behaviour, circumstances surrounding current or previous

³ S130(2) Police Act 1990

complaints, complaints of similar conduct (where the issues are sustained or not sustained), investigative methods used during previous complaints and assist in determining the most appropriate manner in which to manage a current complaint or subject officer.

For example should a triage officer identify a sustained complaint history for a subject officer where reviewable action has been taken or warning notice served on the officer within the previous five years, the triage officer **must** refer the matter to the CMT to consider an evidence based investigation.

Should a triage officer identify a pattern of domestic violence related complaints for a subject officer, the triage officer should consider recommending interim risk management action (see CPN 11/06).

Should the triage officer not have the required c@ts.i access to review a complaint history (due to matters being under caveat) assistance should be sought from the commands executive officer or region Professional Standards Manager (PSM).

Checking complaint histories of an internal police complainant should also be undertaken for the purpose of assessing whether a complaint is a reprisal (payback) complaint. The responsibility as to whether 'detrimental action' is investigated rests with the relevant Complaints Management Team (CMT). For further information on detrimental action and payback complaints Refer to *Detrimental Action / Payback Complaint Policy and Guidelines* located on NSWPF PSC intranet site.

The outcome of the examination of the officer's complaint history should be clearly documented in the Triage Form – Mandatory - P1001

4. Speak with the complainant / victim

The purpose of speaking to the complainant / victim during triage is to clarify the nature of their complaint, clarify allegations and details surrounding the alleged incident/s, and to determine what further information or evidence they may have to support the complaint. It is important to consult with the complainant about their complaint document at the earliest opportunity.

Where the complainant is also a victim consider *The Charter of Victims Rights*, appearing in the *Victims Rights Act 1996* which sets standards for the appropriate treatment of victims of Crime.

Triage is also an opportunity to assess and manage the expectations of the complainant. If a complainant develops unrealistically high expectations, dissatisfaction invariably results. The triage officer should explain how the complaint process works and ask the complainant about their expectations concerning the outcome of the complaint. If these expectations seem unrealistic discussion about the likely outcome may assist in a more satisfactory outcome for the complainant.

The manner in which the complainant is consulted is dependant upon the triage officer. It can be done formally or informally with consideration to the issues identified. Depending on the circumstances, it may be possible for the triage officer to

recommend the investigation of certain issues be declined during triage. For example, when speaking with the complainant / victim it may become apparent that the issues can be addressed by explaining the law, policy or practice. If this is the case the investigation of the complaint should be declined in accordance with section 141(1) (a) of the *Police Act 1990*;

When speaking to a complainant, if it becomes apparent that inculpatory evidence is available for criminal or non-criminal issues that could warrant reviewable action if sustained, the matter **must** be referred to the CMT for the CMT to consider the progression of the complaint.

When a complainant cannot be contacted

If the complainant / victim is not able to be contacted in person or by telephone, it may be necessary to contact them via email or by posting a complaint form to them. This may also be useful where their original correspondence contains large amounts of unstructured information and it is unclear what their concerns are or how they relate to the NSW Police Force. Your correspondence should seek specific information to assist you in assessing and progressing any concerns the complainant may have raised. For example if a complaint alleges police unlawfully released confidential information, you may ask clarifying questions such as the type of information that has allegedly been released and any information the complainant may have about the identity of the police involved. The correspondence should also ask that contact details be provided. The correspondence should state that a response must be provided with **21 days** or the complaint will not progress. (A draft template letter is provided on the PSC website.)

Complaints from Anonymous sources

There is no legislative requirement for a complainant to provide their identity, and often complaints from anonymous sources contain sufficient information for inquiries to be conducted. Investigations into allegations raised in anonymous complaints should proceed in accordance with normal complaint managements practice, including notification to the relevant oversight agencies.

In many cases it will not be necessary to identify a complainant to examine the allegations. However, in circumstances where you believe action should be taken in an attempt to identify the complainant, authority to commence those inquiries needs to be obtained from the Assistant Commissioner, Professional Standards Command. (refer to CPN 11/04: Identifying anonymous complainants for further information).

5. Examine holdings and consider information readily available

IMPORTANT

Information considered at triage must be **existing** and **readily available**. You are not permitted to speak to witnesses or subject officers during triage.

Holdings checked during triage and the information obtained from readily available information and from the complainant must be clearly documented in the Triage Form – Mandatory - P1001.

Examples of existing and readily available information / holdings include:

- **Closed Circuit Television (CCTV) footage** – this includes police station holdings such as charge room and reception area footage, as well as footage from other external sources such as licensed premises. When approaching external sources for CCTV footage a triage officer should be careful not to engage in conversation or request information which may amount to obtaining information from a witness regarding the complaint matter, as this may be considered an investigative process outside the triage stage.
- **In Car Video (ICV) footage** – is useful to assess the veracity of the alleged conduct e.g. allegations of rudeness, unlawful searches and breaches of the Safe Driving Policy etc.
- **COPS/Charge/Custody records** – COPS events may confirm that police did take action, or provide an explanation for not taking a particular action where the allegation is one of inaction. Similarly, events and charge records may provide sufficient information to allow the investigation of a complaint to be declined and left to the determination of a court where criminal proceedings have commenced.
- **Notebooks/Duty books** – these holdings may provide evidence of actions taken and the decision making processes of police involved in the complaint.
- **Rosters** – can be used to confirm if certain police were working when the incident subject of a complaint occurred.
- **Vehicle diaries** – can be used to confirm police attendance at incidents and people who have been conveyed in police vehicles etc.
- **Workplace correspondence** - exhibits, CAD records, tasking sheets, work returns and other information may also be useful.
- **Call Charge Records (CCRs)** – call charge records can be used to assess the validity of allegations, however it should be noted that CCRs cannot be requested or used as part of the triage process unless they are already in the possession of the NSW Police Force. See CPN 07/08 - Using information from carriage service providers in complaint investigations under Part 8A of the *Police Act 1990*.
- **Court transcripts** – can be used to clarify evidence presented at court, e.g. clarify magistrate's comments etc. Use of audio tapes of court transcripts should be considered in the first instance as they are more readily available.
- **Offender/victim history** – information holdings about the offender/victim history (for eg in domestic violence matters) can be used to assess whether there is any previous history of violence, threats or intimidation to give context to the circumstances surrounding the incident and can assist in assessing whether there is any potential ongoing risks.

7. Determine the need for interim risk management action

Triage officers should determine whether recommendations for interim risk management should be made. It should be noted that interim risk management action is determined and approved by the subject officer's Commander / Manager.

Interim risk management actions may include;

- a change of duties,
- additional supervision,
- rostering with more experienced staff,
- securing or restricting access to firearms,
- rectifying systemic or procedural practices,
- referring recommendations on organisational issues to responsible commands,
- suspension from duty and any other management action that appropriately alters relevant risks.

Consult the *Interim Risk Management Guidelines for Police* for further instruction.
http://intranet.police.nsw.gov.au/_data/assets/file/0011/253847/Interim_Risk_Management_Guidelines_for_Police_21Mar10_asset_253847.pdf

8. Triage Recommendation

Following the completion of the checks outlined above the triage officer is required to make one of the following three recommendations:

Refer to CMT for consideration

If the complaint requires an evidence based investigation it must be managed by the CMT. As a practical guide a matter that, if sustained, would warrant mandatory referral to the NSW Police Force Internal Review Panel (IRP) or Commissioner's Advisory Panel (CAP) would be a matter that would warrant an evidence based investigation.

An evidence based investigation involves gathering and documenting sufficient evidence that may later be considered in formal proceedings (in accordance with the rules of evidence of the various forums in which the proceedings are to be heard). Formal proceedings include matters destined for hearings before courts or tribunals. More formal documentation including statements, records of interview and directive memorandums are used during evidence based investigations.

The following matters MUST be referred to the CMT for consideration of an evidence based investigation:

- Allegations of criminal conduct where triage has identified information, in addition to the complaint letter, that may support the allegation. (inculpatory evidence)

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- Complaints concerning the safe keeping of NSW Police Force Firearms including accidental discharge matters
 - Complaints about officers who have been served with a warning notice in the past 5 years
 - Complaints concerning officers who have been charged with a criminal offence
 - Complaints involving allegations, that if sustained, would result in mandatory referral to the NSWPF Internal Review Panel (IRP) or Commissioner's Advisory Panel (CAP)

The following types of matters are highly recommended for management by the CMT, but are not mandatory. These factors alone may NOT warrant conducting an evidence based investigation and are for consideration by the CMT

- Matters with known Police Integrity Commission (PIC) involvement
- Matters with issues of a media/corporate significance
- Matters considered to be a payback complaint as per the Police Act
- Matters that have substantial investigative resource implications for the command
- Matters requiring referral outside of the triaging command

It should be noted that a commander always has the discretion to refer any complaint for management by the CMT even where there is no inculpatory evidence identified at triage if he/she feels that the circumstances of the matter warrant an evidence based investigation.

Refer for Resolution

Where the triage process did not reveal inculpatory evidence or information that would require referral to the CMT the complaint may be referred for resolution.

Matters referred for resolution do not typically warrant the formality, complexity and authoritative decision making associated with evidence based investigations.

If a complaint document outlines issues of criminal conduct and no inculpatory evidence has been identified during triage the matter should initially be referred for resolution.

IMPORTANT	While resolution provides for flexibility in managing complaints, it is expected that the PSDO or Commander/Manager will be consulted where information is identified which may support a more formal investigative approach.
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If the complaint issues are to be resolved, the matter must be referred to a resolution manager. The complaint issues **can not** be resolved in the triage process.

For matters dealt with in the resolution process, the triage officer will need to consider the principles of the Complaint Allocation Risk Appraisal (CARA) when nominating a resolution manager.



The resolution manager must be provided instructions on the enquiries to be undertaken as per the Resolution Instruction Form – Mandatory - P1002.

Decline to Investigate

Determine if the investigation of the complaint may be declined in accordance with section 141 of the *Police Act 1990*

In deciding whether a complaint should be, or does not need to be investigated, the Commissioner or Ombudsman may have regard to such matters as he or she thinks fit, including whether, in his or her opinion:

- a) action has been, is being or will be taken to remedy the subject-matter of the complaint without the need for an investigation, or
- b) the complaint is **frivolous, vexatious** or not made in **good faith**, or
- c) the subject matter of the complaint is trivial, or
- d) the conduct complained of occurred too long ago to justify investigation, or
- e) there is or was available to the complainant an alternative and satisfactory means of redress in relation to the conduct complained of, or
- f) the complainant does not or could not have an interest, or a sufficient interest, in the conduct complained of.

Frivolous

not serious or sensible in content, attitude, or behaviour, unworthy of serious or sensible treatment

Vexatious

Instituted without sufficient grounds or for the purpose of causing trouble or annoyance to the other party.

Good Faith

An action is taken in good faith if it is done honestly, even if it is done negligently or ignorantly. A complaint made with knowledge of the deception and with intent to defraud/deceive or to achieve a biased outcome is not made in good faith.

Approval from Commander / Manager is required to decline to investigate issue/s in accordance with S141 of the Police Act 1990. CMT approval is not required.

Note

- If declining to investigate a matter on the basis that the issues will be explored in criminal court proceedings eg. S141 (i)(e) of the *Police Act 1990*; alternative redress, commands must have a reasonable belief that the issues **will** be explored in that jurisdiction. For example allegations of racist language by police during an arrest may be noted during proceedings, but may not be explored to the extent necessary to satisfy Part 8A complaint obligations.

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- If the Ombudsman requires an investigation under the provisions of section 139(5) or section 140 of the Act, the complaint cannot be declined for investigation; the NSWPF must cause the complaint to be investigated⁴. The PSDO may discuss with the Ombudsman's case officer a proposal to a decline to investigate these types of matters, however the invocation of this section of the Act is binding on NSWPF
 - Where a complaint is made concerning police conduct in connection with a Critical Incident, the complaint should not be declined on c@ts.i on the basis of an 'alternative and satisfactory means of redress'. The complaint should be suspended on the system pending the outcome of the critical incident investigation. The final outcome of the critical incident investigation should be considered when determining the outcome of the complaint. Where relevant, the critical incident investigation findings should be referred to the relevant Complaint Management Team, to consider appropriate management action.
 - If a complaint is declined as being vexatious, false or not made in good faith, the triage officer can make an application to Complaint Services, PSC #PSCHELP (E/N 48370) in accordance with section 128(2) for the removal of the subject officer's name from the c@ts.i complaint file.

See Section 128 of the *Police Act 1990* application on PSC intranet site under forms:

http://intranet.police.nsw.gov.au/__data/assets/file/0006/283290/Section_1282_Application_-_P1039_asset_283290_loaded_150211.dot

Also refer to current Memorandum of Understanding between the Commissioner of Police, the Police Integrity Commission and the NSW Ombudsman:

http://intranet.police.nsw.gov.au/__data/assets/file/0011/218792/MOU_sec_1282_Police_Act_asset_218792_11012011.pdf

Reject as a Part 8A complaint

Rejecting a complaint is to remove a c@ts.i record that during triage was found to have been created in error as the matter is not a complaint under Part 8A *Police Act*. If the Triage process identifies information that affects the status of a matter, the PSDO may choose to reject the matter as a complaint. For example where triage identifies that the subject officer was not a sworn police officer.

Professional Standards Command Assistance

For further information on the complaint triage process or c@ts.i assistance contact Professional Standards Command Complaint Services PSC Help Desk E/N 48370 #pschelp.

⁴ Sections 139(5) and 140, Police Act 1990

Administration

The following information provides guidance on administrative actions which support the triage process.

Triage form – Mandatory - P1001

The Triage Officer must complete the mandatory triage form. This document must be scanned onto the c@ts.i file.

[c@ts.i receipt timeframes / date received](#)

From the received date:

- 21 days for the completion of the triage process

Notifications to the NSW Ombudsman

Notifiable complaints to the NSW Ombudsman must be sent electronically through c@ts.i in line with the requirements of s130(2) of the Police Act 1990.

Declined matters

All documentation relied upon to make the decision to decline must be uploaded / scanned into the c@ts.i system. **Where a command has relied upon media footage (CCTV, ICV) to decline a matter, a copy of the media footage must be sent to the NSW Ombudsman.**

The command must also send correspondence to the complainant outlining the reasons for declining the complaint and upload / scan this document onto c@ts.i. Advice may also be given by phone or in person. This should be recorded.

Refer to [c@ts.i CMT Stream User Guide - April 2008](#) for further information on the administration of declining matters.

Referral to CMT

If a matter is referred to the CMT as a result of triage the executive officer is to be advised. That officer will ensure the complaint is included on the CMT agenda. If accepted the complaint is to be managed as an evidence based investigation, the c@ts.i record is to be updated to a CMT managed investigation 'P stream'.

Referral for resolution

If a matter is referred to a resolution manager, the PSDO must complete the Resolution Instructions Form which must be scanned onto c@ts.i.

Multiple [c@ts.i](#) referencing for complex investigations - cross commands / regions with multiple subject officers

The following criteria should be used to guide decisions as to whether investigations require multiple c@ts.i references.

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1. Multiple c@ts.i references should not be used for a complaint unless exceptional circumstances exist that would significantly affect the timeliness of a resolution or investigation.
 2. Involvement of a large number of officers (at least 20) from more than one command / region.
 3. The investigation involves officers who can be dealt with promptly by non reviewable means as well as other officers facing serious misconduct allegations, court proceedings or reviewable sanctions expected to exceed 12 months. Each group of officers can be dealt with under separate c@ts.i references.
 4. The investigation must be able to be separated into manageable components.

When multiple c@ts.i references are used they must be linked on the c@ts.i system.

If a complaint originates at a temporary, special or major event such as the Royal Easter Show the investigation will be conducted for logistical reasons at the command where the subject officer is permanently attached. The only exceptions are where special organisational arrangements are made to cover the event, or where for other reasons all involved commanders agree on another course of action.

Rejecting a complaint on c@ts.i

Rejecting a complaint is to remove a c@ts.i record that was created in error as the matter is not a complaint under Part 8A *Police Act*.

- The resolution can be rejected up until the status of Quality Review in Progress.
- Only the PSDO can reject a resolution.
- Once the resolution is rejected, it will stay in the status of LMI Rejected.
- If the NSW Ombudsman was notified, the c@ts.i system will send a notification to the NSW Ombudsman that the resolution is now rejected.

For further information refer to *c@ts.i Resolution User Guide*, located on the NSWPF PSC intranet site.

Forms

Access Form – c@ts.i - P833

Triage form – Mandatory - P1001

Resolution Instructions Form P1002

NSW Police Force Complaint Form P964

S128(2) Application - consideration to remove subject officers name from c@ts.i when complaint declined P1039

Part III: Resolution

The NSWPF time frame for completing matters subject to the resolution process is 45 days from the date received by NSWPF.

Refer to section titled 'administration'.

Purpose

The resolution process is an alternative investigative process developed to address complaints in a manner that allows swift, fair, impartial, equitable and discrete resolutions of complaints about police conduct. Matters referred for resolution do not typically warrant the formality, complexity and authoritative decision making associated with evidence based investigations. Consequently, such matters do not require the resources of a Complaint Management Team (CMT), or the application of evidence based techniques such as sworn statements, Records of Interview and Directive Memorandums.

Some matters referred for resolution may be complaints about criminal conduct. These have been referred to the resolution manager because the triage process did not reveal any inculpatory material indicating that the allegations may have some substance. It is expected that the PSDO or Commander/Manager will be consulted where information is identified which may support a more formal investigative approach.

Roles and responsibilities

Resolution Manager

Resolution Managers should focus on quickly gathering material that will enable speedy establishment of what occurred and to swiftly and effectively remedy the issues raised in the complaint. A Resolution Manager should:

- Manage the resolution in a manner that allows swift, fair, impartial, equitable and discrete resolution of complaints
- establish the facts about the complaint and make recommendations on the outcome of the complaint
- seek advice as to whether the complainant is satisfied with the action taken to address their complaint.

Professional Standards Duty Officer (PSDO)

The PSDO must provide support and clear written instructions to the Resolution Manager using Resolution Instructions form – Mandatory - P1002. The PSDO should consider the skill of the resolution manager and suitability in conducting the resolution.

Following the completion of the resolution investigation the PSDO is required to quality review the Resolution Outcome Report – Mandatory - P1046. This is to ensure:

- The source of the complaint is not identified (see 169A guidelines)

-
- All complaint issues are addressed
 - Information prepared within the Resolution Outcome Report – Mandatory - P1046 is factual and does not include personal opinion or speculation
 - Information within the Resolution Outcome Report – Mandatory - P1046 is referenced to any source data relied upon
 - Where multiple subject officers exist, information for each officer should be segmented as far as possible
 - Ensure that the conclusions reached are sound, e.g. linked to specific evidence or information and are clearly articulated.

Details of the completed quality review are required to be recorded onto the Resolution Outcome Report – Mandatory - P1046. PSDOs may also be required to instruct Resolution Managers of a suitable course of action where circumstances of the resolution process change or where the commander has decided on appropriate non-reviewable management action.

Commander/Manager

Commanders / managers must ratify all resolution findings and determine management outcomes. In addition, the Commander/Manager should ensure that appropriate action has been taken to advise the complainant of any action proposed in response to the complaint and ensure that the Resolution Outcome Report contains information in relation to complainant satisfaction.

Practical Guide to the Resolution Process

While Resolution Managers are allowed great flexibility in managing the resolution of the complaint, it is expected that the PSDO or commander / manager will be consulted where information is identified which may support a more formal investigative approach.

A resolution manager should notify their PSDO or member of the CMT in the following circumstances:

- o identification of inculpatory evidence which would warrant conducting an evidence based investigation
- o information is obtained which would warrant reviewable management action should the issue be sustained and mandatory referral to the IRP, or
- o additional issues are identified resulting in the existence of further lines of enquiry
- o additional subject officers, victims / complaints are identified

If any evidence is identified the PSDO or CMT will decide whether the matter should be upgraded to an evidence based investigation.

Recording information

As a general rule, evidence based techniques such as sworn statements, records of interviews or directive memorandums should not be used when conducting a Resolution investigation. Generally, less formal recording methods such as making notes in notebooks or duty books should be used to record resolution actions and outcomes

Notes in a notebook or duty book would suffice as records of conversations and other actions undertaken during resolution. Notes may include:

- time
- date
- who is being spoken to
- why they are being spoken to
- summary of the information they offer.

Investigating a Complaint in Resolution

The following steps provide guidance on completing a resolution process for a Part 8A complaint:

1. Understand the background of the matter.
2. Disclose any conflict of interest
3. Check current holdings / information gathered during triage
4. Identify a strategy to manage the matter
5. Speak with the complainant / victim
6. Speak with potential witnesses
7. Speak with subject officer/s
8. Complete the Resolution Outcome Report – Mandatory - P1046
9. Submit the Resolution Outcome Report to PSDO for quality review
10. Submit Resolution Outcome Report to Commander for endorsement.

1. Understand the background of the matter

The first step in the resolution process is to understand the background of the matter and why it has been referred for resolution. Reviewing current holdings will assist in developing a strategy to manage the matter and should always be done before consideration is given to speaking to a complainant, witnesses or a subject officer.

The Resolution Manager should fully understand the instructions provided by the Triage Officer as outlined in Resolution Instructions form – Mandatory - P1002. The Resolution Manager should initially review the complaint document understanding

the issues raised by the triage officer.

2. Disclose any conflicts of Interest

The Resolution Manager will need to consider whether they have any conflicts of interest that may affect their ability to complete the resolution of the complaint in an effective and objective manner. The Resolution Manager must disclose any actual or perceived conflicts so that these matters can be appropriately managed. In some circumstances, the matter may need to be reassigned. For guidance on the types of matters you must disclose refer to the Complaint Allocation Risk Appraisal Guidelines.

3. Check the current holdings / information gathered during triage

As the Resolution Manager when you receive a file a number of inquiries will probably have already been conducted during triage and records of those inquiries should be on the file.

The file you receive should include:

- Triage Form – Mandatory - P1001 outlining; the c@ts.i number, complainant's name, date of triage, date received at NSWPF, subject officer/s details and issues identified from the complaint document relevant to each subject officer, brief description of the incident, triage enquiries undertaken including notifications and a triage decision, which should indicate the complaint is one for 'Referral for resolution'.
- Documents identified during triage including; complaint document, copies of holdings (CCTV, still photographs, CCTV media, COPS events, custody records etc).
- Resolution Instructions Form – Mandatory - P1002 communicating specific instructions to the resolution manager.

4. Identify a strategy to manage the matter and discuss this with the PSDO / triage officer or equivalent

Following a review of the complaint file, the Resolution Manager should discuss with the PSDO / Triage Officer the instructions provided to them in the Resolution Instructions Form –Mandatory - P1002. A proposed strategy for dealing with the complaint should be discussed, including who should be spoken to, when, in what order and in what manner they should be spoken to.

5. Speak with the complainant / victim

Although the Triage Officer may have already spoken to or otherwise contacted the Complainant, the Resolution Manager may need to further clarify matters with the Complainant as the resolution process progresses.

In communicating with the Complainant, Resolution Managers should aim to:

- give the Complainant the opportunity to tell their story
- understand what outcome the Complainant is seeking
- give clear advice about how the process works
- identify and manage the Complainant's expectations.

Many Complainants / victims simply want some acknowledgement of their complaint and the opportunity to be heard by the NSW Police Force. Some complainants may not wish to be active participants in the resolution process, however the process should be explained to them and their participation encouraged. Where the complainant is also a victim consider *The Charter of Victims Rights*, appearing in the *Victims Rights Act 1996* which sets standards for the appropriate treatment of victims of crime.

When considering whether an apology is suitable in the circumstances, discuss this with the PSDO or equivalent. An apology may be offered on behalf of the NSW Police Force, but not on behalf of individual officers (unless the officer has given their consent). Offering an apology, if warranted, should be considered after having gathered all the facts and exhausted lines of enquiry.

Internal Police Complainants (IPCs) should be instructed not to discuss the matter beyond the purpose of resolving the complaint, to liaise with the PSC Internal Witness Support Unit (IWSU) or to address related welfare concerns. The Resolution Manager should actively discuss issues relating to the IPCs with their PSDO or member of the CMT.

At the conclusion of the resolution process, the complainant / victim should be updated with the outcome and their response recorded by the Resolution Manager onto the Resolution Outcome Report – Mandatory - P1046.

It is a legislative requirement that the Resolution Manager must, if practicable consult with the complainant about the proposed action taken or proposed to be taken in response to the complaint and must seek advice and record information about whether the complainant is satisfied.⁵

Victim follow-up issues should be considered and addressed even when the victim is not the complainant. In matters involving potential risks to children, immediate action should be taken to ensure a risk of harm report is made (refer to CPN 11/06)

6 Speak with potential witnesses

A potential witness is a person who may have useful information to offer. Efficient, effective and appropriate outcomes based on satisfactory enquiries should drive the resolution. Resolution Managers need only speak to the number of witnesses that reasonably serve to satisfy the resolution

Potential witnesses should be approached with an emphasis on problem solving similar to complainants. They may have concerns and emotions that are similar to

⁵ Section 150 (a) and (b) of the Police Act 1990

complainants and should be dealt with as sensitively as possible.

Resolution Managers should instruct NSW Police Force employees who are witnesses not to discuss the matter with any person other than for welfare related support. The Resolution Manager should advise potential witness to discuss any concerns with them initially before speaking with others.

7. Speak with subject officer/s

IMPORTANT

Unless the circumstances do not allow, it is recommended all lines of enquiry are exhausted before speaking to the subject officer. This includes speaking with the complainant and witnesses prior to the subject officer to ensure all the facts are gathered and reviewed.

Subject officers are entitled to have complaints made against them dealt with in a swift, fair, impartial and equitable manner and are entitled to have the complaint handled discreetly. Matters referred for resolution should be of a kind that present little problem in satisfying these concerns.

Prior to speaking with Subject Officer/s, review and identify the issues raised in the complaint document and all information you have gathered from witnesses, NSWPF holdings and external holdings to date. Ensure you have exhausted all lines of enquiry prior to speaking with the Subject Officer(s). Consider what information you need to discuss with the Subject Officer(s) based on the information gathered.

Where a Resolution Manager speaks to the Subject Officer(s) the aim of the discussion should be to speak openly about the allegations, with a view to understanding what has occurred. This should include resolving the Complainant's issues and where appropriate, identifying whether there are any management solutions that would assist in modifying the Subject Officer's behaviour. This may include asking the Subject Officer(s) whether they are prepared to offer an apology to the complainant. The aim is to involve the Subject Officer(s) in finding a solution to the problem and being accountable for their actions.

The management, care and welfare of the Subject Officer(s) remain the responsibility of the subject officer's commander / manager. The Triage Officer should provide instruction to the Resolution Manager in instances when the Resolution Manager should not speak to the Subject Officer.

Instructions on speaking with Subject Officer(s):

- Explain the resolution process to the officer
- Provide the officer with appropriate support
- Inform the subject officer of the allegation with sufficient information to be able to properly respond

-
- Give a direction to the Subject Officer(s) not to discuss the matter with any person, except to address related welfare or other concerns in consultation with you as the resolution manager
 - If possible have the subject officer sign relevant entry as to content and accuracy.



In the event the subject officer makes admissions in relation to a criminal offence whether related or unrelated to the current issues within your resolution cease all conversations and administer the official caution to ensure admissibility of evidence in accordance with section 139 of the *Evidence Act 1995*.

Contact your PSDO or equivalent and advise them of the admission made and the caution administered. Consideration to treating this resolution as an evidence based investigation is now required. The matter should be referred to CMT as soon as practicable.

Seek advice from your PSDO or equivalent and consider the following:

- Custody issues pertaining to the subject officer, Part 9, Division 3 *Law Enforcement Police (Powers & Responsibilities) Act 2002*.
- Conducting an electronically recorded interview with the subject officer in line with Section 281 of the *Criminal Procedure Act 1986* requiring any admissions made to be electronically recorded.

Speaking with officers on sick report

In the event the Subject Officer (or another police witness) is on sick leave and the Resolution Manager is required to speak with the subject officer (or police witness), the Resolution Manager should consult with their PSDO. Refer to CPN 11/11

8. Complete Resolution Outcome Report - Mandatory - P1046

Review all information gathered including the details of the complaint, holdings examined any other information taken into account during the resolution process. That information will form the basis for your Resolution Outcome Report - Mandatory. This report is used to satisfy the requirements under s150 of the *Police Act 1990* and will be provided to the NSW Ombudsman if the matter is a notifiable complaint.

Part of your report includes recommendations for findings in respect of the issues within the complaint. There are three possible findings within the Resolution process:

- sustained
- not sustained; and
- resolved

Sustained

If the Resolution Manager is satisfied on the balance of probabilities that the complaint issue or matters arising occurred, a 'sustained' finding must be recorded.

Not Sustained

If the Resolution Manager is not satisfied on the balance of probabilities that the complaint issue or matters arising occurred, a 'not sustained' finding must be recorded.

Resolved

If the Resolution Manager is not reasonably satisfied that conduct requiring non-reviewable management action occurred, but the matter was the subject of formal NSW Police Force ADR, 'resolved' is to be recorded.

IMPORTANT

The Resolution Manager is not to recommend or implement management action in respect of the Subject Officer(s) unless authorised to do so by the Commander.

Further Advice

Assistance with determining the most appropriate outcome should be sought from your PSDO or PSM.

Organisational outcomes

Where supervisory, managerial or organisational issues, which may have contributed to poor performance, are identified, it is important that these matters are brought to the attention of the Commander/Manager or organisational representative. Any comment included should be based on facts and not include personal opinion.

Organisational outcomes include but are not limited to the following:

- supervisory/managerial issues
- training and development within or across commands relating to a particular issue
- improvements to policies and standard operating procedures
- amendments to legislation

Your report should include information on whether these issues contributed to the poor performance of the subject officer and actions you would recommend to prevent a recurrence.

9. Quality Review

Following completion of the Resolution Outcome Report - Mandatory - P1046 submit this to the PSDO or equivalent.

Quality Review

On completion of the resolution report, the PSDO has a number of functions to perform as part of the quality review process. As a guide the following should be considered:

- all complaint issues have been addressed,
- information should be factual and not include personal opinion or speculation
- ensure conclusions reached are sound.
- Ensure compliance with section 150(a) and (b)

If the PSDO is unavailable, a similarly experienced and appropriate officer should be selected by the command to perform the review function.

10. Commander's endorsement

The Commander is to satisfy themselves that the resolution investigation has been conducted appropriately and the recommended outcome is supported by the information obtained by the Resolution Manager.

Where an investigator has made a recommendation in respect of organisational issues, which may have contributed to poor performance it must be endorsed by the commander/manager. A separate submission about the issue and recommendation must be forwarded to the relevant command.

The corporate submission can be referred to within the investigation report but the complaint file should not be held open pending the outcome of any recommendations made

The Commander is to make a determination on any management action to be implemented as a result of the investigation and should include the reasons decision within the Commander's section of the resolution outcome report.

The Commander should satisfy themselves that action is or has been taken to inform the complainant of the outcome of the matter and that advice in relation to the complainant's satisfaction with the action taken (or proposed to be taken) is recorded within the outcome report.

The signed report should then be provided to the Executive Officer for inclusion in c@ts.i and provision to the NSW Ombudsman's Office if required.

Subject Officer entitled to review of action taken

Where a subject officer does not agree with the decision to implement management action they may seek a review of the decision from the next line of command. The decision should be reviewed with regard to the validity of the findings of the investigation and the reasonableness of the non-reviewable action.

Refer to P1046 Resolution Outcome Report - Mandatory.

Administration

The following information provides guidance on administrative actions which support the resolution process.

Updating c@ts.i

All complaints are to be receipted on c@ts.i in the LMI stream - Non CMT Managed Complaint.

In most cases the Executive Officer or PSDO will create and update the c@ts.i record.

If c@ts.i assistance is required refer to the c@ts.i user guides, the Executive Officer or c@ts.i services at PSC on en 48361.

Timeframes

From the date the complaint was received:

- 45 days to complete a resolution investigation

Resolution timeliness stops once the **resolution is complete within c@ts.i**, action has been recorded and quality review completed by PSDO.

Referral to CMT

If at any time during resolution a matter requires referral to the CMT, the PSDO should advise the Executive Officer to include the complaint on the next CMT agenda. If the matter is urgent, an extraordinary CMT should be convened. The Resolution Manager should cease action on the matter until instructions are received from the CMT.

Documents to be recorded on c@ts.i

Non notifiable matters

If a matter is non-notifiable only upload/scan the Resolution Report onto c@ts.i.

Notifiable matters

If a matter is notifiable, upload copies of all material relied upon and referred to in the resolution report. The command is required to provide a copy of all media footage (CCTV, ICV) relied upon during the resolution as soon as practicable. The NSW Ombudsman conducts a full review of these types of matters and requires the source data for the purposes of that review. .

Record Investigation findings

Investigation findings are reported in the resolution outcome report - mandatory - P1046 and recorded upon c@ts.i before electronic Quality Review is completed. All action taken by commands in response to a complaint must be recorded on c@ts.i. This includes all management action, criminal proceedings and related action and no action. (See c@ts.i user guides).

Where a conduct management plan is implemented, it should be included as an attachment onto the relevant c@tsi record.

Mandatory notification forms to the IRP and other administrative advice is available on the Management and Workplace Services pages of the PSC intranet site.

PSDO Quality Review in c@ts.i

Once resolution is complete the investigator will forward the completed outcome report to the PSDO for quality review.

Managing section 150 reports

Non notifiable matters do not require a section 150 report to the NSW Ombudsman.

Matters dealt with through resolution that are **notifiable** to the NSW Ombudsman require an investigation report to be provided to the Ombudsman. The Resolution Outcome Report - Mandatory is the corporate template and satisfies the requirements of the Act. There is a template provided with these guidelines.

Electronic notification to the Ombudsman via c@ts.i **is** required.

Responding to transfer of Resolution Manager and / or Subject Officer/s

If a Resolution Manager or Subject Officer transfers to another location, ownership of the complaint file remains with the officer's former command. If the Resolution Manager is the transferring officer, the investigation will be reassigned to another Resolution Manager agreed to by the Commander / Manager. If an officer is seconded from their command (LAC A) to a command (LAC B), LAC A is responsible for administration / investigation of the complaint. This is the case where the alleged conduct occurred prior to the secondment.

Suspending a Resolution matter on c@tsi

There is capacity to suspend investigations within c@ts.i. Suspension will only be considered where an investigation has reached a point where no further investigation can be conducted. The criterion for suspending is detailed in CPN 11/12: Procedures to suspend a Part 8A complaint investigation within c@ts.i.

Ombudsman request for further investigation

The Ombudsman may also request further investigation into a complaint by the NSWPF. If the Ombudsman makes such a request, the Commissioner may, but is not obliged to, cause a further investigation to be conducted. In either case, the Commissioner must notify the Ombudsman of the Commissioner's decision on the request and reasons for the decision.

Forms

Advice to NSW Ombudsman as to reasons for delay in investigation P1012 (*only required matters notifiable to the NSW Ombudsman*)

Access form – CIS - P834

Access form – c@ts.i P833

CCYP – Employee Advisory Letter template

CCYP – Relevant Employee Proceedings Summary P986

CCYP – Relevant Employee Proceedings Notification P987

Section 150 letter to NSW Ombudsman

Resolution instructions form – Mandatory - P1002

Resolution outcome report – Mandatory - P1046

S148 *Police Act 1990* Authority to Institute Proceedings against a NSW Police officer P812 (ATIP form)

Professional Standards Command Assistance

For further information on the complaint resolution process or c@ts.i assistance contact Professional Standards Command Field Services Help Desk E/N 48370 #pschelp.

Part IV: Evidence Based Investigation (CMT Managed Investigation)

The NSWPF time frame for completing matters subject to an evidence based investigation is 90 days from the date received by NSWPF.

Purpose

The purpose of conducting an evidence based investigation is to ensure admissibility of information in criminal court proceedings or other tribunals where reviewable action is likely to be taken against a New South Wales Police (NSWPF) officer.

All Part 8A evidence based investigations are managed by a Complaint Management Team (CMT) to ensure compliance with related legal and policy requirements and assist the commander / manager in exercising their delegation in complaint management. This is achieved through monitoring, guiding, reviewing and endorsing evidence based investigations as they progress and then making a determination on management action to be implemented.

Roles and responsibilities

Commander/Manager

Part 8A of the Police Act outlines specific requirements placed upon the Commissioner in relation the administration of complaints about police conduct. The Commissioner has delegated that responsibility to Commander/Managers.

While the members of the CMT will assist the commander / manager in management of a complaint investigation, the ultimate responsibility for the outcome and the reporting requirements rest with the commander. These guidelines provide information about the required administrative actions for complaint management.

Commanders / managers must instruct investigation supervisors and investigators at the commencement of the investigation, throughout the investigation and ratify all CMT decisions.

Commanders / managers also have the sole responsibility in deciding on and implementing management action and interim risk management. For information on determining and implementing management action refer to the *NSWPF Management Action Guidelines*, on the *PSC Intranet site*.

Complaint Management Team (CMT)

CMTs are mandatory for any command with police officers attached. The core members of the CMT are:

- the commander / manager
- the crime manager (or equivalent such as the PSM for specialist commands)
- the executive officer (or equivalent)
- the PSDO (or equivalent).

CMTs may also invite local and specialist personnel as required.

The CMT must meet regularly and as often necessary to satisfy CMT functions and the exercise of the commander's complaint delegations. CMTs monitoring ongoing evidence based investigations should meet at least fortnightly.

Minutes of each meeting are to be recorded using the *Agenda - CMT P1011* form and *Minutes continuation*. These documents are located on the NSWPF PSC intranet site. Any decision made outside a CMT meeting should be recorded and validated at the next CMT meeting.

The delegated officer must be present at CMT meetings, rather than ratifying the recommendations of the remaining CMT members at a later time.

CMTs are responsible for ensuring conflicts of interest are effectively managed at the commencement of an investigation and throughout the course of the investigation. The Complaint Allocation Risk Appraisal (CARA) process assists CMTs to determine whether their complaint should be managed locally or transferred to another location for investigation or other action. This process also ensures CMT decision making processes in relation to risk identification and management are documented. CMTs are required to complete *Minutes – CMT assessment - CARA Part A* and *CARA Part B - Disclosure of conflict by investigator P960* form of the CARA process.

Refer to the NSW Police Force Complaint Allocation Risk Appraisal (CARA) Guidelines for more information on conducting complaint allocation risk appraisals for all Part 8A evidence based investigations.

Investigator

The role of the investigator is to:

- find all relevant information relating to a complaint
- analyse and reach valid conclusions about the veracity of the allegation(s)
- recommend investigation finding and rationale (sustained / not sustained)
- prepare and forward an Investigators report - evidence based – template - P1047 to the CMT.

Obligations of the investigator include:

- declaring any conflict of interest by completing the *CARA Part B - Disclosure of conflict by investigator P960*
- conducting the investigation impartially in a timely and effective manner, in accordance with the mandatory terms of reference (P1013 form)
- complying with confidentiality requirements
- complying with instructions from the investigation supervisor, commander/manager or CMT (consistent with local instructions).
- Consultation with the complainant about the outcome of the investigation and any action proposed as a result.⁶

Investigation supervisor

The CMT may appoint an investigation supervisor to assist in the management and investigation of a complaint. This decision may be influenced by issues including the complexity of the matter and experience of the investigator.

The role of the investigation supervisor in complaint management is to:

- offer advice and guidance to the investigator throughout the investigation, in line with the terms of reference.
- assist the investigator to develop a *Complaint management investigation plan P1053*
- assist the investigator to conduct the investigation in an impartial and effective manner, consistent with the mandatory terms of reference and investigation plan
- ensure variations to the investigation are approved by the CMT
- assist in the use of c@ts.i and e@gle.i, (consider assistance from LAC Exec officer, Region PSM and PSC c@ts.i user support team – contact en 48361).
- comply with written advice from the commander regarding the completion date and ensure the investigation is completed by the due date
- ensure status reports (*Complaint investigation status report P1013*) and extension reports (*Request for extension of complaint investigation time frame P1009*) are prepared and submitted on time
- monitor and check the progress of the investigation
- review the completed *Evidence Based Investigators Report P1047* completed by the investigator prior to its submission to the CMT or PSDO for quality review.

Supervisors could be crime managers, PSDO or experienced investigators. Completion of CARA B by supervisors is not mandatory. However, it is an expectation of the NSW Police Force that staff involved in complaint management

⁶ Section 150 (a) and (b) of the Police Act 1990

and investigation activities identify, declare and participate in the management of any conflicts of interest. This includes investigation supervisors and mentors.

CMT investigation mandatory terms of reference P1013, Evidence Based Investigators Report P1047, Complaint investigation status report P1013 and request for extension of complaint investigation time frame P1009 and complaint management forms can be found on the NSWPF PSC intranet site under Forms.

IMPORTANT

It is preferable that a police officer involved in an investigation in some way does not act as welfare officer for the subject officer in the same investigation.

Practical steps for the CMT in the management of Part 8A Evidence Based Investigation

1. Appraisal
2. Complete Mandatory CMT – Complaint Assessment Minutes (including CARA Part A).
3. Prepare the Terms of reference – Investigation - P1013
4. Allocate investigator and supervisor, where required
5. Provide investigator complaint file including CARA Part B – Disclosure of conflict by investigator P960
6. Monitor investigation and review progress, conduct fortnightly CMT meetings
7. Supervisor / PSDO or equivalent to conduct quality review
8. Commander / manager to certify investigation and decide on appropriate action
9. Provide finalised investigation report to the NSW Ombudsman

1. Appraisal

The appraisal includes:

- confirming issues to be addressed with reference to the *Triage form – Mandatory - P1001* and the original complaint document.
- confirming an evidence based investigation is the most appropriate way to manage the response to the allegations with reference to the *Triage form – Mandatory - P1001*
- confirming legislative administrative requirements have been / will be satisfied (*Police Act 1990* obligations, if applicable notifications to NSW Ombudsman, Workplace Equity Unit, Internal Witness Support Unit Professional Standards Command, Commission for Children & Young People Act 1998 etc).
- considering whether interim risk management strategies need to be implemented.

Downgrading from an Evidence Based Investigation (P stream) to Resolution (LMI stream)

If the CMT determine that a complaint does not require an evidence based investigation, the CMT can advise the triage officer of the decision and appoint a resolution manager.

The original triage officer or CMT are to instruct the resolution manager to conduct informal enquiry / ADR consistent with Part 2 Resolution. The 45 day completion timeframe will apply. The matter will be receipted onto c@ts.i as a resolution investigation (LMI stream) if not already on [c@ts.i](#). If an evidence based investigation (P stream) record exists, downgrade to a resolution investigation (LMI). The CMT has no further role in the matter.

Consider interim risk management strategies for involved officer/s

Interim risk management action can be taken at any time in relation to a complaint matter until final management action is determined and implemented. It is critical that any action taken is clearly recorded as 'interim risk management action' to differentiate between this action and final management action. Taking interim risk management action does not prevent a commander from taking final management action.

The interim risk management action is taken in response to an identified risk while managing the complaint investigation. Risk management action may include; a change of duties, additional supervision, rostering with more experienced staff, , securing or restricting access to firearms, rectifying systemic or procedural practices, referring recommendations on organisational issues to responsible commands, suspension and any other management action that appropriately alters relevant risks.

In all these instances the CMT must monitor any change of circumstances during the investigation of the complaint and amend interim risk management action where required.

Guidelines on when interim risk management action should be taken, developing appropriate strategies and implementing an Interim Management Plan can be found in the NSW Police Force Interim Risk Management Guidelines for Police, located on the NSWPF PSC Intranet Site.

2. Complete Mandatory CMT – Complaint Assessment Minutes (including CARA Part A).

Upon receipt of a complaint, the CMT must initiate the CARA process and complete the CARA Part A document. If an investigation is transferred to another command, CARA must be applied again by the new command.

If there are no impediments for the local management of the complaint investigation, the CMT should complete the assessment of the complaint and determine whether a criminal or departmental investigation should be conducted.

Consider the need for Professional Standards Command assistance.

All CMTs and related complaint handling areas need to ensure they are aware of the acceptance criteria for complaint investigations conducted by PSC before they submit a request for assistance. Criteria for acceptance vary. Refer to Request for Assistance from PSC P968, located on NSWPF PSC intranet site.

3. Prepare the Terms of reference – Investigation - P1013 form.

The terms of reference provide a means of communicating instructions to investigators from the CMT concerning the objective of the investigation, and the scope of activities, including the priority of issues to be investigated (criminal vs non criminal).

The CMT is to prepare the document and provide it to the commander to sign the associated direction. The investigator and supervisor are then required to sign the document acknowledging they have read the terms of reference and fully understand the contents, their obligations and responsibilities as investigator / supervisor.

4. Allocate Investigator

When selecting an investigator the CMT must consider the investigator's:

- rank to ensure the investigator's rank is above that of the subject officer and likely police witnesses
- skill, capability and training undertaken e.g. completion of the Internal Investigators Training Course
- workload, leave and other commitments
- actual or perceived risks or any conflicts of interest which may impact on their ability to conduct an investigation (as identified by the investigator in completing *CARA B -Disclosure of conflict by investigator - P960*). Refer to the *NSWPF CARA Guidelines*

Allocate Supervisor if appropriate

The CMT may appoint an investigation supervisor to assist in the management of the investigation. This decision may be influenced by issues including the complexity of the matter and experience of the investigator.

Where an investigation supervisor has been appointed instruction should be provided to that officer detailing the expectations of the CMT and the action required by the officer during the course of the investigation. These instructions should be recorded within the Complaint Assessment Minutes.

Supervisors could be crime managers, PSDO or experienced investigators. In some cases the commander may appoint themselves as the supervisor.

5. Provide investigator complaint file including CARA Part B – Disclosure of conflict by investigator P960.

The CMT should provide the investigator with a copy of the complete complaint file including the CMT investigation mandatory terms of reference and a blank CARA Part B – Disclosure of conflict by investigator P960 to complete as soon as possible and returned to the CMT.

In the event that an investigator, or investigation supervisor, declares a conflict of interest, the CMT is responsible for deciding (based on the risk factors identified) if the investigation should be reassigned.

6. Monitor investigation and review progress, conduct fortnightly CMT meetings.

The CMT should consider the status of the investigation to ensure that appropriate action is being undertaken to progress the complaint investigation. The CMT's consideration should be recorded using the CMT minutes continuation form and included within the relevant c@ts.i file.

As part of the Terms of Reference, the CMT should ensure the investigator is required to provide regular status reports on the progress of the investigation. The CMT should consider these reports to ensure that appropriate action is being taken to complete the investigation.

Part of the CMTs responsibilities includes monitoring the timeliness of the investigation. Should an evidence based investigation approach the 90 day requirement for completion and it is considered the timeliness standard will not be met, the CMT should consider the reason for the delay and determine whether and extension should be granted. Advice of any delays will need to be provided to the relevant oversight agency.

- *Advice to NSW Ombudsman as to reasons for delay in investigation P1012*

Should an evidence based investigation approach the 90 day requirement for completion, the investigator should complete a *Request for extension of complaint investigation time frame P1009* for the consideration of the CMT.

On receipt of this document a member of the CMT should complete the Advice to NSW Ombudsman as to reasons for delay in investigation P1012 and forward this information to the NSW Ombudsman.

The *Status report – Investigation - P1003* and *Delayed investigation - Advice to NSW Ombudsman - P1012* are located on the NSWPF PSC intranet site under Forms.

- Maintaining contact with the complainant and subject officer at an appropriate time

The CMT or commander/manager must ensure as far as practicable that the investigation has a minimal impact (both professionally and personally) on the subject officer and complainant (if NSWPF employee) within the workplace. It is also appropriate at the end of an investigation that the CMT or commander/manager advise the subject officer of the timeliness of the investigation and the findings and recommendations made as a result of that investigation.

The subject officer can expect to be made aware that they are the subject of a complaint unless there are valid reasons for withholding this information. For example, a complainant may not have provided sufficient information for an investigation to continue but there is every reason to believe they may provide further information in support of the allegation at a later date.

Where the complainant is also a victim consider *The Charter of Victims Rights*, appearing in the *Victims Rights Act 1996* which sets standards for the appropriate treatment of victims of crime.

7. Supervisor / PSDO or equivalent to conduct quality review

Once the investigator has provided a final *Evidence Based Investigation Report P1047* the PSDO or the supervisor should conduct a quality review before the report is provided to the Commander for consideration.

As a guide, the PSDO should consider the following points when conducting the quality review:

- The source of the complaint should not be identified (see section 169A guidelines, NSWPF PSC)
- All complaint issues should be addressed including issues arising during the investigation
- Information should be factual and not include personal opinion or speculation
- Information within the report should be referenced (as a footnote) to any source data relied upon
- The evidence against each subject officer should be segmented as far as possible. This will not only allow for a clear and concise outline of the information concerning their alleged misconduct to be provided without the need for extensive editing and also assist the NSWPF in drafting a show cause notice if or where required
- Ensure that the conclusions reached are sound, e.g. linked to specific evidence or information and clearly articulated.
- Ensure the complainant has been consulted in accordance with section 150 of the Police Act 1990.

The reviewing officer should complete the required section of the *Evidence Based Investigation Report P1047 (pg 4)* and provide the report to the CMT for finalisation.

Feedback on this quality review should be provided to the investigator and the CMT as soon as practicable. The *Investigation Report - Evidence Based - P1047* can be found on the *NSWPF PSC intranet site* under *Forms*.

8. Commander / manager to certify *Evidence Based Investigator's Report* and decide on appropriate action.

The Commander has overall responsibility for the management and investigation of complaints. Once an investigation has concluded and the investigator's report has been subject to quality review the Commander should satisfy themselves that the findings are sound and have been objectively determined. Page 5 of *Evidence Based Investigation Report P1047* requires the Commander provide comment on the investigation and endorse the final report.

Commanders Management Action Decision

In addition to assuming responsibility for the outcome of the investigations, the Commander/Manager must make any determination in relation to management action to be taken against the subject officer/s.

If the commander / manager is considering **reviewable** action as an outcome the commander / manager should provide Part 1 of the *Evidence Based investigators Report P1047* to the subject officer. Refer to *PSC Information Sheet 10/03 - Releasing Part 8A information where reviewable action is considered following the completion of a CMT managed evidenced based investigation*.

PRIOR to serving Part 1 of the Evidence Based Investigation Report and associated documents PSC MUST be notified via e-mail #PSCMAWSLEGAL outlining c@ts.i reference and documents to be served.

Notify all witnesses through serving *Investigation – notice to witness – P1051* form on all witnesses.

Investigator's report for service on a subject officer P1048, Response to investigators report P1049, Investigation – notice to witness – P1051 forms can be found on the NSWPF PSC intranet site under *Forms*.

PSC Information Sheet 10/03 - Releasing Part 8A information where reviewable action is considered following the completion of a CMT managed evidenced based investigation can be found on the NSWPF PSC intranet site under *Policy & Guidelines* within *information sheets*.

For further details on implementing the NSWPF managerial model as well as instructions for implementing reviewable and non reviewable management action refer to NSW Police Force Management Action Guidelines 2010, which can be found

on NSWPF PSC intranet site under Policy & Guidelines Workplace Management.

Where an investigator has made a recommendation in respect of organisational issues, which may have contributed to poor performance it must be endorsed by the commander/manager. A separate submission about the issue and recommendation must be forwarded to the relevant command.

The corporate submission can be referred to within the investigation report but the complaint file should not be held open pending the outcome of any recommendations made,

Commission for Children and Young People notification

A sustained finding triggers notification of certain complaints to the Commission for Children and Young People under the CCYP Act. This includes complaints where children are complainants, victims, or are substantially involved in the situation about which the complaint is made. CMTs must consider CPN 08/01 Notification of certain complaints to the Commission for Children and Young People (CCYP) in this situation.

S163 – Non Publication of information

The Commander must also consider any recommendations made by the investigator in respect of information identified as *critical police information* contained in the investigation.

Refer to CPN 11/13- S163 - Non Publication of Critical Police Information, available on the PSC Intranet site

9 Provide finalised investigation report to NSW Ombudsman

As soon as a CMT is satisfied with the investigation and the investigation report is ratified by the CMT, a copy of the report should be provided to the NSW Ombudsman. The report must consist of a covering letter and supporting materials.

Include the following documents in documentation to be provided to the NSW Ombudsman:

- The investigator's report
 - All material obtained for the purpose of the investigation including statements, records of interview and copies of ICV and CCTV footage)
 - Any documents and reports which include the review and certification of the investigation
 - Any documents and reports outlining decision making concerning the investigation and outcomes including CMT minutes
 - CARA A and CARA B forms
 - The subject officer's response to the Part 1 of the Evidence Based Investigator's Report
-
- Commander's covering letter detailing obligations about complainant satisfaction.

The NSW Ombudsman should be notified of any actual and intended action and any intention to change action already reported. The NSW Police Force has committed to meeting section 150 reporting obligations before notifying matter to the IRP. Advising the NSW Ombudsman that reviewable action is being considered meets the section 150 reporting obligations. Do not wait for IRP or related outcomes before forwarding the section 150 report to the NSW Ombudsman.

The corporately preferred template for section 150 report covering letters for CMT matters is available on the PSC intranet site. Refer to Administration Section on submitting a section 150 report via PDF using c@ts.i.

IMPORTANT

Where a matter has been investigated criminally and charges have been preferred, this **is not** the outcome of the Part 8A investigation.

A Part 8A investigation can only be finalised where a **final departmental determination** has been made that the subject officer engaged in the conduct alleged. This determination may not be able to be reached while a matter is the subject of criminal proceedings as the subject officer may not have provided a version or sought to rebut the evidence gathered during the criminal investigation.

It is important that the Part 8A file is a complete record of the departmental outcome in order that the record is not misleading or incorrect.

Investigator

Practical steps for the investigator when conducting a Part 8A Evidence Based Investigation

1. Appraisal
2. Complete *CARA Part B – Disclosure of conflict by investigator P960* form
3. Complete Complaint management investigation plan P1053
4. Conduct investigation in consultation with supervisor (PSDO or equivalent) maintaining regular contact with complainant and subject officer
5. Complete *Evidence Based Investigators Report P1047*
6. Complete and submit the *Evidence Based Investigators Report P1047* to your supervisor / PSDO or equivalent for quality review.

1. Appraisal

As the investigator you must review the complaint file received from the CMT, ensuring the complaint has been registered on c@ts.i and you have access to the c@ts.i file.

When you receive the file a number of inquiries will probably have already been conducted. Review all the documents.

Understand why the matter has been referred to you to conduct an evidence based investigation. Read the *Terms of reference – Investigation - P1013* form completed by your CMT and be aware of the instructions provided, objective of the investigation and the scope of activities you have been asked to investigate. If you agree with the details sign the document and provide back to your CMT.

IMPORTANT	Identify the criminal and non-criminal issues within the complaint investigation. Refer to Part V: Investigative Issues for information on how to deal with a combination of criminal and non-criminal issues.
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2. Complete *CARA Part B – Disclosure of conflict by investigator P960* form

The purpose of this document is to provide you with an opportunity to disclose any conflicts of interest or other risks, which may affect your ability to undertake an impartial investigation.

You must acknowledge that if at any time during the investigation you believe a conflict may arise, you will immediately bring it to the attention of the commander or a member of the CMT. The *CARA Part B – Disclosure of conflict by investigator P960* form must be signed by you and also by your Commander/Manager.

For further information on CARA Part B refer to the *NSWPF CARA Guidelines*.

3. Complete Complaint management investigation plan P1053

The CMT may direct the completion of an investigation plan within the Mandatory Terms of Reference document P1013. An investigation plan is recommended for all complex investigations and should be submitted to the CMT for approval if required.

The plan may be as simple as a list of proposed tasks or activities taking into account such variables as; the nature and complexity of the complaint, resources required, any anticipated costs and constraints that may impact on that investigation. Deviations from the initial investigation plan must be submitted to the CMT for approval.

The CMT **must** review the plan as submitted and only accept it when:

- the time frame for task completion can be met
- all available evidence will be gathered
- all reasonable avenues of investigation will be undertaken
- the proposed interview style is appropriate to the allegation
- due consideration of all risks has been made.

4. Conduct investigation in consultation with supervisor (PSDO or equivalent).

Throughout the investigation consider:

- *Use of the Complaint investigation chronology document*

A chronology is recommended for all CMT managed investigations. The CMT does not need to review or endorse the chronology.

A chronology also assists in the preparation of the final investigation report. The corporately preferred chronology format is available on the NSWPF PSC intranet site under Forms.

- *Use of the Complaint investigation status report P1003*

Investigators are to submit status reports at a frequency determined by the CMT. These reports advise the CMT of the progress of the investigation and the tasks which have been and are proposed to be completed. Status reports should also be used to report the reasons for any delay in completing the investigation, allowing the CMT to amend the projected completion timeframe if required.

- *Request for extension of complaint investigation time frame P1009*

The 90 day requirement for completion of CMT matters may be extended by the CMT. The investigator must report any circumstance that is likely to impact on the investigation not concluding within the timeframes set.

Approval for an extension must be sought from the CMT before the expiration of the investigation deadline. The report must include the time extension requested, the reason for the request and list the outstanding activities and the new proposed completion dates. Investigators should expect their reasons for extensions to be scrutinised. Commands are frequently called upon to account for failures to achieve corporate standards, especially concerning timeliness of complaint investigations. Where notifiable matters are concerned, the CMT is expected to notify the NSW Ombudsman of extensions and reasons given by investigators.

Complaint Investigation chronology, Complaint investigation status report P1003 and Request for extension of complaint investigation time frame P1009 can be located on the NSWPF PSC intranet site under Forms.

- *Whether sufficient evidence exists to warrant the prosecution of any person for an offence*

Where an investigation finds sufficient evidence to warrant a person being charged with a criminal offence, the investigating officer must cause appropriate proceedings to be instituted against that person. Approval must be sought from the commissioner to institute criminal proceedings against another police officer.

Refer to CPN 03/03 Section 148 Approval to Institute Proceedings against a police officer. In addition information is contained within Part V: Commencing criminal proceedings (S148 Police Act 1990).

5. Complete Evidence Based Investigators Report P1047

Refer to the *Guide to completing an Evidence Based Investigator's Report P1047* located on NSWPF PSC intranet site for specific details on completing the report.

Investigator is required to complete:

- *Part 1 of the Evidence Based Investigator's Report P1047 detailing:* subject officer details, issues investigated, evidence, findings recommended (sustained / not sustained), other issues for each subject officer, and
- *Part 2 of the Evidence Based Investigators Report P1047* providing recommendation to the delegate on invoking / not invoking S163 of the Police Act 1990 and certifying the information contained in the investigation report.

Refer to the *Investigators Report – Evidence Based - Guide to Completing P1047 form* located on PSC Intranet site under forms.

Findings

In order to make a sustained / not sustained finding a reasoned analysis of all available inculpatory and exculpatory evidence must be undertaken. Reasoned analysis requires related conclusions to be reached only after or as a result of a logical sequence of argument or discussion. Both the evidence and processes used

must be capable of withstanding scrutiny; internally and before the Industrial Relations Commission.

In completing an investigator's report an investigator will be required to make a recommended finding of either **sustained** or **not sustained**. Each finding will need to be determined on the balance of probabilities (civil standard of proof). This means that the finder of the facts must be reasonably satisfied that something is more likely than not to have happened.

The investigator must base their decision on cogent evidence and avoid reliance on inexact proofs, indefinite testimony, or indirect inferences.

“...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters ‘reasonable satisfaction’ should not be produced by indefinite testimony, inexact proofs or indirect inferences” [Dixon J in Briginshaw v Briginshaw (1938) 60 CLR 336 (at 362)]

The reasons that form the basis for a recommendation that a sustained finding should be made should logically flow from the evidence that supports the facts on which findings are based. Investigator should be sure that the subject officer has been given the opportunity to respond to the substance of the allegations and any adverse comment about them. The investigator's report should not contain adverse comments that the subject officer has not had the opportunity to respond to. For example, you should not include an adverse comment that you believe a person has been untruthful, or may have a drinking problem, without allowing the officer to refute the allegation. When making a finding, outline the issue, the finding and the rationale for each issue.

Organisational outcomes

Where supervisory, managerial or organisational issues, which may have contributed to poor performance, are identified, it is important that these matters are brought to the attention of the Commander/Manager or organisational representative. Any comment included should be based on facts and not include personal opinion.

Organisational outcomes include but are not limited to the following:

- supervisory/managerial issues
- training and development within or across commands relating to a particular issue
- improvements to policies and standard operating procedures
- amendments to legislation.

Your report should include information on whether these issues contributed to the poor performance of the subject officer and actions you would recommend to prevent a recurrence

6. Submit the completed Evidence Based Investigators Report P1047 to your supervisor / PSDO or equivalent for quality review.

As the investigator you should maintain contact with the PSDO or equivalent regarding the outcome of the quality review and commander's management action decision.

Investigator should seek approval from the PSDO or member of the CMT before speaking to the complainant / subject officer regarding the outcome of the investigation.

7. Maintaining contact with the complainant at an appropriate time

The investigator should provide regular status updates to the complainant about the progress of the investigation.

Where the complainant is also a victim, consider *The Charter of Victims Rights*, appearing in the *Victims Rights Act 1996* which sets standards for the appropriate treatment of victims of Crime.

It is a requirement under the legislation that once the investigation report has been finalised the commander (or delegate) **if practicable**, must consult with the complainant **before** making a decision concerning any action to be taken as a result of the complaint.

In addition, the commander (or delegate) must provide the complainant with advice as to any action already taken or to be taken, as a result of the complaint. These actions are the responsibility of the Commander and can be delegated as required. Remember that under the principles of procedural fairness that a complaint is not considered to be finalised until the subject officer has an opportunity to respond to the P1048 Investigators Report and supporting evidence which has been served upon them by the Commander when considering a reviewable action as an outcome of a complaint.

The Commander should also confirm the outcome of the investigation and the reasons for the outcome to the complainant in writing.

Administration

The following information provides guidance on administrative actions which support the evidence based investigative process.

Timeframes

From the received date:

- 90 days for the completion of evidence based investigations (managed by the CMT)

Timeliness stops once evidence based investigation is complete within c@ts.i.

Upgrading of c@ts.i stream

Complaints referred for evidence based investigation are to be upgraded from an LMI matters to a CMT managed complaint (P stream prefix in c@ts.i). Complaints can be upgraded and downgraded within the CMT Managed Complaint (P stream).

NOTE: If a matter is receipted on c@ts.i as a P stream investigation and the assessment quality review (AQR) on c@ts.i has been completed the matter can NOT be downgraded to a resolution investigation (LMI prefix in c@ts.i). The protocols for the 'P stream' must be adhered to through to the completion of the complaint. See c@ts.i CMT Stream User Guide or contact PSC help desk on 48370.

Assessment Quality Review

PSC complete the Assessment Quality Review within c@ts.i for all P stream matters. This facilitates the notification of the complaint to the NSW Ombudsman. PSC's quality review includes confirmation that the [c@ts.i](#) record contains the following:

- the complaint document
- the triage document
- mandatory CMT minutes including CARA A form
- CARA B form
- Investigator's Terms of Reference

Timeliness measurements

For CMT managed complaints, timeliness is measured from the 'Date Received' by NSWPF to the completion of 'Investigation Outcome s150 report' (date of the first generated section 150 report).

Documents to be recorded on c@ts.i

All complaint documentation is to be recorded onto c@ts.i as it is obtained or received or at the earliest opportunity.

All PIC and NSW Ombudsman correspondence is to be entered on c@ts.i.

IMPORTANT

Documentation should be attached to c@ts.i as the investigation progresses, eg. status reports, records of interview, investigation report etc. It is not appropriate for this to be left until after the investigation is complete.

In the context of evidence based investigations, any document that is not available in its original electronic form or is modified from that original form through the addition of notations, signatures or other means must be scanned and uploaded to c@ts.i.

CMT declined matters

Where a CMT has decided the decline to investigate a complaint or an issue within a complaint, a copy of all documents relied upon must be attached to the c@ts.i record.

Record Investigation findings

Investigation findings are recorded upon c@ts.i before the Investigation Quality Review is completed.

Suspending an evidence based investigation on c@tsi

There is capacity to suspend investigations within c@ts.i. Suspension will only be considered where an investigation has reached a point where no further investigation can be conducted due to one of the following factors:

- The criteria for suspending a matter will include, but is not limited to:
 - a) subject officer is on certified sick leave
 - b) subject officer absent/not contactable eg on annual/extended leave, overseas on holiday
 - c) awaiting a court result
 - d) awaiting legal advice from an external body eg Department of Public Prosecutions (ODPP) and Office of General Counsel.
 - e) awaiting police sampling analysis eg DNA, steroid / drug testing
 - f) vital witness unable to be contacted
 - g) waiting for evidentiary material from external bodies eg CCTV, CCRs
 - h) Police Integrity Commission (PIC) take over Part 8A investigation (See CPN 07/12)
 - i) when the complaint is also the subject of a critical incident investigation
 - j) other unusual circumstances

Points to note:

- If a complaint is suspended due to the officer being criminally charged you must advise the Ombudsman and include a copy of the fact sheet.

-
- Suspension process applies to both resolution (non CMT managed) or evidence based investigations (managed by the CMT)
 - A complaint can be suspended a maximum of **three** times
 - Suspension applications are to be forwarded to **#catsi**
 - The application should outline the reasons supporting the suspension and that no further inquiries can be made at the present time
 - Start date for suspension period is to be nominated
 - PSC Complaint Support Unit will review the application
 - Advise **#catsi** when it can be reopened by stating the date it is to be re-opened

IMPORTANT

To ensure suspended matters are monitored, all region PSMs should monitor complaints and prompt commands about the status of those suspended complaints. PSC Complaints Support Unit also monitor suspended complaints and will liaise with Commands to ensure matters remain on suspension list appropriately.

Outcomes and management action

All action taken by commands in response to a complaint is to be recorded on c@ts.i. This includes all management action, criminal proceedings and related action and no action. See c@ts.i user guides.

Mandatory notification forms to the IRP and other administrative advice is available on the Management and Workplace Services pages of the PSC intranet site.

Section 150 report pdfs to be sent to the NSW Ombudsman

As soon as a CMT is satisfied with the investigation and the investigation report is ratified by the CMT, the section 150 report can be provided to the NSW Ombudsman. The section 150 report for CMT managed notifiable matters must consist of a covering letter and supporting materials. Include in the following documents in the report:

Commander's covering letter detailing satisfaction of s150 obligations

Complaint document

Investigator's reports and Investigation Plan

Investigation documents

CMT Minutes and Terms of Reference

CARA A and CARA B forms

The NSW Ombudsman should be notified of any actual and intended action and any intention to change action already reported. Do not wait for IRP or related outcomes before forwarding the section 150 report to the NSW Ombudsman. The NSW Police Force has committed to meeting section 150 reporting obligations before notifying

matter to the IRP. Advising the NSW Ombudsman that the reviewable action is being considered meets the section 150 reporting obligations.

Ensure that the 'Complete Investigation Outcome' button on c@ts.i is selected to activate notification of the s150 report to the Ombudsman.

The corporately preferred template for section 150 report covering letters for CMT matters is available on the PSC intranet site.

Commission for Children and Young People (CCYP) Notification

CMT minutes for all matters subject to notification to CCYP must record decisions made to notify, or not notify, the CCYP, including the reasons for the decision. These decisions must form part of the section 150 notification to the Ombudsman.

Forms

Triage

Triage Form - P1001

Resolution

Resolution Instruction Form - P1002

Resolution Outcome Report - Mandatory - P1046

Status Report - Investigation - P1003

Evidence based investigations (CMT managed)

Agenda - CMT - P1011

Minutes - CMT assessment - CARA Part A

CARA Part B - Disclosure of conflict by investigator - P960

Directive memorandum - P1004

Chronology - Investigation

Interview - Notice to interview

Interview - Question Template - P1005

Interview - Directed - Direction to senior officer - P1010 [CPN 04/02]

Investigation - Notice to witness - P1051

Investigation Plan - P1053

Investigators Report - Evidence Based - Case Study

Investigators Report - Evidence Based - Guide to Completing

Investigators Report - Evidence Based - Template - P1047

Investigators Report and supporting evidence for service on a subject officer - P1048

Investigators Report - Response - P1049

Minutes - Additional Issues - P1008

Minutes - Continuation Form

Section 148 Police authority to institute proceedings against a NSW police officer - P812

Section 150 Letter to NSW Ombudsman

Status Report - Investigation - P1003

Terms of Reference - Investigation - P1013

Administration

Access form - CIS - P834

Access form - c@ts.i - P833

Delayed investigation - Advice to NSW Ombudsman - P1012

Extension request - Investigation Timeframe - P1009

Section 128 Application - Consideration to remove subject officers name from c@ts.i when complaint denied - P1039

NSW Police Force Complaint Form - P964

CCYP - Employee Advisory Letter template

CCYP - Relevant Employee Proceedings Notification - P987

CCYP - Relevant Employee Proceedings Summary - P986

Professional Standards Command Assistance

For further information on the process of conducting an evidence based investigation managed by the CMT or c@ts.i assistance contact Professional Standards Command Help Desk E/N 48370 #pschelp.

Part V: Investigative Issues

Investigations involving criminal and non criminal allegations

When an investigation includes allegations that are both criminal and non criminal the initial enquiries **must** focus on the criminal allegations.

Once the investigation into the criminal allegations is complete, any existing or new non criminal issues should be addressed. This will be dependant upon the outcome of any criminal proceedings and/or the findings of the criminal investigation itself.

Conducting a Criminal Investigation

The investigation of allegations of criminal conduct by a NSW Police Force Officer should not differ to any investigation into alleged criminal behaviour. Action should be taken to gather evidence in accordance with normal legislative requirements and NSW Police Force practice.

However there are additional requirements that apply to criminal investigations into police conduct, including

- Initiation of interim risk management strategies within the workplace
- compliance with section 148 of the *Police Act 1990* in relation to the prosecution of a NSW Police Force officer
- administrative obligations under Part 8A

Generally, any allegation(s) of criminal conduct against a police officer should be investigated by the command where the incident is alleged to have occurred. The complaint should be managed by that command, including oversight by the Command's CMT, until the criminal investigation is complete. This excludes those allegations that are being (or are to be) investigated by the Professional Standards Command or the Police Integrity Commission

Any subsequent legal proceedings should be managed by the investigating command as with any other legal proceedings arising from an investigation by that command.

In accordance with Commissioner's Instruction 11/18, when an officer under their command has been charged with an offence, all Commanders must ensure the officer in charge, investigator, professional standards duty officer or other suitably qualified person must attend the court proceedings when such matters are being heard.

For further information refer to Commissioners Instruction 11/18 located on the *NSWPF PSC Intranet Site* under *Policy & Guidelines – Workplace Management*.

Arrest and custody issues that may arise from a criminal investigation involving a police officer.

Police, Administrative Officers or other employees of the NSWPF who become the subject of some inquiry within a criminal investigation should be processed the same as members of the public.

IMPORTANT

You are not permitted to arrest a person for the purpose of conducting an interview.

Section 99(3) of the *Law Enforcement (Powers And Responsibilities) Act 2002 (LEPRA)* states that police **must not arrest** a person for the purpose of taking proceedings unless arrest is necessary to achieve one or more of the following;

- ensure the appearance at court;
- prevent repetition or continuation of the offence or commission of another offence;
- prevent the concealment, loss or destruction of evidence relating to the offence;
- prevent harassment or interference with witnesses relating to the offence;
- prevent fabrication of evidence in relation to the offence;
- preserve the safety and welfare of the person.

Persons under arrest

If it is necessary to arrest a police employee the detained person must be introduced to the Custody Manager in accordance with the provisions of LEPRA and NSWPF policy.

Section 123 of LEPRA requires custody managers to inform detained persons of their right to communicate with support persons who are independent of the investigation or legal practitioners, to provide facilities to enable contact, to defer investigative procedures for up to two hours so such a person can attend the place of detention and provide facilities so the detained person can consult with their support person or legal practitioner.

Section 131 of LEPRA requires the custody manager to create a record of relevant information regarding any person presented to them by investigating police.

Voluntary attendance

The Crime Code of Practice provides that people who attend police stations voluntarily (i.e. not under arrest) (volunteers) are to be treated with no less consideration than those in custody (eg: offer refreshments at appropriate times). They are entitled to obtain legal advice, communicate with anyone outside the station or leave at any time.

Investigators should present volunteers to the custody manager who will create an appropriate record. The custody manager is required to inform the volunteer:

- why they are at the station and they are not under arrest and free to leave
- that they may seek legal assistance and can notify someone else they are at the station
- that if the investigating police decide the person is no longer free to leave the investigating police are required to take the person back to the custody manager and advise that officer of the situation.

The custody manager is also required to record the name of the volunteer, the names of investigating police, the time the volunteer arrived at the station and ensure the correct time of release is entered into the custody record once the volunteer is released.

Where the volunteer's status changes to that of a person under arrest and investigating police present the person to the custody manager again, it will be prudent for the custody manager to process the person as a fresh detained person, fulfilling all requirements under Part 9 of LEPPRA.

One example of when this situation may arise is where an officer presents as a volunteer but during questioning, investigating police decide they will be seeking permission under section 148 of the Police Act 1990 to proceed against the volunteer for an offence. In such a case, upon forming such a view, investigating police should immediately terminate that interview and present the person to the custody manager again.

Interviewing the subject officer

As with any suspect in a criminal investigation, a police suspect may exercise their right to silence and should not be directed to provide a statement or participate in an interview.

IMPORTANT

Section 281 of the *Criminal Procedure Act* 1986 requires that any admission during official questioning in regard to any indictable offence must be electronically recorded. (This does not apply to indictable matters that can be dealt with summarily). An admission that is not recorded electronically is not admissible unless it can be established that there was a reasonable excuse, e.g. the ERISP machine was broken or the interviewee did not consent to the interview being electronically recorded.

Police witness obligations during criminal investigations

The NSW Police Force and the community have an expectation that police officers will provide statements when they are witnesses to criminal offences. Providing statements and subsequently giving evidence in court is a key function of being a police officer regardless of whether or not the accused/suspect is a civilian or a police officer. In all circumstances police should execute their duties impartially in

accordance with the functions outlined in section 6 of the *Police Act* and which they have sworn or affirmed to uphold in their oath of office.

Where the investigation involves police officer conduct, police who are witnesses may be reluctant to provide a formal statement to investigators. Advice sought from the Crown Solicitor confirms that it is lawful for a senior officer to direct an officer who has **witnessed** a criminal offence to provide a formal statement in relation to the matter.

If an officer is reluctant to provide a statement because it might incriminate them, the officer **should not** be directed to provide a statement. A direction in this circumstance may not be lawful. Advice should be sought concerning the most appropriate course of action in this instance.

Can a police witness be directed to provide a formal statement in a criminal investigation?

The investigator should consider the following process where a police officer (who is not the subject officer in the investigation), refuses to provide a statement during a criminal investigation.

1. If the police officer refuses to provide a statement the investigator should remind them of their responsibilities as a police officer under sections 6 and 7 of the *Police Act*, the *Code of Conduct and Ethics* and *Statement of Values*.
2. Advise the officer that if they will not voluntarily provide a statement they can be given a lawful direction to provide a statement under clause 8(1) of the *Police Regulation*.
3. If required, direct the officer to provide a statement concerning their knowledge of the matter in a legally admissible form. Failure to provide a statement is a breach of lawful direction and should be referred to the CMT.

Support person

It is recommended that investigators, on request, permit the presence of a support person during a criminal interview provided that they do not interfere with the process.

Interim Risk Management

Where a criminal allegation is being investigated it is essential that commanders / managers consider the identification and application of interim risk management strategies. Interim risk management strategies are used to address the impact of the allegations on those involved in the complaint investigation and the work environment. They are not disciplinary actions. Their determination is a matter for the commander / CMT, but investigators may recommend such strategies as required. Refer to the Stages of Complaint Process at the commencement of this document, Taking Interim Risk Management.

Commencing criminal proceedings (section 148 Police Act 1990)

At times, complaint investigations will disclose that sufficient evidence exists to warrant prosecution for a criminal offence. In the case of a police officer, approval is required from the Commissioner (or delegate) before proceedings can be instituted against a police officer.

CPN 03/03 provides details of the relevant legislative and policy requirements in relation to this process.

In brief, if there is sufficient evidence to initiate criminal proceedings against a police officer, the investigating officer must recommend that proceedings be commenced and must seek authority to do so from the Commissioner (or delegate).

In all cases where approval to institute proceedings has been granted by a delegated officer, the PSM is required to send a copy of the written authorisation to PSC, Management Action and Workplace Services.

In addition to the requirements of s148 of the Police Act, the requirements of the Protocol between the NSW Police Force, Policy Integrity Commission and the Office of the Director Public Prosecutions must be adhered to. A copy of the Protocol is available on both the LAW and PSC Intranet Sites.

In accordance with the terms of the protocol, where there is sufficient evidence to prefer a charge but there may be good reasons for the Commissioner's approval not to be given, advice may first be sought from NSW Police legal advisers.

If, as a result, it is considered that the Commissioner's **approval should be withheld**, the matter **is to be referred to the ODPP** for advice. The ODPP will provide advice as to whether there are discretionary grounds (in accordance with the ODPP policy guidelines) for the matter not to proceed.

S148 Police Act Authority to Institute Proceedings against a NSW Police officer P812 form can be located on the NSWPF PSC intranet site.

Note : The Commissioner's power, in respect to s148(3) has been delegated to members occupying positions of the NSW Police Force Senior Executive Service and each Assistant Commissioner in a specialist support command.(see NSWPF Instrument of Delegation – Police Act 1990 and Regulation 2008)

The role of the CMT in commencing criminal proceedings under section 148 is to:

- monitor and assist related processes,
- monitor legislated and corporate timeframes (including progress towards statutes of limitation)
- continue managing staff involved
- confirm the NSW Ombudsman is notified by the delegated officer when criminal proceedings are authorised and commenced and
- ensure c@ts.i is updated with this action.

Administrative Obligations under Part 8A.

Where an allegation is made that a police officer has, or may have, committed a criminal offence, the administrative process for complaint management is to be applied. This means that the matter is recorded as a complaint within c@ts.i, the NSW Ombudsman and the Police Integrity Commission are notified of the matter and in subsequent reporting requirements of Part 8A will apply.

IMPORTANT

Where a matter has been investigated criminally and charges have been preferred, this **is not** the outcome of the Part 8A investigation.

A Part 8A investigation can only be finalised where a **final departmental determination** has been made that the subject officer engaged in the conduct alleged. This determination may not be able to be reached while a matter is the subject of criminal proceedings as the subject officer may not have provided a version or sought to rebut the evidence gathered during the criminal investigation.

At the conclusion of the criminal proceedings the Commander/Manager will need to determine whether the matter can be finalised without further departmental investigation. This may be the case when the subject officer has resigned or their employment has been terminated as a result of the criminal matter.

When criminal matters are finalised at court, the matter is to be reviewed by the CMT to determine what management action or further investigation should take place. If a conviction is recorded or the matter is proved but dismissed (section 10) the LAC should consider sustaining the criminal matter.

If the matter is dismissed or dealt with under Section 32 of the Mental Health (Forensic Provisions) Act, the LAC needs to determine if the issues can be sustained and/or whether further departmental investigation is necessary.

Suspending the c@ts.i complaint

Where criminal charges have been preferred, the CMT will need to determine whether the complaint investigation should be suspended awaiting the outcome of the criminal proceedings. **Refer to CPN 11/12 Procedure to suspend a Part 8A complaint investigation within c@ts.i system.**

Conducting a departmental investigation

The investigation will be managed by the Command's CMT to ensure that it is conducted fairly, impartially, transparently and thoroughly. It will be subject to independent oversight and a report detailing the findings and recommendations will be provided to the NSW Ombudsman in line with the requirements of Part 8A of the Police Act.

Although the rules of evidence do not apply, there remains a requirement on the investigator to ensure that procedural fairness is afforded to the officer subject of the investigation. Procedural fairness, among other things requires that a person has a reasonable opportunity to respond to an allegation made against them.

The officer does not have a specific right to seek legal advice or be accompanied by a friend or support person. This is entirely at the discretion of the investigator.

Moving between criminal and non criminal evidence based investigations

Where a criminal investigation fails to identify sufficient evidence to support the charging of an officer, a determination can be made to finalise the matter by way of a departmental inquiry.

If an investigator anticipates that it will be necessary to cease a criminal investigation during the subject officer interview, he or she should ensure that the decision to cease the criminal investigation has been approved by the CMT.

Refer to CPN 10/04 *Admissibility of directed interviews with police officers in criminal proceedings*.

Interviews conducted during a departmental investigation

Interviews conducted during a departmental investigation may be audio and/or video recorded. Audio and video recordings must have the consent of all persons engaged otherwise the recording is a breach of surveillance devices legislation.

In the event an involved officer refuses to be electronically recorded the interview should be typed or handwritten.

A NSW police officer may be directed by a senior officer to obey a lawful order. The direction may include the officer participating in an interview, answering questions or demonstrating an action that is reasonably necessary during questioning. Investigating officers must consider the welfare of the subject officer prior to commencing any non criminal interview. Where appropriate make allowances for fatigue or other extenuating factors that may impact negatively on the officer being interviewed. The subject officer should be provided *NSWPF Support Package for police officers interviewed in relation to a complaint*. This document can be located on the NSWPF PSC intranet site under *Policy and Guidelines*.

When the investigating officer is junior in rank to the officer to be interviewed the CMT should attempt to make alternate arrangements. When this is not possible a

direction signed by a more senior officer, i.e. more senior in rank may be served on the interviewee at the beginning of the process. See CPN 04/02 *Directed interviews with Senior Officers under clause 8(1) of the Police Regulation* for more detail.

Direction given to subject officers

The direction given to police officers pursuant to *clause 8(1) of the Police Regulation* for an officer to comply with the departmental interview is:

“As this is a police complaint investigation you are directed, pursuant to Clause 8(1) of the Police Regulation 2008, to answer the questions I ask you. Do you understand that?”

The direction given at the conclusion of a departmental interview in regards to disclosure of information is:

“You are directed not to disclose any information in respect of this interview to any person that you known or have reasonable cause to suspect is a witness or is otherwise involved in this investigation without my authority or a member of the CMT until the completion of this investigation. Do you understand that?”

I would like to advise you of the services of the Workforce Safety Command which includes the Psychology section. The police chaplaincy and external services such as the Employee Assistance Program are also available if you feel that you may require any advice or assistance. Do you understand that?”⁷

Directive memorandum

A common practice for non criminal investigations is the use of directive memorandum or calling for reports from officers. Inevitably this process necessitates clarification of the response by the officer, requiring further questioning by the investigator. In these instances it is more practical to commence an interview that is handwritten, typed or audio recorded.

The memorandum outlines the allegation issue being investigated and directs the officer, pursuant to clause 8 of the *Police Regulation* to provide information about the issue.

If the investigator can justify the use of this tool, it is only to be used for non criminal matters according to the following guidelines:

- multiple issues may be addressed as long as there is sufficient information to identify the incidents surrounding the complaint
- the identity of the complainant must not be divulged, pursuant to section 169A unless authorised to do so by the Commissioner

⁷ *Support Package for police officers interviewed in relation to a complaint*, May 2008, 12.

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- the directive memorandum should be in writing with the date and time of service recorded
 - the service of directives should, as far as possible be contemporary and the police officers should be separated until each has completed their report
 - the investigating officer should properly supervise all police who are served directive memorandum to ensure there is no collaboration between them.

Any response to a directive memorandum should be accepted in the form presented, regardless of whether it contains irrelevant information or spelling and grammatical errors.

The template for a directive memorandum is available on the PSC intranet site under Forms.

Appendix 1: Associated Documents

Complaint Practice Notes (CPNs)

- 03/01 Clause 49
- 07/05 Managing false complaints
- 06/01** Untruthfulness
- 04/05** Handling of sitreps
- 07/03** Handling adverse judicial comments or
- 05/11** Police firearms complaints
- 07/07 Using information from service carrier providers
- 04/02 Directed interviews with senior officers
- 05/02 Searching lockers or other receptacles within NSW Police Force premises

- 11/06 Domestic & Family Violence related complaints

- 07/12 Suspending complaints where the Police Integrity Commission (PIC) take over a Part 8A investigation
- 07/10 Protection of Registered Sources when involved as either complainants or witnesses in complaint investigations
- 07/09 Identifying anonymous complainants
- 07/07 Advice on the dissemination of telecommunication intercept material to the NSW Ombudsman and PIC (updated 12/03/08)
- 06/06 S173(5) show cause notices (Advice concerning the provision of documents during the s173/174 process should be sought in the first instance from the s174 IRC Review Team at PSC - E/N 48260 or E/N 48274).

- 06/04 Section 160 audits by the Ombudsman and record keeping (updated 2/10/06)
- 05/07 Appropriate use of a subject officer's complaint history by complaint management teams and investigators (withdrawn pending review)

- 05/05 Role of Senior Executive Officers in Part 8A complaint interviews

- 04/05 Conduct of internal investigations whilst court proceedings are in progress (updated 17/12/08)
- 04/04 Complaints made to police officers in the course of unrelated dealings
- 04/03 Identification and management of reprisal (payback) complaints
- 04/02 Directed interviews with senior officers, compliance with clause 9 of the Police Regulation
- 03/03 Approval to institute proceedings against a police officer (updated 09/11/07)



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