



NSW Ombudsman

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# Audit of NSW Police Force handling of domestic and family violence complaints

A special report to Parliament under section 161  
of the *Police Act 1990*

May 2011



NSW Ombudsman

Our logo has two visual graphic elements; the 'blurry square' and the 'magnifying glass' which represents our objectives. As we look at the facts with a magnifying glass, the blurry square becomes sharply defined, and a new colour of clarity is created.

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May 2011

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President  
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Speaker  
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Dear President and Speaker

I submit a report pursuant to section 161 of the *Police Act 1990*. In accordance with the Act, I have provided the Minister for Police with a copy of this report.

I draw your attention to the provisions of section 169 of the Police Act in relation to the tabling of this report and request that you make it public forthwith.

Yours sincerely

Bruce Barbour  
**Ombudsman**

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# Ombudsman's message

Given the prevalence of domestic violence, its impact on families and communities, and the demands it places on the resources of agencies and service providers, it is essential that the police response is efficient and effective.

Complaints about the policing of domestic violence are an important source of information. They can provide insights into areas that might need improvement, as well as evidence to test the validity of recurring criticisms of particular police practices. Responding effectively to complaints is vital to maintaining – or in some cases, restoring – the confidence of victims of domestic violence who have sought assistance from police but feel they have not received an appropriate response. It can also help police to build goodwill with community sector partners who advocate on behalf of domestic violence victims.

This report builds on our 2006 investigation and report on the policing of domestic violence. It presents information from our detailed audit of the NSW Police Force's handling of all domestic violence-related complaints in 2008, which found that overall, police respond appropriately when such complaints are made. Importantly, police were willing to rectify mistakes and address poor performance in most cases where this was warranted. This finding should send a positive message to victims of domestic violence, their advocates and the broader community.

The NSW Police Force recognises the extremely serious consequences that can result when police respond poorly to incidents of domestic violence, or fail to deal effectively with complaints about domestic violence. When presented with the results of this audit, police responded positively and constructively, strongly endorsing the recommendations aimed at further improving how domestic violence complaints are handled and the way that information from complaints can be used to enhance operational policing. This reflects the sustained commitment by the NSW Police Force since our 2006 investigation to continuously develop and strengthen its response to domestic violence.

My office will continue to take a strong interest in overseeing complaints about the policing of domestic violence, and in working with police, the community sector and other agencies to identify and address issues of concern.



Bruce Barbour  
**Ombudsman**

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# Executive summary

This report presents the findings and recommendations of our audit of the NSW Police Force's (NSWPF's) handling of domestic violence-related complaints in 2008. The audit was carried out under section 160 of the *Police Act 1990*, which requires the Ombudsman to 'keep under scrutiny the systems established within the NSW Police Force for dealing with complaints'.

Our audit and this report are timely. It is now more than four years since our comprehensive investigation into the policing of domestic violence, which resulted in a special report to Parliament, *Domestic violence: improving police practice* in 2006. Since then, there have been significant changes and improvements to the way police respond to domestic violence.

These changes are reflected in the revised Domestic and Family Violence Standard Operating Procedures (D&FV SOPs) implemented by the NSWPF in 2008 and the *Code of Practice for the NSW Police Force Response to Domestic and Family Violence* released in 2009. In addition to our investigation, the changes have been informed by the introduction of the *Crimes (Domestic and Personal Violence) Act 2007* and the *Keep Them Safe* reforms arising from the 2008 Special Commission of Inquiry into Child Protection Services in NSW.

In recent years the NSWPF has also revised its approach to handling complaints about police conduct, with the introduction in April 2008 of new *Complaint Handling Guidelines* aimed at improving the way complaints are handled through streamlining the way they are assessed and managed. The guidelines were developed in consultation with the Ombudsman following a six month trial in several police local area commands. These guidelines are currently being updated.

## About the audit

Regular audits of the NSWPF's systems for handling complaints about police are an important part of fulfilling our responsibility for overseeing the police complaints system and ensuring its integrity.

Our 2006 report to Parliament emphasised the unique role of police in providing victims of domestic violence with protection and access to justice. For this reason, it is vital that victims and their advocates have confidence that police will respond appropriately to domestic violence when called on to do so, but also that the NSWPF will deal satisfactorily with complaints when this expectation is not met.

This audit has enabled us to assess and provide feedback to the NSWPF, the domestic violence sector and the broader community about whether domestic violence-related complaints are being appropriately and effectively handled. Our aim is to contribute to efficient, high quality police complaint handling through identifying good practice and making recommendations about areas for improvement, and, in doing so, to ensure complainants – particularly those who are victims of domestic violence – receive an appropriate response from the NSWPF.

Before finalising our audit, we provided a consultation draft of this report to the NSWPF and invited comment on our proposed findings and recommendations. We then met with the NSWPF Corporate Spokesperson for Domestic and Family Violence and senior officers from the Operational Programs and the Professional Standards commands. They supported the majority of our recommendations. Significantly, there was also broad agreement in relation to the remaining recommendations, subject to amendments agreed to at these discussions. A key outcome was that the Professional Standards Command would develop a specific *Domestic and Family Violence Complaint Practice Note* to address the issues raised and recommendations made in our draft report. The Complaint Practice Note will be appropriately cross-referenced to the *Complaint Handling Guidelines*, which are currently being updated.

## What we found

Our audit found that domestic violence-related complaints received in 2008 were generally well-handled by the NSWPF. In most cases, police correctly assessed the issues raised by complaints, notified them to the Ombudsman when required, and, when warranted, took appropriate action to address the issues raised. In addition, police generally initiated protective action on behalf of victims in response to complaints. Some form of management action was taken in relation to the majority of complaints referred for evidence based investigation and we were satisfied with the nature of that action in most cases. There was a reasonable level of complainant satisfaction where our audit was able to determine this.

However, we did identify some instances where complaints were not well-handled by police. The audit also again highlighted the serious consequences that can occur when police respond poorly to incidents of domestic violence. While this report deals primarily with the handling of domestic violence-related complaints, it also includes some related observations about operational policing issues.

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Overall, the positive findings of the audit should enable victims, their advocates and the wider public to be confident that, if they complain to the NSWPF about how police have responded to domestic violence, their concerns will be handled in an appropriate and responsive manner.

## How many domestic violence complaints were made in 2008?

In 2008, the NSWPF recorded having received 403 complaints related to domestic violence. Of these, we assessed 396 complaints (our reasons for excluding seven complaints are detailed at section 2.2.1). The assessment determined that 107 (28%) of the 396 complaints had been incorrectly classified by police as being related to domestic violence and the majority were excluded from the audit.<sup>1</sup> As accurate classification is essential if the NSWPF is to use its records – including its complaint records – to provide meaningful data to inform the monitoring of, and improvements to, the operational policing of domestic violence, our report recommends measures aimed at improving the consistency and accuracy of how such information is recorded on the police complaints system. These recommendations include giving consideration to the need for further training for staff (sworn and unsworn) who are responsible for data entry, changes to improve the recording of demographic data, especially about Aboriginality, and developing an agreement between our office and the NSWPF aimed at facilitating consistent data collection. The NSWPF has agreed to do so.

Our audit examined in detail the handling of 289 domestic violence-related complaints received in the 2008 calendar year, representing almost 6% of the total number of complaints received by the NSWPF during that year about any issue. Compared with the high reported incidence of domestic violence – 25,528 incidents were recorded in 2008 – the number of related complaints appears low. While it is not possible to draw any conclusions about this on the basis of our audit, we discuss some possible explanations at section 3.1.1.

The majority of LACs received at least one domestic violence-related complaint in 2008. We found that there was not necessarily a correlation between the recorded incidence of domestic violence in a particular LAC and the number of domestic violence-related complaints received. It was notable that LACs with large Aboriginal populations and a high incidence of domestic violence received a small number of complaints compared to other LACs. For this reason, we recommended that reports provided by LACs with significant Aboriginal populations about their implementation of the *Aboriginal Strategic Direction*, should include whether, and how, the LAC engages with local Aboriginal communities to identify and resolve any concerns they may have about the local policing of domestic violence.

## Who complained and what did they complain about?

More than 40% of complainants were alleged victims of domestic violence. Only two of these complainants were able to be identified from the records as being Aboriginal. Complaints by alleged offenders accounted for 17% of complaints. A significant proportion of complaints (22%) were internal police complaints (IPCs) arising from the reporting obligation imposed on police officers by clause 49 of the Police Regulation 2008. Under the Police Act, the initiation of proceedings for an Apprehended Domestic Violence Order (ADVO) against a police officer constitutes a reportable allegation, as does a police officer being charged for a domestic violence offence (we discuss the observations and findings of our audit in relation to police offenders below). Only 5% of complaints were made by a lawyer or advocate.

The vast majority of complaints related to either the conduct of police in directly responding to a domestic violence incident or the conduct of officers accused of domestic violence. Intimidation/stalking and assault were the most common types of domestic violence alleged to have occurred during incidents giving rise to complaints. Most of the alleged victims were female, while the majority of alleged offenders were male. The most common type of relationship between the alleged victim and offender was previous or current intimate partner. Of all complaints, 30% arose from events that resulted in the laying of criminal charges.

Chapter 3 includes case studies illustrating the types of issues raised by complaints. Alleged poor customer service, failure to investigate and inadequate investigation were the most common issues raised. Reportable allegations relating to police officers as domestic violence offenders accounted for 14% of issues raised. The majority of these allegations comprised IPCs. Ten per cent of issues related to alleged police conduct towards an alleged offender. Other issues the subject of complaint included those relating to the prosecution of court matters and the alleged failure of police to arrest/lay criminal charges; apply for an ADVO; or report children at risk of harm to Community Services or take other action to protect a child.

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<sup>1</sup> Not all incorrectly classified complaints were excluded. The final audit sample included four complaints that related to alleged violence between the former and current intimate partner of a third party (for example, when a woman's ex-partner assaults her current partner). Although this relationship type does not constitute a 'domestic relationship' under the Crimes (Domestic and Personal Violence) Act, we felt that the issues associated with how police respond to complaints in this context warranted closer examination in this audit. .



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## Identifying the primary aggressor

Only one complaint specifically alleged a failure by police to identify the 'primary aggressor' in relation to a domestic violence incident. For some time, the domestic violence sector has voiced ongoing concern about this issue, reporting that it results in charges being laid and ADVOs being taken out against women in inappropriate circumstances. A separate but related concern is that police are said to have a tendency to apply a lower 'threshold' when deciding to lay charges or apply for ADVOs against women as compared to men. We were therefore concerned as part of our audit to examine how regularly the 'primary aggressor' issue was a feature of domestic violence complaints.

As such, in addition to the one complaint that specifically alleged a failure by police to correctly identify the primary aggressor, we looked closely at all complaints that arose from events in which a woman was alleged to be the offender – regardless of whether the woman was the complainant. While based only on a sample of complaints and the records available to us as part of our audit, we found no evidence to indicate that police may have failed to correctly identify the primary aggressor in any matter.

However, what the audit did reveal is that a relatively significant number of women were considered offenders in events giving rise to domestic violence complaints, and that the majority were in a current or former relationship where there was a history of domestic violence against one or more parties. Additionally, a significant proportion of women were charged with an offence or the subject of an ADVO. These findings are critical to informing current research being undertaken by the NSWPF in partnership with the Domestic Violence Coalition, the peak body for the domestic violence sector in NSW, about the overall numbers of women charged with domestic violence offences and the proportion of these matters that may involve a failure by police to identify the primary aggressor.

## Improving customer service

Because customer service related complaints constitute such a large proportion of all domestic violence-related complaints, we have recommended that the NSWPF require LACs to regularly review all complaints of this type, in order to identify and remedy problems with individual officers or LAC systems, and provide related training/guidance to frontline police where necessary. In relation to other customer service issues identified in the report, we have recommended that each LAC conduct regular reviews of all complaints which raise concerns about poor customer service, and the obligation on police to provide victim follow-up within seven days of a report. We have also recommended a system for reviewing all failed domestic violence prosecutions (as well as any complaints about prosecutors), and for the *Code of Practice for the NSW Police Force Response to Domestic and Family Violence* to include information about the expected timeframes for completing complaint investigations/resolutions, key steps in the process, and the nature of contact police are expected to have with complainants.

## Children at risk of harm

Because of the potential risks posed to children as a result of domestic violence, we have also recommended that the NSWPF's proposed *Domestic and Family Violence Complaint Practice Note* require complaint managers/investigators to determine whether an appropriate risk of harm report was or should have been made to Community Services or the NSWPF Child Wellbeing Unit at the time of the incident giving rise to the complaint – irrespective of whether the complaint specifically raised this issue – and that prompt remedial action is taken where identified as necessary.

## Monitoring domestic violence complaints

While the volume of domestic violence-related complaints received by a LAC is not, on its own, a reliable indicator of whether the LAC is performing well in this area of policing, it is one of several quantitative factors that the NSWPF should have regard to as part of its performance monitoring process. We have recommended that in doing so, the NSWPF should also consider the type of issues raised in complaints, the LAC's demographic characteristics and reported incidence of domestic violence, what strategies the LAC employs to support the reporting of domestic violence, and how the LAC engages with local domestic violence services and advocates.

This report makes a number of observations about how the police handling of complaints about domestic and family violence can be further improved, and recommends changes aimed at achieving this. The measures established through our examination of these issues provide benchmarks for any future reviews. For this reason, and to enable observations to be made about key legislative, policy and procedural changes that have been implemented since the period covered by our audit, we have recommended that the NSWPF conduct a follow-up audit of domestic violence complaints received in 2010. In addition to assessing the impact of these reforms, a further review would demonstrate to the domestic violence sector and the broader community the NSWPF's commitment to continually reviewing and improving its response to domestic violence.

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## Risk management

Our audit of complaints generated insights into some of the risks associated with the policing of domestic violence, the measures needed to manage these risks and how well they were being managed.

All of the 289 complaints that were subject to detailed scrutiny were examined to identify any conflicts of interest affecting how they were managed. Our audit identified 11 complaints where conflict of interest issues appeared to arise. Significantly, we found that commanders usually did quite well in addressing these issues once they were identified, recognising the need to manage the conflict. When matters were not handled well, this appeared to be because police had either failed to recognise a conflict of interest at the outset or had failed to take appropriate action when concerns became apparent.

Our audit also checked how responsive police were when complaints raised concerns about ongoing risks to victims and their families. In most cases, police acted quickly to remedy any immediate concerns, indicating that victim safety was a high priority. Despite there being only a few instances where the records indicated a failure by police to act in a timely manner, the risks to victims in these matters was potentially quite high. In response to this issue, the NSWPF has agreed that the D&FV SOPs and *Domestic and Family Violence Complaint Practice Note* should include a specific requirement to consider and, where necessary, respond to and record actions taken to address victim follow-up issues.

We also found that 17 officers were the subject of two or more domestic violence-related complaints during the audit period. Although the incidence of repeated allegations was rare, the risk to victims in some of these cases indicated there was a need for strategies to systematically identify where and when repeat complaints occurred. In this regard, the NSWPF has agreed to ensure the *Domestic and Family Violence Complaint Practice Note* requires officers' complaint histories to be checked for any pattern of complaints relating to their handling of domestic violence matters.

Officers who are accused of domestic violence pose particular risks. The 289 complaints audited for this review included 61 (21%) that indicated the alleged domestic violence offender was a police officer. These matters related to the conduct of 50 officers. Of these, 27 officers were the subject of ADVO applications (although some of these applications were later withdrawn or not granted by the courts) and 13 officers were charged for offences relating to the alleged domestic violence.

Risks in cases involving police officers investigated for being alleged domestic violence offenders or the subject of ADVO applications include how the NSWPF manages its legislative responsibility to check for and restrict alleged perpetrators' access to firearms. Although the D&FV SOPs set out clear instructions regarding the seizure of any personal firearms and restricting access to NSWPF firearms in these cases, we found significant gaps in where and how this information is recorded. After scrutinising the available records, we usually found some indication that appropriate action had been taken. However, the audit highlighted the need for greater consistency in how this information is recorded. In response to this issue, the NSWPF has committed to ensuring that the proposed *Domestic and Family Violence Complaint Practice Note* includes specific advice about the recording of decisions relating to officers' access to firearms.

In relation to decisions about whether, and in what circumstances, officers who are the subject of a domestic violence allegation should have their service firearms returned to them, the NSWPF has committed to clarifying the issues that must be considered. We have been advised that it will request the Crown Solicitor's Office (which represents police officer defendants in ADVO proceedings) consider providing the following advice to magistrates adjudicating ADVO proceedings involving police officers: the defendant is a serving NSW police officer; the Firearms Act does not apply to the availability and use of firearms issued to serving NSW police officers; the requirement of NSW police officers to carry their service firearm while on-duty; the employment ramifications of restricting the availability of service firearms of NSW police officers, and the current processes in place to manage police officers subject to ADVOs in the workplace. The advice is intended to ensure that magistrates are aware of all relevant considerations when determining whether to prohibit or restrict a police officer defendant's access to any or all firearms as a condition of an ADVO.

Our review of complaints about police officers accused of domestic violence offences also highlighted some underlying welfare issues and health concerns for these officers, including conditions that may have been caused by or exacerbated by work-related incidents. Concerns about officers' mental health and alcohol misuse were among the issues identified in a number of matters.

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## Complaint management

Our audit provided insights into some broader complaint management issues. Of the 289 complaints about domestic violence that were subject to detailed scrutiny in this audit, 115 were referred for 'resolution' and 100 were referred for 'evidence-based' investigation. Resolution matters focus on gathering material to quickly establish what occurred and to swiftly and effectively remedy the problems raised in the complaint. Complaints referred for formal evidence-based investigations are generally those involving more serious allegations, or where commanders are expected to use their discretion to require an evidence-based approach to carefully document and test the evidence, particularly if there is any likelihood that the evidence might later be considered in formal proceedings.

Although we found that complaints included in the audit were generally managed well, a number raised serious issues that, in our view, should have been documented and assessed through an evidence-based approach.

Of the 100 complaints which were assessed as more serious and referred for an evidence-based investigation, we were satisfied with the police investigation of 95. This included 12 cases that we initially questioned, but were then satisfied with after considering further information provided by police. The five evidence-based inquiries where we were dissatisfied with the action taken are discussed further in section 6.1.3.

Other observations arising from our review of domestic violence complaints referred for resolution or evidence-based investigation include:

- Police generally seemed responsive to the concerns raised by victims, yet the nature and extent of any victim follow-up was often not apparent from the information on the complaints records.
- It was common for the inquiries to result in some form of management action, with 62 of the 100 complaints referred for evidence-based investigation and 42 of the 115 resolution matters resulting in some form of 'reviewable' or 'non-reviewable' management action.<sup>2</sup>
- The reported rates of complainant satisfaction indicated that 77% of domestic violence complainants were satisfied with the handling of their matters – similar to the rates reported in relation to all notifiable police complaints received in 2008.
- Of the 159 matters where some complainant contact was required, the records indicated that police were better at contacting complainants at the end rather than at the outset or during an investigation. Just 19% were contacted at the outset, during and at the end of the inquiry. Although this level of contact might not be needed in all cases, a rate of 19% is not indicative of best practice in complaint handling.
- In examining issues of timeliness, we found that police were generally very responsive when complaints from alleged victims raised concerns about safety.

As noted previously, the NSWPF has responded positively to this report and committed to implementing our recommendations (which appear at the end of the report), including developing a *Domestic and Family Violence Complaint Practice Note* to address many of the issues raised.

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<sup>2</sup> 'Reviewable' management actions are defined in section 173(2) of the Police Act as including a reduction in the officer's rank or grade, a reduction in seniority, a deferral of the officer's salary increment, or 'any other action (other than dismissal or the imposition of a fine) that the Commissioner considers appropriate'. Less serious 'non-reviewable' actions are listed in Schedule 1 of the Act.

# Recommendations

	Recommendations	Section
1	<p>In measuring the performance of local area commands (LACs) in policing domestic violence, the NSW Police Force should require LACs to report on the number and nature of the domestic violence-related complaints received each year in addition to other qualitative measures. In doing so, the NSWPF should have regard to:</p> <ul style="list-style-type: none"> <li>a. the volume of domestic violence complaints received against the incidence of domestic violence.</li> <li>b. the steps taken by LACs to remedy complaints, including training for individual officers and the command more generally, and closer management of officers.</li> <li>c. reports provided by LACs with significant Aboriginal populations on their implementation of the <i>Aboriginal Strategic Direction</i>, including whether, and how, the LAC engages with local Aboriginal communities. (For example, meetings with women's groups, women's refuges and domestic violence advocacy services to identify and resolve any concerns they may have about the local policing of domestic violence.)</li> <li>d. whether there is evidence that the LAC has a positive relationship with local domestic violence services and advocates, and the type of 'pro-active' strategies being utilised by the LAC to address domestic violence.</li> </ul>	3.1.5
2	<p>The NSW Police Force should provide guidance to police officers in the <i>Domestic and Family Violence Standard Operating Procedures</i> on how best to identify the risks associated with incidents involving violence between a previous intimate partner and current intimate partner of a third party.</p>	3.3.2.4
3	<p>The NSW Police Force should require the customer service 'portfolio holder' at each LAC to conduct regular reviews of all complaints which raise concerns about poor customer service, particularly those relating to domestic violence, in order to identify and remedy problems with individual officers or LAC systems, and provide related training/guidance to frontline police where necessary.</p>	3.4.1
4	<p>As part of their responsibilities under the Command Management Framework, the NSW Police Force should require LACs to regularly review compliance with the obligation on police officers to provide follow up to a victim of crime within seven days of a report, particularly with respect to domestic violence victims.</p>	3.4.1
5	<p>The NSW Police Force should require all LACs to provide trend reports on failed domestic violence prosecutions (as well as any complaints about prosecutors) to the Senior Sergeant (Prosecutions) within the Domestic and Family Violence Team, to inform their role in promoting consistent good practice in the management of domestic violence court work and related training.</p>	3.4.5
6	<p>The NSW Police Force should ensure the <i>Code of Practice for the NSW Police Force Response to Domestic and Family Violence</i> includes information about the police complaint process, including expected timeframes for completion of complaint investigations/resolutions, key steps in the process, and the nature of contact police are expected to have with complainants.</p>	4.3
7	<p>The NSW Police Force should ensure the Corporate Spokesperson for Domestic and Family Violence considers the type of mandatory information recorded about domestic violence-related complaints on c@ts.i to determine its adequacy for the purpose of providing data to inform the monitoring of, and improvements to, the operational policing of domestic violence. In doing so, the Corporate Spokesperson for Domestic and Family Violence should have particular regard to:</p> <ul style="list-style-type: none"> <li>a. whether there is a need to ensure greater consistency and accuracy with the 'identification and recording' of domestic violence-related complaints, including consideration of further training for staff (both sworn and unsworn) who are responsible for data entry.</li> </ul>	4.5

	<b>Recommendations</b>	<b>Section</b>
7	<ul style="list-style-type: none"> <li>b. the availability and recording of key demographic data, especially about Aboriginality.</li> <li>c. the benefits of developing a Memorandum of Understanding between the NSW Ombudsman and the NSWPF to facilitate consistent data collection and recording.</li> </ul>	4.5
8	The Corporate Spokesperson for Domestic and Family Violence should provide advice to the Professional Standards Command about any changes he considers necessary as a result of conducting the review referred to in recommendation 7.	4.5
9	The NSW Police Force should ensure that the: <ul style="list-style-type: none"> <li>a. Domestic &amp; Family Violence Standard Operating Procedures include a specific requirement to consider and, where necessary, respond to and record actions taken to address victim follow-up issues. 6.2</li> <li>b. Domestic and Family Violence Complaint Practice Note includes a requirement that all complaint investigation/resolution reports document whether police have considered and, where necessary, addressed all outstanding victim follow up issues. 6.3</li> </ul>	
10	The NSW Police Force should ensure that the <i>Domestic and Family Violence Complaint Practice Note</i> requires triage officers to: <ul style="list-style-type: none"> <li>a. check subject officers' and complainants' relevant complaint histories when assessing and managing a complaint about the policing of domestic violence.</li> <li>b. check the offender/victim history when assessing domestic violence complaints.</li> <li>c. document in complaint records the outcome of the review of the records referred to in a. and b. above.</li> </ul>	4.8
11	In light of the potential risks posed to children as a result of domestic violence, the NSW Police Force should ensure the <i>Domestic and Family Violence Complaint Practice Note</i> requires police complaint managers/investigators to: <ul style="list-style-type: none"> <li>a. identify and document whether an appropriate risk of harm report was, or should have been, made to Community Services or the Police Child Well-being Unit in relation to all complaints arising from domestic violence events involving children, irrespective of whether or not the complainant specifically raised any concerns about a failure to make such a report.</li> <li>b. identify and document whether corrective action has been taken to report a child as being at risk of harm where the investigation of a complaint identifies that such a report was warranted but not made at the time of the event giving rise to the complaint.</li> </ul>	3.4.9
12	The NSW Police Force should ensure that the <i>Domestic and Family Violence Complaint Practice Note</i> requires: <ul style="list-style-type: none"> <li>a. complaint investigations to be conducted in response to ADVO proceedings being initiated against a police officer, to ensure sufficient information is gathered to determine the nature of any interim and/or ongoing management action that may be required.</li> <li>b. the complaint information system (c@ts.i) to record: <ul style="list-style-type: none"> <li>- the allegations supporting an ADVO application against a serving police officer.</li> <li>- any interim management action taken in relation to an officer the subject of an ADVO application.</li> <li>- the final outcome (e.g. sustained – ADVO granted) in relation to the ADVO application.</li> </ul> </li> </ul>	4.9.1

	Recommendations	Section
13	<p>The NSW Police Force should ensure the <i>Domestic and Family Violence Complaint Practice Note</i> requires that:</p> <ul style="list-style-type: none"> <li>a. Domestic violence incidents the subject of a critical incident investigation should not be 'declined' on the complaint information system (c@ts.i), but instead should be suspended pending the outcome of the critical incident investigation. Where relevant, the critical incident investigation findings should be referred to the relevant Complaint Management Team to consider the need for management action in relation to individual officers or the command generally.</li> <li>b. If the critical incident investigation reveals conduct that is 'notifiable' as defined by the Class and Kind Agreement, then details of the matter – including any action taken as a result of the critical incident inquiry – should be notified to the Ombudsman.</li> </ul>	4.9.2
14	<p>The NSW Police Force should ensure that the <i>Domestic and Family Violence Complaint Practice Note</i> requires triage officers to consider what interim risk management action should be undertaken, in accordance with the <i>Interim Risk Management Guidelines for Police</i>, in circumstances where a subject officer has a pattern of domestic violence-related complaints and/or has had a domestic violence allegation/s made against them.</p>	4.8.1
15	<p>The <i>Domestic and Family Violence Complaint Practice Note</i> should provide clear instruction for triage officers about the handling of complaints involving police officers who have had a domestic violence allegation/s made against them. In particular, guidance should be provided in relation to:</p> <ul style="list-style-type: none"> <li>a. the complaint notification requirements where ADVO proceedings have been initiated against a police officer.</li> <li>b. whether and in what circumstances, an officer the subject of an ADVO may be granted access to their service firearm where firearm restrictions are a condition of the ADVO.</li> <li>c. a requirement to check and follow up on an officer's secondary employment history where those records indicate other ways to access firearms while police-imposed restrictions are in place.</li> <li>d. recording decisions relating to officers' access to firearms.</li> </ul>	4.10.1 5.3.7 5.3.8 5.3.6
16	<p>The NSW Police Force should provide this office with a draft copy of the <i>Domestic and Family Violence Complaint Practice Note</i> for review and comment.</p>	All
17	<p>The NSW Police Force should rationalise its documentation relating to the management of domestic violence complaints. In doing so, the primary document reflecting all specific requirements in relation to domestic violence complaints should be the <i>Domestic and Family Violence Complaint Practice Note</i>, with appropriate cross-referencing in the <i>Complaint Handling Guidelines</i>, <i>Domestic &amp; Family Violence Standard Operating Procedures</i>, the <i>Police Handbook</i> and the <i>Code of Practice for the NSW Police Force Response to Domestic and Family Violence</i>.</p>	All



	<b>Recommendations</b>	<b>Section</b>
18	<p>The NSW Police Force should undertake an audit of a sample of complaints about the policing of domestic and family violence received in 2010 to assess the impact of key policy and legislative changes implemented since 2008. Such an audit should have particular regard to:</p> <ul style="list-style-type: none"> <li>a. complaints raising the following issues: <ul style="list-style-type: none"> <li>- poor customer service</li> <li>- failure to take protective action for a victim of domestic violence (including acting on reported breaches of ADVOs and investigating offences of stalking/intimidation)</li> <li>- failure to respond appropriately to child protection concerns (including appropriate reporting of children at risk of harm)</li> <li>- police officers the subject of ADVO proceedings.</li> </ul> </li> <li>b. examining whether as part of the complaint management process, resolution managers, complaint investigators and commanders have, where appropriate, taken prompt action to: <ul style="list-style-type: none"> <li>- protect a victim of domestic violence, where the assessment or investigation of a complaint identified the need to do so.</li> <li>- report a child identified as being at risk of harm, where the assessment or investigation of a complaint identified that such a report was warranted but not made at the time of the domestic violence incident related to the complaint.</li> </ul> </li> <li>c. reviewing: <ul style="list-style-type: none"> <li>- all domestic violence matters the subject of critical incident investigations, to ensure that they have been appropriately notified where such investigation reveals conduct giving rise to a complaint under the Police Act.</li> <li>- whether complaints have been appropriately recorded and if not, amending the complaints information system (c@ts.i) accordingly.</li> </ul> </li> </ul>	All
19	<p>Within two months, the NSW Police Force should provide advice about whether and how it intends to implement the above recommendations.</p>	All

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# Glossary

ADVO	Apprehended Domestic Violence Order — an order under Part 4 of the Crimes ( <i>Domestic and Personal Violence Act</i> ) 2007. An ADVO may be made for the protection of: a person against another person with whom he or she has a domestic relationship; or two or more persons against another person with whom at least one of those persons has a domestic relationship. An ADVO is intended to prevent or apprehend potentially violent behaviour before it occurs. Failure to comply with the conditions of an ADVO is a criminal offence.
AVO	Apprehended Violence Order — AVOs are applied for and made under the Crimes ( <i>Domestic and Personal Violence Act</i> ) 2007. An AVO is defined by the Act and includes an apprehended domestic violence order (ADVO) for the protection of persons in a domestic relationship or an apprehended personal violence order (APVO) for protection in all other categories. The term AVO includes these orders made as provisional, interim or final orders or a variation of any such order.
Breach	An ADVO is 'breached' when the person against whom it is made fails to comply with the conditions it specifies. Breaching an ADVO is a criminal offence.
c@ts.i	Customer Assistance Tracking System — the system used by the NSW Police Force to maintain their Complaints Information System.
CMF	Command Management Framework
CMT	Complaint Management Teams — a team within a NSW Police Force command whose responsibility it is to manage complaints that are referred to it from triage.
COMPASS	Command Performance Accountability System — a corporate performance management system used by the NSW Police Force.
COPS	Computerised Operational Policing System — the database used by the NSW Police Force to record all incidents reported to them, including domestic violence incidents and ADVOs.
Defendant	A person who has been charged with a criminal offence; a person from who a person in need of protection seeks to be or is protected by an ADVO.
D&FV SOPS	<i>Domestic Violence and Family Violence Policy and Standard Operating Procedures</i> — current version released in November 2008.
DVPASS	Domestic Violence Proactive Support Service
DVLO	Domestic Violence Liaison Officer — DVLOs are members of the NSW Police Force Crime Management Units in a Local Area Command. This specialist role provides support to other police by providing linkages with community issues and concerns, information and intelligence, while forming partnerships for victim support and follow-up.
DVSOPS	<i>Domestic Violence Policy and Standing Operating Procedures</i> — documents operational requirements for police officers when responding to domestic violence matters. No longer current — superseded by D&FV SOPS in November 2008.
IPC	Internal Police Complaint — a complaint made by a NSW Police Force employee who witnesses or is the victim of misconduct by another NSW Police Force employee and reports the misconduct.
LAC	Local Area Command — the NSW Police Force is organised into 80 operational units or local area commands across six regions. Each LAC takes in several local police stations.
LGA	Local Government Area — NSW is divided into 152 local government areas across 13 regions.
LMI	Local Management Issue — a matter that does not meet the threshold of a Part 8A complaint. These matters are managed at the local level in the NSW Police Force.
NSWPF	NSW Police Force
PIC	Police Integrity Commission
PODS	Police Oversight Data Store
PSC	Professional Standards Command — a specialist command within the NSW Police Force that monitors and promotes professional standards.
RDVCs	Region Domestic Violence Coordinators
SOPS	Standard Operating Procedures — provide procedural instructions and guidance to police officers when responding to particular types of incidents and issues.



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# Chapter 1. Audit context

In this chapter we discuss the context of our audit with reference to the police complaint handling system and the policing of domestic violence.

We outline the purpose of the audit and its methodology in chapter 2.

## 1.1. The police complaint handling system

Under Part 8A of the Police Act, the NSW Police Force (NSWPF) has principal responsibility for dealing properly and effectively with complaints about police conduct. This includes requirements that the Commissioner must:

- record all complaints on the NSWPF's complaint information system (c@ts.i)
- decide if a complaint needs to be investigated
- investigate complaints in a timely and effective manner
- consult and advise complainants of the outcome of investigations
- notify the Ombudsman of certain complaints, and
- provide the Ombudsman with a copy of investigation reports.

### 1.1.1. How the Ombudsman oversees police complaints

The Ombudsman's main role is to oversight the police handling of complaints, and to keep under scrutiny the NSWPF's complaint handling systems. In exceptional circumstances, we can also directly investigate a complaint.<sup>3</sup>

#### 1.1.1.1. Complaints that must be notified to the Ombudsman

Section 121 of the Police Act allows the Ombudsman and Police Integrity Commission (PIC), after consulting with the Police Commissioner, to enter into an agreement about the 'class and kind' of complaints that must be notified to the Ombudsman. The effect of this agreement<sup>4</sup> is to define the types of more serious or 'notifiable' complaints about police conduct that the NSWPF must notify to the Ombudsman for oversight. Such complaints include those that allege:

- criminal or corrupt conduct
- conduct of a nature which, if substantiated, might warrant 'reviewable action' as defined by section 173 of the Police Act<sup>5</sup>
- conduct indicating a lack of integrity
- conduct causing or contributing to a failed prosecution, where the conduct is unreasonable or indicates serious incompetence
- harassment, victimisation or unlawful discrimination of a member of the public or repeat allegations of such conduct in relation to a member of the police force
- any unreasonable conduct (including a failure to provide customer service) resulting in death, injury, significant financial loss or involving the discharge of firearms, or
- any unreasonable conduct resulting in and/or from the search, arrest or custody of a person.<sup>6</sup>

#### 1.1.1.2. Decision to investigate complaints

The NSWPF can decide whether or not a complaint should be investigated. If we disagree with the NSWPF's decision not to investigate, we can require them to do so.

If the Ombudsman decides that a complaint should be investigated, he must notify the NSWPF and the complaint must be investigated.

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<sup>3</sup> The Police Integrity Commission (PIC) may also investigate or oversee any complaint about police conduct. In practice, the PIC only does this in a very small number of matters alleging serious misconduct.

<sup>4</sup> Section 121 Agreement – Notifiable complaints, *Guidelines agreed between the Police Integrity Commission and the Ombudsman after consultation with the Commissioner of Police under the Police Act 1990*, 1 September 2008.

<sup>5</sup> Examples of reviewable action against an officer the subject of a complaint include reduction in rank/salary and dismissal from NSWPF.

<sup>6</sup> Other allegations that must be notified to the Ombudsman under the Class and Kind Agreement include complaints about unauthorised secondary employment in high risk industries and detrimental action or reprisals for making protected disclosures.

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Factors that may be taken into consideration in deciding whether or not to investigate include whether a complainant has an alternative and satisfactory means of redress available to them (e.g. court proceedings), the complaint is frivolous or vexatious, or the conduct complained about occurred too long ago to justify investigation.<sup>7</sup>

#### 1.1.1.3. Actions taken by Ombudsman following a NSWPF investigation

The Ombudsman reviews the NSWPF investigation report in relation to a notifiable complaint to determine whether the complaint has been investigated in a timely and effective manner.

If, after reviewing the report, we identify deficiencies, we can ask police to investigate the complaint further or reconsider the actions they have taken. We can also suggest ways that complaint handling could be improved. If we remain dissatisfied with the way police have handled a complaint, we can report the matter to the Police Minister and/or Parliament.

#### 1.1.1.4. Non-notifiable complaints

Non-notifiable complaints are less serious matters that need not be notified to the Ombudsman and can be handled by police without our direct oversight. Under the current arrangements, these complaints are dealt with outside the provisions of Part 8A by way of guidelines agreed between the Ombudsman and the Police Integrity Commission pursuant to section 122(2) of the Police Act. Under the guidelines, the NSWPF must:

- record the complaints on c@ts.i,<sup>8</sup> and
- take appropriate action, including any investigation, conciliation and managerial action as may be necessary in all the circumstances.

Non-notifiable complaints include matters that raise customer service issues (e.g. rudeness, poor victim follow-up). Recent changes to the Class and Kind Agreement broadened the type of complaints that are non-notifiable.

If the complainant or subject officer is dissatisfied with the outcome of the complaint, the NSWPF must advise them that they may make a complaint about how the matter was handled. This further complaint is then reviewed by the Ombudsman.

We conduct audits to ensure non-notifiable matters are assessed and handled appropriately.<sup>9</sup> These audits are an important part of our oversight role.

If through an audit or some other means (such as the complainant contacting our office) we become aware of a complaint that is notifiable, we can require notification, and then oversight the matter as a notifiable complaint.

Guidance for police about the management of complaints is principally contained in the NSWPF *Complaint Handling Guidelines*, the *Police Handbook* and *Complaint Practice Notes* relating to specific issues.

#### 1.1.1.5. Domestic violence complaints

The effect of the arrangements under the section 121 Class and Kind Agreement is that the Ombudsman is notified of complaints about the policing of domestic and family violence if the circumstances suggest criminal or serious misconduct by a police officer. These complaints may be made by victims, offenders, or their representatives.

In addition, the Ombudsman receives internal police complaints (IPCs) that result from the obligation on police officers to report misconduct by colleagues in accordance with Clause 49 of the Police Regulation 2008,<sup>10</sup> which states:

*If:*

*an allegation is made to a police officer that another police officer has engaged in conduct which, in the opinion of the officer to whom the allegation is made, constitutes a criminal offence or other misconduct, or a police officer sincerely believes that another police officer has engaged in any kind of conduct of that kind, the officer is required to report the conduct or alleged conduct by the other officer to a senior police officer.*

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<sup>7</sup> Section 141 of the Police Act outlines the factors affecting the decision to investigate a complaint. If a complaint is 'declined' because the complainant has an alternative means of redress available to them through court proceedings and during those proceedings the court makes adverse comments or findings about police conduct, a new complaint may result on that basis. The new complaint may be made by a police officer, pursuant to clause 49 of the Police Regulation 2008, or by the original complainant.

<sup>8</sup> The guidelines detail some exceptions to this general recording requirement.

<sup>9</sup> These audits are conducted in accordance with s160 of the Police Act which requires the Ombudsman to inspect records of the NSWPF to assess compliance with the Class and Kind agreements; to assess the adequacy of the inquiries and action taken in response to non-notifiable complaints, and to scrutinise police systems for managing complaints.

<sup>10</sup> Formerly clause 20 of the Police Regulation 2000.

In turn, the senior officer must report the conduct or alleged conduct to the Police Commissioner (in the form of an “internal police complaint”) if the senior officer believes that it constitutes or would constitute a criminal offence, or could provide grounds for serious management action.<sup>11</sup> An example of an internal police complaint under Clause 49 is when a police officer is alleged to have committed a domestic violence offence. This may include allegations made to police by victims or that police become aware of as a result of Apprehended Domestic Violence Order (ADVO) proceedings in which a police officer is named as a defendant (we discuss this issue further in chapter 5).

The Ombudsman may be notified of complaints relating to domestic violence incidents that result in serious injury or death – including domestic homicides – in the following circumstances:

- A ‘critical incident’ investigation identifies alleged police conduct of a kind specified in the Class and Kind Agreement, leading to an internal police complaint.
- A complaint about police conduct in relation to the incident is made by a victim or relative of a victim.

A ‘critical incident’ is any incident in which the involvement of police warrants scrutiny. Examples include the homicide of a police officer, death or serious injury to a person in police custody, or death or injury arising from a police vehicle pursuit. A domestic homicide might be classified as a ‘critical incident’ if there was some aspect of police involvement prior to the homicide that warrants scrutiny (e.g. as a result of an allegation that police did not respond to a call for assistance from the victim a short time before the homicide occurred). The NSWPF requires all critical incidents to be investigated.

### 1.1.2. The NSWPF Complaint Handling Guidelines

In April 2008, the NSWPF introduced *Complaint Handling Guidelines* which aimed to improve and strengthen the management of complaints about the conduct of NSW police officers. The guidelines were developed in consultation with the Ombudsman following a six-month trial in eight local area commands and five specialist commands.

The guidelines introduced a streamlined process for conducting the initial assessment of complaints. Where previously complaint management teams (CMTs) conducted all initial assessments, this role is now performed by a Professional Standards Duty Officer (PSDO) or other delegate of the Commissioner using a ‘triage’ process. Importantly, the ‘triage’ process was supported by an amendment to section 141 of the Police Act, which provided the Commissioner and Ombudsman with greater flexibility in deciding whether complaints need to be investigated.

The *Complaint Handling Guidelines* also list and refer to the various Complaint Practice Notes that have been developed to provide guidance on specific complaint issues.

During the course of our audit of domestic and family violence complaints, we identified a number of general complaint handling issues requiring improvement. These issues were brought to the attention of the NSWPF in the context of our separate review of the *Complaint Handling Guidelines*. On 26 October 2010, we provided the NSW Police Force with a consultation draft of a report concerning our review of the *Complaint Handling Guidelines*. The report contained 16 recommendations, and suggested amendments to the triage process to ensure that complaints about criminal and serious misconduct are investigated in an effective manner. The NSWPF has agreed to incorporate our suggestions into the *Complaint Handling Guidelines* and where necessary, develop complaint practice notes to address specific issues, including a practice note for domestic and family violence complaints.<sup>12</sup>

## 1.2. Domestic violence legislation, policy and procedures

Responding to domestic and family violence incidents is a significant component of police work. In 2008, 25,528 incidents of domestic violence-related assault were recorded in NSW.<sup>13</sup> However, this figure does not reflect the total number of domestic violence incidents responded to each year by police – in 2008, police responded to over 110,000 domestic violence events.<sup>14</sup>

The overarching legislative framework governing domestic violence in NSW is the Crimes (Domestic and Personal Violence) Act. The Act confers a range of obligations and powers on police, particularly in relation to Apprehended Domestic Violence Orders. Search, entry and seizure powers relating to domestic violence offences are contained in Part 6 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

The *Domestic and Family Violence Policy* is a public document which sits within a broader policy context that includes the *NSW State Plan*, *NSW Domestic and Family Violence Action Plan* and *Keep Them Safe* – the NSW Government’s action plan for the delivery of community services aimed at protecting children and supporting their families. The NSWPF *Domestic and Family Violence Policy and Standard Operating Procedures* (D&FV SOPs)

11 Serious management action can include dismissal or ‘reviewable’ action (e.g. reduction in rank or salary increment) under section 173 of the Police Act.

12 Police formally responded to the Ombudsman’s review of the NSWPF Complaint Handling Guidelines on 4 February 2011.

13 Data provided by NSW Bureau of Crime Statistics and Research for the calendar year 2008.

14 Data provided by NSWPF.

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provide police with operational direction and guidance about responding to domestic and family violence within the legislative and policy context. They were released in November 2008 and build on earlier versions that the NSWPF revised having regard to the findings and recommendations of our 2006 investigation into the policing of domestic violence. The procedures are designed for police use, and are not public documents.

In response to a recommendation of our 2006 investigation, the NSWPF also developed a *Code of Practice for the NSW Police Force Response to Domestic and Family Violence*, released in November 2009. The Code is designed to provide information to the public about the procedures used by police when responding to domestic and family violence, and encourages people to complain if they believe these procedures have not been followed.

### **1.3. NSWPF Corporate responsibilities**

The business units of the NSWPF with overall corporate responsibility for complaint handling and the NSWPF's response to domestic and family violence are outlined below.

#### **1.3.1. Professional Standards Command**

The NSWPF's Professional Standards Command (PSC) assists commands to meet their complaint handling and employee management obligations. It works closely with professional standards managers within regions, promotes the *Complaint Handling Guidelines* and other complaint management tools, and conducts quality reviews of complaint handling. It also provides a 'consultancy service' for complaint investigations where resources or expertise are not available locally or where a fast response is required to manage risks to police or the individuals involved. In addition, the PSC provides advice to NSWPF employees about reporting misconduct, and investigates serious criminal offences that involve police.

#### **1.3.2. Domestic and family violence 'portfolio'**

In determining policy and monitoring the overall performance of the NSWPF in relation to domestic violence, the Police Commissioner is supported by the Corporate Spokesperson for Domestic Violence, the Domestic and Family Violence Team, Region Domestic and Family Violence Sponsors, and Region Domestic Violence Coordinators.

The Corporate Spokesperson provides advice to the Police Commissioner and his executive on issues concerning the domestic violence 'portfolio'. He oversees the development of related policy and practice, and coordinates NSWPF involvement in a range of relevant interagency initiatives. The current Corporate Spokesperson is the Central Metropolitan Region commander, Assistant Commissioner Mark Murdoch.

The Corporate Spokesperson is supported by the Domestic and Family Violence Team within the NSWPF's Operational Programs Command. The team promotes good practice by providing operational advice and information to police officers, manages and evaluates policies, programs and issues specific to the domestic violence portfolio, and coordinates and provides support to Domestic Violence Liaison Officers. The team also includes a Senior Sergeant (Prosecutions) who is responsible for developing strategies to support the consistent, high quality prosecution of domestic violence matters.

Region Domestic and Family Violence Sponsors are police local area commanders tasked with responsibility for overseeing the strategic management of the police responses to domestic violence in their region. They are assisted by Region Domestic Violence Coordinators (RDVCs), who perform a range of roles, including monitoring LAC performance and trends and providing support and advice to LACs to develop appropriate strategies to reduce domestic and family violence. RDVCs have particular responsibility for working in partnership with other agencies and services.

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# Chapter 2. Why and how we conducted the audit

In this chapter we briefly outline the purpose and methodology for the audit.

On 18 May 2009 we advised the Police Commissioner of our intention to conduct an audit of the handling of domestic violence complaints in accordance with section 160 of the Police Act. We had foreshadowed the audit earlier in 2009 with the NSWPF Corporate Spokesperson for Domestic Violence and the steering committee established by the NSWPF to oversee the implementation of the recommendations of our 2006 investigation.

## 2.1. Why we conducted the audit

Our audit is consistent with the Ombudsman's responsibility for ensuring the integrity of the police complaints system through overseeing the handling of complaints and the systems established by the NSWPF for doing so. Regular audits provide us with a means to oversight all complaints including those complaints that do not come to our attention directly (non-notifiable complaints). This scrutiny is an important component of ensuring that police are held accountable for properly managing all complaints.

### 2.1.1. Evaluating the quality of complaint handling

Our audit has enabled us to assess and provide feedback to the NSWPF about whether complaints about domestic violence are being appropriately and effectively handled. In this regard, a key aim of the audit is to contribute to high quality police complaint handling through making observations and recommendations about good practice and areas for improvement.

The audit also allows us to independently report on the quality of the police handling of domestic violence complaints to the domestic violence sector. It is important that the sector has confidence in the police complaint handling process, including the arrangements that are in place for scrutinising it.

### 2.1.2. Capturing information about the policing of domestic violence

The audit has also provided an opportunity to identify and provide feedback to the NSWPF about issues and concerns relating to the operational policing of domestic violence.

Our 2006 investigation into the policing of domestic violence resulted in a number of recommendations to the NSWPF aimed at addressing a variety of systemic issues. That investigation included a review of 452 notifiable complaints received during 2004 and 2005. While the review helped inform the overall findings and recommendations of our investigation, it did not focus on examining how the complaints were handled by police.

At the time of our 2006 report to Parliament, we undertook to conduct an audit of domestic violence complaints once the NSWPF had had a reasonable period of time to implement our recommendations. We noted that, as well as determining whether police generally handle these complaints appropriately, an audit of this kind would provide an insight into whether the types of issues and concerns about the operational policing of domestic violence identified during our investigation continued to exist and, if so, whether they appear to be more prevalent in some commands. This audit has also presented an opportunity to capture information about the characteristics of complainants.

### 2.1.3. Providing the NSWPF with 'benchmark' data

The audit has captured data about the police handling of domestic violence complaints at a particular point in time, approximately 12 months to two years following the release of our 2006 report. It therefore provides the NSWPF with a 'benchmark' against which they can carry out future audits of domestic violence complaint handling. Future auditing will enable observations to be made about the impact of changes that took place during and beyond 2008 – the period covered by our audit – including the rollout of the new complaint 'streamlining' process, the commencement of the Crimes (Domestic and Personal Violence) Act, the implementation of revised D&FV SOPS, the introduction of the NSWPF *Customer Service Charter*, and the changes to the mandatory reporting system as a result of the Special Commission of Inquiry into Child Protection Services in NSW.

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## 2.2. How we conducted the audit

The audit targeted all notifiable and non-notifiable complaints received and registered in the 2008 calendar year, and identified ('flagged') on c@ts.i as relating to domestic violence.<sup>15</sup> (Where a complaint about police conduct raised several issues, our audit considered only the issue/s that related to domestic violence.)

It is possible that there were non-notifiable complaints in 2008 which police should have flagged on c@ts.i as domestic violence-related, but did not. We were not able to capture such matters in the audit.

### 2.2.1. Complaints audited

In 2008, 403 complaints were flagged on c@ts.i as domestic violence-related.<sup>16</sup> Of these, we assessed 396 complaints.<sup>17</sup>

Each of the 396 complaints was initially assessed to determine whether it had been correctly flagged on c@ts.i as domestic violence-related. This was done on the basis of the definitions of 'domestic violence offence' and 'domestic relationship' contained in the Crimes (Domestic and Personal Violence) Act.

The assessment showed that 107 (28%) of the 396 complaints had been incorrectly flagged as domestic violence-related. These complaints arose from a range of situations, including neighbourhood and family law disputes. We excluded the majority of these matters from the audit.

However, we retained four complaints that arose from events involving alleged violence between the former and current intimate partners of a third party – despite this relationship type not constituting a 'domestic relationship' under the Crimes (Domestic and Personal Violence) Act. We discuss our reasons for including these complaints in the audit in chapter 3. We discuss the broader issue of complaints being incorrectly flagged as domestic violence-related in chapter 4.

Following initial assessment, we audited a total of 289 complaints.

### 2.2.2. Audit survey and materials

Each of the 289 complaints was audited using a survey consisting of 109 multiple-choice and open questions aimed at eliciting information about:

- how the complaint arose
- what the complaint was about
- characteristics of the complainant and parties to the event giving rise to the complaint
- how the complaint was assessed<sup>18</sup> at the outset and whether this assessment was reasonable
- whether the complaint was handled in a timely and effective manner,<sup>19</sup> and
- whether the complainant was satisfied with how the complaint was handled and the outcome.

Of these 289 complaints, we excluded 26 after assessment revealed that the concerns giving rise to these complaints were not sufficiently connected to the original domestic violence incident. These matters included complaints relating to property lost or damaged while in custody and issues relating to the service of warrants. (These complaints have only been included in relation to the data reported on in chapter 3).

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<sup>15</sup> Both 'face value' and 'actual' issues are flagged on c@ts.i: 'Face value' issues are those articulated in the written complaint, while 'actual' issues are those determined during assessment of the complaint.

<sup>16</sup> We identified 409 complaints 'flagged' on c@ts.i as raising domestic violence issues. Six of these matters were found to be duplicates.

<sup>17</sup> We excluded seven complaints on the basis that: there was insufficient information readily available at the time of the audit (five complaints); the matter was being overlooked by the PIC (one complaint); or the matter fell outside our jurisdiction (one complaint).

<sup>18</sup> Including whether the complaint issues were correctly identified, whether the complaint was assessed as notifiable or non-notifiable, whether the complaint was declined and, if the complaint was non-notifiable, whether it was determined to require resolution or evidence-based investigation.

<sup>19</sup> Including timeliness, involvement of the complainant/subject officer in investigation/resolution process, and the appropriateness of any management action taken.



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Each member of the audit team had access to the following when assessing complaints:

- records of incidents and charges on the NSWPF's Computerised Operational Policing System (COPS)
- Police Oversight Data Store (PODS), a PIC system that collates COPS information
- Police complaints information system (c@ts.i – including local management issue 'LMI stream' records)
- Resolve, the NSW Ombudsman's complaints information system
- the Ombudsman's hard copy complaint files, and
- relevant legislation and associated guidelines for notifying complaints, the NSWPF D&FV Policy and SOPs,<sup>20</sup> the NSWPF *Complaint Handling Guidelines*, and the *Police Handbook*.

Data was entered into a spreadsheet as surveys were completed.

During the audit the NSWPF's Professional Standards Command (PSC) provided us with some additional information. We also liaised with the PSC about any complaints we identified through the audit as having been incorrectly assessed by police as non-notifiable. We provided interim feedback to the Corporate Spokesperson for Domestic Violence during the audit.

### **2.2.3. Consultation with the domestic violence sector**

In December 2009 we held a Domestic Violence Community Stakeholders Forum which provided an opportunity for us to consult with the non-government domestic violence sector about our audit and a range of other issues. Almost 60 people representing over 40 community organisations attended the forum. We explained the purpose of the audit and invited participants to provide feedback about their experience of the police handling of domestic violence complaints. We have taken this feedback into account in reporting our observations.

Where appropriate, we have also had regard to other feedback we have received from the domestic violence sector, including our ongoing liaison with the Domestic Violence Coalition, a meeting with the Women's Domestic Violence Court Assistance Scheme Network in June 2010, and contact with advocates who attended domestic and family workshops we conducted in 2010 in partnership with the Women's Legal Service across NSW.

In addition, our ongoing audit of the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities* has involved consultations with domestic violence advocates, women's refuges and family support services in metropolitan, regional and remote locations.

### **2.2.4. Consultation on our draft report**

On 13 December 2010 we provided the NSWPF with a consultation draft of this report and invited senior police personnel to meet with us to discuss our proposed findings and recommendations. We then met with the NSWPF Corporate Spokesperson for Domestic and Family Violence and senior officers from the operational programs and the professional standards commands on 9 February 2011. They supported the majority of our recommendations. Significantly, there was also broad agreement in relation to the remaining recommendations, subject to amendments agreed to at these discussions. A key outcome was that NSWPF's Professional Standards Command would develop a specific *Domestic and Family Violence Complaint Practice Note* to address the issues and recommendations contained in our draft report. The Complaint Practice Note would be cross-referenced appropriately to the *Complaint Handling Guidelines* which are currently being updated. A final consultation copy of the report was provided to the NSWPF on 28 March 2011. The comments received have been incorporated into this final version of the report.

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<sup>20</sup> The audit team had regard to both the current D&FV Policy and SOPs – released in November 2008 – and the previous version.

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## Chapter 3. Complaint characteristics

In this chapter we discuss the characteristics of the 289 complaints that were audited, including:

- their distribution across police local area commands
- who complained
- the nature of the domestic violence events giving rise to complaints
- what was complained about, and
- police officers the subject of complaint.

### 3.1. Distribution of complaints

We examined the domestic violence complaints received in 2008 against the incidence of reported domestic violence, the total number of complaints received by the NSWPF about any domestic violence issue in 2008, and the police local area commands (LACs) concerned.

#### 3.1.1. Number of complaints

In the 2008 calendar year, the NSWPF received a total of 5,159 notifiable and non-notifiable complaints about a range of issues.<sup>21</sup>

As we explained in chapter 2, we audited 289 domestic violence-related complaints received in the 2008 calendar year. These represent almost 6% of the total number of complaints received by police in 2008.

The number of complaints about the policing of domestic violence matters appears relatively low against a background where responding to domestic violence is a significant component of police work. As noted above, police recorded 25,528 domestic violence-related assault incidents in 2008.<sup>22</sup> Some LACs report that responding to domestic violence accounts for the majority of police officers' time.

There may be several explanations for the relatively low number of complaints. It may indicate that on the majority of occasions, police respond to domestic violence appropriately and in a way that reflects 'good practice'. It may also be a result of the under-reporting of grievances and concerns. Many service providers in the domestic violence sector have told us that victims are often reluctant to complain when they feel they have not received appropriate service from police because they may:

- lack confidence that police will respond appropriately and effectively to a complaint
- fear that any complaint may influence whether police are willing to assist them in the future should the need arise
- lack the time or motivation to complain during a period of their life that may be chaotic and traumatic due to domestic violence and its consequences
- wish to avoid further contact with police.

There are a range of other factors that may influence whether an individual chooses to complain about a service or agency, including their level of awareness about their right to complain and their ability to take the practical steps required to do so.

Advocates in the domestic violence sector have told us that they also sometimes do not complain about what they perceive to be instances of poor policing for fear of 'antagonising' police – who they depend on to effectively assist victims – or because they lack the time to do so against a background of urgent casework priorities. Another reason an advocate may not complain is because a victim does not consent to them doing so on his or her behalf.

We also know from our work with police and the domestic violence sector that – where a good relationship exists – advocates are often able to informally resolve with police at a local level any concerns that may arise, making formal complaints unnecessary.<sup>23</sup> Many LACs have regular liaison with advocates in their area through participation on local domestic violence committees, or partnership arrangements such as the Domestic Violence Proactive Support Service (DVPASS) or 'yellow card' referral scheme. We are aware that several of these LACs take a strategic approach to domestic violence that involves pro-active cooperation with other service providers. A good example is

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<sup>21</sup> Figures obtained from the PODS Watson (Xanalys) Database for the 2008 calendar year.

<sup>22</sup> NSW Bureau of Crime Statistics and Research, *NSW Recorded Crime Statistics 2008, 2009*.

<sup>23</sup> Including contact with the Domestic Violence Coalition, Women's Domestic Violence Court Advocacy Scheme Network and Women's Refuge Movement.



Sutherland LAC, where we have observed this approach operating in practice.<sup>24</sup> On the other hand, we also know from our work with the domestic violence sector – particularly through our delivery of advocacy training to frontline workers – that in areas where there is a poor or non-existent relationship between police and the broader service and advocacy sector, concerns about policing are often less likely to be raised in any form at all.

It is also important to bear in mind that the domestic violence sector often seeks to raise with the NSWPF ‘systemic issues’ identified on the basis of the collective experiences of advocates and the clients they support – experiences that may not necessarily lead to individual complaints. (We discuss some of these issues in section 3.4, ‘What was complained about’). The current NSWPF Domestic Violence Spokesperson, Assistant Commissioner Mark Murdoch, has encouraged and been receptive to this approach. On several occasions since taking on the Spokesperson role, Assistant Commissioner Murdoch has met with complainants and advocates to address their concerns. Issues that we have raised directly with Assistant Commissioner Murdoch have also been responded to efficiently and appropriately. We have also received positive feedback from the domestic violence sector about the responsiveness of the Senior Sergeant (Prosecutions) in the NSWPF’s Domestic and Family Violence Team and several of the Region Domestic Violence Coordinators across the state.

It is important to have regard to the variety of factors outlined above when considering what the number of domestic violence complaints might reveal about the policing of domestic violence more generally.

### 3.1.2. Distribution of complaints

It is also important to consider a range of factors when examining the distribution of complaints among LACs. These factors include population size and the incidence – both by overall volume and per capita – of recorded domestic violence. LACs with larger populations and/or a higher incidence of domestic violence might reasonably be expected to attract more domestic violence complaints.

A higher number of domestic violence complaints might also reflect:

- a population with a greater degree of awareness about their right to complain and the skills to negotiate the complaints process
- the presence in the community of strong advocates able to encourage and assist individuals to complain when they feel they have not received an appropriate service from police
- a high degree of confidence in the ability of the LAC to respond to the complaint in a positive way, often as a result of strong police leadership and good relationships between police and local domestic violence advocates, or
- a pattern of poor policing of domestic violence.

Conversely, a lower number of complaints might be attributable to the absence of the first three factors above, or to consistently good policing of domestic violence. It may also be a result of police failing to appropriately record – or categorise – complaints.

For organisational purposes, LACs are grouped into six regions. Table 1 shows the regional distribution of domestic violence-related complaints during 2008.

	<b>Region</b>	<b>2008 Est. population<sup>25</sup></b>	<b>Number of DV complaints</b>	<b>% of all DV complaints</b>	<b>DV complaints per capita ranking</b>
<b>1</b>	Northern	1,484,717	66	23%	4th
<b>2</b>	Central Metro	1,055,945	50	17%	3rd
<b>3</b>	North West Metro	1,765,492	48	17%	6th
<b>4</b>	South West Metro	1,267,739	47	16%	5th
<b>5</b>	Southern	901,542	46	16%	2nd
<b>6</b>	Western	508,737	27	9%	1st
<b>7</b>	Specialist commands	-	5	2%	-
	<b>TOTAL</b>	<b>6,984,172</b>	<b>289</b>	<b>100%</b>	

<sup>24</sup> In 2009, we were invited to visit Sutherland LAC to observe the operation of the DVPASS scheme by attending a morning ‘muster’.

<sup>25</sup> NSW Police Force, *Annual Report 2008-09*, p6.

Table 1 shows that the metropolitan regions each received a similar number of complaints, while among the non-metropolitan regions, Northern region – which has the largest population – received the greatest number. Western and Southern regions received the highest number of domestic violence complaints per capita.

Table 2 shows which LACs received domestic violence complaints in 2008, and how many. The table excludes the four specialist commands that received domestic violence-related complaints in 2008: Prosecutions Command (2), State Crime Command (1), Public Order and Riot Squad (1) and Counter Terrorism and Special Tactics Command (1).

<b>Table 2: LAC distribution of domestic violence complaints in 2008</b>						
	<b>Police local area command</b>	<b>Est. pop. (2006 Census)</b>	<b>No. recorded DV events</b>	<b>No. DV complaints</b>	<b>Total complaints received<sup>26</sup></b>	<b>DV complaints as % of complaints received</b>
1	Hurstville	106,614	1,299	11	55	20%
2	Central Hunter	109,000	2,102	11	144	8%
3	Tuggerah Lakes	139,834	2,988	10	81	12%
4	Mid North Coast	114,045	2,491	10	82	12%
5	Penrith	85,515	1,426	9	63	14%
6	Campbelltown	70,060	2,128	9	111	8%
7	Newcastle City <sup>27</sup>	141,752	2,655	9	119	7%
8	Sutherland	125,495	1,180	8	74	11%
9	Wollongong	113,668	1,952	7	62	11%
10	Shoalhaven	88,443	2,136	7	70	10%
11	Oxley	75,458	1,717	7	70	10%
12	Ku-ring-gai	159,386	876	6	51	12%
13	Macquarie Fields	74,748	2,282	6	73	8%
14	St George	110,947	1,561	5	36	14%
15	Quakers Hill	93,286	1,389	5	50	10%
16	Lachlan	30,623	910	5	52	10%
17	Brisbane Water	158,111	2,183	5	56	9%
18	Monaro	68,856	948	5	59	8%
19	Lake Macquarie	183,050	2,650	5	66	8%
20	Liverpool	92,310	1,551	5	71	7%
21	Canobolas	59,837	1,526	5	86	6%
22	Wagga Wagga	75,955	1,148	5	95	5%
23	Cootamundra	43,049	880	4	32	13%
24	The Hills	158,357	1,161	4	39	10%
25	Eastern Beaches	119,892	1,590	4	42	10%
26	Goulburn	87,453	1,148	4	48	8%

<sup>26</sup> PODS Watson (Xanalys) Database. Figures are based on the LAC responsible for investigating the complaint. On occasion, a complaint concerning one LAC may be referred to another LAC for investigation.

<sup>27</sup> Includes four complaints received by the former Lower Hunter LAC and two complaints from Newcastle LAC, which have since been incorporated into Newcastle City LAC. Population for Newcastle City is based on Local Government Area (LGA).

<b>Table 2: LAC distribution of domestic violence complaints in 2008</b>						
	<b>Police local area command</b>	<b>Est. pop. (2006 Census)</b>	<b>No. recorded DV events</b>	<b>No. DV complaints</b>	<b>Total complaints received<sup>26</sup></b>	<b>DV complaints as % of complaints received</b>
27	Flemington	96,959	1,233	4	49	8%
28	Camden	82,714	1,042	4	49	8%
29	Tweed/Byron	108,109	1,810	4	52	8%
30	Blacktown	83,880	2,262	4	58	7%
31	Fairfield	128,884	1,797	4	61	7%
32	Richmond	112,863	2,435	4	66	6%
33	St Marys	92,136	2,671	4	73	5%
34	Far South Coast	66,044	1,102	4	83	5%
35	Mt Druitt	94,556	3,816	4	72	6%
36	Lake Illawarra	149,897	3,100	4	81	5%
37	Redfern	42,838	1,058	4	83	5%
38	City Central	32,165	430	4	82	5%
39	Eastwood	119,104	519	3	19	16%
40	Campsie	96,576	1,735	3	40	8%
41	Hawkesbury	61,874	1,055	3	40	8%
42	Deniliquin	35,390	461	3	49	6%
43	The Rocks	6,058	163	3	54	6%
44	Manning/Great Lakes	75,922	1,525	3	61	5%
45	Coffs/Clarence	125,319	2,175	3	87	3%
46	Mudgee	30,880	578	2	25	8%
47	Botany Bay	36,794	636	2	35	6%
48	Leichhardt	64,132	889	2	39	5%
49	Ashfield	73,050	761	2	40	5%
50	Eastern Suburbs	54,561	543	2	43	5%
51	Barrier	28,786	1,158	2	43	5%
52	Rosehill	73,200	1,417	2	46	4%
53	Griffith	52,524	1,102	2	47	4%
54	Northern Beaches	187,323	1,680	2	50	4%
55	Bankstown	170,481	2,533	2	55	4%
56	Burwood	96,682	828	2	59	3%
57	Miranda	79,882	1,100	2	61	3%
58	New England	62,676	1,251	2	69	3%
59	Marrickville	51,039	920	2	76	3%

Table 2: LAC distribution of domestic violence complaints in 2008						
	Police local area command	Est. pop. (2006 Census)	No. recorded DV events	No. DV complaints	Total complaints received <sup>26</sup>	DV complaints as % of complaints received
60	Newtown	33,010	498	1	21	5%
61	Castlereagh	11,717	892	1	27	4%
62	Cabramatta	51,049	883	1	29	3%
63	Holroyd	89,813	1,624	1	30	3%
64	Port Stephens	77,482	1,216	1	33	3%
65	Manly	37,114	328	1	34	3%
66	Green Valley	72,324	1,359	1	36	3%
67	Blue Mountains	74,066	894	1	38	3%
68	Darling River	14,818	833	1	40	3%
69	Rose Bay	56,318	419	1	45	2%
70	Hunter Valley	56,042	949	1	44	2%
71	Orana	57,605	1,910	1	58	2%
72	Albury	71,289	1,203	1	63	2%
73	Kings Cross	25,771	374	1	65	2%
74	Chifley	67,105	1,285	1	70	1%
75	Parramatta	63,425	910	1	87	1%
76	Barwon	32,074	1,232	0	48	-
77	Gladesville	72,867	581	0	25	-
78	Harbourside	84,471	585	0	48	-
79	North Shore	116,408	502	0	20	-
80	Surry Hills	22,186	418	0	60	-
	<b>TOTAL</b>			<b>284</b>		

The audit revealed that in 2008:

- The majority of LACs (94%) and four specialist commands received domestic violence complaints.
- Only five LACs – Barwon, Surry Hills, Harbourside, Gladesville and North Shore – received no domestic violence complaints.
- 22 LACs received five or more domestic violence complaints – accounting for half of all domestic violence complaints received by the NSWPF in 2008.<sup>28</sup> Ten of these LACs were among the 20 LACs that received the most complaints about any issue in 2008.<sup>29</sup>
- In 16 LACs, complaints about domestic violence accounted for 10% or more of all complaints received by the LAC during 2008. Hurstville LAC had the largest proportion (20%) of domestic violence complaints. Central Hunter LAC received the same number of domestic violence complaints as Hurstville; however, the proportion

28 Hurstville, Central Hunter, Tuggerah Lakes, Mid North Coast, Penrith, Campbelltown, Newcastle City, Sutherland, Wollongong, Shoalhaven, Oxley, Kur-ing-gai, Macquarie Fields, St George, Quakers Hill, Lachlan, Brisbane Water, Monaro, Lake Macquarie, Liverpool. Complaints made about two officers in Campbelltown and two officers in Ku-ring-gai accounted for just over 50% of the DV complaints received by these LACs.

29 Central Hunter, Newcastle City, Campbelltown, Wagga Wagga, Canobolas, Mid North Coast, Oxley, Tuggerah Lakes, Sutherland, Macquarie Fields.

of these complaints as a percentage of all complaints was only 8%, due to the high number of complaints received by the LAC (144) – 2.6 times the number received by Hurstville.

- It is noteworthy that at least three of the LACs (Sutherland, Oxley and Central Hunter) in the top 12 for distribution of domestic violence complaints conducted only one investigation where we identified any deficiencies. The remaining nine LACs had no deficient investigations. Therefore, although the domestic violence complaint numbers for these LACs are higher, their handling of these matters was satisfactory overall.

When comparing commands, it is important to note that several have particular partnerships or initiatives in place aimed at preventing or better responding to domestic violence. They include Campbelltown and Wagga (Domestic Violence Intervention Court Model – DVICM), Shoalhaven (Nowra Domestic Violence Intervention Service), Sutherland (DVPASS), Brisbane Water (Domestic Violence Intervention Response Team – DVIRT), Tuggerah Lakes (Domestic Assault Response Team – DART) and Liverpool (Liverpool Domestic Violence Service). It may be that the ‘advocacy infrastructure’ and/or partnerships between police and local service providers in these LACs are responsible for their higher number of complaints. Another critical consideration is the incidence of recorded domestic violence, which we discuss below.

### 3.1.3. Incidence of domestic violence

Table 3 shows the 20 LACs with the highest number of recorded domestic violence events in 2008.

<b>Table 3: Top 20 LACs for recorded domestic violence events in 2008</b>					
	<b>LAC</b>	<b>Region</b>	<b>Est. LAC pop.</b>	<b>Recorded domestic violence events<sup>30</sup></b>	<b>No. of DV related complaints</b>
<b>1</b>	Mt Druitt	NW Metro	94,556	3,816	4
<b>2</b>	Lake Illawarra	Southern	149,897	3,100	4
<b>3</b>	Tuggerah Lakes	Northern	139,834	2,988	10
<b>4</b>	St Marys	NW Metro	92,136	2,671	4
<b>5</b>	Newcastle City	Northern	141,752	2,655	9
<b>6</b>	Lake Macquarie	Northern	183,050	2,650	5
<b>7</b>	Bankstown	SW Metro	170,481	2,533	2
<b>8</b>	Mid North Coast	Northern	114,045	2,491	10
<b>9</b>	Richmond	Northern	112,863	2,435	4
<b>10</b>	Macquarie Fields	SW Metro	74,748	2,282	6
<b>11</b>	Blacktown	NW Metro	83,880	2,262	4
<b>12</b>	Brisbane Water	Northern	158,111	2,183	5
<b>13</b>	Coffs/Clarence	Northern	125,319	2,175	3
<b>14</b>	Shoalhaven	Southern	88,443	2,136	7
<b>15</b>	Campbelltown	SW Metro	70,060	2,128	9
<b>16</b>	Central Hunter	Northern	109,000	2,102	11
<b>17</b>	Wollongong	Southern	113,668	1,952	7
<b>18</b>	Orana	Western	57,605	1,910	1
<b>19</b>	Tweed/Byron	Northern	108,109	1,810	4
<b>20</b>	Fairfield	SW Metro	128,884	1,797	1
	<b>TOTAL</b>				<b>110</b>

<sup>30</sup> Data provided by NSWPF.

The Table 3 listing of commands with the highest incidence of recorded domestic violence in NSW shows that the volume of incidents can be a factor in identifying where complaints about the policing of domestic violence might occur, but not always. For instance:

- Mt Druitt has more recorded domestic violence incidents than any other LAC, but is among the 'middle-ranked' LACs in terms of the number of complaints about the policing of domestic violence.
- Bankstown has one of the highest LAC populations and recorded incidents of domestic violence, but it has very few complaints about the policing of domestic violence.

Table 4 shows the 20 local government areas (LGAs) with the highest per capita rates of recorded domestic violence assault incidents in 2009,<sup>31</sup> and the corresponding LAC.

<b>Table 4: Top 20 LGAs for recorded domestic violence assault incidents per capita in 2009</b>							
	<b>Local Government Area</b>	<b>Corresponding LAC</b>	<b>Region</b>	<b>No. of DV assault incidents</b>	<b>LGA pop.</b>	<b>Rate per 100,000 of pop.</b>	<b>No. of DV complaints by LAC (2008)</b>
1	Bourke	Darling River	Western	117	3,070	3811.1	1
2	Walgett	Castlereagh	Western	192	7,209	2663.3	1
3	Moree Plains	Barwon	Western	231	14,406	1603.5	0
4	Wentworth	Barrier	Western	91	7,127	1276.8	2
5	Coonamble	Castlereagh	Western	41	4,306	952.2	1
6	Broken Hill	Barrier	Western	173	19,960	866.7	2
7	Wellington	Orana	Western	76	8,904	853.5	1
8	Lachlan	Lachlan	Western	58	6,872	844.0	5
9	Forbes	Lachlan	Western	76	9,744	780.0	5
10	Bogan	Darling River	Western	22	3,003	732.6	1
11	Campbelltown	Campbelltown	SW Metro	1099	152,107	722.5	9
12	Narranderra	Griffith	Southern	45	6,262	718.6	2
13	Hay	Deniliquin	Southern	24	3,370	712.2	3
14	Cowra	Canobolas	Western	89	12,945	687.5	5
15	Richmond Valley	Richmond	Northern	157	22,934	684.6	4
16	Kempsey	Mid North Coast	Northern	193	29,331	658.0	10
17	Dubbo	Orana	Western	258	41,211	626.0	1
18	Kyogle	Richmond	Northern	61	9,824	620.9	4
19	Parkes	Lachlan	Western	93	15,052	617.9	5
20	Gunnedah	Oxley	Western	75	12,162	616.7	7
	<b>TOTAL</b>						<b>69</b>

When the complaints figures are examined in conjunction with the incidence of domestic violence events *and* the per capita rates of domestic violence, the data shows that:

- Of the 22 LACs that had five or more complaints about the policing of domestic violence in 2008, five (Mid North Coast, Campbelltown, Oxley, Lachlan and Canobolas) take in areas that have a high per capita rate

<sup>31</sup> Data provided by Bureau of Crime Statistics and Research. We do not have data for the rate of recorded domestic violence assault incidents per capita in 2008.

of domestic violence, and another 10 (Tuggerah Lakes, Newcastle City, Lake Macquarie, Mid North Coast, Macquarie Fields, Brisbane Water, Shoalhaven, Campbelltown, Central Hunter and Wollongong) are among the top 20 LACs for domestic violence by number of events.

- However, 10 LACs with a high number of domestic violence events (Mt Druitt, Lake Illawarra, St Marys, Bankstown, Richmond, Blacktown, Coffs Clarence, Orana, Tweed Byron and Fairfield) and 8 LACs which take in areas with a high rate per capita of reported domestic violence (Orana, Richmond, Deniliquin, Griffith, Darling River, Castlereagh, Barrier and Barwon) received four or less complaints about policing (Barwon received none).
- Nine LACs with five or more complaints (Hurstville, Penrith, Sutherland, Ku-ring-gai, St George, Quakers Hill, Monaro, Liverpool and Wagga Wagga) are not represented among the top 20 LACs for domestic violence by either number of events or rate per capita.
- 13 of the 20 LACs with a high volume of domestic violence events, and 19 of the 20 LACs that take in areas with a high per capita rate of domestic violence, are in regional NSW. Regions outside Sydney accounted for almost half of all complaints about the policing of domestic violence in 2008.

### 3.1.4. Aboriginal population

In 2006, Aboriginal women in NSW were nearly six times as likely to be victims of domestic violence-related assault as the general female population. Aboriginal children and young people are three times more likely than all children and young people to be reported to police as victims of domestic violence and sexual assault.<sup>32</sup> With the exception of New England and Wagga Wagga, all of the LACs with the largest Aboriginal populations (using data from the 2006 Census, the most recent available to us) are among the 20 LACs with the highest incidence of domestic violence, either by number of events or per capita.

We examined the distribution of complaints in the 20 LACs with the largest Aboriginal populations<sup>33</sup> and found that in 2008:

- The 20 LACs received a total of 82 complaints about the policing of domestic violence – accounting for 28% of all such complaints.
- Seven of the 20 LACs – Oxley, Mid North Coast, Lake Macquarie, Tuggerah Lakes, Shoalhaven, Wagga Wagga and Lachlan – received five or more complaints.
- Of the three LACs with the largest Aboriginal populations as a percentage of overall population, Darling River and Orana received one complaint each, while Barwon received none.<sup>34</sup>
- Eight of the LACs were among the 20 LACs that received the highest number of complaints about any issue in 2008.<sup>35</sup>

The apparently low number of complaints made in LACs with large Aboriginal populations and a high incidence of domestic violence and the fact that only two Aboriginal women who were alleged victims of domestic violence made a related complaint about police in 2008 (see section 3.2, 'Who complained', below),<sup>36</sup> are consistent with the known high level of under-reporting of domestic and family violence in Aboriginal communities.

We are aware from our many years of working with Aboriginal communities that relying on complaints is a limited way for police to identify and respond to community concerns about policing. The most effective way is to capitalise on formal and informal opportunities to build good relationships with Aboriginal communities. Our 2005 report to Parliament, *Working with Local Aboriginal Communities*,<sup>37</sup> emphasised the importance of police working in partnership with their local communities to identify positive ways of addressing issues relating to the policing of domestic violence (and other areas), and outlined a variety of ways that LACs can do this. The report was informed by our program of audits between 2003 and 2006 in LACs with significant Aboriginal populations. The audits revealed that, while these LACs generally attracted a small number of complaints, the local Aboriginal communities that they serviced had a variety of concerns about policing. A common area of concern was policing domestic violence. This often included concerns about:<sup>38</sup>

- failing to attend incidents
- lengthy delays in attending incidents

32 NSW Government, *NSW Domestic and Family Violence Action Plan*, June 2010.

33 The top 20 LACs, in order of Aboriginal population by number of persons, are: Orana, Oxley, Lower Hunter, Mid North Coast, Coffs/Clarence, Richmond, Lake Macquarie, Mt Druitt, Barwon, Tuggerah Lakes, New England, Castlereagh, Shoalhaven, Lake Illawarra, Manning/Great Lakes, Wagga Wagga, Darling River, Lachlan, Tweed Byron and Barrier. Lower Hunter LAC is now part of Newcastle City LAC.

34 According to 2006 Census data, Darling River LAC has the highest Aboriginal population as a percentage of overall population (19%) followed by Orana and Barwon LACs (12%).

35 Oxley, Lower Hunter, Mid North Coast, Coffs/Clarence, Mt Druitt, Tuggerah Lakes, Lake Illawarra, Wagga Wagga.

36 An additional seven complaints were made on behalf of alleged female victims who were identified as Aboriginal.

37 NSW Ombudsman, *Working with Local Aboriginal Communities*, Special report to Parliament, April 2005.

38 NSW Ombudsman, *Domestic Violence: Improving police practice*, December 2006, p59.



- poor investigative responses, including a failure to act on reported breaches of ADVOs, and
- lack of victim follow up.

Identifying these concerns requires police to establish and maintain good links with a diverse range of community leaders and members.

### 3.1.5. Using complaint data to monitor LAC performance

It is evident from the discussion so far that, on its own, the number of complaints about the policing of domestic violence received by a LAC is not a reliable indicator of its performance in policing in this area.

As we noted in our 2006 report to Parliament, it is critical that the NSWPF monitors the performance of LACs in relation to the policing of domestic violence against a range of quantitative and qualitative factors based on prior performance. The NSWPF business plan indicators for LACs include advice that:

Unlike other crime areas, this [*domestic violence*] indicator seeks an increase in the number of reported incidents. This reflects a focus on encouraging the reporting of family and domestic violence. Family and domestic violence is heavily under reported to police, and there are many reasons that victims may be unwilling to report. Two key challenges facing police are how to increase the willingness of victims to report family and domestic violence and how to encourage their cooperation in legal proceedings.<sup>39</sup>

Our 2006 report recommended that the NSWPF develop a 'good practice framework', to provide advice to commanders about evidence-based strategies and practices for policing domestic violence. We further recommended that, as part of the performance monitoring process, commanders should be asked to explain their actions to implement the good practice framework, and the outcome of those actions.

To date, the NSWPF has not developed a generally applicable good practice framework. Rather, each LAC has a business plan which includes 'performance measures specifically related to domestic violence targets'. Each LAC is required to develop its own target for increasing the number of domestic assault incidents reported. All LACs must aim to increase legal actions for domestic violence-related assaults by at least 60%.<sup>40</sup> LACs are required to report against both performance indicators monthly. LACs are not required to report against any qualitative indicators. LACs hold tasking and deployment meetings to review domestic violence incidents (and other crime categories) to ensure appropriate action has been taken in response. At a corporate level, LACs compliance is monitored through the Command Management Framework (CMF)<sup>41</sup> and their performance is measured through the Command Performance Accountability System (COMPASS)<sup>42</sup>:

The CMF requires LACs to self rate their performance. The results from the completion of a standardised Domestic Violence Checklist completed by supervisors each shift form a critical part of a Command's self assessment. The results are viewed by the Region and other units such as the Commissioner's Executive Team (CET).

Commands are required to record comments and actions when they are not meeting the targets in relation to domestic violence indicators contained within the COMPASS system:

- increase assault (domestic violence-related) incidents reported, and
- increase legal action rate for assault (domestic violence-related) incidents.

Region commands are required to comment on the same performance indicators as LACs. They should not only discuss the performance of the region as a whole but the performance of individual commands within the region. They are not required to comment when the region is meeting its business plan targets.

Quarterly reports on performance are provided to the CET. These reports contain the following indicators:

- increase legal action rate for assault (domestic violence-related) incidents (same indicator contained within EDW Compass), and
- reduce domestic violence-related assault repeat victims (%).

While the current NSWPF performance reporting process in relation to domestic violence has several important indicators, it does not address the recommendations we made in our 2006 report to Parliament about the need for a range of qualitative and quantitative indicators to form part of this process.

<sup>39</sup> Advice provided by the NSWPF in response to Ombudsman request for information (received 24 September 2010).

<sup>40</sup> This is the NSWPF corporate target. Advice provided by the NSWPF in response to Ombudsman request for information (received 24 September 2010).

<sup>41</sup> The CMF tool is available to all LACs and is a self assessment tool, measuring compliance against the corporate standards (and requirements) of legislation and policy, in this case the Domestic and Family Violence policies and legislation. Advice provided by the NSWPF in response to Ombudsman request for information (received 24 September 2010).

<sup>42</sup> Commands within the NSW Police Force use the EDW COMPASS system on the NSW Police Force intranet to report performance against business plan indicators on a monthly basis. Ibid.



In our view, the number of domestic violence complaints received by a LAC is one of several quantitative factors it should have regard to. The NSWPF needs to consider quantitative complaint data in the context of other factors, including the type of issues raised in complaints, the LAC's demographic characteristics, the incidence of domestic violence, whether the LAC has a positive relationship with local domestic violence services and advocates, and what 'pro-active' strategies are being implemented to target domestic violence.

### 3.2. Who complained

We examined the type and distribution of complainants. The results of our analysis are set out in the following table:

Table 5: Complainant type		
Complainant type	No.	% of all complainants
Alleged victim <sup>43</sup>	123	43%
Internal police complaint (police officer) <sup>44</sup>	63	22%
Alleged offender	49	17%
Other (e.g. friend or relative)	33	11%
Lawyer	8	3%
Other advocate	7	2%
Anonymous	3	1%
Member of Parliament	3	1%
<b>TOTAL</b>	<b>289</b>	<b>100%</b>

The audit showed that in 2008:

- Over 40% (123) of complaints were made by alleged victims. Of these, 82% (101) were female and 18% (22) were male. Two of the female complainants were identified as Aboriginal.<sup>45</sup>
- 63 internal police complaints (IPCs) accounted for the second most common complainant type. As noted in chapter 1, IPCs arise from the reporting obligation imposed on police officers by clause 49 of the Police Regulation 2008.<sup>46</sup>
- Complaints by alleged offenders accounted for 17% (49) of the complaints. Of the complainants, 75% (37) were male and 25% (12) were female. None were identified as Aboriginal.
- 5% (15) of complaints were made by a lawyer or an advocate.

Although c@ts.i allows information to be captured about a complainant's age, gender, ethnicity and Aboriginal status, entering information into these 'fields' is not mandatory. However, police are required to record on COPS whether an alleged victim or 'person of interest' is Aboriginal. It is these records which we have used to determine the Aboriginality of victim/offender complainants.

It can be difficult to gauge from complaint records whether a complainant required an interpreter. However, we identified two individuals who required an interpreter when making a complaint relating to domestic violence. One was male, an alleged victim who used the services of a Spanish interpreter organised by the NSWPF to make a complaint about the conduct of his son-in-law who was a serving police officer. The other was female, an alleged offender who required a Cantonese interpreter to assist her in making a written complaint.

The number of complaints made by lawyers and advocates appears relatively low, given that we often receive anecdotal information from advocates in the domestic violence sector about issues and concerns relating to the policing of domestic violence. We have discussed earlier some of the factors that may have a bearing on whether advocates make formal complaints. In this regard, it is important for LACs to develop strong relationships with the local domestic violence sector to allow them to be confident that a low rate of complaints from this group is not necessarily due to a lack of awareness of complaint processes or a lack of confidence in local police.

43 Includes four alleged victims who were police officers.

44 This figure does not include the four police officer victims who complained.

45 An additional seven complaints were made on behalf of alleged female victims who were identified as Aboriginal.

46 See 1.1.1.5 for further discussion of this obligation.

As noted above, 22% of complainants were police making IPCs. By comparison, IPCs made up 39% of notifiable complaints about any issue in 2008-09.<sup>47</sup>

### 3.3. Events giving rise to complaints

We examined the circumstances of the domestic violence events that led to complaints about police.

Over 90% (263) of the complaints related to either the conduct of police in directly responding to a domestic violence event or the conduct of officers accused of domestic violence. These events involved a range of alleged domestic violence incidents.

The remaining 10% (26) of complaints related to subsequent related contact with police. They included complaints by alleged offenders or their family members about matters such as lost or damaged property in custody, 'customer service' during the serving of warrants, objections to charges being laid, and the handling of prosecutions. Other complaints related to the handling of family law/custody disputes.

Table 6 shows the types of violence alleged to have occurred as part of the event giving rise to the complaint.

<b>Table 6: Domestic violence alleged to have occurred as part of the event giving rise to the complaint</b>		
Type of domestic violence	No. of times alleged to have occurred during events giving rise to domestic violence complaints	As % of all domestic violence complaints
Intimidation/stalking	181	63%
Assault	140	48%
Property damage	29	10%
Breach of ADVO	22	8%
Sexual violence	12	4%
Assault causing serious injury	11	4%
Weapons brandished or threatened to be used	9	3%
Child abduction	2	1%
Murder	1	<1%
Attempt murder	1	<1%
Conspiring to commit murder	1	<1%
Kidnapping	1	<1%

Note: The number of each type of violence alleged exceeds the number of complaints overall as many events involved allegations of more than one type of violence.

The audit found that:

- Intimidation/stalking – including verbal threats and harassment – was the most common type of domestic violence alleged to have occurred (63%), followed by assault (48%).
- In 36% (104) of matters it was reported that a verbal argument had occurred. Reports of verbal arguments *only* occurred in 15 of the 104 matters. The significance of this is that a verbal argument does not constitute a 'domestic violence offence' under the Crimes (Domestic and Personal Violence) Act; however, police still record these matters as domestic violence incidents.
- Property damage was alleged to have occurred in 10% (29) of matters, while 8% (22) involved an allegation that an ADVO had been breached.

<sup>47</sup> NSW Ombudsman Annual Report 2008-2009 p67.

In addition to the types of domestic violence included in Table 6, a range of related offences were alleged to have occurred including trespass (5), theft (3), animal cruelty (3), child neglect (3), unlawful COPS access (2), fraud (1) and false report made to Community Services (1).

### 3.3.1. Intimidation, stalking and breaching ADVOs

The high percentage of complaints arising from events that involved alleged intimidation/stalking is notable. Our 2006 report, *Domestic violence: improving police practice*, included feedback from service providers who have contact with victims of domestic violence that ‘*police respond haphazardly to non-physical domestic violence, especially harassment and intimidation*’. They said that:

- Some police officers do not treat certain behaviours as constituting harassment unless those behaviours involve the making of an overt threat.
- An offender leaving repeated messages on a victim’s answering machine would not be investigated unless the messages contained actual threats.
- Victims went to police with answering machine tapes, or saved text messages, only to be told that there was insufficient evidence to justify their claim of harassment.<sup>48</sup>

It is worth noting that the Crimes (Domestic and Personal Violence) Act – which came into effect in March 2008, a few months into the audit period – introduced within the definition of a ‘personal violence offence’ an offence of stalking or intimidating another person with the intention of causing the other person to fear physical or mental harm. While the Act includes the same definitions of stalking and intimidation as those previously included in the *Crimes Act 1900*, it now provides a basis for the court to take into account a pattern of violence when determining whether a person’s conduct constitutes stalking or intimidation. The Act also requires the granting of automatic interim apprehended violence orders, whether personal or domestic, when an accused person has been charged with offences involving personal violence or stalking. These changes have arguably strengthened the criminal justice system’s focus on stalking and intimidation, particularly within the context of a domestic relationship.

The previous NSWPF DV SOPs – which were in place for most of the audit period – contained no guidance about stalking and intimidation, with the exception of advice about how to arrange call tracing. The current D&FV SOPs include more information about the offences of stalking and intimidation, including what factors police should consider to determine whether these offences have occurred. Since the audit period, the NSWPF has made other efforts to provide police with guidance about responding appropriately to stalking and intimidation. An October 2009 article in the *Police Weekly* provided detailed advice about identifying, investigating and responding to stalking and intimidation offences, and information about these offences will be included in a new specialist domestic violence course for prosecutors due to commence in 2011.

Although just one complaint specifically raised a failure by police to establish a pattern of intimidation/stalking as an issue, 63% of all complaints arose from events that involved alleged intimidation/stalking. It is possible that the reforms introduced since the audit period have had a positive impact. It would be useful for the NSWPF to consider this issue in a future audit.

Only 8% of complaints arose from events involving an alleged breach of an ADVO. In 2006, by far the most specific area of concern reported to us by domestic violence advocates was an inadequate police response to ADVO breaches. However, in 2008 only 2% of complaints alleged a failure by police to enforce an ADVO (see section 3.4 below, ‘What was complained about’). The audit would therefore appear to suggest that either there has been an improvement in this regard, or that the concern is still warranted but is not resulting in complaints.

### 3.3.2. Parties involved in the events

We looked at the parties involved in the domestic violence events.

#### 3.3.2.1. Alleged victims

In relation to alleged victims involved, we found that:

- 80% (210) were female. This is comparable to NSW recorded crime figures for 2009 which indicate that just under 70% of alleged victims of domestic violence-related assaults in that year were female.<sup>49</sup>
- The average age of the complainants was 31 years. Only 18 (7%) were aged over 50 years. Thirteen (5%) were less than 18 years of age.

48 NSW Ombudsman, *Domestic violence: improving police practice*, Special report to Parliament, 2006, p15.

49 Data provided by Bureau of Crime Statistics and Research.

- Ten (4%) were identified as Aboriginal. Of these, nine were female. Seven were involved in events that took place in LACs with significant Aboriginal populations.<sup>50</sup>
- In 82% of cases the complainant was not Aboriginal. In 14% of cases, it was not possible to determine whether or not the complainant was Aboriginal even though it is mandatory for police to enquire and record whether a victim of crime is Aboriginal.<sup>51</sup>
- Three complainants (1%) were identified as requiring an interpreter. The remaining (95%) were identified as not requiring an interpreter. In ten (4%) matters this information could not be determined. It is not mandatory for police to enquire or record whether an alleged victim/person of interest requires an interpreter.

### 3.3.2.2. Alleged offenders

In relation to alleged offenders involved in the events, the audit found that:

- 82% (219) were male. In two matters the gender of the alleged offender could not be determined from the records. NSW recorded crime figures for 2009 indicate that 83% of 'persons of interest proceeded against' for domestic violence-related assault were male.<sup>52</sup>
- Their average age was 33 years. Only 24 (9%) were aged over 50 years. Three (1%) were less than 18 years of age.
- 15 (6%) were identified as Aboriginal. Of these, 13 were male.
- In 9% of cases, information about whether the alleged offender was Aboriginal was unknown, even though it is mandatory for police to enquire and record whether an alleged offender is Aboriginal.<sup>53</sup>
- Two (less than 1%) were identified as requiring an interpreter. 95% were identified as not requiring an interpreter. In ten (4%) matters this information could not be determined.

### 3.3.2.3. Relationship between alleged victim and offender

We examined the relationship between the alleged victim and offender.

Table 7: Relationship between alleged victim and offender		
Relationship	No.	As % of all complaints
Intimate partners (previous)	159	55%
Intimate partners (current)	72	25%
Child/parent	31	10%
In-laws	13	4%
Siblings	5	2%
Unknown	5	2%
Previous intimate partner and current intimate partner of third party	4	1%
Flatmates	4	1%
Uncle/nephew or niece	2	0.67%
Cousins	2	0.67%

<sup>50</sup> Castlereagh, Tuggerah Lakes, Darling River, Lachlan and Barrier.

<sup>51</sup> NSWPF response to Ombudsman request for information (received 24 September 2010).

<sup>52</sup> Data provided by Bureau of Crime Statistics and Research.

<sup>53</sup> Following a recommendation from the Royal Commission into Aboriginal Deaths in Custody in 1991, NSW police officers have had to record whether or not the person they are charging is an Aboriginal or Torres Strait Islander. The COPS database does not allow the record to be finalised unless this question is answered.

The data shows that:

- In more than 75% (231) of matters, the event giving rise to the complaint involved current or previous intimate partners, with relationships between previous partners accounting for more than half (159).
- 10% (31) of complaints arose from events involving parents and their children.
- In more than 75% of matters one or both parties had a history of domestic violence, but not necessarily with each other.

#### 3.3.2.4. Previous intimate partner and current intimate partner of a third party

In chapter 2 we noted that our initial assessment of complaints revealed a number of matters that had been incorrectly flagged by police as raising a domestic violence issue/s. While we excluded the majority of these complaints from the audit, we retained four complaints that arose from events involving alleged violence between the previous intimate partner and current intimate partner of a third party. Although such a relationship does not meet the legislative definition of a 'domestic relationship',<sup>54</sup> it is logical that police might categorise alleged violence which takes place between the current and former intimate partner of a third party as 'domestic violence'. This is particularly so when there is a previous history of domestic violence involving one or both parties, and especially if this history is between the third party and their former partner.

The four complaints raised the following issues:

- The partner of a woman alleged that he was assaulted by the woman's former partner when the former partner attended the woman's home to collect some property for their son.<sup>55</sup>
- A man approached police to report that he had received a series of hostile and threatening phone calls and messages from his ex-wife's new partner.<sup>56</sup>
- A man and his son were allegedly assaulted by the new partner of the son's ex-girlfriend.<sup>57</sup>
- A woman was verbally abused and assaulted by her partner's ex-wife when the woman was observed video-taping the ex-wife unlawfully removing property from her estranged husband's home.<sup>58</sup>

There had been a pre-existing history of domestic violence involving one or more parties in each of these matters. All four matters were originally flagged on COPS as domestic violence events. However, as these types of matters are not required to be recorded as domestic violence-related complaints, it is difficult to know how prevalent this type of violence is.

Violence threatened or committed by the former partner of a third party against their current partner may be an indicator of risk, either of further violence against the current partner, the third party and/or someone else with whom they have a domestic relationship. Case study 40 describes a scenario of this type that ended in the homicide of a woman's current partner by her former partner.

In our view, police should receive appropriate guidance about assessing and managing risk in these matters. While they do not technically involve 'domestic violence', we suggest that the D&FV SOPS is the most appropriate location for this guidance to be provided.

#### 3.3.2.5. Involvement of children

Over 55% (160) arose from events in which children were witnesses, or living with either the alleged victim or offender at the time of the event. In 41% (118) of matters no children were involved. In 4% (11) we were unable to determine whether children were involved.

In 2008, both the NSWPF D&FV SOPS and Child Protection SOPS required police to make a risk of harm report to Community Services for any child present at a domestic violence incident. We discuss complaints alleging a failure by police to make a risk of harm report to Community Services at 3.4, 'What was complained about'.

54 According to the Crimes (Domestic and Personal Violence) Act.

55 Survey 220

56 Survey 20

57 Survey 33

58 Survey 172

### 3.3.2.6. How police became involved

We examined how police became involved in the events giving rise to the complaints.

<b>Table 8: How police became involved in the event giving rise to the complaint</b>		
<b>Means of alerting police to the incident</b>	<b>No. of complaints arising from events</b>	<b>As % of all complaints</b>
Call to 000 or to local police by alleged victim	109	38%
Alleged victim attended police station to report matter	93	32%
Call to 000 or to local police by third party	37	13%
Other <sup>59</sup>	10	3%
Call to 000 or to local police by alleged offender	10	3%
Third party attended police station to report matter	7	2%
Alleged victim or third party wrote to police	7	2%
Alleged victim made disclosure to police during street patrol/ through victim follow-up	4	1%
Alleged offender attended police station to report DV	3	1%
Unable to determine from records	23	8%

Note: Some complaints arose from events that came to the attention of police in more than one way.

The data shows that:

- Just over half (156) of all events giving rise to complaints came to the attention of police via a call made to 000 or local police.
- Most commonly (109) it was the alleged victim who rang 000 or local police requesting that police attend the event.
- In just under a third (93) of matters giving rise to a complaint, the alleged victim attended a police station to report domestic violence. (We discuss this category of complaint further in section 3.4, 'What was complained about'.)

### 3.3.2.7. Action taken by police in response to the event

The audit gathered information about whether the events giving rise to complaints resulted in police applying for Apprehended Domestic Violence Orders (ADVOs) or laying criminal charges. However, there are a range of other appropriate actions that police may take where there is insufficient evidence to pursue criminal or civil action, including referring parties to support services.

The NSWPF has a pro-arrest and pro-prosecution policy where there is sufficient evidence to establish that a domestic violence offence has occurred. While this policy has operated for some time in practice, it is now more explicitly articulated in the current D&FV Policy and SOPs.

Regardless of whether there is evidence to support a criminal charge, the Crimes (Domestic and Personal Violence) Act states that police must apply for an ADVO if:

*they suspect a domestic violence offence has been recently committed, is being committed, is imminent or is likely to be committed against the person for whose protection the order would be made, unless they believe the person in need of protection intends to make a complaint for an order, or that there is a good reason not to.<sup>60</sup>*

The same legislative test operated under Part 15A of the Crimes Act, which preceded the Crimes (Domestic and Personal Violence) Act.

<sup>59</sup> Other ways police became involved in events included: police witnessing the event, the alleged victim providing advice to police at court, an anonymous report to Crime Stoppers, an alleged victim being referred to police by the Domestic Violence Helpline, and the NSW Ambulance Service contacting police.

<sup>60</sup> Section 49 Crimes (Domestic and Personal Violence) Act

Table 9 shows the type and number of criminal charges laid against alleged offenders in response to events giving rise to the complaints in 2008.

<b>Table 9: Criminal charges resulting from events</b>		
<b>Type of offence</b>	<b>No. of charges</b>	<b>As % of all charges</b>
Assault	53	30%
Breach ADVO	25	14%
Assault occasioning actual bodily harm	23	13%
Stalk/intimidate	16	9%
Property damage	13	7%
Other	11	6%
Traffic/driving offence	10	6%
Resist/hinder/intimidate police	7	4%
Sexual assault	5	3%
Not specified	4	2%
Malicious wounding	3	2%
Aggravated sexual assault	2	1%
Larceny	2	1%
Assault causing serious injury	1	>1%
<b>TOTAL</b>	<b>175</b>	<b>100%</b>

The audit found that:

- 30% of complaints about police (88) arose from events that resulted in criminal charges being laid by police – not all of these charges were domestic violence-related (e.g. those for larceny or traffic/driving offences).
- A total of 175 charges were laid against a total of 92 offenders as a result of all events giving rise to complaints.
- Assault was the most common criminal charge, followed by breach of ADVO, assault occasioning actual bodily harm, stalk/intimidate and property damage.
- Charges were laid in 33% of matters where the alleged offender was male and 14% of matters where the alleged offender was female.

In addition to criminal charges, we examined police applications for ADVOs. The audit found that in response to the events giving rise to complaints, police either made an application for an ADVO (137) or considered doing so (12) in just over 50% of matters.

### **3.4. What was complained about**

A key focus of the audit was identifying the type of allegations about police conduct contained in the complaints.

Table 10 shows the type and frequency of the complaint issues raised. (We discuss sustained issues in chapter 6.)<sup>61</sup>

<sup>61</sup> The data in Table 10 is based on the NSWPF's assessment of complaint issues in addition to our own.



<b>Table 10: Issues raised by domestic violence complaints</b>		
<b>Issue</b>	<b>No. of times raised as a complaint issue*</b>	<b>As % of all complaint issues raised</b>
Customer service issues	93	20%
Failure to investigate/inadequate investigation	87	19%
Police officer as domestic violence offender	61**	13%
Offender issues – e.g. excessive use of force, harassment, improper treatment in custody	45	10%
Prosecution issue – e.g. failure to prepare proper brief of evidence	40	9%
Failure to arrest/lay appropriate criminal charges	26	6%
Failure to apply for ADVO	23	5%
Integrity issues – e.g. bias, falsify records, failure to declare conflict of interest	16	3%
Unauthorised/improper disclosure of information – e.g. police officer accessing information about family member, victim's address provided to offender	13	3%
Failure to make appropriate records – e.g. failure to create COPS event	12	3%
Failure to enforce ADVO (failure to respond to breach)	11	2%
Failure to make risk of harm report to Community Services/take other action to protect a child – e.g. delay in making report to Community Services, failure to conduct welfare check	11	2%
Victim did not want police to take any further action	4	>1%
Failure to establish a pattern of violence/stalking	1	>1%
Failure to use accredited translator or interpreter services	1	>1%
Failure to identify primary aggressor	1	>1%
<b>TOTAL</b>	<b>445</b>	<b>100%</b>

\* As a complaint may raise more than one issue, the total number of times an issue was raised exceeds the number of complaints overall.

\*\*There were 61 complaints relating to 50 police officers.

The data shows that:

- Customer service (20%) and alleged failure to investigate/inadequate investigation (19%) were the most commonly raised issues of complaint.
- Allegations relating to police officers as domestic violence offenders accounted for 14% of issues raised by complaints.<sup>62</sup>
- 10% of issues related to alleged police conduct towards an alleged offender.
- 9% of issues related to prosecution matters.
- Alleged failure to arrest/lay appropriate criminal charges accounted for 6% of issues.
- 5% of issues related to an alleged failure to apply for an ADVO.

<sup>62</sup> The majority of these complaints were 'internal police complaints'.



The remaining 10 issues of complaint collectively accounted for only 18% of all complaint issues raised. An alleged failure by police to enforce an ADVO was an issue in only 11 (4%) of complaints. This is notable given the frequency with which anecdotal concern about the policing of ADVO breaches has been raised with us by the domestic violence sector.

We discuss below the issues of complaint accounting for more than 5% of all complaint issues raised.

Because such a significant degree of concern has been expressed by the domestic violence sector in recent years about the alleged failure of police on many occasions to correctly identify the 'primary aggressor' when responding to incidents of domestic violence, we also discuss this issue.

In addition, because domestic violence has such a significant child protection implications, we discuss those complaints that alleged failure by police to make a risk of harm report or take other action to protect a child.

### 3.4.1. Customer service

Complaints classified as raising a 'customer service' issue often raise other substantive issues, such as an alleged failure to investigate or apply for an ADVO. However, other customer service complaints raise more straightforward concerns, such as alleged rudeness.

Many of the customer service complaints we audited illustrate the critical importance of police responding appropriately to victims of domestic violence on each occasion they come into contact with police – but especially the first time they seek or require assistance. The *Code of Practice for the NSW Police Force Response to Domestic and Family Violence* recognises this:

*Any initial contact should never be undervalued in being able to set the scene for future police interaction with persons involved in domestic and family violence. Police must provide a service that will meet the needs of the people involved whilst also ensuring compliance with legislative powers.<sup>63</sup>*

A recent complaint to our office illustrates why it is so important that police provide good customer service from the outset in response to reports of domestic violence, and the potential consequences when this does not occur.

#### Case study 1

After her ex-partner was convicted and imprisoned for having seriously assaulted her in 2006, a woman complained to us that police had failed to investigate and take action in response to numerous requests for assistance she had made prior to the assault. As a result of the assault, she had sustained an acquired brain injury, loss of feeling to the right side of her face and post traumatic stress syndrome.

The woman first sought assistance from police in 2004 when she visited a local police station. After reportedly telling the police officer on duty that she was upset and scared after having received several abusive phone calls from her ex-partner, she was allegedly told that she was at the 'wrong' police station and would have to attend another. She left without obtaining any further assistance.

The stalking and harassment continued and on one occasion, the woman was allegedly assaulted by her ex-partner. Throughout 2004 and 2005 she approached police a number of times for assistance. While an ADVO was at one stage sought and granted, the woman alleged that police failed to act on her reports that the order had been breached.

As a result of the poor service she felt she repeatedly received, the woman eventually lost confidence in the ability of police to protect her. Despite her ex-partner continuing to harass and stalk her, she had had no contact with police for more than a year before the serious assault for which her ex-partner was convicted took place.

Although the complaint itself reflects poorly on the alleged actions of a number of police some years ago, its resolution is a good example of effective complaint handling. After speaking to the complainant about what action she wished to be taken in response to the complaint, we approached the NSWPF Corporate Spokesperson for Domestic Violence who agreed to meet with the complainant personally and subsequently visited her home for this purpose. This gesture of acknowledgement, together with the Corporate Spokesperson's explanation of changes to policy, procedures and training since her negative experience with police, resulted in the complainant being satisfied with the way her complaint was dealt with.<sup>64</sup> As a result of her complaint, the woman's story will be featured in a training DVD for police officers.

<sup>63</sup> *Code of Practice for the NSW Police Force Response to Domestic and Family Violence, November 2009, p16.*

<sup>64</sup> The time that had elapsed between the alleged police conduct the woman complained about and when she made her complaint was also a factor in the decision to resolve the complaint in this way.

Our 2006 report to Parliament noted a number of concerns about the level of customer service received by many victims of domestic violence. Advocates expressed particular concern about how police respond to victims of domestic violence who attend a police station to seek assistance. They reported to us that:

- The quality of service received by victims who present to the police station is inconsistent and largely dependent on which officer happens to receive the enquiry.
- Victims who present at the police station are often told to speak to the Domestic Violence Liaison Officer who may or may not be available at that particular time.
- There tends to be a perception by police that if a victim does not appear to be in 'immediate danger', in other words, does not present to the police station at the time of an incident or immediately afterwards, the threat is less serious, leading to a failure to respond promptly.
- Police officers do not always employ appropriate methods of dealing with victims of domestic violence who present at the police station, e.g. questioning the victim at the counter rather than in a private area and leaving victims to wait for 'unacceptably long periods of time' in the public waiting area of the police station.<sup>65</sup>

We therefore looked closely at complaints in 2008 that arose from events that involved an alleged victim attending a police station to report domestic violence, and which raised customer service issues. We identified that customer service issues were raised in about 25% (22) of all domestic violence complaints that arose from this type of event. Some examples of these matters are outlined below.

## Case study 2

A woman attended a metropolitan police station to report that she had been hit on the jaw by her partner. The senior constable on duty observed that the woman was upset and had a lump on her jaw. She asked a leading senior constable to assist the woman. Over an hour passed before the leading senior constable spoke to the woman. After a short discussion, the leading senior constable advised that she was unable to assist the woman as the alleged assault had occurred in a suburb falling within another command.

After becoming aware of this sometime later, the senior constable who originally spoke to the woman complained to her supervisor. Inquiries were conducted to locate and identify the woman but these were unsuccessful as no recorded information had been obtained at the time she presented to the police station.

Supervisors have a particular responsibility to ensure good customer service is provided, especially to vulnerable people such as victims of domestic violence.

## Case study 3

The mother of a young woman complained that a probationary constable took no action when she, her husband and daughter attended a regional police station to report that the daughter's ex-boyfriend had allegedly threatened to shoot her. The young woman was alarmed at the threat and concerned for her safety and that of her young child. The probationary constable took a statement from the young woman about a fight she had witnessed between a number of parties, including her ex-boyfriend, but did not record the alleged threat against her, apply for an ADVO to protect her, or investigate whether the ex-boyfriend possessed firearms.

The family attended the police station the following day and spoke to the same officer. After consulting a sergeant, the probationary constable advised that police did not have enough evidence to take action, and referred the woman to the local court to apply for an ADVO. When the family attended the court they were advised to return to police and ask them to make the ADVO application. On doing so, the same probationary constable took a statement and undertook to make the application. When the young woman's mother contacted police two days later, she was informed that no ADVO application had been made and no further action had been taken. Appropriate steps were then taken by a sergeant who seized the ex-boyfriend's firearms, and applied for an ADVO. The sergeant also initiated an internal complaint investigation about the probationary constable's conduct.

<sup>65</sup> NSW Ombudsman, *Domestic violence: improving police practice*, Special report to Parliament, 2006, p15.

Overall, customer service complaints were more likely to arise from events where the alleged victim called 000 or the local police for assistance, with 43 (40%) falling into this category. This may reflect the way in which police are alerted to domestic violence events on the majority of occasions.

## Case study 4

A sexual assault service in a regional area complained to police on behalf of a young Aboriginal woman. The woman was in the process of leaving a relationship in which she had allegedly been the victim of domestic violence. When the woman attended her previous home to collect some belongings, her ex-partner took her two year old child from her car and ran into the surrounding bush. Police were called and the child's whereabouts and safety were established.

The mother indicated that she wished to make a statement and obtain an ADVO. The police officer in attendance advised her that as his shift was ending, he would arrange for the woman to be seen by another officer at the local police station the next morning. However, the next morning, the woman discovered the station was closed. A support worker who had accompanied her rang another local police station who advised that the first station would remain closed for the day. The woman and the support worker then attended the other police station, where they were told they could not be assisted due to a death that had been reported nearby. They then travelled to a third station, which was also unattended.

The woman and the support worker attended the local court, where they were advised that the matter should be dealt with by police. The support worker then contacted the LAC's Crime Coordinator who arranged for an officer to meet them at another police station. After arriving at the station, they discovered the officer had been called away. They were assisted by another officer but due to the officer's inexperience processing an ADVO application, a further delay occurred. The woman finally signed a statement six hours after originally attending the local police station earlier that morning. By this time, she was advised that it was too late for a provisional order to be sought and was told to attend court in two weeks for the ADVO mention.

Data aggregated by the NSWPF in 2007-2008 indicated that, at that time, more than 25% of all complaints about police conduct related to customer service.<sup>66</sup> This is relatively consistent with our audit findings.

In recognition of the need to improve customer service, the NSWPF introduced a *Customer Service Charter*, along with practical guidelines and training for police, in November 2008 – towards the end of the audit period. The charter was developed in consultation with a range of stakeholders from the community, government, partner organisations and NSWPF staff. To support the implementation of the charter, each LAC now has a customer service 'portfolio holder'.

In February 2009 the NSWPF also introduced a 'mystery shopper' program, which involved calls and visits to police stations aimed at measuring the level of customer service provided by police. At the end of the first phase of the program, an independent consultant rated some police stations as achieving a score of 100% on their customer service measures, while the overall average was 87%. The second phase of the program took place between September 2009 and July 2010.<sup>67</sup>

As part of its strategy to reduce customer service complaints, since 2008 the NSWPF has also focused on improving follow-up contact with victims of crime. It is now mandatory for police to provide follow up to a victim of crime within seven days of a report. *The Code of Practice for the NSW Police Force Response to Domestic and Family Violence* reinforces that 'it is critical that victims are informed of the progress of their investigation and the outcome in a timely, respectful manner'.<sup>68</sup> We understand that for several years now the NSWPF has also conducted victim phone surveys which involve police personnel making contact with victims to seek their feedback about the response by police to their concerns.

It is important to take these initiatives into account when considering the high level of domestic violence complaints in 2008 that related to customer service issues.

66 NSW Police Force, *Customer Service Guidelines*, 2008. Data relates to 2007-08.

67 NSWPF Intranet. Accessed 24 September 2010.

68 *Code of Practice for the NSW Police Force Response to Domestic and Family Violence*, November 2009, p56.

### 3.4.2. Failure to investigate/inadequate investigation

An alleged failure by police to initiate an investigation or adequately investigate a domestic violence matter was the second most common complaint issue.

The DV SOPS that were in place until November 2008 directed police to '*thoroughly investigate alleged domestic violence offences*'.<sup>69</sup> The current D&FV SOPS that came into effect towards the end of the audit period more explicitly identify the investigation of incidents as one of five key roles that police have in relation to domestic and family violence, stating that: '*all reports of domestic violence or suspected domestic violence will be thoroughly investigated*'.<sup>70</sup>

Our 2006 report noted that we received considerable feedback from domestic violence advocates about failures by police to adequately investigate incidents of domestic violence. (It was also one of the most common issues identified in our audit of domestic violence complaints received in 2004 and 2005.) A repeatedly expressed view concerned a perceived lack of consistency in whether and how police decide to investigate a matter.

Some examples of complaints in 2008 that alleged a failure to initiate an investigation, or complained of an inadequate investigation, are described below.

#### Case study 5

A woman wrote to police complaining that, seven months previously, she had reported a series of offences allegedly committed by her ex-boyfriend to a regional police station but had not been contacted by police since. She had attended her local police station and reported that she had been threatened, seriously assaulted, detained against her will, and had money stolen from her. After being advised by the officer on duty that the allegations would be investigated if she forwarded a statement to the police station, the woman submitted a lengthy document.

The woman subsequently had a number of phone and email conversations with the officer and provided a range of additional information, including photographs and other potential evidence. The woman requested that police consider charging her ex-boyfriend and that they make an application for an ADVO to protect her.

After receiving this information, the officer failed to create a COPS event and investigate the matter. This was discovered after police from Western Australia contacted the police station in relation to allegations that the woman's ex-boyfriend had committed similar offences against another victim in that state. A statement was subsequently taken from the woman seven months after she had first reported the offence.<sup>71</sup>

#### Case study 6

Police were called to an incident by a male victim who reported that he and his partner had had a verbal and physical argument and that both parties had sustained injuries. The victim further advised that there were children present in the home at the time, that he had been drinking and that he had now left the scene of the incident.

The two probationary constables who attended the couple's home took no action to investigate and failed to complete a COPS record of the incident. This came to the attention of police two days later when one of the parties called to further report the matter and seek an ADVO, advising that the probationary constables had attended the incident. Both parties attended the police station and provided statements indicating that a violent physical altercation had occurred. Police documented visible injuries to both. The parties had a significant history of domestic violence between them and had previously been charged with assault against each other. They also both had ADVOS against them relating to previous relationships. Due to conflicting versions of the event, police did not lay any charges but applied for an ADVO at the female victim's request, and made risk of harm reports to Community Services.

This complaint also raises an issue about why the probationary constables were working alone and why a quality review of police records for the evening in question was not conducted by a senior officer.

69 NSW Police Service, *Domestic Violence Standard Operating Procedures*, April 2000, p24.

70 NSWPF *Domestic and Family Violence Policy and Standard Operating Procedure*, November 2008, p31.

71 Following an internal police investigation, the complaint was sustained.

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### 3.4.3. Police officers as domestic violence offenders

The third most common issue of complaint was an allegation about a police officer as a domestic violence offender. Under the Police Act, the initiation of proceedings for an ADVO against a police officer constitutes a complaint, as does a police officer being charged for a domestic violence offence.

In 2008, 50 police officers were alleged to have perpetrated domestic violence. Issues relating to alleged police officer offenders are discussed in detail in chapter 5.

### 3.4.4. Offender issues

The fourth most common issue of complaint consisted of allegations about police treatment of offenders, such as unreasonable use of force, harassment or improper treatment in custody. Examples of complaints raising these issues included:

- The mother of a man arrested for a domestic violence offence complained that police accessed her property inappropriately, did not show any paperwork relating to the arrest warrant, and provided incorrect information about attending court for a bail hearing.
- A woman complained that police assaulted and swore at her partner when arresting him for a number of domestic violence offences.
- A lawyer complained that her client, who was arrested for breaching an ADVO, should not have been denied bail.
- A correctional centre inmate charged with a domestic violence offence complained that police had not recovered his property from his ex-partner's residence.

### 3.4.5. Prosecution issues

Issues relating to the prosecution of court matters accounted for just under 10% of all complaint issues raised. However, only two matters related to the conduct of police prosecutors. The remaining complaints concerned allegations about the conduct of other police officers in relation to failed prosecutions.

Complaints raising prosecution issues included 21 internal police complaints about failed prosecutions of domestic violence offences. Complaints from members of the public raising prosecution issues contained a variety of allegations about police conduct, including failure to prepare a proper brief of evidence and failure to appropriately liaise with a victim about court proceedings.

The very small number of complaints about the conduct of police prosecutors is notable given the degree of anecdotal concern that has been expressed by the domestic violence sector about the practices of some police prosecutors. In this regard, our 2006 report to Parliament included a chapter about issues relating to police prosecutors and the court system more generally. The most common concerns about police prosecutors that were expressed during our consultations concerned:

- the provision of advice to police informants that is inconsistent with the DV SOPS or incorrect
- failure to confer with victims and/or their advocates
- failure to confer with Domestic Violence Liaison Officers (DVLOs)
- failure to effectively advocate on behalf of victims, and
- a lack of accountability.<sup>72</sup>

More recently, at our Domestic Violence Community Stakeholders Forum in December 2009, participants expressed concern about a perceived increase in the frequency with which police prosecutors are willing to accept undertakings rather than proceed to an ADVO hearing. They also expressed concern about the number of prosecutions of alleged domestic violence offenders that either fail completely, or involve certain charges being dropped.

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<sup>72</sup> NSW Ombudsman, *Domestic violence: improving police practice*, Special report to Parliament, 2006, p33.

## Case study 7

A woman complained to police that she was 'scared to death' because her estranged husband had been threatening to kill her. She also advised that her husband was verbally abusing their children, who were very scared and confused. Police took a statement, applied for an ADVO and made a risk of harm report to Community Services. The woman subsequently complained that she withdrew from the ADVO proceedings because the police officer in charge 'criticised and intimidated her'.

A few months later, the woman reported that her husband had maliciously damaged her car by scratching it and puncturing the tyres whilst it was parked at a shopping centre. Her teenage children had allegedly witnessed the offence. Police charged the man with malicious damage, but the prosecution failed at court and costs were awarded against police.

An internal investigation found that the subject officer in charge of the matter – who was the same officer that allegedly intimidated the victim during the earlier ADVO proceedings – had inappropriately interviewed the child witnesses in the presence of the victim, failed to produce the transcripts of the interviews, failed to canvass the scene for any potential independent witnesses to the alleged incident, and failed to make inquiries about whether it may have been recorded on CCTV.

The investigation noted that, had the matter been properly investigated, there would appear to have been sufficient evidence for the prosecution to establish a prima facie case. In this regard, poor supervision of the subject officer was found to have contributed to the failed prosecution.

## Case study 8

A woman complained to police that a police prosecutor provided incorrect information about her criminal record to the court, resulting in the failed prosecution of an assault charge in which she was the victim. The charge related to an incident where the victim had allegedly been pushed, grabbed by the neck and hit in the face by her boyfriend.

On the day of the court hearing, the woman did not appear to give evidence and the prosecutor requested that the matter be adjourned. The prosecutor advised the magistrate that the officer in charge of the matter had informed him that numerous unsuccessful attempts had been made to locate the victim about the court date, and that the victim had recently been charged with dishonesty offences and supplied false residential details. On this basis, the prosecutor submitted that there appeared to be little chance of locating the victim and having her appear at court. As a result, the magistrate refused the adjournment and the matter was dismissed.

The victim complained that she had never been charged with dishonesty offences and had at no stage avoided police. The investigation confirmed that the victim had not been charged with any such offences. The subject officer who had provided this information to the prosecutor had since left the NSWPF. Police considered charging him with giving false and misleading information to a public authority, but concluded there was insufficient evidence to successfully prosecute him. The six months statute of limitations relevant to such proceedings had also expired.

Our 2006 report recommended that the NSWPF establish a domestic violence prosecutions coordinator to promote consistent good practice in the prosecution and management of domestic violence court work. The NSWPF agreed and the position – occupied at the level of Senior Sergeant – has been part of the expanded Domestic and Family Violence Team since late 2007. A focus of the position has been supporting the identification and professional development of 'specialist' domestic violence prosecutors. There are now four prosecutors identified as domestic violence specialists, and other potential specialists have been identified.

Consistent with another recommendation of our 2006 report, the NSWPF is currently developing a specialist domestic violence prosecutions course. The course will consist of two days of face-to-face instruction in addition to an e-learning module, addressing a range of topics including the role of DVLOs and court assistance schemes, legislation and policy, and effective advocacy and networking. It will run two to four times a year, beginning in early 2011.

These positive efforts of the part of the NSWPF should help to reduce the number of complaints raising prosecution issues.



### 3.4.6. Failure to arrest/lay criminal charges

Just over 5% of the complaint issues concerned the alleged unreasonable failure by police to arrest or lay appropriate criminal charges against an offender. As noted earlier in this chapter, the NSWPF has a pro-arrest and pro-prosecution policy in relation to domestic violence.

#### Case study 9

A woman called police to report that she had been assaulted by her partner, and that he was smashing windows. Police attended the residence and observed the broken glass. The Senior Constable in attendance did not investigate any possible offences, and did not apply for an ADVO. He incorrectly recorded the matter on COPS, indicating that a verbal argument had taken place, no offence had been committed and neither party held fears for their safety. The details of the alleged malicious damage were not documented.

Four days later, police were again called to the same residence in response to a report that the woman had been assaulted with a golf club by her partner. The attending police noted the smashed glass and questioned the victim about it. She advised that the damage related to the previous incident she reported. The man was charged with assault occasioning actual bodily harm and an ADVO was applied for to protect the woman. The investigation of the internal police complaint found that, had the officer who attended the first incident taken appropriate action, the subsequent assault may have been prevented.

#### Case study 10

A woman complained to a police officer that she was being stalked and harassed by a man with whom she had previously had a short relationship. She reported that the man constantly drove past her home and place of work, as well as her current boyfriend's home when she visited. She also stated that the man continuously sent her text messages and emails. The woman told the police officer that she feared the man and did not want any contact with him. She provided a statement and copies of emails and text messages.

The police officer contacted the man and informed him that an ADVO would be sought if he continued to harass the woman. The woman subsequently reported to the same police officer that the man was sleeping in his truck opposite her home and that further incidents of harassment had occurred. An ADVO was finally sought to protect her, some five months after she had initially reported the man's behaviour to police. However, the officer determined not to charge the man on the basis that an offence could not be proven beyond reasonable doubt and it was not in the public interest to prosecute him.

An internal police complaint against the subject officer was made as a result of a routine review of the matter by a supervisor. The police officer who investigated the complaint found that there had been 'ample evidence' to support the charges of stalking and intimidation.

### 3.4.7. Failure to apply for ADVO

An alleged failure of police to apply for an ADVO or impose appropriate bail conditions accounted for 5% of the complaint issues raised. ADVOs and bail conditions are two mechanisms by which victims of domestic violence can be afforded protection.

As noted earlier, police must apply for an ADVO in the circumstances defined by the Crimes (Domestic and Personal Violence) Act. Under the *Bail Act 1978*, an exception from the presumption in favour of bail exists for any domestic violence offence, or any offence of contravening an ADVO by an act that involves violence or constitutes an offence against section 13 of the Crimes (Domestic and Personal Violence) Act.<sup>73</sup>

An alleged offender's previous history of violence is a relevant consideration for police in determining bail and deciding whether to apply for an ADVO.

<sup>73</sup> The exception from presumption of bail applies where the determining officer is satisfied that the accused person has a history of violence, or has been violent to the victim in the past (whether or not they have been convicted of an offence in respect of violence), or has failed to comply with a bail condition imposed for the protection and welfare of the victim.



### 3.4.8. Failure to identify the 'primary aggressor'

For the past four years the domestic violence sector has voiced ongoing concern about the alleged failure of police on many occasions to correctly identify the 'primary aggressor' when responding to reports of domestic violence. It is claimed that this failure is leading to charges being laid and ADVOs being taken out against women in inappropriate circumstances. There is also a separate concern that police apply a lower 'threshold' when deciding to lay charges or apply for ADVOs against women as compared to men. The sector has suggested that these failures constitute a 'systemic' policing issue.

The NSWPF is aware of this issue. Earlier in 2010, the Corporate Spokesperson for Domestic Violence undertook to consider any information provided by the sector about the issue. For this purpose, the Domestic Violence Coalition requested that, for a specified period, its members systematically collect examples of the failure of police to correctly identify the 'primary aggressor'. The sector undertook to collate this information and forward it to the NSWPF.

At our Domestic Violence Community Stakeholder Forum in December 2009, we also undertook to consider the issue as part of our audit of domestic violence complaints.

Table 10 shows that in 2008, only one domestic violence complaint specifically alleged a failure by police to identify the primary aggressor. This complaint arose from an event in which a woman was originally thought to be the alleged victim, but was subsequently charged with a domestic violence offence.

#### Case study 11

The mother of a woman charged with assaulting her husband complained that police should not have charged her daughter. She alleged her daughter had been subjected to physical and emotional abuse by her husband over a number of years, resulting in injuries including black eyes, bruised legs and a cracked skull. The mother also stated that her daughter's husband had a history of domestic violence against two former female partners.

The woman was charged after police observed her forcefully throw a plastic container at her husband's head after they attended the couple's residence when a neighbour called to report overhearing a verbal argument. She was noted by police to be 'moderately intoxicated' at the time of the offence.

COPS records indicate that, two years previously, the woman's husband was charged with assaulting her and an ADVO was taken out against him. However, it appears he was not convicted. A few weeks later the husband reported to the police station that his wife had verbally and physically abused him. Police noted he had injuries but no action was taken, apparently because the husband would not disclose full details of what had occurred. The following month, the woman was charged with assaulting her husband and an ADVO was taken out against her. She admitted to punching her husband and said she did so because he was abusing her. She was convicted of the offence of common assault and issued with a bond.

Outside of the relationship with her husband, the woman had no prior recorded domestic violence history, either as a victim or offender. Her husband had an extensive prior history of domestic violence against two other women and in one instance, a child. COPS records indicate numerous charges of domestic violence assault and breaching ADVOs.

The issues raised by the mother's complaint were not sustained. Police had directly observed the woman assault her husband and, notwithstanding her husband's extensive prior history of domestic violence, there was no evidence to suggest he had been violent towards her on the evening of the assault. The complaint investigator commented that *'it is difficult to determine if [the husband] became the victim...as a result of actual abuse by [his wife] or by his manipulation of the system'*. The woman was later convicted of the offence.

This complaint in many ways illustrates the complexity of the 'primary aggressor' issue. Despite the man's history of domestic violence, police were required to charge the woman after directly observing her commit an assault against him.

The above complaint was the only one in 2008 to allege a failure by police to identify the primary aggressor. However, given the degree of concern among the domestic violence sector about the issue, we examined all other complaints that arose from events in which a woman was alleged to be the offender – regardless of whether the woman was the complainant.

The relevant events involved 46 women – representing 18% of all offenders involved in events giving rise to complaints.<sup>74</sup> Of the 46 women:

- 10 were charged with an offence (including stalk/intimidate, assault and malicious wounding).
- 19 had an ADVO application made against them.
- 39 (85%) were involved in a current or former relationship where there was a history of domestic violence involving one or both parties.
- 11 (24%) made a complaint.

The alleged female offenders who complained about police conduct raised issues including:

- rudeness, aggression and intimidation by police officers attending the incident
- unnecessary force during arrest
- failure to use an interpreter
- failure to investigate an historical sexual assault
- failure to pursue an alleged breach of ADVO by their ex-partner, and
- failure of police to provide correct advice.

While based only on a sample of complaints and the records available to us as part of our audit, our review of complaints arising from events in which a woman was alleged to be the offender found no evidence to indicate that police may have failed to correctly identify the primary aggressor in any matter.

However, what our audit does confirm is that a relatively significant number of women (18%) were considered offenders in events giving rise to domestic violence complaints, and that 85% of these women were involved in a current or former relationship where there was a history of domestic violence involving one or both parties. Additionally, a relatively significant proportion of this group was charged with an offence or was the subject of an ADVO. These findings are critical to informing the current research being undertaken by the NSWPF in conjunction with the Domestic Violence Coalition to ensure that solid information is made available about the overall numbers of women charged with domestic violence offences and the proportion of these matters that may involve a failure by police to identify the 'primary aggressor'.

Our draft report recommended that the NSWPF promptly provide the findings from our audit (as outlined in this section) to the Domestic Violence Coalition to inform the joint research project being undertaken by the NSWPF and the Coalition into the identification of the 'primary aggressor' in domestic violence matters, prior to the publication of our final report. In March 2011, the Corporate Spokesperson for Domestic and Family Violence indicated that he had met with the Domestic Violence Coalition to discuss the relevant aspects of our audit findings.

### **3.4.9. Failure to report risk of harm to Community Services/take other action to protect a child**

Domestic violence is a significant child protection issue, and this is recognised in the D&FV SOPS and *Code of Practice for the NSW Police Force Response to Domestic and Family Violence*. Because of the serious risks that domestic violence poses to children, we looked closely at the complaints that alleged a failure by police to make a risk of harm report to Community Services, or to take other action to protect a child.

As noted earlier, in 2008 NSWPF policy required police officers to make a risk of harm report to Community Services for any child present at a domestic violence incident. Our submission to the Special Commission of Inquiry into Child Protection Services in NSW ('Wood Inquiry') noted that, in 2006-07, mandatory reporters were responsible for approximately 75% of all risk of harm reports. We also observed that, between 2003 and 2007, police were the single largest group of mandatory reporters, with domestic violence the most frequently reported risk factor.<sup>75</sup>

Failure to make a report to Community Services about a child at risk was alleged in only eight (3%) domestic violence complaints in 2008. Five of these matters were internal police complaints. A further three (1%) matters by members of the public alleged failure of some other kind to take action to protect a child. These included matters where police had allegedly delayed making a report to Community Services or failed to respond to a report that a child was at risk in the custody of a parent.

<sup>74</sup> As noted at 3.3.2.2, 17% of persons of interest proceeded against for a domestic violence offence in 2009 were women.

<sup>75</sup> NSW Ombudsman, Submission on mandatory reporting to the Special Commission of Inquiry into Child Protection Services in NSW, 2008.

In one domestic violence complaint we audited, a woman called 000 to report that her ex-partner had thrown petrol on her house while holding a lighter in his hand, threatening to kill her. The woman's two children were present during this and previous threats. It was only after police were called to the house on four later occasions that it became apparent that the officers who had responded to the petrol incident had been slow to respond, failed to record details of the threats, recorded incorrect details about the children present, and failed to submit 'child at risk' reports (a full description of this case is set out in Case study 39 in chapter 6).

Another matter raised the adequacy of the action taken to protect an infant associated with the following domestic violence incident:

## Case study 12

A woman, her male partner and their four week old baby were out walking one morning when the partner allegedly verbally abused the woman and punched her in the back of the head. The woman ran away, leaving the baby with her partner. She spoke to nearby police, advising them that she had been assaulted and was frightened for herself and her son. She had previously reported to police on a number of occasions that her partner had assaulted her, and there was an ADVO in place against him to protect her. The police located the woman's partner and asked him to return the baby to the woman, which he refused to do. Police then told the woman there was nothing more they could do.

The woman attended her local police station that afternoon and reported a number of additional domestic violence offences allegedly committed by her partner, who police then located and arrested. At the time of the man's arrest he was with a male friend and had the baby in his care. The police left the baby with the friend and took the partner into custody. On several occasions that evening, the woman sought the assistance of police to have her baby returned to her. This did not take place until 1am the next morning.

A community legal service complained on the woman's behalf that police did not arrest the man for breaching the ADVO when they first approached him in the morning and did not question him about the assault. They also complained about the actions of police in leaving the baby in the man's care, given his significant history of domestic and other violence, and later, in the care of another male. In addition, the complaint alleged a failure by police to make a risk of harm report to Community Services.

Children are often present at domestic violence events, whether or not they directly witness the incident. In 2006, the Australian Bureau of Statistics found that 57% of women who had experienced violence by their current partner reported that they had children in their care during the relationship.<sup>76</sup> As reported in section 3.3.2.5, over 55% of the complaints we audited arose from events in which children were present or living with the alleged victim/offender at the time of the domestic violence event.

In the context of these figures and the complexities often associated with child protection issues, the small number of complaints about police conduct in this area is a very positive result. It is reasonable to expect that such complaints would mostly be made by police as a result of supervisors identifying deficiencies in the way domestic violence events have been handled, or through a LAC's other quality review processes such as the Command Management Framework (CMF).<sup>77</sup>

It was apparent from our audit that police made a risk of harm report in relation to 38 of the 160 events involving children that gave rise to a complaint. However, the vast majority of the complaints audited did not raise as an issue whether a risk of harm report was made, and whether police had made a report in circumstances where this would appear to have been warranted was not always able to be determined from the complaint file. However, there is merit in requiring complaint documentation to clearly articulate whether any potential risk to children was considered, irrespective of whether or not this issue was complained about.

Since the audit period, the child protection landscape has changed considerably as a result of the NSW Government's response to the recommendations of the Wood Inquiry. Child Wellbeing Units have been established in a number of government agencies, including the NSWPF. Police are no longer required to automatically make a risk of harm report to Community Services if a child is present at a domestic violence event. Rather, they must exercise 'professional judgment' and use the Mandatory Reporter Guide to determine whether a child is at 'risk of significant harm'. In such cases, police must immediately notify Community Services. If a child is not assessed as being at 'risk of significant harm', police must make a report to the NSWPF Child Wellbeing Unit. This change potentially introduces further complexity for police in responding to domestic violence events that involve children. It would be useful for the NSWPF to examine as part of a future audit whether this results in more or less complaints about the police handling of child protection issues.

<sup>76</sup> Australian Bureau of Statistics, *Personal Safety Australia Survey*, 2006.

<sup>77</sup> The CMF is a self-assessment tool available to all LACs which measures compliance against legislation and policy across a range of areas.

### 3.5. Police officers whose conduct was the subject of complaints

The audit examined the police officers whose conduct was the subject of complaint.

<b>Table 11: Rank of officers subject of domestic violence complaints</b>		
<b>Rank</b>	<b>Number</b>	<b>As % of all subject officers</b>
Senior Constable	147	37%
Constable	133	34%
Sergeant	43	11%
Other <sup>78</sup>	30	8%
Probationary Constable	18	5%
Leading Senior Constable	10	2%
Inspector	5	1%
Detective Senior Constable	3	<1%
Detective Sergeant	2	<1%
<b>TOTAL</b>	<b>391</b>	<b>100%</b>

Note: As many complaints involved more than one subject officer, the number of subject officers exceeds the total number of complaints.

The audit found that:

- A total of 391 named officers were the subject complaint, with some complaints naming two or more officers.
- In 30 matters, the subject officer was not identified or the complaint did not concern a specific officer.
- Of the named officers who were the subject of complaint, the vast majority (72%) were Senior Constables and Constables.
- 17 officers were the subject of two or more complaints relating to domestic violence matters. Almost half of these 17 officers were alleged to be domestic violence offenders. 12 of these officers had at least one sustained finding made against them.<sup>79</sup>
- Just over a quarter (26%) of subject officers had a prior complaint history involving domestic violence.

We discuss subject officers further in chapter 5.

<sup>78</sup> Subject officer not named, or complaint did not concern a specific officer.

<sup>79</sup> Four of these officers were alleged to have perpetrated violence against one victim. Another four officers were alleged to have perpetrated violence against two different victims.

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# Chapter 4. Complaint assessment

In this chapter we discuss the initial stages of the complaint handling process, notably information about:

- how complaints are assessed
- the outcomes of assessment decisions
- responsibility for assessments
- complaint classification
- identifying and recording important issues or concerns
- identifying issues relating to serious incompetence
- the importance of checking information holdings as part of the assessment
- declining at the outset to investigate certain complaints, and
- police compliance with requirements to notify the Ombudsman of serious complaints.

## 4.1. How complaints are assessed

The NSWPF's initial complaint assessment and 'triage' process is critical to determining how complaints are subsequently handled. Complaint assessment/triage is conducted by the commander (or a delegated triage officer). Its purpose is to:

- identify and clarify complaint issues
- determine the most appropriate way to manage the matter effectively, and
- satisfy legislative requirements.

This may require speaking to the complainant and reviewing materials they provide, and examining relevant information holdings. On the basis of these initial inquiries, the triage officer should make an informed judgement about the complaint allegation/s. The outcomes of the triage process will determine whether the matter is:

- a 'complaint' under Part 8A of the Police Act<sup>80</sup>
- 'notifiable' (meaning that it includes more serious allegations and must be notified to the Ombudsman)
- of a type that should be declined (on one or more of the grounds set out in section 141 of the Police Act),<sup>81</sup> or
- sufficiently serious to warrant an evidence-based investigation rather than resolution.

For complaints arising from domestic violence events, triage should identify and respond to any immediate risks to victims, as well as other organisational risks such as managing subject officers. These issues are discussed in further detail in chapter 5.

Previously, Complaint Management Teams (CMTs) had responsibility for assessing complaints and for directly managing the majority of resolution and evidence-based complaint investigations. CMTs consist of a local area commander, the crime manager or equivalent, the professional standards duty officer (PSDO) or equivalent, and the executive officer, and may be assisted by others as required. Since the reforms that accompanied the introduction of the *Complaint Handling Guidelines*, the triage officer is expected to identify whether an evidence-based approach is needed. This will primarily depend on whether there is a need for evidence to be gathered and carefully documented in a way that can later be used in formal proceedings. The CMTs have primary responsibility for managing more serious investigations.

With the introduction of the *Complaint Handling Guidelines*, matters assessed at triage as suitable for resolution are delegated to a 'resolution manager' to conduct any necessary inquiries, take steps to resolve the matter and prepare an outcome report.

Matters referred for resolution do not typically warrant the formality, complexity and authoritative decision-making associated with evidence-based investigations. As many of these informal, outcome-focused inquiries were once known as Local Management Issues (LMIs), the NSWPF uses the term 'LMI stream' to identify matters suitable for resolution.

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<sup>80</sup> For example, Part 8A requires that 'complaints' must relate to the conduct of police, be in writing and have been submitted to an investigating authority (the Commissioner of Police, the PIC or the Ombudsman).

<sup>81</sup> Section 141 of the Police Act provides that the NSWPF or Ombudsman may decline to investigate an allegation on various grounds, such as if action has been, is being or will be taken to remedy the issue, alternative and satisfactory means of redress are or were available to the complainant (eg court proceedings), the conduct complained of occurred too long ago, the complainant does not have a sufficient interest in the conduct complained about, the issue complained of is trivial, or the complaint is frivolous, vexatious or not made in good faith.

If the complaint is notifiable, the NSWPF provides a copy to the Ombudsman. If the matter is non-notifiable, and the complainant (or the subject officer) is dissatisfied with the handling of the matter, the NSWPF must provide advice that they may make a further written complaint to the Ombudsman about how the matter was handled and request the Ombudsman to independently assess the NSWPF's handling of the matter.

Our March 2011 report concerning our *Review of the NSW Police Force Complaint Handling Guidelines* makes a number of observations about the appropriateness of decision making by triage officers in relation to complaints alleging criminal and serious misconduct, and includes recommendations aimed at ensuring effective decisions are made.

## 4.2. Who people complained to

Complaints about police conduct must generally be made in writing to an 'investigating authority' – the Commissioner of Police, the Police Integrity Commission or the Ombudsman. Where appropriate, we encourage members of the public to take their concerns to the appropriate local area commander or to the NSWPF's Customer Assistance Unit to enable the NSWPF to assess and respond directly to their concerns.

Table 12 shows where the complaints we audited were first submitted and assessed.

<b>Table 12: Who received the complaint</b>				
<b>Received by</b>	<b>Notifiable</b>	<b>Non-notifiable</b>	<b>Total</b>	<b>%</b>
Police	133	89	222	84%
Ombudsman	24	15	39	15%
PIC	0	1	1	<1%
PIC, Police & Ombudsman*	1	0	1	<1%
<b>TOTAL</b>	<b>158</b>	<b>105</b>	<b>263</b>	<b>100%</b>

Note: Among the 289 complaints that raised domestic violence issues in 2008 we excluded 26 after assessment of the complaint issues, as the concerns raised were not sufficiently connected to the original domestic violence incident.

\* One complaint was received and assessed by all three agencies.

Most complaints – 222 (84%) of all those included in the audit – were made directly to the NSWPF. Of these, 133 (60%) were notifiable. Of the 39 complaints made directly to the Ombudsman, 24 (61%) were notifiable.

## 4.3. Complainants

Of the complaints made directly to police, 106 (48%) were made by alleged victims and 27 (12%) were by alleged offenders. The remaining 40% of complainants consisted mainly of supervisors (complying with mandatory reporting requirements), lawyers, advocates and other representatives, and family or friends. Of the 39 complaints made directly to the Ombudsman, 15 were by alleged offenders, 13 were by alleged victims, and the remainder by lawyers and others lodging a complaint on the person's behalf. Six advocates (refuge workers and court support staff) complained directly to police on behalf of alleged victims. No advocates complained directly to the Ombudsman.<sup>82</sup>

The *Code of Practice for the NSW Police Force Response to Domestic and Family Violence* includes guidance on who to complain to. However, it does not include information about what to expect from the complaints process. Consistent with the NSWPF's Customer Service Charter, we believe there would be merit in updating the Code to outline further information about the complaints process, including the role of the CMT and others who hold critical complaint handling responsibilities, expected time frames for resolving complaints, and contact by police with complainants during the complaint management process.

<sup>82</sup> These figures are based on the 263 complaints that remained following the audit team's preliminary assessment of the 289 complaints.



## 4.4. Outcomes of initial assessment decisions

Table 13 (below) summarises the initial assessment decisions relating to the complaints included in our audit. As complaint streamlining was implemented in stages during the audit period, the summary includes the outcomes of assessments made before and after the streamlining reforms were introduced.

<b>Table 13: Assessment of complaints</b>		
<b>Assessment category</b>	<b>No.</b>	<b>As % of all assessments</b>
<b>Notifiable, pre-streamlining complaint</b> Notifiable complaints that pre-date streamlining – CMTs responsible for managing both evidence-based and resolution matters.	40	15%
<b>Notifiable, P stream</b> 'P stream' denotes matters assessed at triage as requiring an evidence-based inquiry and referred for direct CMT management.	65	25%
<b>Notifiable, LMI stream</b> 'LMI stream' denotes matters identified at triage as suitable to be delegated to a resolution manager for informal inquiry and resolution	22	8%
<b>Notifiable, decline</b> Serious allegation that must be notified to the Ombudsman, but investigation declined on grounds listed in s.141 of the Police Act. <sup>83</sup>	30	12%
<b>Non-notifiable, direct to police*</b> Allegation received by NSWPF but assessed as not required to be notified to the Ombudsman.	98	37%
<b>Non-notifiable, decline by Ombudsman*</b> Non-notifiable complaint received and declined by the Ombudsman.	8	3%
<b>TOTAL</b>	<b>263</b>	<b>100%</b>

\* Non-notifiable data do not distinguish between complaints assessed before or after the introduction of complaint streamlining reforms. The category 'non-notifiable, direct to police' includes 10 complaints declined by NSWPF.

Of the 263 complaints that were directly related to the original domestic violence incident, 157 (60%) were assessed as notifiable. By comparison, the proportion of all police complaints deemed notifiable in 2008 was 47%.<sup>84</sup>

Although the complaint streamlining reforms were introduced in stages throughout the audit period, the audit sample includes a substantial proportion of notifiable matters that were assessed by triage officers and referred for investigation under the new system. Of the 157 notifiable complaints, 65 (41%) were referred by triage officers to CMTs for an evidence-based investigation and 22 (14%) were referred to resolution managers for informal inquiries and resolution. Of the rest, 40 (25%) pre-dated the reforms but, under the management of CMTs, would have been subject to some form of evidence-based or informal inquiry, and 30 (19%) were declined (before or after the introduction of streamlining).

As the period covered by this audit coincided with the introduction of streamlining, we were unable to make any conclusive findings about the impact of the streamlining reforms. On the one hand, the relatively high proportion of matters referred for evidence-based investigations and the low investigation deficiency rate (5%)<sup>85</sup> suggests that the process did not necessarily lead to matters being inappropriately handled in a less formal manner during this period. On the other hand, in chapter 6 we note some matters that were referred for resolution that would have been better handled as evidence-based investigations. Issues relating to the impact of the changes and the choice of investigative process are considered further in our report to the NSWPF concerning our review of the *NSW Police Force Complaint Handling Guidelines*.<sup>86</sup>

83 Section 141 of the *Police Act 1990* provides that the NSWPF or Ombudsman may decline to investigate an allegation on various grounds, such as if action has been, is being or will be taken to remedy the issue, alternative and satisfactory means of redress are or were available to the complainant (eg court proceedings), the conduct complained of occurred too long ago, the complainant does not have a sufficient interest in the conduct complained about, the issue complained of is trivial, or the complaint is frivolous, vexatious or not made in good faith.

84 Figures obtained from the PODS Watson (Xanalys) Database for the 2008 calendar year.

85 Investigation deficiencies are discussed in chapter 6.

86 March 2011.



## 4.5. Complaint classification

Two significant issues to emerge from our audit relate to:

- the inconsistency between police and our office in flagging complaints as 'domestic violence-related', and
- the limited recording of important demographic data such as Aboriginality.

When police notify a complaint to us, we register it on our system. If the complaint relates to domestic violence, we record this by selecting a 'keyword'.

We also have 'keywords' for a range of other complaint types or complainant characteristics, including complaints relating to Aboriginal and young people.

Often Aboriginality is not determined until after the assessment stage. This information may become apparent when our case officers make initial contact with complainants. Our Aboriginal Unit is also well placed to identify Aboriginality through their knowledge of Aboriginal families and communities across the state.

In chapter 2 we explained that our initial assessment of 396 complaints revealed that 107 (27%) had been incorrectly flagged by police as relating to domestic violence.<sup>87</sup>

Our analysis of these complaints found that they arose from a range of events, as shown in the following table:

Event type	Example	No.	%
Neighbourhood dispute	Neighbourhood incident involving parties not in a domestic/family relationship	21	19%
Non-domestic violence police misconduct on-duty	IPCs about work practices of supervisors, internal disputes over property, and alleged inappropriate behaviour by colleagues	15	14%
Non domestic violence assault	Assault in public place between people otherwise unknown to each other e.g. patrons at cafe/bar.	13	12%
Breach APVO	APVO involving ex-work colleagues	11	10%
Other	Failure to investigate fraud, alleged inappropriate stop/search, wrongful arrest for non domestic violence offence	8	7%
Drug use/supply	Use or supply of illicit drugs by police officer	7	6%
Improper access/release of information	Police officer accessing and/or releasing information not pertaining to a domestic violence incident	6	6%
Non domestic violence incidents taking place in a domestic setting	Property dispute	6	6%
Non domestic violence police misconduct off-duty	Police officer engaging in inappropriate behaviour whilst off duty and outside of a domestic or family context e.g. intoxication in public place	6	6%
Harassment by police officer	Harassment where there is no domestic relationship between the complainant and the subject officer(s) or relation to a domestic violence incident	4	4%
Non domestic sexual assault	Sexual assault where alleged victim/offender not in domestic relationship	4	4%
Family law dispute	Non domestic violence incident concerning parties involved in Family Court proceedings, or dispute about Family Court imposed arrangements	3	3%
Traffic offence	Issuing of traffic infringement notice	3	3%

<sup>87</sup> Our assessment relied on the definitions of 'domestic violence offence' and 'domestic relationship' contained in the Crimes (Domestic and Personal Violence) Act and reflected in the D&FV SOPs.

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It appears that many of complaints were incorrectly flagged as relating to domestic violence because this is how the events that gave rise to them were recorded by police on COPS.<sup>88</sup>

There is a reasonably clear explanation for why some of the event types described above might be incorrectly recorded on COPS, e.g. breach APVO, and incidents taking place in a domestic setting. Other matters, including family law disputes and some relating to drug use/supply, are likely to have been incorrectly flagged because they involved parties in a domestic relationship – some of these relationships may also have involved a history of domestic violence. As we noted in chapter 3, four of the matters involved allegations of violence against a person's current partner by the person's former partner (or vice versa). The incorrect recording of these matters on COPS is understandable and as we discussed earlier, there are good reasons for providing guidance to police officers about responding to them *as though* they constitute domestic violence events.

However, there is no clear reason why other event categories would be incorrectly flagged, e.g. traffic offences and IPCs about work-related grievances. Of the incorrectly flagged complaints, 74 (69%) contained notifiable allegations. The Tweed-Byron LAC had the most (7 complaints), followed by City Central (6), Far South Coast (6) and Mid North Coast (5). There were no discernable patterns in relation to incorrect flagging.

Incorrect flagging presents a distorted picture of the number of complaints about police conduct arising from domestic violence events, both at LAC level and across the NSWPF. As complaint trends are an important source of information the NSWPF can and should use to monitor performance in relation to the policing of domestic violence, it is important that the data from which these trends are observed is accurate. The incorrect flagging of complaints as domestic violence-related also means that an inaccurate picture is painted of the number of complaints arising from police conduct in relation to other types of events (e.g. family law or neighbourhood disputes), and this also has implications for the analysis of complaint data and of areas in need of improvement.

Where a matter has been incorrectly classified as 'domestic violence-related' on COPS, and a complaint is subsequently made about police conduct in relation to the incident, the complaints record should not identify a matter as domestic violence-related simply because it was recorded as such on COPS. The COPS record should also be amended so that it accurately reflects the nature of the incident.

The need for accurate data capture is also relevant to other complaint classification categories. To our knowledge, apart from domestic violence, the only other 'flags' on the police complaint management system are 'internal police complaints' and 'alcohol-related complaints.' As noted earlier, the police complaint management system does allow basic demographic information to be captured about a complainant's age, gender and Aboriginal status, but it appears that these fields are not mandatory. If these fields are not mandatory then the data is less reliable. In addition, there is potential for our office to share its data capture on issues such as Aboriginality with the NSWPF once our Aboriginal Unit staff have performed their own complaint assessment, particularly given their knowledge of the major Aboriginal family groupings and communities across the state.

It is critically important that police records of domestic violence incidents on COPS and complaints on c@ts.i be used to alert the NSWPF of significant issues, analyse trends and monitor systemic practices in relation to the policing of domestic violence. As the Corporate Spokesperson for Domestic and Family Violence and the Domestic and Family Violence Team have principal responsibility for advising the NSWPF on domestic violence issues, they should be well-placed to assess the adequacy of information from these sources, and whether the information currently being provided is of a quality, and in a form, that meets their needs and the needs of LACs.

To facilitate the exchange of information where complaints have been incorrectly classified by the NSWPF as 'domestic violence-related' or where 'Aboriginality' has not been identified, a Memorandum of Understanding between our office and the NSWPF could be developed to ensure that such data discrepancies are addressed at the assessment stage.

## 4.6. Identifying and recording complaint issues

A crucial step in the triage or assessment process is to accurately identify and record important issues and concerns about each of the subject officers – issues raised directly in the complaint, and any additional concerns that become apparent through checking available information holdings.<sup>89</sup>

For instance, a complainant might allege that officers failed to respond appropriately to a serious domestic violence assault. As part of the triage process, a check of relevant police records might show clear inaccuracies in the way that the officers recorded the incident – suggesting either a failure to recognise key issues or a failure to correct an initial mistake. Ideally, both the failure to respond and the record-keeping issues should be identified and recorded

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<sup>88</sup> We note that the *NSW Domestic and Family Violence Action Plan*, released in June 2010, commits the NSWPF to 'Ensure that all police officers are appropriately trained in the accurate flagging of domestic violence-related incidents on the NSW Police Force computerised database' (Action 84).

<sup>89</sup> NSW Police Force, *Complaint Handling Guidelines*, 2008, p6.

at the earliest opportunity to assist in determining other assessment decisions, such as whether an evidence-based investigation might be needed to assess the veracity of the more serious concerns. A failure to correctly identify and record complaint issues can seriously impact on the quality of investigations and attempts to resolve matters informally.

Other significant issues might also arise in the course of an investigation, or after the evidence is gathered and reviewed. These issues should also be identified and recorded.

Our audit of domestic violence matters identified 215 notifiable and non-notifiable complaints that were not declined at the outset. Our assessors considered whether the main issues raised were all identified, having regard to relevant legislation and NSWPF policies.<sup>90</sup> The NSWPF performed very well on this measure, correctly identifying all of the main issues in the majority of complaints. According to our assessors, there was a failure to identify one or more key issues in relation to only 22 of the 215 complaints. Of these, 10 were notifiable and 12 were non-notifiable.

The more serious omissions related to failures to identify allegations relating to criminal conduct (4), lack of integrity (4), failure to protect victims (4), and children at risk of harm (2). The alleged criminal conduct and/or integrity issues that police failed to identify included various threats and intimidation, pressure to falsify documents, recording false information in official police records, and concerns about an officer's truthfulness in response to questioning. Other issues that the NSWPF failed to identify and record included victim support issues, poor record keeping, inadequate supervision, failure to investigate a breach of ADVO and assault matters, and failure to follow up on court proceedings.

Although these kinds of omissions are relatively rare and police appear to be quite adept at identifying and recording complaint issues, the cases below highlight the importance of police taking a broad view in identifying relevant complaint issues. In both cases, it appears that police took appropriate action in relation to the issues identified at assessment, but their failure to recognise the additional issues or issues arising meant that investigators were slow to recognise important broader concerns.

### Case study 13

Two probationary constables were sent to an address in response to reports of a serious domestic assault but took no action, stating that the occupants refused to provide them with details.<sup>91</sup> The officers did not investigate further and failed to complete a COPS record of the incident. It was only after one of the parties telephoned two days later to provide further information and seek an ADVO that the initial failure to investigate and appropriately record the incident became apparent. The NSWPF initiated an inquiry into the junior officers' conduct. However, we were concerned that the inquiry failed to address why two probationary constables were sent to an incident without the support of a more experienced officer and why there had been no routine quality review of police records for the day of the incident.

### Case study 14

An officer's former sister-in-law alleged that the officer had a history of violence towards his ex-wife and current wife, and that his children were fearful of him. The matter was investigated. The ex-wife's statement detailed a lengthy history of domestic violence between the couple, and the children disclosed having witnessed violence between their mother and their father's current wife. One child also disclosed having seen his father kick his step-brother. However, the officer's ex-wife later indicated that she was unwilling to attend court or allow her children to give evidence. As a result, police decided not to lay charges and made no sustained findings in relation to the complaint.

We were satisfied with the steps taken to investigate the issues identified at the outset. However, the further allegation about the officer kicking a child appeared not to have been addressed. In our view, the issue constituted 'alleged abuse of a young person' and the NSWPF was required to report it to the Commission for Children and Young People (CCYP). Police disagreed, arguing that the allegation related to 'off duty' conduct. The CCYP subsequently advised that all relevant employment proceedings relating to reportable conduct must be reported, whether the alleged conduct is on or off duty. The NSWPF then agreed to report the matter to the CCYP, and is reviewing its policy relating to its reporting obligations.

<sup>90</sup> Relevant legislation and policies include the Crimes (Domestic and Personal Violence) Act and the *NSWPF Domestic and Family Violence Standard Operating Procedures*.

<sup>91</sup> This matter was also outlined in case study 6.

## 4.7. Identifying incompetence

It is evident from the findings of this audit, as well as from our general oversight, that a common area of complaint relates to the need for police to take protective action for victims – such as applying for an ADVO, properly investigating domestic violence offences, and following up on allegations that an ADVO has been breached.

At the time of this audit, an allegation that police failed to take action to protect a victim was not necessarily notifiable to this office and subject to direct oversight. This was because this form of conduct was not on its own criminal or corrupt or necessarily likely to attract the taking of reviewable action by the NSWPF, but usually related to an officer's competence. Complaints concerning 'incompetence only' were generally not required to be notified to the Ombudsman. One notable exception concerned allegations of 'serious incompetence' in relation to failed prosecutions, which are notifiable if a range of other factors exist.

While in the majority of contexts the Class and Kind Agreement adequately provided for more serious conduct to be notified to this office and directly oversighted, in the context of policing domestic violence, it could be argued that the failure of an officer to take appropriate steps to secure a victim's safety should be treated differently to certain other areas of policing, given the unique risks posed to domestic violence victims.

However, given the finding of this audit that police generally managed complaints about the policing of domestic violence well, including complaints about 'incompetence', we consider that there are insufficient grounds at this stage to amend the existing Class and Kind Agreement to bring greater scrutiny to these types of complaints.

Nonetheless, through our ongoing audit work, we will continue to focus on the handling of complaints alleging 'failure to protect a domestic violence victim'. In the event that there is an increase in these types of complaints not being handled well by police, consideration could then be given to altering the Class and Kind Agreement to allow complaints alleging unreasonable conduct (such as a failure to follow up on or investigate a breach of an ADVO) which results in a 'failure to protect' the victim, to be included in the definition of 'notifiable' complaints.

Both of the case studies below involve an alleged failure to protect a victim and were assessed as 'non-notifiable' to the Ombudsman.

### Case study 15

A constable failed to act on a report of a breach of an ADVO. The ADVO had been applied for on behalf of a woman who alleged that her estranged husband had continued to terrorise and intimidate her. She claimed that her estranged husband had threatened to kill her via a third party. Three months later her estranged husband approached her at the local Housing NSW office and allegedly threatened to damage her car. The woman provided a signed statement. Five months later, following no action on the matter, the subject officer was reminded by his supervisor that processing a breach of an ADVO had a six-month limitation period. The constable failed to formally interview the alleged offender and the matter became statute barred. The officer acknowledged that the fact that the case was statute barred was an oversight by himself and that he had to *'improve on his time management skills and adhere to comments made by his supervisors'*.

### Case study 16

A pregnant woman stated she was pushed, slapped, bitten, poked in the eyes and strangled by her husband in the presence of her young children after she had walked in on him having sexual relations with another woman. Eleven months after the matter had been reported and nine months after the subject officer had entered the matter onto the police information system, the case was still current and the offender had not been arrested and an ADVO had not been served. The investigator of the internal police complaint commented *'not enough was done to action and complete the investigation even though numerous reminders [6] were given [to the subject officer] by supervisors'*. The constable conceded *'that he had not actioned and completed the investigation in timely manner'*.

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## 4.8. Checking information holdings

The triage officer may examine information holdings to clarify the complaint issues and determine the most appropriate way to manage the matter.<sup>92</sup> Triage officers have ready access to a range of records and information. In many cases these checks may address the central issues of complaint, or at least clarify the necessary lines of inquiry.

Depending on the issues, examples of the records that may be checked include relevant COPS/charge/custody records, official notebooks and duty books, closed-circuit TV footage (from police station cameras or from external sources such as licensed premises), police rosters and vehicle diaries, exhibit records, incident dispatch records and police tasking sheets, call charge records, and court transcripts.

These holdings may be used to inform the type of investigative strategy to be conducted, and the interim management action taken to address a subject officer's conduct, particularly where a serious pattern of behaviour has been identified. In the context of complaints about domestic violence, information holdings may be examined to determine any patterns of behaviour between the victim and the offender – especially behaviour that may place a victim at greater risk. In this regard, the types of information holdings that are relevant include:

- the subject officer's complaint history
- the complainant's complaint history, and
- the offender-victim history.

In our recent draft report concerning our review of the NSW Police Force *Complaint Handling Guidelines*, we recommended changes to the triage framework to improve decisions about whether complaints are referred for an evidence-based investigation or for resolution. Our review identified concerns about complaints alleging serious misconduct being routinely referred for resolution. The draft report recommended that triage officers consider a number of additional factors, including the risks for the NSWPF in deciding to deal with a complaint by resolution rather than evidence-based investigation.

With respect to what information holdings should be checked, the NSWPF *Complaint Handling Guidelines* provides good guidance on this issue and notes that, 'a check of holdings during triage is necessary to clarify issues and determine the veracity of the complaint'.<sup>93</sup>

Our audit found that:

- In 80% of cases a significant range of holdings were considered.
- In 13% of cases we were unable to tell.
- In 7% of matters it appeared that no holdings had been checked at any point when managing the complaint.

While police compliance with checking information holdings process is solid, the above results indicate there is still room for improvement. Our audit found ample evidence of police noting key documents and other supporting evidence at the end of an investigation, but the evidence relied on the initial stages was often much less clear. There may be some merit in emphasising the importance of noting the evidence relied on at each stage of the process.

### 4.8.1. Checking information about previous complaints

An officer's complaint history includes records of complaints made against the officer, the investigation of those complaints, and any management action taken during and at the end of the investigation. It should include both on-duty and off-duty incidents (examples of off-duty incidents include drink-driving or domestic violence offences). Similar information is recorded in relation to complainants' previous complaints.

The relevance of an officer's complaint history will depend on all of the circumstances. It may be significant because it includes inherently serious allegations, such as corruption, perjury or assault, or because there are a number of allegations that indicate a pattern of behaviour. Officers who are the subject of a number of complaints in a particular area such as domestic violence-related matters should be carefully assessed to determine whether the current complaint inquiry needs to consider broader conduct, competence, integrity or performance issues and/or lifestyle factors and off-duty conduct which pose risks that require early intervention and careful management.

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<sup>92</sup> NSW Police Force, *Complaint Handling Guidelines*, 2008, p6.

<sup>93</sup> NSW Police Force, *Complaint Handling Guidelines*, 2008, p6.



Our review of the 215 domestic violence complaints referred for either evidence-based or informal inquiries<sup>94</sup> included assessing whether police considered the complaint history of the subject officer when managing the complaint. This analysis indicated that:

- 26% (55) of complaints referred for inquiry included records showing that police considered the complaint history of the subject officer or officers.
- 19% (42) indicated that the subject officer's complaint history was not considered.
- 55% (118) of complaint records included no information to show whether or not the subject officer's complaint history had been considered.
- Of the 55 complaints where it was evident that the complaint histories of the subject officer had been checked, just over half (28) noted concerns about potential patterns of misconduct in relation to the subject officer. In 12 of these matters, investigators raised concerns resulting from previous allegations against the subject officer as being an offender in domestic violence-related circumstances. In the remaining 16 matters the investigators raised concerns regarding poor performance and incompetence, including inadequate investigations and failed prosecutions.

Our assessment also included looking at whether police considered the complaint history of the complainant when managing the complaint.

We found evidence that police considered the complaint history of the complainant in 20% of these matters. In 30% they did not consider the complainant's complaint history. We were unable to tell in the remaining half whether or not police had considered the complaint history.

Checks of complaint histories and other relevant records are critical to determining whether there might be a need for evidence-based inquiries. In case study 14, we discussed a matter in which an officer's former sister-in-law complained that the officer had been violent towards his ex-wife, continued to be violent towards his current wife and that his children were fearful of him. In that matter, a check of police records and complaint holdings verified the claims about the officer's previous violence, strengthening the case for an evidence-based investigation. After the investigation, the officer's commander noted: *"Although this matter was not sustained, there is a pattern of behaviour that is concerning and is completely unacceptable. The conduct of the subject officer needs to be monitored and suitable strategies employed to appropriately investigate domestic related issues if they arise in the future"*.

The following case study also illustrates the importance of checking information about previous complaints.

## Case study 17

A NSWPF review of reasons for a failed domestic violence prosecution examined the initial checks of COPS records relating to the prosecution, the responsible officer's roster, dissemination reports and date-stamped copies of relevant court documents. These showed that the officer had failed to serve the court documents on time despite specific instructions and two court orders requiring her to do so. The officer's complaints history showed a pattern of poor performance, reviewable management action taken in relation to integrity concerns, and the officer's involvement in other failed prosecutions. The matter was referred for an evidence-based investigation.

The COPS records also highlighted the seriousness of the incident related to the failed prosecution. The case involved a man accused of terrorising and assaulting his Aboriginal partner as the couple was driving home from a party. The woman said she was so scared by his erratic driving that she jumped from the vehicle while it was moving. He then tried to run her over, stopped the car and grabbed her by the throat. He later punched her in the mouth.

In this case, the alleged misconduct was of a nature that, if substantiated, could lead to significant action being taken against the subject officers, especially in light of information indicating that the alleged incidents were not one-off mistakes. In both cases checks of the officers' complaints histories contributed to decisions to refer the matter for evidence-based investigations.

Similarly, the complaint history of the complainant may be relevant to determinations as to how to handle particular matters. Such checks may confirm that police have previously addressed (or failed to address) significant issues raised in an earlier complaint, or provide information that could assist in resolving the current matter.

<sup>94</sup> This excludes the 48 notifiable and non-notifiable complaints declined by the NSWPF or the Ombudsman at the outset.

Our review of the NSWPF's *Complaint Handling Guidelines* identified that there was no specific direction to check subject officers' complaints histories when assessing the potential consequences or determining whether an evidence-based approach is necessary – only that the triage should include checks for any previous reviewable management action against the officer or whether a warning notice has been issued.<sup>95</sup> The guidelines only required complaint histories to be considered in the context of determining what management action to recommend at the end of an investigation.<sup>96</sup> Nor was there any specific guidance on when complainants' complaint histories should be checked.

With no general requirement to check complaint histories in all cases at the outset, there is a real risk that important information might not be considered as part of the triage or assessment of a complaint involving a subject officer 'of concern'. For instance, the matter outlined in case study 14 (section 4.6) concluded with a commitment by the officer's commander to carefully investigate any future domestic violence allegations. Yet if the officer or commander moved to another location, there is a risk that future incidents may be treated as isolated or one-off events, because the concerning 'pattern of behaviour' identified in the previous complaint inquiry would not be taken into account.

In addition, reviewing an officer's complaint history at the outset may help in identifying immediate or ongoing risks. Our discussion of risk management issues in section 5.3 includes reference to an officer who was charged with assault and subject to an interim ADVO after a serious incident. As part of the NSWPF's assessment of the complaint, we asked police to review the officer's complaint history. This identified potential steroid abuse as an issue. The interim risk management strategies put in place included conducting a targeted drug test for steroid use and removing the officer's access to weapons (see case study 27).

In our view, complaint managers/investigators should always consider the subject officers' relevant complaint histories both at the outset and at the end of the complaint investigation or resolution process. Our draft report concerning our review of the NSWPF's *Complaint Handling Guidelines* has recommended that the guidelines be amended to provide clear direction about the need for the triage officer to check the complaint history of the subject officer – including whether reviewable action has been taken, a warning notice issued or a conduct management plan implemented, before determining whether the complaint is suitable for resolution or evidence-based investigation.

It is good practice for checks of both subject officers' and complainants' complaint history to be recorded in complaint documentation. This assists both NSWPF in managing complaints and our office in oversighting compliance matters. As mentioned above, in more than half of the complaints examined for the audit we were unable to tell from the papers whether the subject officer's complaint history had been checked.

#### **4.8.2. Checking information holdings about the offender-victim history**

In assessing domestic violence complaints, particular consideration should be given to examining holdings for information about the offender-victim history for any history of violence, threats or intimidation. Information about a history of violence or other concerns should be considered carefully, particularly in the context of any victim risk assessment – even when allegations are not substantiated or are unlikely to be substantiated.

This information will be particularly relevant in considering allegations that police failed to correctly identify the 'primary aggressor' when responding to reports of domestic violence – see the discussion of this issue in section 3.4.8. In many other cases, checking the offender/victim history may indicate whether police have previously dealt with one or both parties in relation to domestic violence or other issues and could shed some light on how best to proceed.

Although information about the offender/victim history is not relevant in the management of all complaints (for instance, when inquiring into a police procedural error or the reasons for a failed prosecution), we found evidence that police had considered the offender/victim history in 130 (60%) of the 215 complaints referred for formal or informal inquiries. Although this indicates that police are generally alert to the need to check such information, there were still 62 complaints where it was not clear whether this information had been checked or needed to be checked.

As detailed in chapter 6 (case study 40), a check of the offender-victim history and prompt action in response to reported breaches of an ADVO might have had an impact on the outcome. In that case, a woman sought protection from her ex-boyfriend who, shortly before his release from prison for serious domestic violence offences against her, made a series of well-documented threats to kill her and her new partner. The new partner was killed soon after the ex-boyfriend's release. During the investigation into his death, the woman revealed to police that she had complained about the offender driving past her home, breaching the ADVO, the day after his release from prison. While there is some dispute about why the constable that the woman spoke to did not act, it appears that the constable resolved to take no action without considering critical information recorded on COPS about the ex-boyfriend's history of violence and threats. In our view, the officer could have reasonably formed the suspicion that the offender had committed an offence and arrested him on the basis of this information.

<sup>95</sup> NSW Police Force, *Complaint Handling Guidelines*, 2008, p10 and p26.

<sup>96</sup> NSW Police Force, *Complaint Handling Guidelines*, 2008, p90.



Triage officers should be given guidance about when the offender-victim history should be checked in assessing how to manage a complaint and identify any immediate risks to a victim. In addition, there should be a requirement to document whether or not this type of check was considered and/or conducted.

Further information about the offender-victim history could also become apparent at later stages of the investigation. For this reason, resolution managers and investigators should be encouraged to undertake their own assessments at critical points of the handling of the complaint.

In response to our draft report, the NSWPF indicated that the *Domestic and Family Violence Complaint Practice Note* will require triage officers to check both subject officers' and complainants' complaint histories and document that they have done so in the mandatory complaint triage form. Where a subject officer's complaint history reveals a pattern of domestic violence-related complaints, triage officers will be required to implement interim risk management action in accordance with the *Interim Risk Management Guidelines for Police*. The NSWPF also agreed with our draft recommendation that complaint managers should be required to check the complaint history between the offender and victim in connection with assessing and managing relevant complaints.<sup>97</sup>

## 4.9. Declining to investigate at the outset

Section 141 of the Police Act provides that the NSWPF or the Ombudsman may decline to investigate an allegation on various grounds, such as action has been, is being or will be taken to remedy the issue; alternative and satisfactory means of redress are or were available to the complainant; the conduct complained of occurred too long ago; the complainant does not have a sufficient interest in the conduct complained about; the issue complained of is trivial; the complaint is misconceived; or the complaint is frivolous, vexatious or not made in good faith.<sup>98</sup> Only officers with the appropriate delegated powers – usually commanders or professional standards duty officers – can decline to investigate a complaint.<sup>99</sup>

Of the 263 complaints we examined in our audit, police declined 48 (18%) at the triage/assessment stage. Of these 48 declined matters:

- 30 were notifiable.
- Just over half (26 complaints) were declined because there were court proceedings that provided an alternative means of redress to the complainant.
- Seven were declined on the basis that action had been, was being or would be taken to remedy the issues.
- Four were declined because of a previous or current investigation into the same issues.
- Three were assessed as frivolous.

In relation to the 30 matters declined by police and notified to us, we endorsed the police assessment in all but one matter.

### 4.9.1. Police officers who are the subject of ADVOs

While we are notified of the majority of instances where ADVOs are taken out against police officers, the NSWPF often declines to investigate these complaints on the basis that the court provides the victim with an alternative avenue or remedy for their complaint.

In our view, all complaints arising from an application for an ADVO against a police officer should be made the subject of an investigation under Part 8A of the Police Act. An investigation provides an opportunity to monitor the outcome of the ADVO proceedings, to identify whether any conduct needs to be investigated, and to gather sufficient information to make decisions about interim and ongoing management action, including monitoring the subject officer's compliance with the ADVO and the restriction of their access to firearms.

The practice of declining an investigation appears to be inconsistent with the obligations set out in *Commissioner's Instruction 10/05; Changes to Mandatory Notifications* which advises that:

*A Notification MUST be submitted to Professional Standards Command when:*

- *an officer has entered the criminal justice system including being charged or having received a summons, court attendance notice, field court attendance notice or any process alleging apprehended violence (whether under Commonwealth, state or territory legislation).*

<sup>97</sup> Advice provided by the NSW Police Force Professional Standards Command, 21 March 2011.

<sup>98</sup> Section 141 (1) (a) – (f) Police Act.

<sup>99</sup> NSW Police Force, *Complaint Handling Guidelines*, 2008, p9.

Without some form of investigation, the local commander is unlikely to be able to provide a report to the Professional Standards Command with recommendations regarding the risk management strategies that should be considered. These include removing the officer's access to firearms or changing their duties.

A separate but related issue raised by a number of matters both during and since our audit, is that a practice has emerged of police failing to record the allegations contained in an ADVO initiated against a police officer on the complaint information system because of the 'civil' nature of the process. In our view, the alleged victim's statement supporting the application for the ADVO should be assessed as a written complaint – just as any other written allegation would be assessed and recorded. In the absence of any associated criminal allegations or other complaint issues, the investigation outcome for these types of ADVO matters should reflect whether the final ADVO was granted, including as 'sustained – final ADVO granted'.

We discuss in further detail issues relating to police officers as domestic violence offenders in chapter 5.

#### 4.9.2. Deaths and serious injuries

As noted previously, police conduct in connection with a death or serious injury may be the subject of a 'critical incident' investigation in accordance with the NSWPF *Guidelines for the Management and Investigation of Critical Incidents*. A 'critical incident' investigation will be notified to the Ombudsman if the investigation identifies alleged police conduct of a kind specified in the Class and Kind Agreement. Clause 10 of the Agreement operating at the time of the audit required police to notify the Ombudsman of any unreasonable conduct resulting in death, injury, significant financial loss, or involving the discharge of firearms.<sup>100</sup>

This means that this office should be notified by the NSWPF of any complaint about police conduct in connection with a death or injury that occurs in the context of domestic violence (for example, an allegation that police did not respond to a call for assistance from a victim shortly before a homicide occurred).

Our audit identified two complaints in connection with domestic violence homicides and one involving an attempted homicide. (A fourth complaint relating to a domestic homicide committed in late 2008 was not notified to us until 2009, and thus was not included in the audit.)

A requirement of the critical incident investigation guidelines includes timely notification of any matter that may constitute a Part 8A complaint under the Police Act to the relevant region commander, to facilitate appropriate notifications to relevant agencies such as this office.

While such matters are notified to our office, police may decline to investigate on the basis that an 'alternative and satisfactory means of redress' is available.

As with matters subject to ADVO proceedings, complaints arising from critical domestic violence incidents should not be declined. Instead, the critical investigation should run its course and – as with the ADVO process – be used to determine the outcomes of the complaint. The critical incident investigation findings should be referred to the relevant Complaint Management Team to consider the need for any management action in relation to individual officers or the command generally. This approach is consistent with the NSWPF's commitment to '*demonstrating its professionalism by investigating all such incidents in an effective, accountable and transparent manner*'.<sup>101</sup>

### 4.10. Complaints that should have been notified to the Ombudsman

The 98 complaints received by the NSWPF that were assessed as not needing to be notified to the Ombudsman, were examined to determine whether each complaint had been correctly classified, by reference to the requirements of the Class and Kind Agreement.<sup>102</sup>

The NSWPF performed well in this area, correctly classifying 91 (93%) of the 98 'non-notifiable complaints' we reviewed. This indicates that police generally understand and comply with the notification requirements.

Of the seven complaints that, in our view, should have been notified to us:

- Two complaints included allegations of criminal conduct, (requiring notification under clause 1 of the Agreement).
- Three included allegations raising integrity issues (clause 4).
- Two alleged conduct causing or contributing to a failed prosecution where the conduct was unreasonable or indicated serious incompetence (clause 5).

<sup>100</sup> A new Class and Kind Agreement adopted by the Ombudsman and the Commissioner of the Police Integrity Commission following consultations with the Commissioner of Police, became operational on 1 December 2010. The equivalent clause is now expressed as Clause 12.

<sup>101</sup> NSW Police Force, *Complaint Handling Guidelines*, 2008.

<sup>102</sup> Section 121 Agreement – Notifiable complaints, *Guidelines agreed between the Police Integrity Commission and the Ombudsman after consultation with the Commissioner of Police under the Police Act 1990*, 1 September 2008.

- One included an allegation of harassment, requiring notification under Clause 7, which refers to any 'harassment, victimisation or unlawful discrimination of a member of the public'.

Our reasons for disagreeing with the police assessment in relation to these seven matters are summarised below:

- The former de facto partner of the subject officer alleged that she had been assaulted by the subject officer (notifiable under Clause 1).
- The subject officer allegedly lied in a COPS event and lied about applying for an interim order. The alleged conduct indicates a lack of integrity (Clause 4).
- The estranged wife alleged the subject officer continually contacted her and requested that she falsify a document to financially benefit him. The NSWPF did not address these allegations when handling the complaint (Clause 4).
- The ex-wife of the subject officer alleged that he made intimidatory, threatening and/or harassing phone calls (Clause 1 and possibly Clause 7 – harassment of a member of the public).
- An officer failed to serve a brief of evidence as directed by a court, which resulted in the failure of a DV assault prosecution (Clause 5).
- The subject officers were alleged to have acted unreasonably by searching premises, arresting and charging the occupants, and collecting evidence while attending a DV incident. A police prosecutor withdrew the charges after expressing concerns about the lawfulness of the search and the arrests. Issues about the adequacy of the custody management records were also raised (Clause 5).
- The subject officers allegedly incorrectly recorded or falsified details in a COPS event to justify their failure to take appropriate action at a DV incident (Clause 4).

As any failure by police to notify this office of complaints can limit our capacity to oversight the police handling of important matters, we provided details of our review assessments to the NSWPF's Professional Standards Command, including the reasons why we believed these matters should have been classified as notifiable. Following a review by the relevant local commands, the NSWPF agreed that all seven matters were notifiable and amended its records to reflect this. The case studies below are examples of matters that should have been notified to us but were not, despite the seriousness of the alleged police conduct.

## Case study 18

Three police officers attended a domestic violence incident in a regional area following a 000 call in which the caller stated that an intoxicated person was 'going beserk' and was refusing to leave the residence. Two other officers, one of whom was a former Domestic Violence Liaison Officer (DVLO), attended as back-up. The former DVLO observed that there was damage to the victim's premises, the victim was in a distressed state and the offender appeared to have committed a number of offences. The former DVLO tried to advise the officer in charge at the scene on how to manage the incident, but this advice was rejected. Later one of the first-response officers completed a COPS event record, stating that the alleged offender had not damaged any property, the victim had no concerns for her own safety and that no further action was required. On reading this, the former DVLO complained to the current DVLO about the inaccuracies. The current DVLO spoke with the victim who reported that she had shown the damage caused by the offender to the officers who attended, that she was frightened of the alleged offender on the night of the incident, and that her fears persisted. The DVLO successfully applied for an ADVO on behalf of the victim and made a complaint alleging that the attending police had falsified COPS records. Senior police investigated but did not notify us, despite the fact that the alleged conduct indicated a lack of integrity – an issue notifiable under clause 4 of the Class and Kind Agreement.

## Case study 19

A NSWPF civilian employee complained to her supervisor, a sergeant, that her ex-partner – a serving police officer and DVLO – was continuing to contact her despite requests for him to stop. Two months later the woman complained again that her ex-partner was continuing to contact her by fax, text and email and via her silent telephone number. She also reported that he had repeatedly attempted to persuade her to prepare a letter for a Credit Union stating that she lived in the family home, even though she no longer lived there. The complaint was treated as a non-notifiable complaint. We were of the view that this complaint should have been notified to us pursuant to the Class and Kind Agreement because the complaint raised issues alleging harassment (clause 7) and conduct lacking integrity (clause 4).

### 4.10.1. Clarifying procedures for notifying complaints about the initiation of ADVO proceedings

For some time, there has been a lack of clarity about whether an ADVO taken out against a police officer, in the absence of any other criminal conduct, should be notified to this office.

The D&FV SOPS state in relation to the responsibilities of duty officers that:

*Initiation of proceedings for an AVO constitutes a complaint under the Police Act 1990 and the matter must be brought before the Local Area Command's Complaint Management Team for adjudication.<sup>103</sup>*

And the following applies in relation to the responsibilities of local area commanders:

*Bear in mind the duty of care when considering the return of NSW Police Force firearms to an officer who is the subject of an AVO or has been in the past ten years. Initiation of proceedings for an AVO constitutes a complaint under the Police Act.<sup>104</sup>*

While the D&FV SOPS clearly state that the initiation of ADVO proceedings constitutes a complaint, there is no information about whether or not such proceedings are notifiable to the Ombudsman.

The version of the Class and Kind Agreement current at the time of the audit did not specifically refer to ADVO proceedings. However, the type of conduct commonly alleged in an ADVO application includes assault, intimidation, stalking or harassment. These types of allegations were separately notifiable in accordance with clause 1 (criminal conduct), clause 3 (conduct, if substantiated, might warrant reviewable action), or clause 7 (harassment).

The NSWPF *Complaint Handling Guidelines* also provide no instruction or advice on the management of complaints arising from the initiation of ADVO proceedings.

Our audit identified 27 officers who were the subject of ADVO applications during the audit period. We are also aware through our ongoing oversight of police complaints that there is confusion as to whether, and at what point, these types of proceedings should be notified to our office.

Against this background, a revised Class and Kind Agreement was recently adopted by the Ombudsman and the Commissioner of the Police Integrity Commission following consultations with the Commissioner of Police. It became operational on 1 December 2010. The revised agreement has partly addressed this problem by providing greater clarification of the notification requirement. Clause 9 of the new agreement now includes the following conduct as notifiable:

*Apprehended violence including intimidation or stalking.*

However, there is still a need to provide greater guidance to field staff in the *Domestic and Family Violence Complaint Practice Note* and *Complaint Handling Guidelines* in dealing with complaints arising from the initiation of ADVO proceedings.

<sup>103</sup> NSWPF *Domestic and Family Violence Policy and Standard Operating Procedure*, November 2008, p112.

<sup>104</sup> Ibid.

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# Chapter 5. Risk management

In this chapter we discuss risk management issues associated with:

- conflicts of interest
- victim safety
- officers who are the subject of complaints about domestic violence issues, and officers who are accused of domestic violence offences.

## 5.1. Conflicts of interest

Our audit of domestic violence complaints included checking for any conflicts of interest affecting the management of these matters. Conflicts of interest involve conflicts between public duty and private interests that could influence the performance of the public duty. Private interests can be pecuniary (financial or other material benefit) and non-pecuniary (family or other close association). Having a conflict of interest is not of itself misconduct. What is important is that conflicts of interest are identified, declared and managed.

Our audit identified 11 complaints where conflict of interest issues appeared to arise. Significantly, we found that commanders usually did quite well in addressing these issues once they were identified, recognising the need to manage the conflict. Examples of good practice in identifying and managing potential conflicts of interest included:

- Considering moving the inquiry to another command because both the subject officer and his estranged wife, a civilian NSWPF employee, had previously both worked closely with all senior officers in the command.
- An investigator declaring a potential conflict of interest because he had previously been on friendly terms with the subject officer and alleged victim some years earlier, even though his contact with the couple since then had been limited.
- Having an investigator, who declared that his friendship with the officer under investigation could be perceived by others as a conflict of interest, report directly to and take instruction from senior officers in the command's complaints management team.
- Using pairs of officers to interview witnesses and provide updates to the commander as part of a strategy to assure all parties that the inquiry was impartial and was being closely monitored by the commander.
- Consulting an Aboriginal Legal Service about how police should investigate cross-allegations (an officer was accused of assaulting his step-son, the same officer alleged he was assaulted by the boy's father) – the legal service, which represented the boy, agreed that the same investigator should investigate both incidents.

When matters were not handled well, this appeared to be because police had either failed to recognise a conflict of interest at the outset or had failed to take appropriate action when concerns became apparent. The case below shows an initial failure to recognise a conflict of interest, followed by a failure to recognise and fix the conflict when it should have become apparent.

### Case study 20

A non-notifiable complaint about a delayed response to a domestic assault and alleged inappropriate comments to the victim, was delegated for inquiry to one of the officers who was the subject of the complaint, effectively requiring him to inquire into and review his own conduct and that of his junior colleague. This mistake was compounded by the apparent failure of his senior colleagues to recognise the conflict of interest when they ratified the officer's resolution report and his finding that no misconduct had occurred.

Our review of conflict of interest issues also highlighted the importance of accurate and contemporaneous record-keeping.

## Case study 21

A man had called police following an argument with his girlfriend about the custody of their son. The sergeant who attended allegedly said he was 'a very good friend' of the girlfriend's brother and, before investigating further, told the complainant: 'Wait there. I am going to call [the brother] and see what this is all about'. After checking on the son, the sergeant then persuaded the man to go home. The man later made a complaint, expressing concerns that the friendship with the girlfriend's family had led the sergeant to dismiss the man's concerns, fail to record details of police attending the home, and fail to report that the boy was at risk. While it appears that the sergeant did have a conflict of interest and perhaps should have referred the matter to another officer, a check of the relevant records confirmed that the matter had in fact been accurately recorded, a 'child at risk' notification submitted and victim follow-up conducted. The records showed that the sergeant had taken the man's concerns seriously and helped convince the father that appropriate steps had been taken steps to ensure his son's welfare.

In one case police had recognised the conflict of interest and acted appropriately, but had failed to make appropriate records.

## Case study 22

A Domestic Violence Liaison Officer recognised that her friendship with a victim might be perceived as a conflict of interest by the victim's partner, who was to be arrested for breaching an ADVO. She explained her concerns to a supervisor before becoming involved in the arrest. The supervisor assessed the matter and took appropriate action, but failed to make adequate records. This left the officer exposed to criticism when the victim's partner made a complaint, accusing the officer of bias for taking part in the arrest.

In this case, the investigation confirmed that both the officer and supervisor had acted appropriately. However, the need for a detailed investigation into this issue could have been avoided if the supervisor had recorded the officer's conflict of interest declaration and the outcome of their discussion.

In response to our draft report, the NSWPF advised us that it had already taken steps to clarify the need for conflicts of interests to be carefully considered and managed for all investigations – not just evidence based matters – as part of its current review of the *Complaint Handling Guidelines*.

## 5.2. Resolving immediate concerns

Often the issues raised in complaints will require action to be taken by police to resolve immediate concerns. Appropriate and timely intervention at the time a complaint is submitted may be crucial to protecting victims. For instance, the complaint may detail circumstances where police have failed to respond to a domestic violence incident in a timely and appropriate manner, and may alert the relevant LAC to the need to put strategies in place to deal with the situation.

Our assessment of complaints included looking at whether appropriate action was taken by police to resolve any immediate concerns raised by the complaints.

<b>Appropriate action taken?</b>	<b>Notifiable</b>	<b>Non-notifiable</b>	<b>Total</b>	<b>%</b>
<b>Yes</b>	75	59	141	66%
<b>Not applicable</b>	22	17	39	18%
<b>Unknown</b>	21	5	26	12%
<b>No</b>	7	9	9	4%
<b>Total</b>	<b>125</b>	<b>90</b>	<b>215</b>	<b>100%</b>



We found that, in the majority of cases, appropriate protective action was taken:

- In 66% of matters, immediate action was taken.
- In 4% of matters, there was no action taken.
- In 18% of matters, this was not applicable.
- In 12% of matters, it was unclear whether any immediate concerns had been resolved.

For those matters where immediate action was not taken, the action that should have been taken included:

- conducting victim follow-up following failed prosecutions (5)
- considering applying for an ADVO on behalf of the victim and/or their family (2)
- notifying Community Services about children at risk (2)
- notifying Community Services without delay about children at risk – notification was delayed by two months following receipt of the complaint (1).<sup>105</sup>

An example of a matter where we concluded that immediate action should have been taken is case study 10. In that case, a woman told a police officer that she was being stalked and harassed by a man with whom she had previously had a short relationship, and that she feared him and did not want any contact with him. She provided a statement and other evidence. Although the officer informed the man that an ADVO would be sought if he continued to harass the woman, the harassment continued. An ADVO was finally sought to protect the woman some five months after she had initially reported the man's behaviour to police. However, no charges were laid. An internal investigation initiated by a police supervisor found that there had been 'ample evidence' to support charges of stalking and intimidation.

### 5.3. Risks associated with officers the subject of complaints

The following sections examine information identified through the audit about the risks associated with officers who are the subject of complaints about domestic violence issues generally, including those alleged to have repeatedly mishandled domestic violence matters. We then consider some of the specific risks associated with officers who were accused of domestic violence offences themselves, together with issues relating to officers' access to firearms when a complaint is made or while an ADVO is in place.

#### 5.3.1. Interim actions taken to manage officers the subject of complaint

Until a final management action has been determined and implemented, the NSWPF *Complaint Handling Guidelines* advise triage officers, investigators and others responsible for managing the complaint to consider the need for interim risk management measures, in accordance with the *Interim Risk Management Guidelines for Police*, to deal with identified risks, including risks associated with subject officers.<sup>106</sup> Depending on the issue, interim risk management actions may include additional supervision, rostering an officer with more experienced staff, a change of duties, taking steps to rectify systemic or procedural practices, referring recommendations on organisational issues to responsible commands and suspension.

Our audit included checking what risk management strategies were put in place to manage subject officers. It was evident that some form of risk management strategies were implemented in 20% of complaints. Table 16 details the range of strategies actually noted on complaint records.

Risk strategy	No. of occasions implemented
Secure/restrict access to firearms	23
Risk assessment undertaken	6
Restriction/change in duties	6
Suspended with pay	5
Referral to support services	5
Coaching/mentoring/counselling	4

<sup>105</sup> The 'child at risk' notification obligation relates to the requirements in place at the time of the audit.

<sup>106</sup> NSW Police Force, *Complaint Handling Guidelines*, 2008, p34.



Table 16: Risk management strategies adopted	
Risk strategy	No. of occasions implemented
ADVOs initiated following complaint	4
Conduct or performance management plan	2
Supervision increased	1
Police Medical Officer/Psychiatric referral	1
Transfer	1
Protection measures for victim	1
Officers instructed to read D&FV SOPs and Victims Charter of Rights	1
Targeted drug test	1
Officer on extended sick leave – no action required	5

By far the most common risk management strategy implemented in response to officers who were accused of domestic violence offences was to restrict or remove their access to firearms. This is consistent with the guidance provided in the D&FV SOPs, which state that when officers are the subject of ADVOs, their commanders should generally restrict their access to firearms and place them on duties where access to weapons is not a requirement. However, as discussed later in this chapter, there is little consistency in the way these decisions are recorded, and the records about actions taken to seize or restrict access to firearms were not always clear.

The audit found that 27 officers were the subject of ADVOs. In most cases, the ADVO applications preceded the complaints – that is, the ADVO applications triggered the mandatory reports that led to the complaint investigations against the officers. However, on at least four occasions, the complaint inquiries came first and the ADVO applications were initiated in response to the risks described in the complaints. The use of ADVOs and criminal proceedings in relation to police officers is discussed further at section 5.3.3.

### 5.3.2. Risk identified through checks of officers' complaint histories

We highlighted earlier the importance of reviewing an officer's complaint history as part of assessing the type of investigative strategy that should be used to manage particular complaints. Reviewing an officer's complaint history is also critical to assessing ongoing risks.

We found that 17 officers were the subject of two or more domestic violence-related complaints during the audit period. As the following case studies show, routine customer service errors can put victims of domestic violence at risk of significant harm.

#### Case study 23

A probationary constable had two complaints sustained against him for failing to investigate domestic violence offences and failing to take action to protect a victim. In one of these matters, despite the officer being told that the person of interest (POI) had threatened to shoot the alleged victim, he failed to follow domestic violence policy and check police records to see whether the POI had access to a firearm.<sup>107</sup> Had he done so, he would have found that the POI did have a gun and should have taken steps to seize it. The officer also failed to apply for an ADVO on the victim's behalf. As a result of this and other complaint investigations, the officer's conduct was referred to the Probationary Constable Review Panel to assess his suitability to remain in the NSWPF.

<sup>107</sup> This matter was outlined in case study 3.

## Case study 24

A sergeant had complaints against her in connection with two unrelated domestic violence matters. In the first complaint, there were sustained findings against her for unlawful arrest, failing to create appropriate records, failing to supervise staff and bullying staff. In the second complaint, there were sustained findings for failing to serve a brief of evidence, resulting in a failed prosecution. Our audit found that insufficient consideration was given to the officer's complaints history in managing the second complaint.

It is now accepted practice that officers with complaint histories of significance should be supervised and managed carefully as their continued presence can pose risks to members of the public, their colleagues and themselves. In this regard, the NSWPF have advised us that risk assessments on '100% of police officers' are conducted each year by LACs consistent with corporate auditing and risk management requirements.<sup>108</sup> Earlier at section 4.8, we discussed the steps the NSWPF has taken to ensure that interim and ongoing risk management issues relating to officers the subject of complaints are addressed – including where a pattern of 'domestic violence' related complaints has been identified.

In response to our draft report, the NSWPF indicated that the mandatory complaint 'triage form' is currently being reviewed and will include a requirement that the complaints history of the subject officer be checked at the outset as well as at the end of an investigation. If appropriate, interim risk management action may be taken to avoid any potential adverse impact on the subject officer's work performance. In circumstances where an officer has a problematic complaints history, and a sustained finding is made as a result of a complaint investigation, then the matter will be referred to an internal review panel made up of senior police personnel for their consideration as to appropriate management action – which could include in very serious cases – dismissal of the subject officer.

### 5.3.3. Complaints about officers accused of domestic violence

The 289 complaints audited for this review included 61 (21%) that indicated the alleged domestic violence offender was a police officer. These matters related to the conduct of 50 officers, including two who were each the subject of three complaints during the review period, and seven who were the subject of two complaints. Many of these matters became 'complaints' as a result of mandatory requirements for officers to report misconduct and for the NSWPF to notify the Ombudsman of certain allegations of more serious ('notifiable') police misconduct.

Of the 50 officers identified in our complaint audit as alleged domestic violence offenders:

- Almost all (46 officers) were male.
- Most were aged between 30 and 34 years (16), 35-39 years (12), or 40-44 years (14).
- There were 29 senior constables, 13 constables, 4 sergeants, 3 probationary constables and 1 inspector.
- Just over half (27) were the subject of ADVO applications – although some of these applications were later withdrawn or not granted by the courts.

There were 24 charges against 13 officers for offences relating to alleged domestic violence.<sup>109</sup> The most common charges were for assault (10 charges), assault occasioning bodily harm (five), firearms offences (three) and breach ADVO (two).<sup>110</sup>

Of the 13 officers charged with one or more offences:

- Six were convicted – for assault occasioning bodily harm (two officers), grievous bodily harm, assault, breach ADVO and animal cruelty.
- Four pleaded guilty but had no conviction recorded under section 10A of the *Crimes (Sentencing Procedure) Act 1999* – for assault, intimidation and firearms offences.
- Three were found not guilty or the charge was withdrawn.

<sup>108</sup> Advice provided by Detective Superintendent Helen Begg, Commander Operational Programs, at our meeting with the NSWPF in February 2011.

<sup>109</sup> This does not include charges in 2008 for offences that occurred before the audit period or criminal charges that were unrelated to the domestic violence allegation.

<sup>110</sup> The firearms offences included: unauthorised possession, not keep firearm safe, fire in a manner likely to injure persons or property.

Ten charges were withdrawn prior to hearing or dismissed at court. These included an assault charge that was dismissed after the officer's wife declined to testify, and the withdrawal of a charge relating to the assault of a de facto partner's son after the boy retracted his statement. The following case illustrates the complexity associated with prosecuting some offences.

## Case study 25

Early in 2008 a woman complained to police that her flatmate, a serving police officer, had thrown her to the ground, then handcuffed and threatened her. Senior police attended the house and, after the complainant retracted her initial statement and refused to cooperate, made no adverse finding in relation to the alleged assault. However, the officer was formally warned in relation to the 'theft' of a NSWPF alcometer and a can of OC spray found at his home.

Police obtained an ADVO on behalf of the woman when she subsequently alleged that the officer had made further threats due to her initial complaint and had assaulted her on another occasion. A conviction of assault occasioning bodily harm against the officer was upheld on appeal in 2010.<sup>111</sup>

The same officer was also charged in 2008 for assaulting a 14-year-old boy, the son of his then intimate partner. The boy's mother submitted a statutory declaration signed by the boy retracting his allegations. The boy was subpoenaed to give evidence at court but the Director of Public Prosecutions withdrew the charge after he failed to appear.

After her relationship with the officer ended, the mother claimed that the officer had dictated the boy's retraction statement, getting her to write it and the boy to sign it. In return, the officer promised to help her defend a malicious damage charge. The boy then reasserted his original assault allegation. The NSWPF referred the matter back to the DPP for advice on charging the officer for perverting the course of justice and making a false statement. The officer was suspended pending the outcome of this matter.<sup>112</sup>

Although our audit did not systematically screen for information about mental health issues, we found that mental health concerns were mentioned in relation to at least eight of the 50 officers identified as alleged offenders. Of these eight officers, there was information on their complaint files indicating that:

- Two had been admitted to mental health facilities for treatment.
- One was assessed and treated at hospital following an incident involving alcohol and prescription drugs, then admitted to a private hospital for further treatment.
- Two said they had depression – one mentioned he was using medication to treat his condition and the other (a probationary constable) reported that he was suffering depression from work-related stress.
- One was suffering anxiety attributed to incidents at work.
- One threatened to harm himself.
- One was on long-term sick leave and reported to have post traumatic stress disorder as a result of his involvement in a critical incident.

A number of the mental health issues experienced by officers were directly attributed to incidents at work or work-related stress. Yet in two cases the investigators noted that the mental health issues appeared to be unrelated to the officers' work: one involving an officer admitted to a mental health facility, whose mental health problem was attributed to a pre-existing condition; and the other involving an officer referred to the Employee Assistance Program after a threat of self-harm that was said to be unrelated to his work. Of the remaining cases, it was not clear whether or not the officer's work might have been a contributing factor.

In auditing these files, we also found that post traumatic stress disorder (PTSD) was noted as an issue in relation to at least five officers, often as an explanation for their behaviour or as a factor to consider in managing the officer. In two cases, the PTSD diagnosis appeared to be supported by medical assessments – one involving an officer whose PTSD was taken into account by the magistrate when sentencing, and one involving an officer who suffered symptoms of PTSD after a work-related incident. However, in other cases it was not clear from the available documents whether the investigator had relied on medical evidence or if the condition was work-related.

111 Original conviction was 2009. Officer appealed and the conviction was upheld in 2010.

112 Advice provided as at 14 July 2010 indicated that the DPP was yet to complete its review.

## Case study 26

A police officer told a colleague that her husband, also a serving officer, had assaulted her on a number of occasions and grabbed her around the throat. Police sought and were granted an ADVO on her behalf, without any admissions from the husband. After the victim declined to make a statement, the NSWPF determined there was insufficient evidence to support criminal charges but sought and obtained a 12 month ADVO.

The related complaint inquiry concluded that, on the balance of probabilities, serious assaults had occurred and that management action was needed to address the officer's behaviour. The inquiry also learned that, some time before the domestic assaults, the officer had been involved in a critical incident and was said to be suffering PTSD, depression and anxiety as a result. It was only after the domestic violence complaint that these pre-existing conditions came to light and the officer began to seek treatment.

The NSWPF served a Region Commander's Warning Notice on the officer and, following concerns raised by us, agreed that the officer's return-to-work plan should seek to manage issues relating to his PTSD. We also asked the NSWPF to plan for any welfare or other issues likely to arise during the officer's transition back to work.

Although our audit did not specifically screen for issues relating to officers' use of alcohol, a check of complaint documents found that alcohol was mentioned as a factor in relation to at least eight officers who were alleged to be domestic violence offenders. Alcohol was generally noted in the description of the incident, related police records, the victim's statement or other complaint documents.

As noted earlier in section 5.3.1, there is often a need for interim measures to address risks identified through complaint inquiries. This includes risks arising from evidence of previous violence, mental health or substance abuse problems, and other such issues.

The following complaint involved a risk assessment of an officer who was accused of assaulting his girlfriend, and led to the NSWPF implementing a number of measures to address the risks.

## Case study 27

An officer was subject to an interim ADVO and charged with assault after his girlfriend alleged that he had shoved her backwards onto a bed, straddled her to pin her down, grabbed her throat and poured a bottle of water over her face, telling her to 'toughen up' and mocking her when she began to sob. We asked the CMT to review the officer's complaint history as part of its assessment. This showed previous complaints of excessive force and violence, including alleged assaults of a previous girlfriend. There was also information from one source that the officer exhibited symptoms consistent with the side effects of steroid use. The interim risk management strategies put in place included removing the officer's access to firearms, conducting a targeted drug test for steroid use, restricting his duties, and checking the records that he accessed on COPS. He pleaded guilty to the assault charge and later resigned from the NSWPF.

### 5.3.4. Victims identified through the audit

The audit also provided some insights into who was affected by the conduct of officers who were alleged to have engaged in domestic violence.

#### 5.3.4.1. Victims of officers accused of domestic violence

In relation to the 50 officers alleged to have committed domestic violence, we found that the primary victim was usually the officer's previous intimate partner (27 complaints) or current intimate partner (17 complaints). In three cases the victim was a child. There were also flatmates and extended family mentioned as primary victims. In some cases additional victims were also identified, such as the victim's mother, sister or child.

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#### 5.3.4.2. Victims of domestic violence who were police officers

The 289 complaints audited for this review included 12 matters where the alleged victims were police officers. Of the 12 officers identified in our complaint audit as victims:

- Most (nine) were female.
- The officers were aged between 20 and 30 years (three), 30-34 years (two), 35-39 years (three), or 40-44 years (four).
- There were seven senior constables, two constables, two sergeants, and one probationary constable.

In most (eight) cases the alleged perpetrator was also a police officer.

Issues relating to police officers as domestic violence victims will generally only be dealt with as a complaint if the alleged offender is a serving police officer and thus there is a mandatory requirement to treat the matter as a complaint, the victim complains about the conduct of police in handling the domestic violence matter, or the victim has also been accused of misconduct. Of the 12 complaints where police officers were identified as victims:

- eight complaints arose from the mandatory reporting of domestic violence offences allegedly committed by their police officer partners
- three related to police officer victims who complained about alleged police inaction or failure to investigate offences committed by a civilian perpetrator, and
- one arose from an investigation into an alleged 'pervert the course of justice' by an officer who was a victim of domestic violence.

It is very likely that there were a number of other instances during the audit period where police officers reported having been victims of domestic violence incidents, including complaints where the alleged perpetrator was not a police officer.

There were also three other matters where the victim was initially accused of being the offender. It was only after the circumstances were investigated that the officer was recognised as being a person in need of protection on the related ADVO application (see the discussion at section 3.4.8 of issues surrounding the identification of the 'primary aggressor' in domestic violence incidents).

#### 5.3.4.3. Children affected by incidents involving officers

Many of the incidents involving officers as alleged offenders also involved children. While only some children were victims, the presence of children at domestic violence incidents presents particular risks that must be considered and addressed.

We identified 50 complaints where the officer's alleged domestic violence affected dependent children. Some children were assaulted or threatened directly. Others were mentioned as witnesses to the conflict or as persons in need of protection.

During the audit period, NSWPF policy required police to make risk of harm reports to Community Services for any child present at a domestic violence incident. Reforms since then require police to use their professional judgment and the Mandatory Reporter Guide to determine whether a child is at 'risk of significant harm' and should be reported directly to Community Services, or whether the risk should instead be referred to the police Child Wellbeing Unit to assess what action might be needed.

## Case study 28

In one case, an application for an ADVO intended to protect an officer's estranged wife and 14-month-old daughter was withdrawn after the wife gave evidence that she no longer feared for her safety. She told the court that she would accept undertakings made by the officer to refrain from a range of specified conduct. The undertakings, which were proposed as an alternative to the ADVO and have no legislative basis, were intended to protect the mother and daughter from further violence, threats and intimidation for a period of two years. When asked, the officer's commander told the magistrate that he believed the officer's undertakings would be sufficient to protect the daughter.

Counsel for the NSWPF reported concerns voiced by the magistrate when dismissing the ADVO application. The magistrate observed that the application indicated a clear pattern of domestic violence over an extended period, the wife had tolerated the violence, and concerns persisted about the need to protect the child. The magistrate was also critical of NSWPF for accepting the officer's undertakings. In light of the magistrate's concerns for the child, it is not clear why the ADVO application was dismissed. Under changes to the Crimes (Domestic and Personal Violence) Act that commenced a few months earlier, section 16 gives magistrates a discretion to make an ADVO to protect a child in circumstances such as these. One possibility may be that the commander's support for the officer's undertakings was interpreted as the NSWPF tacitly withdrawing the application.

In reporting the magistrate's comments to the NSWPF, counsel said: *'It may be worth considering in future AVO applications against police officers, where a child is named as a PINOP [person in need of protection], whether the AVO should be pressed regardless of the primary PINOP's position, especially where the child, by reason of the extent of their minority, are unable to express fear or otherwise of the defendant.'*

Although complaints alleging domestic violence by an officer usually concern off-duty conduct, the issues raised may also be relevant to the officer's suitability to work in child-related employment, as the complaint described in case study 14 showed. That matter related to an officer who was investigated for domestic violence offences. As part of the investigation, the officer's children were interviewed. One child claimed to have seen the officer kicking a step-child. The mothers of both children declined to participate further in the investigation. No charges were laid and the related complaint inquiry was inconclusive on this issue. However, the NSWPF eventually accepted our advice that the matter was a 'relevant employment proceeding' under the *Commission for Children and Young People Act 1998* and that the complaint alleged 'reportable conduct'. The NSWPF reported the incident to the Commission for Children and Young People to determine its relevance to any future 'working with children check' in relation to the officer concerned.

### 5.3.5. Outcomes of complaint inquiries into officers accused of domestic violence

In addition to any ADVO or criminal proceedings, the NSWPF must determine what, if any, departmental or management action should be taken in relation to officers accused of domestic violence offences. The NSWPF's complaint inquiry processes are intended to clarify information about the officer's conduct, including evidence sourced from any related court proceedings and any further departmental inquiries under Part 8A of the Police Act. The outcomes of these complaint inquiries can provide a basis for taking management action. (As noted earlier in section 5.3.1, complaint procedures also require the NSWPF to consider the need for any interim action such as whether firearms should be removed or whether the officer be placed on restricted duties.)

Our review found that the NSWPF made adverse findings against 13 of the 27 officers who were the subject of ADVO applications.

There were also 13 officers charged with criminal offences. Of these, 11 had adverse findings recorded on their complaint record in relation to the incidents that led them to being charged. This included four of the five officers who were convicted (one officer resigned before a departmental finding could be made) and all of the four officers who pleaded guilty but had no conviction recorded. Of the three officers who were charged but not convicted, two had adverse findings against them as a result of the complaint inquiry and one had no adverse finding after the departmental investigation concluded that there was no evidence to support the assault allegation.

Whereas criminal investigations focus on determining whether there is sufficient evidence to bring a matter before court, the subsequent complaint assessment and inquiry is intended to guide decisions regarding the officer's suitability to remain in the NSWPF and what management action might be needed. In many cases, the evidence gathered through the criminal investigation and prosecution informs the departmental inquiry and can be a key factor in determining any subsequent management action taken, as the following case shows.



## Case study 29

In early 2008 a woman alleged that her estranged husband, a serving police officer, had assaulted her. Police investigated, and the criminal and departmental inquiries were closed with no adverse findings.

Later that year the woman complained that the officer had assaulted her on another occasion and sent threatening text messages. Police applied for an interim ADVO for the woman's protection and charged the officer with assault. They also restricted his duties pending the outcome of the assault prosecution, secured his firearms and implemented our suggestion that the officer be the subject of a risk assessment in light of these and other allegations against him.

The officer pleaded guilty to the assault charge. The magistrate found that the officer's conduct was reckless, but not intentional, and determined that no conviction be recorded. The NSWPF concluded that the officer's admission of misconduct was serious, but not serious enough to warrant his dismissal. He was issued with a Commissioner's Warning Notice for this and other matters.

The primary purpose of a warning notice and related management action in circumstances such as this is to put the officer on notice about the unacceptable nature of his or her conduct. At the same time, the warning and the management action should also provide a sound basis for the officer's dismissal in the case of any future misconduct or persistent poor performance.

Four of the 50 officers identified in our audit as alleged domestic violence offenders in 2008 had previously also been the subject of complaints criticising their handling of domestic violence matters as officers. Complaints against two of these officers were sustained. The inquiry into a third was discontinued after the officer involved was referred for Commissioner's Confidence dismissal proceedings for other matters. In relation to the allegations that these officers were themselves domestic violence offenders, none of the four were charged. However, one had an adverse finding recorded against him, and another was discharged as medically unfit before the complaint inquiry could be finalised.

For most of the 50 officers identified as alleged offenders, there was nothing in their complaint records to indicate a prior history of personal violence before the allegations in 2008. However, in reviewing the 2008 inquiries, we found that 39 (78%) reportedly had a prior history of verbal or physical abuse of the same or another victim. This information was usually disclosed in victim statements or other information gathered as part of the inquiry.

### 5.3.6. Records relating to the seizure of officers' firearms

When investigating domestic violence incidents, police have a legislative responsibility to inquire about the alleged perpetrator's access to firearms and to search for, seize and detain any firearms in the household. In cases involving police officers being investigated for alleged domestic violence offences or the subject of ADVO applications, the D&FV SOPs set out clear instructions regarding the initial seizure of any personal firearms and restriction of access to service firearms. When a private ADVO is granted against a police officer, the officer must attend a police station to surrender any firearms they possess.

In order to check compliance with the above requirements, our audit relied on investigators or commanders having made a written record of action taken. Usually there were records to indicate that appropriate action had been taken to restrict officers' access to personal and service firearms. However, in relation to some officers the subject of ADVO applications, we could find no record. Sometimes restrictions were imposed, but these were not apparent until we questioned police about what action had been taken.

## Case study 30

An officer was the subject of an ADVO application. He had previously been the subject of two other applications involving different persons in need of protection. A month after the 2008 application was lodged, the officer entered into an interim conduct management plan with the NSWPF that allowed him limited access to his service firearm while on duty. We were satisfied with the police investigation, but queried what action had been taken to remove his firearm when the ADVO application was first lodged and what factors informed the decision to then allow restricted access a month later. We also noted that his records showed 'officer subject of ADVO' but the investigation status for this issue was 'declined' and no finding recorded. As a court had granted the ADVO, we asked the NSWPF to review its finding.

The NSWPF said the officer had unrestricted access to his firearm in the month leading up to the interim conduct management plan as the matter was 'under consideration'. The risk factors then considered in imposing some restrictions included the officer's history of ADVOs and the location of the person in need of protection. The NSWPF retained its record showing it had 'declined' this issue, but added 'court hearing' as the outcome.

Another concern was the lack of detail provided in relation to recorded action about access to firearms. The use of terms such as 'double padlocked' and 'firearm restricted' without further explanation made it difficult for us to determine the exact nature of the restrictions imposed.

There were also inconsistencies relating to where key information was recorded. Usually restrictions were mentioned in situation reports, emails, CMT assessment/minute forms or in response to Ombudsman requests. In one case the form giving 'authority to institute proceedings' against an officer noted other restrictions and actions taken, but left unanswered a mandatory question about 'prohibition from carrying appointments'. However, a complaint assessment form later noted that the officer's service firearm had in fact been secured and his access to any personal firearms had been checked. It is critically important that clear, accurate information is available about decisions made to secure or restrict an officer's access to firearms.

In one case we reviewed, the records documented that the officer involved should retain access to his service firearm. However, the risk assessment used to inform this decision appeared to be based on incomplete information about the strength of the allegations against him.

## Case study 31

The alleged perpetrator and victim were both police officers. An ADVO was issued to protect the victim, who was said to be an alcoholic with post traumatic stress disorder and unlikely to return to work. Despite the vulnerability of the victim and the apparent volatility of their relationship, the records indicated that following a risk assessment the alleged offender was allowed to retain access to his firearm. In assessing the risk, it seems his commander was unaware that he was being criminally investigated. After the situation was eventually clarified, access to the firearm was removed. The investigation concluded with the alleged perpetrator being criminally charged in relation to a number of assaults and breaching an ADVO.

Once an officer's firearms have been seized, the D&FV SOPs require the local area commander to determine:

*... under what circumstance, if any, the officer will access it and the nature of duties to be performed. Until such direction is forthcoming, place the officer on duties that do not need appointments to be worn.*

*If an order has been applied for with regard to the person of interest, keep the NSW Police Force firearm until the AVO is granted, dismissed or expires.*

The D&FV SOPs also require commanders to consider their 'duty of care' before returning an officer's service firearm.

We identified that while decisions about access to firearms were sometimes recorded on interim conduct management plans which formed part of the complaint documentation (see case study 30), the nature of the risk assessment informing these decisions was not always apparent. In one case it appeared that a firearm may have been returned after a telephone interim order (TIO) application was refused, but while an ADVO application was still to be heard at court. While commanders appear to have the discretion to make these kinds of decisions and are well-placed to assess the risks, it would be preferable for the decision to be clearly documented and the reasons to be noted.

The D&FV SOPS also advise investigators that 'where the person in need of protection is also a police officer you will take their firearm and secure it pending a determination from the Commander regarding safety issues of all persons involved'.<sup>113</sup> While some files we reviewed noted that this had occurred, not all files involving police officers who were in need of protection included records relating to this issue.

Currently, the NSWPF's *Complaint Handling Guidelines* provide no specific advice on how officers who are the subject of ADVOs should be managed, the factors to consider in identifying and addressing various risks, or where and how such decisions should be recorded. This is a critical area that should be reflected in the guidance provided to those responsible for managing these complaints.

### 5.3.7. Access to firearms while an ADVO is still in force

One issue we considered in our audit was the discretion the NSWPF has to manage access to officers' service firearms when they are named as the defendant in an ADVO. During the audit period, we received a complaint concerning a decision by the NSWPF to allow an officer access to his service firearm while being subject to an ADVO with a condition stipulating that he must 'surrender all firearms and related licences to police'.

#### Case study 32

An officer was charged with intimidation in late 2008 after threatening his estranged partner in the presence of their young son. The court imposed an ADVO for two years to protect the woman, her son and her current partner. The officer consented to the ADVO. The NSWPF suspended the officer pending the outcome of the intimidation charge, restricted his access to his service firearm and transferred him to another location.

The officer pleaded guilty to the intimidation charge and the court determined that no conviction should be recorded. The officer returned to work performing restricted duties that did not require access to his firearm. Almost a year later, after conducting a risk assessment and receiving medical and legal advice, the NSWPF returned the officer to operational duties involving supervised access to his service firearm while on-duty. The NSWPF advised the officer's ex-partner of the decision to return the officer to operational duties, noting that he would have supervised access to his service firearm.

The ex-partner's advocate complained to us that the NSWPF decision appeared to be contrary to the ADVO condition requiring the officer to 'surrender all firearms and related licences to police'. The advocate requested that the NSWPF put the matter before a court on the basis that the decision to permit the officer to have access to his service firearm amounted to a change in circumstances. The advocate suggested that it was appropriate for a court to resolve any ambiguity in the interests of protecting the persons previously identified by the court as being in need of protection.

The NSWPF stated that it was reasonable to permit the officer to have access to his service firearm while conducting supervised duties. It also argued that police officers do not require a licence to possess and use their service firearm, as the licensing regime established by the *Firearms Act 1996* exempts police officers who are 'acting in the course of their duties'. That is, a firearms licence is not required for officers to possess and use their service firearms while on-duty. The NSWPF hold the view that, therefore, an ADVO condition requiring the 'surrender of all firearms and related licences to police' only relates to firearms for which there are 'related' licences, not service firearms.

In reviewing this case, we determined that the decision to permit the officer to have supervised access to his service firearm was justifiable. However, the issue we are currently exploring with the NSWPF relates to the validity of the advocate's assertion that the court should be allowed to reconsider the protection needs of a victim, in circumstances where the NSWPF decides to return an officer's service weapon while an ADVO condition restricting access to firearms and related licenses is still current.

The NSWPF has accepted our advice that there is a need for greater clarity about this issue, and has agreed to ensure that the *Domestic and Family Violence Complaint Practice Note* outlines the various factors that should be considered when police officers are the subject of allegations of domestic violence. In addition, the NSWPF will request that the Crown Solicitor's Office (which represents police officer defendants in ADVO proceedings) consider providing the following advice to magistrates adjudicating ADVO proceedings involving police officers:

- the defendant is a serving NSW police officer
- the Firearms Act does not apply to the availability and use of firearms issued to serving NSW police officers
- the requirement of NSW police officers to carry their service firearm while on-duty

<sup>113</sup> NSWPF *Domestic and Family Violence Policy and Standard Operating Procedure*, November 2008, p112.

- 
- the employment ramifications of restricting the availability of service firearms of NSW police officers, and
  - the current processes in place to manage police officers subject to ADVOs in the workplace.

These steps should go some way towards preventing the repetition of some of the issues raised in case study 32 by ensuring that magistrates are aware of all relevant considerations when determining whether to prohibit or restrict a police officer defendant's access to any or all firearms as a condition of an ADVO.

### **5.3.8. Other risks relating to officers' access to firearms**

#### **5.3.8.1. Presence of police issue firearm at home as an alleged threat**

Although officers must usually store their service firearms at a police station, exceptions can be made if officers have permission and have approved safes for securing their arms and appointments. In one case (see case study 28) a police officer admitted to taking his service firearm home a number of times without permission and storing it in a basket of towels and nappies in the corner of the lounge room. The officer claimed that, after a discussion with his wife, they chose the basket as a hiding place because a thief would be less likely to look there. His wife alleged that he hid the weapon without consulting her and – in the context of alleged ongoing domestic violence in the house – had deliberately made her aware of the gun's location as a way to intimidate her. The matter was investigated and the NSWPF recommended that a finding of 'sustained' was appropriate in relation to the allegation that the officer had inadequately secured his firearm. The officer was referred to the Commissioner's Advisory Panel to be considered for removal under section 181D of the Police Act. The officer was not removed but the Internal Review Panel imposed reviewable actions, including reducing the officer's rank for six months.

#### **5.3.8.2. Access to firearms through secondary employment**

The officer who admitted to taking his police gun home without permission was also one of two officers the subject of domestic violence allegations who were identified as having access to firearms through their secondary employment. In both cases, the police officers were members of the Army Reserve and this issue was identified by senior officers from the outset. The NSWPF contacted the Army Reserve to alert them to the need to consider whether the officers' access to their Army firearms should be restricted. In both cases the senior officers demonstrated good practice by checking NSWPF records for information about secondary employment as part of the risk assessment and took practical steps to mitigate the risks identified.

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## Chapter 6. Complaint management

In this chapter we discuss the 215 domestic violence complaints that were referred for resolution or evidence-based investigation, including issues associated with:

- strategies to resolve complaints
- addressing victims' concerns
- management action in response to police misconduct
- the information provided to complainants and subject officers
- complainant and subject officer satisfaction, and
- the time taken to resolve complaints.

### 6.1. Strategies to resolve complaints

At triage complaints are assessed by police as suitable for decline, resolution or evidence-based investigation. Resolutions focus on gathering material to quickly establish what occurred and to swiftly and effectively remedy the problems raised in the complaint. Complaints referred for formal evidence-based investigations are generally those involving more serious allegations, or where commanders are expected to use their discretion to require an evidence-based approach to carefully document and test the evidence, particularly if there is any likelihood that the evidence might later be considered in formal proceedings.

#### 6.1.1. Resolutions

Resolution matters generally relate to less serious allegations that require some action to clarify the issues and establish the facts, but do not warrant the formality, complexity or authoritative decision-making associated with evidence-based investigations.<sup>114</sup> Since the introduction of the streamlining reforms noted earlier in this report, resolutions are managed by a 'resolution manager' whose role includes:

- managing the resolution in a manner that allows swift, fair, impartial, equitable and discrete resolution of complaints
- establishing the facts about the complaint and recommending any management action, and
- achieving, as far as possible, complainant satisfaction and subject officer satisfaction in respect to handling the complaint.<sup>115</sup>

There were 115 domestic violence complaints referred for resolution during the audit period. Of these, 28 were notifiable.

If a resolution manager is reasonably satisfied that conduct requiring a management response has occurred, the outcome for that issue is recorded as 'sustained'. Of the 115 domestic violence complaints referred for resolution, 41 (36%) complaints included sustained issues. The most common sustained issues related to failure to investigate and customer service, such as poor victim follow-up. These two issues accounted for more than half of all sustained issues.

Even if no management action is required, there may still be a need to try to resolve the issues of complaint. Half of such cases were resolved directly with the complainant. The most common strategy for resolving these matters was to provide an explanation or advice to the complainant, particularly in response to issues of poor customer service or failure to investigate. This accounted for two-thirds of all issues resolved informally.

Although our review found that complaints about the policing of domestic violence were generally managed well during the period covered by the audit, there were still some domestic violence complaints referred for resolution which raised serious issues that, in our view, should have been documented and assessed through an evidence-based approach.

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<sup>114</sup> NSW Police Force, *Complaint Handling Guidelines*, 2008, p16.

<sup>115</sup> NSW Police Force, *Complaint Handling Guidelines*, 2008, p15.

## Case study 33

A man allegedly tried to kill his ex-partner, a female senior constable, by strangling her with a leather belt at her home. When she escaped, he used the belt to attempt to hang himself. She cut him down, then hid from him. The man fled, disappearing for a few days but continuing to call and send text messages, apologising and threatening suicide. He later attended hospital for psychiatric treatment. The man had previously been convicted of assaulting the victim and had a history of mental health problems.

Because of the seriousness of the incident, the victim was advised by senior police colleagues to avoid her home while the man was still at large. She also did not want to disturb the crime scene. Three days after the attack she made a formal statement. The officer in charge of the investigation inspected the crime scene but had no exhibit bags, requiring the victim to provide a bag for the belt. He failed to check for fingerprint evidence, took no photographs of the victim's injuries or the crime scene, and did not check her mobile phone for evidence. He had no further contact with the victim.

When the man was released from hospital he was charged with assault and granted bail. The decision not to prefer a more serious charge was apparently based on the delay in the victim reporting the incident, a lack of medical and corroborating evidence, and the victim's apparent concern for the man's welfare. The officer who charged the man asked civilian staff at the victim's station to pass on a message that he had 'charged [her] ex-partner'. Until then, only her commander and the duty officers at her station knew of her personal situation.

When she contacted the investigators to express concern about the failure to take photos and collect other evidence, she was assured that police were confident the man would plead guilty. She was also allegedly asked if she had 'learnt [her] lesson yet?'

Two months later, the victim complained about adequacy of the criminal investigation, the adequacy of the charge and the decision to release the man on bail despite his history of violence against her. An immediate review by a senior detective found sufficient evidence to charge the man with further offences, including attempt to strangle/suffocate with intent to murder, use offensive weapon with intent to commit indictable offence, and two further assault charges. The man was refused bail.

Using 'outcome focused' inquiries in relation to the victim's complaint, a complaint resolution manager found that the officer in charge of the original investigation conducted an adequate, though incomplete, criminal investigation and failed to provide the victim with adequate support.

On reviewing the police handling of the complaint, our case officer questioned the 'adequate investigation' finding given the outcome of the detective's review following the victim's complaint. In our view, the officer in charge and the LAC's Investigation Manager failed to identify the seriousness of the alleged violence perpetrated against the victim and did not adequately assess the risk that her ex-partner posed during the period he remained on bail. We also expressed concern that the complaint was handled as a locally managed issue as, in our view, the nature of the allegation and the potential risk to the victim and the NSWPF warranted evidence-based inquiries.

The LAC advised us that it had organised domestic violence education and training for all officers, and the officer in charge of the original investigation had been counselled.

The commander conceded that the *'matter was obviously not managed to the appropriate standards'* but was satisfied that the action taken would prevent the problem from recurring. However, the informal nature of the complaint inquiry made it difficult to assess the adequacy of the NSWPF management actions in relation to each of the officers involved. This should have been recognised at the triage stage or, at the latest, early in the resolution process.

### 6.1.2. Evidence-based investigations

Evidence-based investigations should be used when there is a need to gather and document information about issues that, if sustained, could provide grounds for taking reviewable action or might be used in formal proceedings. The kinds of documentation associated with this more formal approach include witness statements, records of interview and directive memoranda.



Since the streamlining reforms, evidence-based complaint investigations are the responsibility of the Complaint Management Teams (CMTs). As noted earlier, CMTs consist of a local area commander, the crime manager or equivalent, the professional standards duty officer (PSDO) or equivalent and the executive officer, and may be assisted by others as required. Previously, CMTs had responsibility for assessing and directly managing a much wider range of matters, not just evidence-based complaint inquiries.

Of the 100 domestic violence complaints identified as having been referred for an evidence-based investigation during the audit period, we found that:

- 99 were notifiable.
- 54 included an issue that led to a 'sustained' finding against the subject officer or officers. The most common issues sustained related to alleged assaults, breaches of conduct and ethics and inadequate or failed investigations.
- 99 were correctly referred for evidence-based investigation at the outset.

Most complaints in this group were, by definition, assessed as more serious matters and referred for an evidence-based investigation. However, one matter was initially assessed as suitable for resolution. Police changed to an evidenced-based inquiry following concerns raised by our case officer. The investigation led to findings and action against the officer.

### Case study 34

A Leading Senior Constable's estranged wife told police that the officer was harassing, stalking and threatening her and her current boyfriend, and that she was in fear. The NSWPF began to investigate and applied for an ADVO on the woman's behalf. However, after the victim withdrew the ADVO application at court, the NSWPF determined that the stalking allegation was 'not sustained' and that the matter should be handled informally. Our case officer disagreed, arguing that although the ADVO application had been withdrawn, the original stalking and intimidation allegations had not been retracted and further evidence-based inquiries were needed to determine their veracity.

The NSWPF agreed to formally require the officer to respond to the allegations and provide his version of events. Police also agreed to assess the risks associated with the officer's highway patrol duties and his threats to the current boyfriend, a truck driver. The further evidence-based inquiries led to 'sustained' findings against the officer for unprofessional conduct and the removal of his Leading Senior Constable designation.<sup>116</sup>

#### 6.1.3. Deficiencies identified in evidence-based investigations

We were satisfied with the police investigation of 95 of the 100 domestic violence matters ultimately referred for evidence-based investigation. This included 12 matters that we initially questioned, but were then satisfied with after considering further information provided by police.

We were not satisfied with the investigation of five complaints. Our concerns related to questions about the findings made (three cases), the failure to consider relevant legislation or procedures (2), the need to ensure victim safety (2), referring the victim to support services, and the adequacy of management action taken.<sup>117</sup>

The steps we proposed to remedy such deficiencies included asking the NSWPF to review the handling of the matter, reconsider the findings and management action, raise the issue with the Corporate Spokesperson for Domestic Violence, raise our concerns with the subject officer and review the subject officer's management plan.

The following case study highlights an example of investigative deficiencies, and the actions proposed to remedy those deficiencies.

<sup>116</sup> The Leading Senior Constable designation provides a way for the NSWPF to recognise and reward high performing Senior Constables. The designation should usually be subject to annual performance reviews. Removing the designation is not considered to be a reviewable action.

<sup>117</sup> Some matters had more than one deficiency noted.

## Case study 35

A woman complained to police that a constable had not taken any action for seven months after she reported that she had been threatened, seriously assaulted, detained against her will and robbed by her ex-boyfriend. The NSWPF investigated the woman's complaint and found 'sustained' allegations relating to 'inadequate investigation' and 'failure to create and maintain records'.

Given the seriousness of the constable's alleged inaction, potentially compromising the criminal investigation and leaving the man at liberty while he allegedly committed similar offences in another state, we argued that NSWPF should consider a more serious 'neglect of duty' finding. The constable was also the subject of other unresolved complaints.

The NSWPF agreed that, if the constable ever resumed active duty, all matters would be reviewed and it would consider taking action to remove her from the NSWPF. The officer was subsequently discharged after being medically assessed as unfit for duty.

## 6.2. Action taken to address victims' complaint issues

Investigators and resolution managers are encouraged to consider and, where appropriate, take steps to address complainants' or victims' complaint issues.<sup>118</sup>

Of the 100 complaints referred for evidence-based inquiries, the NSWPF took action in response to victims' needs in 57 complaints. The most common measures were to apply for ADVOs, charge offenders, explain the actions of police, explain the relevant laws, policies or procedures, and to conduct further investigations.

Of the 115 complaints referred for resolution, we found that the NSWPF took action to deal with the victim's issues in 45. The most common action taken was to explain the relevant policy, procedure or law to the victim, apply for an ADVO on the victim's behalf, investigate further, or explain the actions of the officers involved. In most cases (35), we were satisfied with the action taken.

No action was taken in relation to 43 of the 100 evidence-based complaints and 70 of the 115 resolution matters. In many cases this was because no action was needed. Yet in at least some cases, the investigator or resolution manager voiced serious concerns that action was needed, but it was not apparent from the information provided that appropriate action had been taken. Examples of investigators or resolution managers expressing concerns included the following:

- 'I would submit that the evidence clearly [indicates] several incidents of 'stalking'... It is my opinion that at the time there did exist ample evidence to support the charges of stalking and intimidation.' There was no indication of any further investigation or charges laid.
- 'The constable's handling of the matter could have led in the worst-case scenario to a catastrophic outcome and potentially someone losing their life.' We could find no follow-up action recorded on the complaints information system or COPS.

Given the strength of the concerns expressed in these instances, it seems highly likely that some follow-up action occurred. However, the nature and extent of any victim follow-up was not apparent from the information on the complaints records.

## 6.3. Management action to address police misconduct

Section 173 of the Police Act provides the NSWPF with two broad options when implementing management action in response to misconduct or unsatisfactory performance on the part of a police officer:

- **'Reviewable' actions** – defined in section 173(2) as including a reduction in the officer's rank or grade, a reduction in seniority, a deferral of the officer's salary increment, or 'any other action (other than dismissal or the imposition of a fine) that the Commissioner considers appropriate'.
- **'Non-reviewable' actions** – listed in Schedule 1 of the Act as coaching, mentoring, training and development, increased professional, administrative or educational supervision, counselling, reprimand, warning, retraining, personal development, performance enhancement agreements, non-disciplinary transfer, change of shift (but only if the change results in no financial loss and is imposed for a limited period and is subject to review), restricted duties, recording of adverse findings.

<sup>118</sup> NSW Police Force, *Complaint Handling Guidelines*, 2008, p17.

As noted throughout this report, police should use evidence-based approaches to investigate complaints if there is a need to gather and carefully document evidence in a way that can later be used in formal proceedings. The need for an evidence-based approach would include investigating issues that, if substantiated, might result in reviewable action being imposed as such action is, by definition, potentially subject to review by the Industrial Relations Commission. In practice, this means that unless a complaint has been referred (usually at the triage or assessment stage) for an evidence-based inquiry, 'non-reviewable' management actions will generally be used.

Of the 100 complaints referred for evidence-based inquiries, our audit found that the NSWPF imposed reviewable and non-reviewable management actions in relation to the officers involved in 62. The most common actions taken in relation to officers the subject of complaint in these matters were to remove the officer from the NSWPF (3 cases) or refer the officer for consideration of Commissioner's Confidence proceedings (16), provide counselling (18) or advice and guidance (12), issue a warning notice (10), devise local training (10), implement conduct or performance plans (10), prefer criminal charges (6), refer the officer for consideration of other reviewable action (5), changes to duties (4), policy or procedural changes (4) and referrals to welfare or support services (6). These made up the majority of actions imposed. More than one action could be imposed in relation to each complaint. Other actions taken in relation to these matters included officer transfers, reduction in rank or seniority, reprimands and mentoring, and referral for psychiatric assessment. In a few cases the officer resigned.

Of the 115 domestic violence complaints referred for resolution during the audit period, we found that the NSWPF imposed non-reviewable action in relation to 42 (37%). None resulted in the NSWPF imposing reviewable action.

In most cases, the non-reviewable action involved providing advice and guidance, or counselling. These actions made up about two-thirds of the non-reviewable actions imposed in response to these matters. Other actions noted included local training, devising performance management plans, policy or procedural changes, and mentoring. We were generally satisfied with the management action taken in relation to most of these cases.

However, we had some concerns in relation to the adequacy of the action taken to deal with one or more officers in 11 of the 115 resolution complaints. Specifically, we believed there was a need for additional measures to address incompetence and/or integrity issues, investigate further or take further action to address the issues raised. In seven cases we thought there was scope to counsel or reprimand the subject officer.

The references to 'local training' following evidence-based investigations or resolutions encompassed a variety of strategies. Local training included referring officers for instruction from, or to work directly with the domestic violence liaison officer (DVLO), requiring completion of an electronic training package on domestic violence, investigation training, and training in brief handling and working shifts with the brief handling manager.

In many cases, the management actions were imposed as a result of inquiries initiated by police officers. One such internal police complaint examined a constable's mishandling of ADVO proceedings.

### Case study 36

The NSWPF initiated an evidence-based complaint investigation into a constable's initial mishandling of an ADVO application. The investigator concluded: *'The extent of the neglect in this incident is extreme and vast. There could be an inference that [the subject officer] had deliberately downgraded the severity of his COPS event and AVO application to prevent further workload associated with AVO hearings and investigations.'*

The constable was one of four officers who responded to a violent incident between a couple. The incident was in the presence of a young child. The constable was directed by a sergeant to apply for an urgent ADVO on behalf of the female partner because of fears for her safety. Police noted that the male partner appeared to have been drinking heavily and had 'anger management issues'. There was one witness and the couple had a long history of domestic violence. Upon returning to the station, the constable completed a COPS event that indicated there were no witnesses, no prior history of domestic violence, no alcohol involved and no fears held for the victim's safety. The ADVO was refused on the basis of this information.

The sergeant corrected the COPS event the next day and re-applied for the urgent ADVO. This was refused because of the delay in applying. A third application submitted by the command's domestic violence liaison officer finally succeeded. However, in the interim the woman was assaulted, resulting in her partner being charged. At the end of the complaint investigation the NSWPF issued a Region Commander's Warning Notice reprimanding the officer for his 'unacceptable and unsatisfactory' conduct in relation to his neglect of duty, his failure to follow the sergeant's directions, and his creation of false records.

In this case, the NSWPF deemed that non-reviewable actions were sufficient to address the misconduct identified by the investigation. However, the use of evidence-based investigation techniques meant that information was gathered and documented in a way that could have supported the use of reviewable actions if necessary.

Following a complaint investigation, the Ombudsman can request the NSWPF to review its decisions on complaints, including the management action to be taken. Police are not obliged to change the decision, but they must respond to the request and provide reasons for their decision.

Our audit found that we were satisfied with the management action taken by police in relation to most complaints. In relation to evidence-based inquiries, there were only five cases in which we were dissatisfied with the management action taken. These included concerns about decisions to place the subject officers in the DVLO role (in two instances), deciding against reprimanding an officer (one instance), finding 'not sustained' a neglect of duty allegation (one instance), and failing to restrict an officer's access to his firearm until one month after the ADVO against him was issued.

The kinds of cases where we had concerns in relation to the adequacy of the action taken to deal with the officer or officers involved are discussed below.

### **Case study 37**

A leading senior constable advised a woman, who attended a police station to report that her partner had assaulted her, to go to another station as the incident occurred in a different command.<sup>119</sup>

The NSWPF initiated its own inquiry. The sergeant investigating the complaint checked police records and found that no details had been obtained from the woman, so there was no way of knowing if she reported the incident or what, if any, action was taken. The investigator told the leading senior constable that it was totally unacceptable to turn victims of violence away and direct them to another command.

After auditing this matter, we were of the view that stronger management action should have been considered, such as reviewing the subject officer's leading senior constable designation. The designation recognises and rewards high performance by senior constables and is supposed to be subject to performance-based reviews.

### **Case study 38**

A senior constable investigated for failing to investigate a domestic violence-related malicious damage offence was directed to not discuss the complaint with anyone involved in the original incident. It was subsequently revealed that he had discussed details of the complaint with a probationary constable on several occasions prior to that officer being interviewed. Sustained findings were made in relation to three issues: inadequate investigation, failure to comply with reasonable direction by a senior officer, and unprofessional conduct. The investigator recommended that the officer be issued a Region Commander's Warning Notice.

In our view, stronger sanctions were warranted in light of evidence indicating that the senior constable had attempted to interfere with the complaint investigation, attempted to intimidate a witness and had been untruthful. At our request, police reviewed the matter and forwarded it to the Internal Review Panel, which subsequently imposed reviewable actions, including reducing the officer's rank for six months.

In both cases, one using resolution techniques and the other evidence-focused, the NSWPF gathered and documented information in a way that enabled us to assess the adequacy of the management action taken and to support stronger sanctions. By contrast, the inappropriate use of resolution techniques to investigate and document the serious deficiencies alleged in case study 33 (where police initially failed to recognise the seriousness of an attempt to strangle the alleged victim), made it difficult to assess the culpability of the officers involved and limited the scope of action that could then be taken.

<sup>119</sup> This matter is outlined in case study 2.

Occasionally such deficiencies can be addressed through further investigation. The case below was one of the seven complaints noted in section 4.10 that we believed the NSWPF had wrongly classified as 'non-notifiable'. After noting that issues which alleged a lack of integrity (requiring notification under clause 4 of the Class and Kind Agreement), we required further investigation.

### **Case study 39**

A woman called 000 early one morning to report that her ex-partner had thrown petrol on her house while holding a lighter in his hand, threatening to kill her. The woman's two children were present during this and previous threats. An hour later she rang again to advise that she had to go to work but would leave the petrol container on the veranda for police to inspect. Two police officers attended that afternoon.

It was only after police were called to the house on four subsequent occasions that it became apparent that the officers who responded to the petrol incident failed to record details of the threats, recorded incorrect details about the children present, and submitted no 'child at risk' reports. One officer had made a record noting that he applied for a Telephone Interim Order (TIO) after the petrol threat, but that the on-call magistrate declined the application. The victim had not been advised of this outcome.

The complaint inquiry led to 'sustained' findings for the failure to submit child at risk reports and failing to tell the victim about the TIO application. The investigator noted that he could locate no records relating to the TIO application, and recorded this as an anomaly. The recommended outcome was to provide the officer with guidance on investigating domestic violence offences and police obligations under the Charter of Victims Rights. The officer was already on a remedial performance agreement in relation to previous complaints.

The complaint had been finalised as a local management issue and not notified to us. After our audit of domestic violence complaints identified concerns about the truthfulness of the subject officer's record of the TIO application, we required the NSWPF to reclassify the complaint as 'notifiable' and conduct further inquiries into the recording 'anomaly'. Court records proved that the officer had lied about applying for a TIO and the matter was referred to the Internal Review Panel with a recommendation for 'reviewable action'.

It should be noted that the audit found that such lapses appear to be relatively rare. In the majority of cases, police comply with the notification requirements.

We also found that police are generally very responsive to the needs of victims of violence. However, when lapses and oversights do occur in relation to domestic violence issues, the consequences can be tragic, as the following case shows.

### **Case study 40**

A woman's ex-boyfriend was imprisoned after being convicted for a number of serious domestic violence offences against her. The woman subsequently began a relationship with a friend of the offender. After the woman became aware of her ex-boyfriend's imminent release from prison, she contacted police to seek a new ADVO to protect her. The ADVO was granted and served on the offender while he was still in prison.

About one month before the offender's release, his parole officer contacted police to report that he had made death threats against her. Shortly after, a hospital social worker reported to police that the woman and her new partner had informed her that they had become aware that the offender had threatened to kill them after his release from prison.

Police immediately reviewed the offender's criminal history, noting that an enforceable ADVO was in place against him. The woman was contacted and reported that she had been receiving 'silent' phone calls. She also advised police that the offender had a criminal record in another state for attempted murder. Her new partner reported that he held concerns for his safety and was 'as good as dead' according to people who had visited the offender in prison. He also stated that he had received threats by mobile phone. Police advised him to consider applying for an apprehended personal violence order prior to the offender's release. The man indicated his fear that this would 'only make matters worse', but that he would look into this option.

The day after the offender's release, the woman allegedly saw him drive slowly past her home, staring at her and raising a bottle towards her. Shortly after, she phoned local police to report the alleged breach of the ADVO. There is disagreement about the conversation which took place between the woman and the constable she spoke to. However, the constable conducted no follow-up inquiries (including with the alleged offender) and made no contemporaneous COPS or notebook record.

The following evening, the woman saw a car drive past her home. She thought the offender was a passenger, but was unsure. She noted the incident on her calendar but did not report it. The next day she did phone local police after she thought she saw the offender drive by her home. Her call was diverted to another station, where she was advised that there was no officer on duty at her local station until later that day. Again, she was not completely sure if the offender was in the car. The same day, the woman's new partner reported that he had been followed and 'tailgated' by the offender. The next day, the woman found her partner dead with severe head injuries.

A few days later the alleged offender was arrested and charged with breaching the ADVO. Bail was refused and he was remanded in custody. He was subsequently charged with murder.

During the investigation into the death of the woman's partner, the woman revealed to police that she had complained about the offender driving past her home, breaching the ADVO, the day after his release from prison. According to the woman, the constable to whom she had spoken advised her to note any further incidents. The woman said she would have made a statement if the constable had asked her to do so, and been prepared to give evidence if required.

The complaint was assessed as requiring a non-criminal evidence-based investigation. A sustained finding was made against the subject officer for 'fail to investigate'. A second issue, 'inadequate customer service', was not sustained. The investigator's report noted that the officer had been displaying signs of negligence and had been counselled on a number of occasions for failing to properly investigate matters and for displaying a poor attitude to victims of crime. She was also found to have failed to properly investigate a separate domestic violence offence and provide adequate care to the victim. She admitted to the complaint investigator that she did not do more to investigate the matter at the time because she had 'after work plans'.

The Complaint Management Team determined that she would be issued with a Commander's Warning Notice and placed on a six-month Conduct Management Plan. In addition, she would be assigned a mentor, receive further training in domestic violence, and thereafter be placed in the DVLO role to assist her in 'gaining knowledge and understanding of domestic violence matters.'

Notification of the internal police complaint to our office was delayed. When we were notified, we identified a number of concerns in relation to the police handling of the complaint, including the rationale for investigator's 'not sustained' finding in relation to 'inadequate customer service'. We noted that the investigator appeared to place the onus for escalating the police response to the first reported ADVO breach on the person in need of protection, suggesting that she withheld critical information during her phone conversation with the subject officer, and characterising her as 'a classic victim of domestic violence who did not want the anxiety of further conflict and contact with the offender through the court process'.

We expressed the view that the investigator's comments and reasoning were inappropriate, misconceived and difficult to comprehend. We indicated that the information provided by the woman when she reported the first breach should have resulted in inquiries by the subject officer, and that the 'critical information' that the complainant purportedly failed to provide was recorded on COPS, which the officer should have considered before resolving to take no action. In our view, the officer could have reasonably formed the suspicion that the offender had committed an offence allowing her to arrest him on the basis of this information.

We expressed the view that the investigator's observations and findings did not appear to recognise the significant impact of the subject officer's inaction in relation to the breach of the ADVO. We also expressed the view that the matter should have been referred to the NSWPF's Internal Review Panel (IRP) for consideration of s.173(2) reviewable action and/or s.181D removal given the serious consequences that arguably flowed from the subject officer's failure to take action. We noted that involving the IRP would have also been appropriate given the possibility of adverse media and/or judicial comment and the potential for civil action.



In addition, we voiced strong concerns about appointing the subject officer to the position of DVLO, noting that this important role should be performed by officers with demonstrated achievement, knowledge and commitment in the policing of domestic violence issues. In response, the Local Area Commander advised that the subject officer would be performing the role 'under close supervision' and that he was confident the role would give her 'a greater appreciation of victim dynamics in DV incidents'.

We then raised our concerns with the NSWPF Corporate Spokesperson for Domestic Violence. He undertook to reinforce with police commanders the need for the DVLO role to be performed by officers with a high level of knowledge, experience and commitment to investigating domestic violence and supporting victims. We also recommended that the Police Commissioner's mandatory reporting guidelines be amended to require significant and/or 'high profile' domestic violence matters to be notified to the Corporate Spokesperson.

A broader issue raised by this complaint is the manner in which the NSWPF's Corporate Spokesperson on Domestic Violence is advised of significant domestic violence issues raised by complaints or through critical incident investigations. In our view, the NSWPF should consider referring all significant or high profile domestic violence issues, including all domestic homicide matters, to its Corporate Spokesperson, particularly in situations where there is a strong possibility of adverse media or judicial comment or civil action against the NSWPF, so that they can assess and provide appropriate advice on potential risks to the organisation.

## 6.4. Complainant satisfaction

The Police Act requires police reports to the Ombudsman to include '*advice as to whether or not the complainant is satisfied with the action taken, or to be taken, as a result of the complaint*' (section 150). The need for complainant feedback is reflected in the NSWPF's *Complaint Handling Guidelines* which require resolution managers and investigators to report on complainant satisfaction with the action taken in relation to their complaint.<sup>120</sup>

Our audit of domestic violence complaints checked for information about complainant and subject officer satisfaction in the records of all 215 domestic violence complaints referred for resolution or evidence-based investigation during the audit period. In relation to the 115 resolution complaints, we found that complainant satisfaction was noted in 71 of these matters.<sup>121</sup> Of these, the records indicated that 55 (77%) were satisfied with the action taken. In relation to the 100 evidence-based complaints audited, we found that complainant satisfaction was noted in 70 of these matters. Of these, 54 (77%) were satisfied. These rates are similar to the 72% rate of complainant satisfaction reported in relation to all notifiable police complaints received in 2008.<sup>122</sup>

As the NSWPF's *Complaint Handling Guidelines* also require complaint handlers to report on subject officer satisfaction with the complaint processes and their treatment during the informal inquiry or investigation, our audit checked for information on this issue. For both resolutions and evidence-based investigations, there appeared to be very low levels of compliance with this requirement. Where subject officers' views were reported, it was almost always to advise of their satisfaction with the process, with 98% of officers reporting that they were satisfied.

## 6.5. Communication with complainants and subject officers

In addition to checking the complaint records for information about complainant and subject officer satisfaction, we looked at evidence of police communication with complainants and subject officers at other stages.

Communication with complainants is an essential part of effective complaint handling. Contact at the outset, during, and at the end of an investigation or the resolution process may enable complainants to clarify issues or concerns and provide information that may inform the assessment and ongoing management of the complaint.

The Police Act provides for officers who manage complaints to communicate with complainants at various stages. There are specific requirements for the NSWPF to provide the complainant with information about whether police will investigate or not investigate the complaint (section 139), and to consult the complainant before deciding what action to take as a result of the complaint, provide advice on any action already taken or to be taken, and seek feedback

<sup>120</sup> NSW Police Force, *Complaint Handling Guidelines*, 2008 – see requirements noted on pages 18, 20, 41 and 77.

<sup>121</sup> After excluding the 24 'police internal' complaints where there was effectively no complainant to consult, this indicates that complainant satisfaction was reported in relation to 77% of resolution matters.

<sup>122</sup> Data generated by NSW Ombudsman.

on whether the complainant is satisfied with the action taken or to be taken (section 150). Police may also *'from time to time report to the complainant on the progress of an investigation into a complaint'* (section 147). The legislative provisions that require police to keep complainants informed at critical stages of the complaint handling process are reflected in the NSWPF's *Complaint Handling Guidelines*.

The guidelines also provide advice on the need to communicate with officers whose conduct is the subject of complaint. The timing and extent of this contact will depend on factors such as the nature of the allegations and the type of investigation used. For resolution matters, it might include explaining the inquiry or resolution process, providing enough detail about the allegation to respond and, if adverse findings are made, the basis for those findings. In the case of evidence-based investigations, a more formal approach may be needed. For both resolution matters and evidence-based investigations, the guidelines note the need to provide officers with referral and support, and there are requirements to report on subject officers' satisfaction with the process.<sup>123</sup>

The mode of communication can also be important. Through our oversight of police complaints, we know that complainants are more likely to be satisfied with the complaint handling process if a police officer discusses the matter directly with them either by telephone or face-to-face, rather than relying solely on correspondence. Providing an explanation of the outcome can also reduce the number of requests for additional documentation.

Our audit checked for records of police contact with complainants as part of the complaint management process. Of the 215 domestic violence complaints referred for resolution or evidence-based investigation during the audit period, we found that police contacted most complainants at some stage. After excluding 44 matters where complainant contact was not relevant to the handling of the complaint, the audit found records noting that 159 (92%) of complainants were contacted at least once, indicating a generally high level of police compliance with the requirements to communicate with complainants. In a handful of matters police were unable to contact the complainant despite reasonable attempts to do so. In some matters we were unable to ascertain the degree of complainant contact from the available records.

Of the 159 complainants who were contacted by the NSWPF as part of the resolution or investigation of their complaint, our audit noted that:

- 67 (42%) were contacted at the outset (for some this was their only contact).
- 134 (84%) were contacted at the end.
- 54 (34%) were contacted at the outset and at the end.
- 30 (19%) were contacted at the outset, during and at the end of the investigation.

The complaint records indicated that police generally appeared to be better at contacting complainants at the end rather than at the outset or during an investigation. Best practice would be to consult complainants at each stage of the process. Although this level of contact might not be needed in all cases, a rate of 19% is not indicative of best practice complaint handling.

We checked the complaint records for evidence of contact with subject officers as part of the complaint management process and found that most subject officers were also contacted at least once at some point. After excluding 22 matters where subject officer contact was not relevant or there was a clearly recorded reason for not contacting the officer, we found that subject officers had been contacted in relation to 178 (91%) of cases. In relation to the 178 subject officers who were consulted, the records indicated that:

- 26 (15%) were contacted at the outset.
- 134 (75%) were contacted during the inquiry.
- 127 (71%) were contacted at the end.
- 91 (34%) were contacted during and at the end.

It is encouraging that the records showed that most complainants and subject officers were contacted at least once. Yet there was clearly room for improvement, with just 34% of complainants contacted at the outset and at end, and 34% of subject officers consulted during and at the end of the resolution or investigation.

Actual rates of contact may have been higher, but were simply not noted in the written records. There would be merit in the NSWPF requiring the contacts made to be properly documented. These records could be checked for completeness as part of the NSWPF's complaint closure process.

Resolution managers' contact with complainants was also considered in our October 2010 draft report, *Review of the NSW Police Force Complaint Handling Guidelines*. The review included an assessment of the level of participation by the complainant in a sample of 88 resolution matters involving members of the public. Of the 88 complaints, we found that the resolution manager contacted the complainant:

- at least once during the resolution of 75 (85%) complaints

<sup>123</sup> NSW Police Force, *Complaint Handling Guidelines*, 2008 – see pages 18 and 41.

- once only, at the completion of the resolution of 25 (28%) complaints
- at the outset and the completion of the resolution of 23 (26%) complaints
- at the outset and during the resolution of 17 (19%) complaints, and
- at the outset in only 9 (10%) complaints.

The review also identified that the resolution manager only recorded information on the *Mandatory Resolution Form* about the outcome requested by the complainant in 38 of the 88 (43%) complaints examined. Although the sample was small, the results suggest that there is room for resolution managers to increase their contact with complainants as part of the resolution process.

Ultimately, resolution managers and investigators must determine whether and at what points it is necessary and appropriate for them to consult complainants and subject officers about aspects of the complaint process. Some level of complainant contact would seem to be necessary as part of police attempts to resolve the matter and to comply with legislative and procedural requirements to seek their views on whether they are satisfied with the action taken, or to be taken, as a result of the complaint. Moreover, when a victim of domestic violence complains about the handling of a domestic violence incident, police communication with the complainant might be needed to clarify the complainant's concerns, assess any ongoing risks to the safety of the person in need of protection, and foster trust in police. Similarly, it is important for police officers accused of misconduct to be aware of allegations against them, whether the NSWPF is likely to investigate or take other action, and – where relevant – be given a chance to respond.

The issues discussed in this section have implications for the handling of all complaints. For this reason, we raised the need for adequate communication with complainants and subject officers with the NSWPF Professional Standards Command as part of our review of the *Complaint Handling Guidelines*. In this regard, the NSWPF has advised that it will highlight the need for triage officers, resolution managers and investigators to document relevant communication with complainants and subject officers. Similarly, supervisors and commanders will be required to consider relevant police contact with complainants and subject officers when certifying resolutions and evidence-based investigations.

## 6.6. Time taken to resolve complaints

The importance of a timely police response to complaints is recognised in section 145 of the Police Act, which requires that the officer or officers responsible for a complaint investigation *'must carry out the investigation in a manner that, having regard to the circumstances of the case, is both effective and timely'*.

In relation to serious domestic violence offences, a timely police response may be critical to ensuring that measures are put in place to reduce the risks of further harm to victims or to secure the evidence needed to prosecute an offender. The timeliness of the police response can be critical to complainant satisfaction.

Our audit of domestic violence complaints found that police were generally very responsive when complaints from alleged victims raised concerns about safety. A good example is case study 33 at the start of this chapter, in which a victim alleged that officers investigating an incident in which she was attacked by her ex-boyfriend, had failed to recognise the seriousness of his attempt to strangle her. Two months after the attack she complained about the adequacy of the criminal investigation. Police responded immediately, identifying enough evidence to arrest and detain the alleged offender on a number of additional serious charges.

In practice, the NSWPF requires resolution managers to finalise matters referred for resolution within 45 days of receiving the complaint (38 days to resolve the matter, plus 14 days to create a c@ts.i record). However, resolution managers are encouraged to attempt to resolve matters as soon as possible. Matters referred for evidence-based investigation are expected to be completed within 90 days.<sup>124</sup>

Our audit of the records relating to the 115 domestic violence complaints referred for resolution in 2008 found that 73% were finalised within 45 days, 18% were finalised within 45-90 days, and the remainder took more than 90 days to finalise. Of the complaints referred for evidence-based investigation, 47% were completed within the recommended 90-day period. The rest took longer than 90 days.

We also asked our auditors to note 'any significant unjustified delays' in the handling of the complaint, and whether the delays put the victim 'at greater risk'. There were 10 resolutions and 10 evidence-based investigations where the delay was assessed as 'unjustified'. One resolution matter involved a delay that was assessed as putting the victim at greater risk. In relation to the delayed evidence-based investigations, none of the delays were assessed as putting the victim at greater risk.

<sup>124</sup> NSW Police Force – *Complaint Handling Guidelines*, 2008, p93, 94 and 102.

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# Conclusion

While the findings from our audit indicate that police generally handle complaints about domestic violence well, our audit has also highlighted the extremely serious consequences that can result when police respond poorly to incidents of domestic violence or domestic violence-related complaints.

Our audit of the police handling of complaints about domestic violence provides a 'report card' on police progress in this area and identifies areas for further improvement. This report demonstrates the valuable information that complaints contain, and how this information can be used to monitor and improve the operational policing of domestic violence. For this reason, and to better enable observations to be made about the various legislative, policy and procedural changes that have been implemented since the period covered by our audit (outlined at section 2.1.3), we believe there is merit in the NSWPF conducting a follow-up audit of a sample of domestic violence complaints received in 2010. In addition to assessing the impact of these reforms, a further review would demonstrate to the domestic violence sector the NSWPF's commitment to continually review and improve its response to domestic violence.

# Recommendations

	Recommendations	Section
1	<p>In measuring the performance of local area commands (LACs) in policing domestic violence, the NSW Police Force should require LACs to report on the number and nature of the domestic violence-related complaints received each year in addition to other qualitative measures. In doing so, the NSWPF should have regard to:</p> <ul style="list-style-type: none"> <li>a. the volume of domestic violence complaints received against the incidence of domestic violence.</li> <li>b. the steps taken by LACs to remedy complaints, including training for individual officers and the command more generally, and closer management of officers.</li> <li>c. reports provided by LACs with significant Aboriginal populations on their implementation of the <i>Aboriginal Strategic Direction</i>, including whether, and how, the LAC engages with local Aboriginal communities. (For example, meetings with women's groups, women's refuges and domestic violence advocacy services to identify and resolve any concerns they may have about the local policing of domestic violence.)</li> <li>d. whether there is evidence that the LAC has a positive relationship with local domestic violence services and advocates, and the type of 'pro-active' strategies being utilised by the LAC to address domestic violence.</li> </ul>	3.1.5
2	The NSW Police Force should provide guidance to police officers in the <i>Domestic and Family Violence Standard Operating Procedures</i> on how best to identify the risks associated with incidents involving violence between a previous intimate partner and current intimate partner of a third party.	3.3.2.4
3	The NSW Police Force should require the customer service 'portfolio holder' at each LAC to conduct regular reviews of all complaints which raise concerns about poor customer service, particularly those relating to domestic violence, in order to identify and remedy problems with individual officers or LAC systems, and provide related training/guidance to frontline police where necessary.	3.4.1
4	As part of their responsibilities under the Command Management Framework, the NSW Police Force should require LACs to regularly review compliance with the obligation on police officers to provide follow up to a victim of crime within seven days of a report, particularly with respect to domestic violence victims.	3.4.1
5	The NSW Police Force should require all LACs to provide trend reports on failed domestic violence prosecutions (as well as any complaints about prosecutors) to the Senior Sergeant (Prosecutions) within the Domestic and Family Violence Team, to inform their role in promoting consistent good practice in the management of domestic violence court work and related training.	3.4.5
6	The NSW Police Force should ensure the <i>Code of Practice for the NSW Police Force Response to Domestic and Family Violence</i> includes information about the police complaint process, including expected timeframes for completion of complaint investigations/resolutions, key steps in the process, and the nature of contact police are expected to have with complainants.	4.3

	Recommendations	Section
7	<p>The NSW Police Force should ensure the Corporate Spokesperson for Domestic and Family Violence considers the type of mandatory information recorded about domestic violence-related complaints on c@ts.i to determine its adequacy for the purpose of providing data to inform the monitoring of, and improvements to, the operational policing of domestic violence. In doing so, the Corporate Spokesperson for Domestic and Family Violence should have particular regard to:</p> <p>a. whether there is a need to ensure greater consistency and accuracy with the 'identification and recording' of domestic violence-related complaints, including consideration of further training for staff (both sworn and unsworn) who are responsible for data entry.</p>	4.5
7	<p>b. the availability and recording of key demographic data, especially about Aboriginality.</p> <p>c. the benefits of developing a Memorandum of Understanding between the NSW Ombudsman and the NSWPF to facilitate consistent data collection and recording.</p>	4.5
8	<p>The Corporate Spokesperson for Domestic and Family Violence should provide advice to the Professional Standards Command about any changes he considers necessary as a result of conducting the review referred to in recommendation 7.</p>	4.5
9	<p>The NSW Police Force should ensure that the:</p> <p>a. Domestic &amp; Family Violence Standard Operating Procedures include a specific requirement to consider and, where necessary, respond to and record actions taken to address victim follow-up issues.</p> <p>b. Domestic and Family Violence Complaint Practice Note includes a requirement that all complaint investigation/resolution reports document whether police have considered and, where necessary, addressed all outstanding victim follow up issues.</p>	6.2 6.3
10	<p>The NSW Police Force should ensure that the <i>Domestic and Family Violence Complaint Practice Note</i> requires triage officers to:</p> <p>a. check subject officers' and complainants' relevant complaint histories when assessing and managing a complaint about the policing of domestic violence.</p> <p>b. check the offender/victim history when assessing domestic violence complaints.</p> <p>c. document in complaint records the outcome of the review of the records referred to in a. and b. above.</p>	4.8
11	<p>In light of the potential risks posed to children as a result of domestic violence, the NSW Police Force should ensure the <i>Domestic and Family Violence Complaint Practice Note</i> requires police complaint managers/investigators to:</p> <p>a. identify and document whether an appropriate risk of harm report was, or should have been, made to Community Services or the Police Child Well-being Unit in relation to all complaints arising from domestic violence events involving children, irrespective of whether or not the complainant specifically raised any concerns about a failure to make such a report.</p> <p>b. identify and document whether corrective action has been taken to report a child as being at risk of harm where the investigation of a complaint identifies that such a report was warranted but not made at the time of the event giving rise to the complaint.</p>	3.4.9



	<b>Recommendations</b>	<b>Section</b>
12	<p>The NSW Police Force should ensure that the <i>Domestic and Family Violence Complaint Practice Note</i> requires:</p> <ul style="list-style-type: none"> <li>a. complaint investigations to be conducted in response to ADVO proceedings being initiated against a police officer, to ensure sufficient information is gathered to determine the nature of any interim and/or ongoing management action that may be required.</li> <li>b. the complaint information system (c@ts.i) to record: <ul style="list-style-type: none"> <li>- the allegations supporting an ADVO application against a serving police officer.</li> <li>- any interim management action taken in relation to an officer the subject of an ADVO application.</li> <li>- the final outcome (e.g. sustained – ADVO granted) in relation to the ADVO application.</li> </ul> </li> </ul>	4.9.1
13	<p>The NSW Police Force should ensure the <i>Domestic and Family Violence Complaint Practice Note</i> requires that:</p> <ul style="list-style-type: none"> <li>a. Domestic violence incidents the subject of a critical incident investigation should not be 'declined' on the complaint information system (c@ts.i), but instead should be suspended pending the outcome of the critical incident investigation. Where relevant, the critical incident investigation findings should be referred to the relevant Complaint Management Team to consider the need for management action in relation to individual officers or the command generally.</li> <li>b. If the critical incident investigation reveals conduct that is 'notifiable' as defined by the Class and Kind Agreement, then details of the matter – including any action taken as a result of the critical incident inquiry – should be notified to the Ombudsman.</li> </ul>	4.9.2
14	<p>The NSW Police Force should ensure that the <i>Domestic and Family Violence Complaint Practice Note</i> requires triage officers to consider what interim risk management action should be undertaken, in accordance with the <i>Interim Risk Management Guidelines for Police</i>, in circumstances where a subject officer has a pattern of domestic violence-related complaints and/or has had a domestic violence allegation/s made against them.</p>	4.8.1
15	<p>The <i>Domestic and Family Violence Complaint Practice Note</i> should provide clear instruction for triage officers about the handling of complaints involving police officers who have had a domestic violence allegation/s made against them. In particular, guidance should be provided in relation to:</p> <ul style="list-style-type: none"> <li>a. the complaint notification requirements where ADVO proceedings have been initiated against a police officer.</li> <li>b. whether and in what circumstances, an officer the subject of an ADVO may be granted access to their service firearm where firearm restrictions are a condition of the ADVO.</li> <li>c. a requirement to check and follow up on an officer's secondary employment history where those records indicate other ways to access firearms while police-imposed restrictions are in place.</li> <li>d. recording decisions relating to officers' access to firearms.</li> </ul>	4.10.1 5.3.7 5.3.8 5.3.6
16	<p>The NSW Police Force should provide this office with a draft copy of the <i>Domestic and Family Violence Complaint Practice Note</i> for review and comment.</p>	All
17	<p>The NSW Police Force should rationalise its documentation relating to the management of domestic violence complaints. In doing so, the primary document reflecting all specific requirements in relation to domestic violence complaints should be the <i>Domestic and Family Violence Complaint Practice Note</i>, with appropriate cross-referencing in the <i>Complaint Handling Guidelines</i>, <i>Domestic &amp; Family Violence Standard Operating Procedures</i>, the <i>Police Handbook</i> and the <i>Code of Practice for the NSW Police Force Response to Domestic and Family Violence</i>.</p>	All

	Recommendations	Section
18	<p>The NSW Police Force should undertake an audit of a sample of complaints about the policing of domestic and family violence received in 2010 to assess the impact of key policy and legislative changes implemented since 2008. Such an audit should have particular regard to:</p> <p>a. complaints raising the following issues:</p> <ul style="list-style-type: none"> <li>- poor customer service</li> <li>- failure to take protective action for a victim of domestic violence (including acting on reported breaches of ADVOs and investigating offences of stalking/intimidation)</li> <li>- failure to respond appropriately to child protection concerns (including appropriate reporting of children at risk of harm)</li> <li>- police officers the subject of ADVO proceedings.</li> </ul> <p>b. examining whether as part of the complaint management process, resolution managers, complaint investigators and commanders have, where appropriate, taken prompt action to:</p> <ul style="list-style-type: none"> <li>- protect a victim of domestic violence, where the assessment or investigation of a complaint identified the need to do so.</li> <li>- report a child identified as being at risk of harm, where the assessment or investigation of a complaint identified that such a report was warranted but not made at the time of the domestic violence incident related to the complaint.</li> </ul> <p>c. reviewing:</p> <ul style="list-style-type: none"> <li>- all domestic violence matters the subject of critical incident investigations, to ensure that they have been appropriately notified where such investigation reveals conduct giving rise to a complaint under the Police Act.</li> <li>- whether complaints have been appropriately recorded and if not, amending the complaints information system (c@ts.i) accordingly.</li> </ul>	All
19	<p>Within two months, the NSW Police Force should provide advice about whether and how it intends to implement the above recommendations.</p>	All



