

# **Review of New Zealand Police's progress in response to the 2007 Commission of Inquiry into Police Conduct**

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## Contents

1. Introduction and background .....	4
2. Methodology .....	6
3. Theme One: ASA(I) .....	7
3.1 Training materials and programmes .....	7
3.2 Conduct of investigations (including Evidential Video Interviewing).....	10
3.3 Police relations with support and specialist agencies .....	19
3.4 ASA and the Criminal Justice System .....	20
4. Theme Two: Cultural change .....	22
4.1 Changing values .....	22
4.2 Training and Development.....	23
4.3 Ethical Leadership .....	24
4.4 Symbolic aspects of cultural change.....	25
4.5 Embedding an Integrity Culture .....	26
5. Summary .....	27
6. References .....	28

## 1. Introduction and background

In 2007 the report of the Commission of Inquiry (Col) into Police Conduct made 60 recommendations for change; New Zealand Police (NZ Police) had responsibility for 47 of those. In an effort to ensure that the broad package of recommendations were implemented in a meaningful way that would embed reform in a long-term and fundamental manner, Col recommendation 60 set a 10-year time frame during which the Auditor-General would periodically report to Parliament on Police's progress against the Col recommendations. Four such reports have been made. This decade of oversight concludes in 2017 and in anticipation of a final audit by the Office of the Auditor-General (OAG), NZ Police commissioned this review. The central remit of this review is to consider, in broad terms, the extent to which NZ Police has met the 'spirit and intent' of the Col report and its Police-specific recommendations. This will supplement the work of the Police's own Commission of Inquiry Executive Oversight Group that has regularly audited progress relating to each individual recommendation.

One challenge for this review stems from a lack of clarity in terms of defining the 'spirit and intent' of the Col report. While the phrase 'spirit and intent' is commonly used, neither the Col report, subsequent OAG reviews, nor other documentation, provides a clear definition. For the purposes of this review, 'spirit and intent' is understood to encompass two broad (and somewhat related) themes: adult sexual assault investigations, and culture change within Police. In terms of adult sexual assault investigations – referred to within Police by the abbreviation ASA(I) – the Col report outlines a raft of reforms, including those relating to improved training, more robust supervision of investigations, and more appropriate communications with complainants, as central to providing a more professional response to adult sexual assault that more effectively meets the interests of victims. For the purposes of this review, this overarching priority around ASA(I) is understood to reflect the 'spirit and intent' of the Col. In relation to the second major theme, relating to the culture of NZ Police, the Col identified significant problems stemming from, among other things, a prevailing macho culture that had a negative impact on women within policing, a lack of effective management, policy and process to respond to inappropriate behaviour, and a lack of progress in terms of recruiting a workforce that more closely reflected the diversity of the population of New Zealand. Tackling these (and other problems identified by Col) was vital if NZ Police was to create a working environment that could ensure public trust and confidence, attract and retain the most able staff, and provide a professional service to victims and the wider public. For the purposes of this review, these overarching priorities around cultural change are understood to reflect the 'spirit and intent' of the Col.

The report below is structured around the two broad themes of reform relating to ASA(I) and cultural change. Each is reviewed in relation to sub-themes: for example, training, recruitment, management, external relationships and so on. Where relevant, areas of continuing concern are noted, as well as identification of aspects of reform that have been notably successful. Following from this main representation of the review findings, broader commentary is offered reflecting on the wider context of the two themes and the general state of play in terms of the Police response to the Col reforms.

## 2. Methodology

The discussion below is based on a series of semi-structured interviews with key informants from NZ Police staff in a wide range of positions, in terms of both the rank hierarchy of the organisation as well as in relation to various specialist and general roles. These have been supplemented with interviews with those from external agencies across New Zealand. More than 240 police officers, civilian staff, victim advocates, doctors and staff from victim specialist support agencies were interviewed between June and September 2016. The interviews were conducted in nine of the 12 policing Districts across New Zealand and included a good range of metropolitan and rural areas: from large urban policing environments to very small police stations in rural locations. The identity of those spoken to is not reported on the basis that a full and frank response is better ensured if anonymity is maintained. For the same reason, remarks and observations recorded in the discussion below are not attributed to those in specific roles. In addition to these interviews, extensive documentary analysis has been undertaken, including a review of policy and management information, background papers, procedural models, and a range of relevant data.

### 3. Theme One: ASA(I)

#### 3.1 Training materials and programmes

Since 2011 NZ Police training in ASA(I) has adopted a four-tier model, closely mirroring the arrangements previously developed for Child Protection (CP) investigations. The model embeds the wider commitment to ensuring a quality response to ASA victims by ensuring that staff have the necessary understanding of the particular nature of ASA and the related requirements of victims. Furthermore senior staff are trained in the enhanced quality control mechanisms associated with the Crime Investigation Model. The four tiers operate as follows:

Level One sessions are delivered to all police recruits during initial training and include input relating to the definition of ASA, the background of the Col and the required response of frontline officers who might be the initial responders to incidents of ASA. In particular, the Level One training includes instruction on process. The initial action is that all incidents be referred to Criminal Investigation Branch (CIB). Officers outside the CIB may advance 'low level' ASA investigations [with maximum penalty of 7 years imprisonment] where agreed after CIB referral (e.g. 'low level' indecent assaults). In those instances, officers must record on the file why ASA investigators are not holding the file. Officers outside CIB must not hold sexual violation files, and must not file (i.e. close) ASA investigations. In this way the key principles of referring ASA cases to specialist investigators and of case oversight are inculcated from the outset. All staff interviewed felt these principles are understood and enacted by frontline staff.

Some of those interviewed from counselling and support services noted that the quality of response from Police staff varied depending on whether the officer dealing with a victim was a specialist officer trained at higher levels in ASA(I) or was a member of staff from outside the CIB. The latter were sometimes regarded as less confident in terms of understanding protocols relating to handling complainants or knowing of the agreements (Local Level Agreements or Memoranda of Understanding) to apply in terms of relations with partner agencies. In two policing Districts, it was noted that police were not routinely referring complainants to specialist sexual assault counselling services but rather to generic victim support services (further discussion of police relations with support services is provided in section 3.3 below).

Widely held among police and support and medical services was a perspective that the involvement of key experts from third party organisations in all levels of training was both effective and also evidence of wider improvement in Police's responses to ASA(I). Including key speakers from external agencies was regarded as beneficial in terms of helping officers to understand the experiences and needs of ASA victims.

Level Two training on ASA(I) has been compulsory for officers entering CIB since 2011. The induction training includes content on legislation, dealing appropriately with victims, investigative best practice and policy requirements, evidence gathering, and crime scene management. A greater amount of time is allocated to this crime type than any other – approximately 12 hours of content is provided, including sessions provided by external agencies. On successful completion of the CIB induction training, Level Two-trained officers can be lead investigators on ASA cases but only under the supervision of a Level Four-trained supervisor or a Level Three-trained investigator relieving in the supervisor role.

Level Three training (the completion of the CIB training programme) enables detectives to become qualified ASA investigators and to have supervisory powers over those at lower levels. Prior to commencing the course candidates have to meet requirements around workplace assessment, time in position, and pass a pre-requisite examination. The content of the programme develops and updates candidates in terms of policy and practice requirements around ASA(I).

Level Four training is the most advanced programme delivered on ASA(I) and candidates must be authorised onto the course by their District Crime Manager on the basis that they have the necessary training, experience and supervisory capability to oversee, manage and review ASA investigations. The programme develops knowledge and understanding of police experiences in running ASA investigations, and includes various operational case studies as learning opportunities. Specific content – not featured in less-specialised training – is included for senior staff tasked with managing and supervising ASA(I), relating to staff welfare, psychology, the role of Doctors for Sexual Abuse Care (DSAC), Māori experiences of ASA, and the case monitoring and review process.

Crucially, Level Four trained officers at the Detective Senior Sergeant (DSS) level – or Level Four qualified Detective Sergeants relieving up into a DSS position – have exclusive responsibility for closing ASA files; a particularly significant role in relation to cases that are not being taken forward to prosecution. Appropriate communication of such outcomes to complainants is a crucial moment in providing empathetic victim-centred policing. Counselling and support services should be included in meetings with complainants at which such outcomes are discussed. Some services reported that this was not always enacted. Those involved in national oversight of ASA investigations reported that a lack of communication, or poor quality communication, is a more significant source of complaints from victims than, for example, poor investigatory practice. While this relative position might reflect welcome improvements in the standard of investigations, it is nonetheless imperative that communication with complainants is central to an effective service reflecting stated organisational values (see discussion below on the case management process in section 3.2).



While the quality and the extent of the induction training for CIB officers has been strengthened, building on the positive model of improvement in training for Child Protection investigations, it remains a concern that in Districts and Areas that do not have specialist ASA teams there continues to be a perception from external partner agencies that the practice of non-specialist detectives is variable (see more in section 3.3). Respondents noted, for example, their experiences of CIB staff being unaware of procedures and protocols, and at times not displaying expected levels of empathy to victims. One officer in a remote area without a dedicated ASA team illustrated this with reference to victims being transported relatively long distances in Police vehicles accompanied by a single male officer, and failing to recognise that this might be a traumatic experience for that victim, as well as posing risks both for the individual and the wider organisation.

It is the responsibility of District Commanders to ensure that staff are trained to Levels Three and Four in sufficient number. As noted earlier, only a Level Four qualified DSS (or a Level Four qualified Detective Sergeant acting up into a DSS role) can finalise cases or 'file' cases. No district commanders or crime managers, or the national ASA coordinator reported that there was a lack of staff or difficulty eliciting sufficient candidates trained up to Level Four standard. It was also widely reported by internal and external respondents that the training on ASA(I) was much improved, and that the four-level model helped to facilitate more effective case management.

Training for civilian Police staff is less developed than for CIB officers. Plans to introduce an online training package for employees who interact with the public (including Communications and watch-house staff) was originally scheduled for delivery in 2013, but delayed until November 2016. By early December 2016, however, 4000 general Police staff had already completed the course. Given that such staff might be the first line of NZ Police to interact with victims of ASA, it is of concern that the high quality training model developed for officers was only latterly extended to civilian staff who might be the initial point of contact. Police station reception areas should be equipped with information guides outlining procedures and expectations that the public can expect from police in response to ASA, and additional information referring to support services available in each area. Only in three stations visited across Districts were these information leaflets visibly available at front counters. Nonetheless, front counter staff interviewed spoke coherently about the policies and procedures that they were expected to follow. One respondent, working at a relatively large station with a specialist ASA squad present, understood his role in the following terms:

*I know that we are expected not to go into any detail with the person as they come to the front counter but to immediately refer upstairs to the CIB [ASA specialist squad]. They'll then come down and take the necessary information. It can be difficult if the person at the counter wants to unburden themselves to you,*

*but CIB are always around so in practice they follow-up pretty quickly. It might be different in other stations where there are not so many detectives on hand.*

Although this extract suggests that front counter staff might understand their roles and responsibilities, it also indicates that in smaller stations, or those without dedicated ASA teams, this group of staff occupy an even more pivotal position. In that context the lack of developed training for that cohort of staff until very recently is less than ideal.

### **3.2 Conduct of investigations (including Evidential Video Interviewing)**

There was considerable evidence from a wide-range of respondents to the effect that the general conduct of investigations into reports of ASA was significantly improved. Some concerns continue to be expressed about the effectiveness of key elements of the investigation process, and that the good practice developed strongly in many Areas and Districts has not been uniformly enacted across the country.

#### **3.2.1 Taking initial reports**

Support and counselling services, victim advocates, legal professionals and medical staff conveyed a strong consensus that police are more receptive and victim-focused in terms of receiving initial reports from ASA victims. The culture of denying or down-playing the experience of victims was widely perceived to have been overcome and so this important source of attrition and victim dissatisfaction seems likely to have been reduced. Respondents tended to suggest that problems associated with previous cultures of 'victim doubting' or 'victim blaming' have been replaced by a more empathetic approach that takes victims seriously. There were reports to the contrary, such as from a support service staff member who noted that a 17-year-old victim had reported to a (non-specialist) officer who called her a 'liar'. While such practice is clearly unacceptable, the interviewee noted this example as highly exceptional and that she was in discussion with a more senior officer in the District to identify how best to ensure such exceptions are not repeated.

Support and counselling services that might respond to victims before any complaint has been made to Police tended to state that they would not dissuade a victim from reporting on the grounds that they would not receive an appropriate response from Police staff. Respondents stated that police officers provided an empathetic service, and reassured victims in terms of what the process of the police investigation entailed. Examples were given, however, of officers who appeared inexperienced and had not dealt with ASA cases before. In one case, a support service staff member identified a 'hard-edged, cynical, patronising "old school" cop' they had experience of, but noted that he was an exception to the general rule and that service users tended to report that they were positively surprised by the police response. Police officers also noted that some colleagues

lacked the sort of interpersonal skills required to deal sensitively with victims. This poses a challenge to NZ Police given that 'empathy' is a core value, but might be a skill that some are less able to deliver on compared to others. The more common perspective was reflected in comments from a support service staff member:

*'[there is] much greater understanding among police that complainants can be re-traumatised, and may not anticipate that the process can be complex and challenging. They take more care with victims.'*

Officers and specialist support workers noted that empathetic responses to victims extended to not pressurising victims to make a formal statement of complaint in circumstances where they might be uncertain as to how they preferred to proceed. Specialist support staff noted that officers would provide a strong service to victims and understood that prevarication was a normal part of the trauma of their experience and not a sign of lack of veracity. Officers and support service staff noted that a strong relationship between their agencies might prove more effective in the medium term since (as one support service staff member put it) 'mediation helps to keep survivors on board and gets better engagement in the end'. A relatively new ASA investigator observed that:

*'often the victim is not sold on making a complaint – they have their own reasons – so getting them on board is a challenge, they don't return calls sometimes. Specialist support are pretty good at working with them though, and very helpful in mediating'*

A major component of the 'rape myths' that informed a negative police culture for many years has been that individuals are likely to make 'false reports' of sexual assault either in circumstances where no incident of any kind occurred, or that allegations might be in response to sexual encounters that were consensual at the time but are subsequently regretted. The fallacy of these myths is covered at some length in Level One and Level Two ASA(I) training. There is considerable ambiguity surrounding police perceptions of false claims. Officers and support service staff reported that there were times when victim reports were not believed by police. An informant in a support service role noted her experience that:

*'Mothers all over the country [are] saying that their daughter's reports of rape have been described by police as "regretful sex syndrome", as though there is a syndrome.'*

One support service staff member noted that in a Police training session officers had been asked to estimate what proportion of reports were false and most estimated the figure to be upwards of 50%. She noted that officers who had joined from UK police were 'streets ahead' in their

perception of witness veracity. A trained ASA investigator, in contrast, reported that he had 'never had any trouble believing a victim'. A different ASA detective observed:

*False complaints? I can't recall a case ... generally something has happened, although it may not be as it first appears of course. It's very easy to find inconsistencies in a victim's story [but] they don't prove it's incorrect.*

However, another detective reported that in up to 'two thirds of cases there might be an issue of "regretful sex", which you have to investigate to a high degree even though there is no crime because the bosses want everything ticked off, they're covering ass. It happens a lot'. In the same discussion another officer reflected:

*[you are] 'in a mindset where you don't know whether to believe someone or not – is she telling the truth or not? I don't know if I have that preconception with other crime complaints'*

The ambiguity arises, however, in terms of the response and action officers reported in such circumstances. Most often officers stated that they would still implement a high level of investigation into such complaints, although there is no way to establish the extent to which anecdotal evidence of specific instances reflects the more general experience. For some officers this was expressed in relatively negative terms that to do otherwise would leave them vulnerable since procedures to manage crime investigations would identify a poor quality response. More positively, however, officers sometimes reported (and specialist support service staff sometimes confirmed this) that they would provide a strong investigative response since the victim either might actually be 'genuine' (even if there were doubt) or that even if the claim was not genuine the complainant might have other extraneous problems that needed to be addressed. Officers often referred to mental health or substance abuse in this regard. Police officers, DSAC staff and specialist support staff alike referred to the challenges of dealing with 'frequent flyers' (a widely repeated phrase applied to recurring complainants) who tend to make complaints that are difficult to verify but who nonetheless were treated professionally and taken seriously in circumstances where they were vulnerable and at risk. One district crime manager expressed the approach, and that it has resource implications:

*'... a couple of years ago a policy came out that any complaint, even if it wasn't going to go through the criminal justice system, must still be thoroughly investigated. Previous to that, if it wasn't going anywhere it was put to bed early, but we can't just 'tick the box' anymore. That new approach increases demand on staff'.*

One outcome of that increased demand, coupled with the rising number of reports of 'historical' ASA cases – widely perceived to require more time to investigate properly – can be that cases remain unassigned to an investigating officer in a manner that previously would not have applied. One CIB manager reported having 29 files awaiting assignment to an investigating officer and noted that, while this was likely a greater number than in previous eras, it was preferable to have cases formally recorded as unassigned, and so subject to bring-up and ongoing risk assessment. Prior to improved case management practices, it would have been common for most cases to be formally assigned but not actually under investigation by officers with too many open files for them to effectively maintain. Clearly a reliable measure of unassigned cases provides an indication of the extent to which further resources might be needed to meet demand.

### *3.2.2 Evidential Video Interviewing*

As in other territories, NZ Police has improved the physical facilities available to ASA victims and worked with District Health Boards, the Accident Compensation Corporation (ACC), and other partners to create specialist suites within Police or medical premises such that victims are dealt with in more amenable surroundings, where all medical and police procedures can be completed. Inevitably, perhaps, such provisions are not uniformly available, and not all victims will be able to access the highest level of facilities – at least not without travelling significant distances. Within these bespoke premises are facilities for Evidential Video Interviewing (EVI), a form of evidence gathering also implemented with other vulnerable victims of crime for whom giving evidence might be likely to a traumatic form of re-victimisation (Westera et al, 2015).

EVI has two broad components in its use by NZ Police with ASA cases. First, the content, structure and conduct of the interview is distinct from the standard form for taking a statement from a crime victim. Essentially EVI is intended to place the victim at the centre of the process such that they are able to exert greater control over the pace and direction of the interview. Typically, EVIs contain fewer questions than standard formats – indicating that they are less inquisitorial and less directive in terms of the role of the police interviewer. Instead the victim provides a narrative account of their experience and is allowed to do so in their own terms. Respondents, from Police and support services, strongly reported that this victim-centred approach not only helps avoid re-traumatisation but can also positively help the victim restore control and dignity, and for their account to be treated respectfully: all of which have been destroyed by their experience of sexual assault. As an ASA advocate noted:

*Narrative interviewing avoids re-traumatisation, it avoids probing questions and is less harmful. Videoing is positive, it is more victim-focused and leads to better engagement.*

The second component of the EVI is more problematic, however. As commonly practiced in many countries, EVIs in ASA cases in New Zealand are video recorded such that they might be used as evidence-in-chief in subsequent prosecutions. Respondents from Police, the legal profession, and support services described a very mixed picture in terms of the extent to which this video evidence is permitted; reflecting that members of the judiciary have significant power to shape the tone and style of cases in their Court rooms. The use of this form of evidence in the Court room is under review by the Law Commission, and many of the issues informing wider debates were highlighted by respondents to this study. First, it was often argued that lawyers and judges were reluctant to admit video testimony since it can be 'lengthy, messy, disjointed and dirty', as an ASA-trained detective noted. A strength of the format, as mentioned above, is that it allows the victim to order and direct the narrative account, but this means that events might not be recounted in the chronological sequence that the Courts require. Although national ASA managers reported that central funding is made available for video recordings to be transcribed into a chronological format, one District manager cited the cost of doing this as a barrier to such practice in his Area.<sup>1</sup> Second, was the perception that juries are more impressed by a victim presenting evidence in person, and that their pain and trauma can bolster the prosecution case. This perspective was not borne out by Westera et al's (2015) study, which concluded that lawyers' concerns that juries regard narrative testimony as less credible are unfounded. In this study, though, one Crown Prosecutor argued that efforts to 'shield' victims from the trauma of giving evidence are misguided, patronising and work against them in terms of securing a conviction:

*... women are not 'weak and gutless', they have been brutalised already. Sometimes in Court they look as though they are in turmoil but this can be part of what makes them convincing. EVIs make them appear too comfortable and are sanitised. To win the trial you need the trauma, women are tough. If EVI is used then the first interaction in the Court is the cross-examination, it can be better for them first to present their story and get more settled in the environment.*

Overall, the strengths of EVI lie in the value it offers victims in terms of regaining control over events, being able to offer testimony in a safe environment and the therapeutic benefits that flow. That the benefits of EVI in forensic terms are less apparent does not mean that the procedure ought to be abandoned, but officers and support agencies need to ensure victims understand that the video recordings might not be used in subsequent Court hearings. Police staff who spoke very positively about the use of EVI in terms of the strength of the victim-centred approach often had not

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<sup>1</sup> Nationally, however, Police's COI Executive Oversight Group has confirmed that funding for such transcriptions is always available – indicating that there may be a 'perception versus reality' issue at play here.

thought about problems that might arise from their lack of evidential value, in terms of victim expectations about not having to give evidence in person in the courtroom.

### *3.2.3 Management and oversight of investigations*

The Col report noted that there were no established standards or reliable systems in place to ensure effective oversight of ASA(I). As indicated above, the case management system subsequently developed has been adapted from CP investigations, and is intended to ensure consistency across the service and that required steps in the process are completed to standard. As more widely in policing, technological developments have greatly increased the capacity for police managers to inspect the progress of investigations.

Investigators are required to prepare a Case Investigation Plan (CIP), which is reviewed by their supervisor to confirm the investigator has considered all possible investigation angles. These include checks that correct data entry into the National Intelligence Application (NIA) has been completed. The CIP also records that a wide-range of provisions to the victim has been attended to, including referral to specialist support services, medical examination, and that their safety has been assessed. Investigation of crime scenes, exhibits, work with witnesses and suspects must also be recorded in the CIP, along with information about the end of case outcomes. In each of these domains, officers are required to include information about who takes responsibility for completing the action and appropriate timelines. Supervisors are then responsible for reviewing the quality and timely progress of the investigation. The CIP is the crucial document for effective case management but can only prove useful if the appropriate information is recorded. As detailed further below, the specialist ASA investigators interviewed reported that they understood and took seriously the requirements of the CIP. Those reviewing CIPs reported that there were rarely concerns that officers were not attending to key requirements of ASA case investigation but the quality and detail contained in the reports was at times insufficient, and that this was brought to the attention of supervisors.

### *3.2.4 Oversight and monitoring*

ASA investigation files are subject to a scrutiny process at various levels, some of which are directed at local district level and others from national managers. This process is referred to as the Quality Assurance and Improvement Framework (QAIF).

The first level of oversight is referred to as a supervisor's review. These reviews occur every four months – being April, August and December. The supervisors of the investigators who hold ASA investigation files (typically Detective Sergeants) are tasked to review a sample of 10 percent of active files (excluding prosecution files) selected at random by staff at Police National Headquarters (PNHQ) and to report back on key components. This is intended to provide

opportunities for those supervisory officers to mentor and advise investigators on the conduct and progress of their work.

The second level of oversight is referred to as a management review and is conducted in the months of February, June and October. At the management level, 10 percent of active files are again selected at random by PNHQ and reviewed by District ASA Coordinators (DSSs) or Crime Managers (Detective Inspectors). Included in that process is information about the quality of the line management supervision provided in each case. Additionally, District ASA Coordinators or Crime Managers are required to provide information to PNHQ about the nature of offences, trends and difficulties in the investigation process to be used for forward planning and risk mitigation work.

The third level of oversight is the national review of both ASA and CP files, which is completed once a year. Six of the 12 districts are reviewed in May and the other six in November. These reviews are completed by the CP and ASA Team at PNHQ. Five percent of each District's ASA cases and five percent of CP files are selected at random by PNHQ. These cases were active several months previously and so the review can include analysis of the end of case filing process (whereby cases proceed to prosecution or are in some other way finalised). This review includes some files that have been previously checked at District level. Feedback from this review is given to District Crime Managers. This national overview of District management is supplemented by training and conference events whereby District staff engage with national managers in relation to operational, policy and resource requirements. Conferences provide opportunities for external perspective on ASA(I) through presentations from partner agencies, such as District Health Boards (DHBs), Child Youth and Family, Victim Support, and DSAC.

ASA files are also monitored by way of weekly reporting, using Police's SAS business intelligence tool. District Commanders and the Police Executive have visibility of the SAS monitoring reports, which provide a number of data points about timeliness of investigation and victim contact, as well as training levels of assigned ASA investigators.

Officers tended to report that they were highly aware of the level of oversight to which ASAI are subject and that this differs from the experiences with other crime investigations. Some reported that they rarely had feedback or line management discussions about the content of the files submitted into the QAIF process (suggesting that feature of the first level review is not always enacted). Even though some officers reported that they sometimes completed details of the CIP in quick time to meet deadlines and established requirements, there were few complaints that the process was unduly or unnecessarily bureaucratic, although there were some reports that at a District management level there was some 'push back' in relation to the level of bureaucracy the process imposed. Frontline staff did not generally express such views and more often reported that



the system helped them ensure investigations were proceeding as required. A relatively new ASA investigator reported that the system meant she could feel confident that she was complying with NZ Police requirements in a difficult and demanding field. Another ASA investigator reported that he was:

*... perpetually afraid of not doing everything I ought in terms of investigating; all has to be covered off so nothing comes back to bite you in 20 years. The CIP helps keep everything straight ... looking back at historic case files makes it clear how bad record-keeping used to be*

A DSS reported that 'we are doing a way better job than we used to, I am not sure we can do much more to improve, although the rest of the criminal justice system can'. One ASA detective noted:

*There is an extra layer of work, but there's no moans and groans. It's what victims need and staff understand that. Keeping the NIA record up-to-date is really helpful because you have to keep the investigation moving.*

Senior Police staff interviewed suggested that the individual case planning process and the review model was 'the most significant change' in terms of improving ASA(I), and that 'the possibility of systemic organisational failure is now minimised, although maybe not eliminated altogether'. The model was widely regarded as successful in the domain of CP and further consideration should be given to extending the approach yet more widely to include the investigation of other, or even all, crime types. While this would need to be carefully resourced, it seems difficult to identify reasons why a model regarded very widely to have improved the investigation of CP and ASA should not be used as standard practice by a police service predicated on professional evidence-based practice.

There were instances cited where police had not provided a good quality investigation, which suggests the case management process does not always prevent poor practice. Such examples were often couched in terms of the wider sense of discrepancies that can occur in terms of the quality of service provided by specialist or non-specialist officers, and between Districts. One lawyer presented his view in terms stronger than most, but the comments below make the point very effectively:

*Some cases that come before Court are very poorly investigated by local police, there are a couple of cowboys in our town who get shown up in Court and get bad outcomes. They do an appalling job: poor investigations with no collaborative forensics. I get the sense that the work of more junior staff is*

*properly scrutinised and reviewed, but more senior detectives can be problematic. This didn't happen in Auckland.*

Limitations relating to case management were identified in respect of the lack of communication of identified risks. It was argued by one lawyer, for example, that the 'Roast Busters' [albeit schoolage sexual abuse] case showed that perpetrators in different places and across cases were still not being identified through multiple reports and systems. Better use could also be made of data relating to ASA cases. The evidence base of information about trends and patterns across time and between Districts, case outcomes, attrition rates, victim characteristics and so forth can be used to evaluate current performance and to develop innovation. Such work underpinned a recent review by Hohl and Stanko (2015), and NZ Police, committed to evidence-based policing, should make greater use of the data gathered as part of the much-improved case management process.

### *3.2.5 Developing a prevention-based approach*

Following NZ Police strategy, officers spoke of efforts to develop a preventative approach to ASA. In many cases examples were given of outreach and educational activity designed to inform key demographic groups about the risks both of becoming a victim or an offender. The latter messages were conveyed in terms of the nature and importance of informed consent. Such work was mentioned by officers in relation to campaigns targeting students during university Orientation Week or aimed at young people in key tourist sites. Relatedly, officers pointed to programmes aimed at door staff, bar staff, taxi drivers, and others involved in the Night Time Economy who might play an important role in prevention of sexual assaults. A key example of this was a programme run in one tourist venue such that bar owners were encouraged not to allow inebriated women to leave venues unaccompanied, or to be ejected from premises in such circumstances.

Beyond this, and more innovatively, officers also often noted that they are required to speak to suspected offenders, even in circumstances where no criminal proceedings will be continued against them. Unless to do so would risk further harm to the complainant, officers reported that they do routinely offer 'words of advice' to named suspected perpetrators, either in order to warn them that they might face more serious consequences in the future or, perhaps, to offer them genuine advice about their problematic approach to sexual relationships. Some officers also noted that such conversations offered an opportunity to identify behaviour that might prove useful for future investigations: an example given by one officer was that he had learnt about an individual who had targeted venues where young single women were likely to have been drinking on the basis that this presented opportunities for sexual encounters. While the immediate case had not led to any criminal proceedings, the officer was assured that he had gathered intelligence on some potential future modus operandi. In this way officers recognised the value of developing

'propensity' evidence (under the 2011 Criminal Procedures Act) to show patterns of behaviour, aided by keeping ASA files in perpetuity.

### **3.3 Police relations with support and specialist agencies**

As noted above, specialist support agencies and victim advocates spoke very positively in terms of significant improvements in relations with Police. One DSAC coordinator suggested that Police had played a central role in the wider development and professionalisation of the support sector: through financial support for agencies, the provision of training opportunities, and developing strong local relations between staff in the various sectors. Whether as a result of better local coordination, or as a cause of that, a key shift had been the development of shared understanding of the nature of the impact of ASA and the need to prioritise the needs of victims. One example of this was provided by a DSAC doctor who explained that changes in financial arrangements meant that forensic examinations are no longer paid for by Police on a case-by-case basis. Subsequently officers were prone to refer victims for forensic examinations if it might provide reassurance and was in the interests of their recovery, even in circumstances where the officer did not anticipate significant evidence would be obtained.

Positive working relations between Police and support agencies at the local level were seen to be supported by the role that the Police played (along with ACC and DHBs) in seeking improved funding for Sexual Abuse Assessment and Treatment Services (SAATS) and related services. Similarly, routine day-to-day interactions were seen to be supported effectively by local memoranda of understanding and policy-level and operational meetings between senior police and agency staff at regular intervals. Such arrangements were noted in several Districts. A support agency manager suggested that in her area 'NZ Police have moved beyond "ticking the box" to trusting work and communication'. In another of the large metropolitan centres, and mentioning specific senior police officers, a DSAC coordinator stated that 'police have led the way in transforming the whole health and support sector'.

While the national picture is largely one of improving mutually beneficial relationships it remains a concern that not all areas of New Zealand are well provided for in these terms. Several victim advocates noted that part of the problem has been the 'Cinderella' nature of such services, with insecure and insufficient funding preventing the development of a robust support service network. The extent to which Police relations with the sector were insufficient in some areas was (at least in part) attributed to the paucity of specialist support services, rather than a lack of engagement from police. Many respondents in this study noted that proposals from the Ministry of Social Development to invest \$40M in the sector might encourage wider robust service provision. Whatever might explain the problem, however, this remains another example of the geographic lottery in terms of services to victims. A specialist ASA detective in one (relatively large) town noted

that the lack of local support services meant that victims faced a lengthy journey in a police car, without being able to change clothes, eat or drink, in order to attend a DSAC service for a medical examination.

### 3.4 ASA and the Criminal Justice System

The focus of part one of this report has been on the Police response to ASA; the discussion below develops to consider the wider role of the criminal justice system. In the course of the fieldwork, respondents were often asked whether they would encourage somebody close to them to report their victimisation, should the occasion arise. The most common response was that they would encourage reporting in the sense that the victim could expect an appropriate, professional and meaningful response from police, but that they would be much less confident that the wider criminal justice system would provide a positive experience for the victim. Support agencies, medical staff and victim advocates, as well as police, widely regarded the system as a whole as 'brutal and ineffective', to quote one person interviewed. Concerns were expressed about the high threshold required to bring a prosecution (in terms of the need for a realistic chance of conviction), the continuing influence of 'rape myths' being held by juries, the problems of an adversarial system leading to re-victimisation in the Court room, and the sentencing options available to judges effectively dissuading defendants from an early guilty plea.

Often victim advocates and lawyers reflected on proposals mooted for specialist sexual violence Courts that would hear cases without a jury. A defence lawyer argued that juries lack the specialist expertise required to consider issues of consent and the status of forensic evidence, sympathising that they struggle with highly complex evidence. One victim advocate supported the use of judge-only trials on the basis that

*Rape-myths and attitudinal problems still exist; they reflect society. Jury-free trials with specialist expert judges would help [overcome this] because juries don't want to acknowledge that there is a rapist in their community. A judge-only system would improve on the 3% conviction rate.*

Others (from a range of professional backgrounds) took the opposite view, arguing that juries often deal with complex sets of evidence and make difficult decisions about motive, intent, and so forth. One lawyer expressed a preference for jury trial, stating that his experience of winning and losing trials led him to think that juries weigh evidence carefully and take the role seriously, and that he had not experienced the 'rape myth' issue in relation to juries. A different lawyer argued that non-jury trials might not prove any more effective since 'white, male, middle-class judges might be less likely to convict than a jury: I'll take my chance with a jury', and that she had a principled attachment to the jury system.

Whatever position taken in terms of the strengths and weaknesses of proposals for reform, there was a very broad consensus that existing arrangements are highly problematic in ASA cases. Some specialist support staff and victim advocates noted that the outcome of securing a conviction might not be the sole or primary positive outcome for the victim, and that they counselled that this tended to be an unobtainable result. Instead, they argued, victims valued the opportunity to have their testimony heard and validated in the Court environment and that, even if the result was an acquittal, this was a worthwhile outcome. Changes to Court procedures and process, it follows, need not be entirely predicated on seeking to increase the conviction rate: providing a safe environment for victims to testify is an end in itself. Working against this somewhat, the constraints on ASA prosecuting agencies must be acknowledged, to the extent that the Solicitor-General's prosecution guidelines<sup>2</sup> require any case taken to Court on behalf of the Crown must make the grade in terms of evidential sufficiency, as well as offer a reasonable prospect of conviction – meaning that not every ASA victim will get 'their day in Court'.

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<sup>2</sup> Accessible online from: <http://www.crownlaw.govt.nz/assets/Uploads/Prosecution-Guidelines/prosecution-guidelines-2013.pdf>

## 4. Theme Two: Cultural change

We were informed many times over that the ten-year process since the Commission of Inquiry had been one of cultural change in the NZ Police:

*Cultural change has been significant. Police culture stems from the unique job – the range, scope and unpredictability – we must be able to use black humour, vent and speak with colleagues. It's healing. We need the camaraderie so we can stand together and laugh without people getting offended ... and we can band together when we need to. When something happens the police family does rally around you. That's really important, looking after each other. I need to know my partner has got my back.*

There were substantial levels of honesty about the success of this change. One senior officer argued that “we’re never there” – a comment that encapsulates the prevailing view that the police force has made tangible and substantial improvements in terms of culture, but that this is very much the proverbial journey not a destination. Indeed there was repeated acknowledgement that conduct, integrity and ethical culture issues are by their very nature unending.

Historically, the culture of NZ Police was very male-oriented and several respondents spoke of an ‘all-boys club’. Furthermore, cultural change has been attempted on several occasions and had been the subject of a number of false starts, albeit with the best of intentions, but there seemed to be a step change beginning around 2012/13 with the adoption of a new approach to organisational values, which had been reinforced with changes to leadership teams. The difference was not just that the values themselves were updated but that (a) the process of developing the values was highly inclusive, (b) the training and development has been immersive, and (c) the communication of the values has been aligned to emotional as well as rational triggers. All of these elements are interconnected.

### 4.1 Changing values

Since 2015, when two new organisational values (empathy, and valuing diversity) were given formal recognition, NZ Police's values have been denoted by the acronym PRIMED: **P**rofessionalism, **R**espect, **I**ntegrity, commitment to **M**āori and the Treaty, **E**mpathy, valuing **D**iversity. Even at face value it is clear that these values signal a shift away from a more traditional view of policing to one that is very much focused on helping victims of crime. The two newly-minted values of empathy and valuing diversity are seen as especially important in order to change mind-sets towards a more caring view: “shifting from an offender focus to victim-centric”. It was also seen as a direct response to the traditionally male-oriented culture that was the previous norm for Police. The promotion of ‘values culture’ makes the vocation more attractive to women.

These have been reinforced by recruitment policies that offer benefits to all employees seeking to make arrangements different from regular shift work and full-time employment. These policies are designed to allow parents of young children, or employees with other caring responsibilities outside of the work place, to secure an appropriate balance, and to allow NZ Police to attract, and retain, the highest quality staff and to ensure effective service delivery. Although perceived as successful, several respondents mentioned that there was more work to be done to embed these policies: one officer, for example, reported 'I had to leave CIB as I couldn't leave to get the kids at 3p.m., there was no tolerance for that'.

The development of PRIMED is a useful example of notable practice in the field. There is substantial research to show that inclusivity and participation are crucial components in encouraging the take-up of organisational values,<sup>3</sup> and PRIMED was established through an extensive consultation process, which involved the entire organisation. It was also a process that involved drilling deeply into what values would have resonance for officers and using innovative approaches.

One form of discussion, for example, drew heavily on narrative techniques and storytelling. Eight groups, including Area Commanders, were asked to tell stories around different values and the code. Each group then chose one particular narrative to relay back to the others, all of which were collected and collated to help inform the final values. Storytelling has been shown to be an effective way of communicating integrity and ethics ideas, due to the emotional resonance that it creates.<sup>4</sup> In adopting this technique the values became "much deeper and richer" and directly applicable to the daily life of an officer. It is notable that NZ Police has even developed its own framework for using narrative and story-telling approaches, in the form of a guide available for staff on generating stories.

Equally important in creating support for the PRIMED values has been the language in which they have been framed. Each value has its own associated tagline, which serves not only as a definition but also as a heuristic to guide behaviour. The formal statement of *Our Values*<sup>5</sup> translates empathy, for example, simply as "walk in their shoes". For each value there is attendant section that again utilises a story-telling technique to help reinforce the message and behaviours that are to be modelled, which reinforces the methods used during the development of the values themselves.

## 4.2 Training and Development

The range of training and development for the PRIMED values is equally extensive. Specifically on the values themselves, there is a self-assessment *How I Live The Values* that allows respondents to evaluate their own behaviours against clearly defined and accessible examples.

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<sup>3</sup> Nabatchi's work demonstrates this very effectively (e.g., see Nabatchi [2012]), whereas Lawton and Macaulay (2014) relates directly to consultation for integrity frameworks.

<sup>4</sup> Drawing on Jonathan Haidt's work on moral emotions – as expanded, for example, in Haidt (2003).

<sup>5</sup> Accessible online from: <http://www.police.govt.nz/sites/default/files/publications/our-values.pdf>

The relevant online training modules test for knowledge and awareness. The *Code of Conduct* and *Speak Up* modules are both mandatory, the former offering multiple choice answers at key points in an extended scenario. The recommended *Conflict of Interest* training module again offers a scenario, but one that is based on a real-life incident. Again there are questions at key points but the module also employs some classic ethical decision-making heuristics (for example the newspaper test) to guide people. The *Conflict of Interest* module also finishes with a reflection from the police officer involved in the incident, which yet again emphasises the emotional attachment to ethical dilemmas. Taken together, the three modules use a range of pedagogical techniques that offers a variation for learners. Before the *Code of Conduct* module was widely promoted as mandatory, word of mouth saw roughly one thousand NZ Police officers voluntarily completing the training.

Other discrete practices and processes include the *Speak Up* campaign, which is designed to allow officers to report suspicions of misconduct, anonymously if they wish. The scheme has proven relatively successful so far, with approximately 60 reports being placed in 2016 and high recognition among officers. Some people remain cautious about its effectiveness, however:

*Speak Up can be frustrating because of the anonymity of the complainant, it can't lead to a proper investigation without that disclosure. But it can lead to identification of trends around individuals so can lead into EI [Early Intervention] provisions. We recently had a junior constable whistleblowing against a sergeant. It was important to show a sound investigation and that the whistleblower was protected: maybe move their area or role, and keep them up-to-date, HR support and so on. We need to honour them and do them justice.*

The scheme is reinforced through complementary programmes, such as a dedicated Employee Assistance Programme (EAP) alongside Harassment Support Officers. This reflects the clear guidance on how and when to voice concerns over the behaviour of colleagues. As with the values themselves, these are posited in accessible terms (including *when to do nothing* and *when you should definitely report behaviour*).

#### 4.3 Ethical Leadership

Also notable is that the PRIMED values sit alongside core competencies for new recruits and also leadership behaviours, which offers a spectrum of behaviours from individual contributions to leading the Police. These elements enable values to be embedded in all stages of career progress but serve two further important cultural factors. First, it sets clear expectations that allow everybody to understand what is or is not acceptable. Second, and perhaps more important, it holds all levels of leadership to the same standards of accountability. Modelling and matching behaviours has been



repeatedly shown to be important to developing a high-integrity culture and having a clear model of leadership enables this to happen.

There is also considerable evidence to demonstrate evaluation and monitoring of behaviour. Executive-led Command Assessments take place approximately every six months in all policing Districts and several of the larger Service Centres, and these have had very clear evaluations on values, behaviour and public engagement.

#### 4.4 Symbolic aspects of cultural change

While the development of the PRIMED values is clearly an important foundation for cultural change, many other initiatives have been developed in order to help solidify this further. One key aspect has been to alter the perceptions of work-life balance; there has been a deliberate move away from the traditional (again often regarded as typically male) drinking culture to try and develop a much more familial outlook.

*I've been in the old police culture that led to the Col. The lack of bars and canteens is a positive thing, there's been a remarkable improvement in drinking culture. The binge drinking, work hard/play hard environment [has gone]. People are not prepared to dedicate their whole life to the job, now there's a life and family focus, leave the cell phone at work and switch off. There needs to be a balance. Police bars were like nightclubs. I was treasurer of the police club in [.....], we took \$108k in a year and it was packed from 4pm until the early hours. I'm very glad all that culture's changed – I hated it, it was an unhealthy culture. Young women in those bars were perhaps groupies for police. It resulted in marriage break-ups. That bonding process among police can be problematic.*

Perhaps even more powerful has been the move towards new symbolism with NZ Police, and this was particularly evident in changing attitudes towards LGBT officers and members of staff. The October 2016 edition of *Ten-One*, the national magazine for NZ Police, featured a cover story on Rhona Stace, a senior prosecutor who is currently New Zealand Police's only male-to-female transsexual officer. The decision to enter the Pride Parade in Auckland, with uniformed officers, was also regarded as huge step forward in terms of symbolising the changing attitudes of Police, and also in embodying the values of PRIMED.

Other less-explicit symbolism could be demonstrated in the placing of key messages, such as the *Speak Up* posters, which are positioned in places where they will attract the eye and reinforce the message. In addition it is notable that the language used for marketing and recruitment is now clearly modelled around the values of empathy and diversity, asking people to join the police if they are caring and supportive people ('Do you care enough to be a cop?').

These elements may at first glance appear to be relatively unimportant but changing the symbols and language of an organisation can be an incredibly powerful tool for culture change. Not only does it allow perceptions to be altered but it allows key messages to be reinforced in subtle ways. It also affects the 'hearts and minds' that are crucial to win support for change. Modifying the symbols and language of the NZ Police demonstrates, therefore, a strong commitment to change from the bottom-up. That this tactic has proven successful was reflected to us in a number of interviews. Several respondents suggested that there had been significant moves towards not tolerating poor language (e.g. 'Prostitute', 'false allegation', 'piece of shit'). It seeps out to junior officers, is contrary to values and 'just not acceptable'. There has been a huge cultural shift breaking down the hierarchy and culture of deference: now challenging and contributing. Officers noted that they can now 'question and discuss' but some hierarchy is needed to make decisions in pressured situations. We can 'talk about it back at the station'.

This shift was largely put down to the inclusion of valuing diversity and empathy within *Our Values*. Younger officers become acculturated by 'older dinosaurs'. Exclusionary language about 'lads' and 'guys' is raised with senior officers. Older macho culture and overt misbehaviour is much less common and is challenged. In this way, the modelling of values through language and symbols, alongside other aspects such as sound leadership, has had an impact in providing cultural change.

#### 4.5 Embedding an Integrity Culture

To approach culture change from a slightly different perspective, it may be useful to consider the key stages where integrity and ethics can be embedded within an organisation: from recruitment through to feedback and evaluation.

Police's PRIMED values are crucial to both the recruiting and induction processes, so that new officers are fully aware of the expectations upon them, but perhaps even more fundamentally so that people who share these values will be interested in joining the police to begin with. From induction onwards, it is apparent there are a number of practices and processes that have been established to help deepen and strengthen the values-based approach. The *Code of Conduct* is aspirational and accessible. Discrete elements such as the *Speak Up* campaign help to develop a sense of psychological safety in the organisation, along within a non-judgmental environment. The training materials are varied and focused, and, taken together, provide a very interesting spectrum of learning and development. There are numerous channels for monitoring both internally and externally. Feedback from the public is sought and, as described, there are many opportunities to evaluate the strength of the organisational culture in all regions. Everything is underpinned by clear expectations and by a nuanced use of language and symbol.

## 5. Summary

The review found that NZ Police has made significant and widely-regarded progress in terms of responding to victims of Adult Sexual Assault. This was often characterised in terms suggesting that an area of police work that had been particularly marginalised, under-resourced, poorly managed and neglected has become a beacon of good practice that now provides a model that could bring significant benefits if applied to other crime types.

This is not to suggest that problems do not continue. Key among these are the continuing differences in standards applying across different Districts, regions and communities. Victims in areas with specialist ASA officers, state-of-the-art facilities and a strong network of support agencies might benefit from the 'Rolls Royce' standard response but it is a continuing concern that very clear good practice is not implemented across the whole country. The organisational structure of NZ Police is such that District and Area Commanders have a degree of autonomy from national leadership. While this might enhance local direction and service delivery, it must not hamper the provision of the best possible response to those who experience adult sexual assault. Moreover, there is a clear and continuing view that the wider criminal justice system needs to be recalibrated such that the experience of victims is improved. While NZ Police clearly cannot direct such reforms, it would be a significant setback if progress made at the 'front-end' of the criminal justice system was undermined at later stages. A victim-centred approach by NZ Police is laudable, and progress towards this is clear, but the benefits that this can secure for New Zealand society will be greatly reduced if a more holistic system-wide perspective is not developed.

In terms of culture change, NZ Police has met many, if not all, of the marks that one would hope to see. The organisational culture is based solidly on values that have been widely and deeply consulted upon. Again it may be noted that despite the support for positive change few, if any, respondents felt that success had been universal or was complete. There was a great deal of honesty surrounding areas that remain to be tackled. Nevertheless there is very strong evidence that substantial progress has been made, and that the leadership, will and the relevant processes and practices are in place to continue on an upward trajectory.

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