

# Questions on notice

## NSW Police Association

---

### Question 1: Number of matters in specified categories raised with the PANSW

#### Question

The Hon. LYNDA VOLTZ: When you say women complain about transfers and promotions, are they simply based on merit?

Mr WEBER: Promotions are based on merit and transfers can be based on merit. There are obviously issues in regards to leave—maternity leave, part-time work—and that does affect women more than men. We recently had a survey through the Police Federation of Australia about flexible working arrangements. It was highlighting that we have an ageing police force, so it is becoming a bit more prevalent for males. Again, it is mostly dealing with females, especially return-to-work plans, maternity leave and part-time arrangements.

The Hon. LYNDA VOLTZ: How many complaints by women would relate to those types of issues?

Mr WEBER: Off the top of my head I would not know.

The Hon. LYNDA VOLTZ: Will you take it on notice?

Mr WEBER: Yes

#### Answer

The Police Association can provide the following data for matters brought us by our members between 01.04.17 (when our new tasking system came online) and 06.12.17.

Matter type	Number of cases	% of cases raised by female member
<b>Transfers</b>	135	20.7
<b>Promotions</b>	52	17.3
<b>RTW Plans</b>	24	50
<b>Maternity Leave</b>	35	100
<b>Part-time Arrangements</b>	88	89.7

The Police Association of NSW understood the Committee Member wanted to know how many matters are brought to the Police Association which fall within the specified categories, and how many of those matters are raised by female members.

There are some possible limitations to the data we are able to provide:

PORTFOLIO COMMITTEE NO. 4 – LEGAL AFFAIRS  
INQUIRY INTO EMERGENCY SERVICES AGENCIES

- We did not interpret the question to be seeking the number of matters involving these issues which were coupled with complaints of bullying as that was not specified in the question. If that were sought, we would not be able to provide that data. Matters where bullying allegations are made in the context of these other matter types certainly occur, but our tasking system is not capable of filtering matters based on that dual categorisation.
- There would be matters falling within the specified categories not captured by the table above; our tasking system allows us to filter via the primary categorisation only. Matters brought to us by members frequently involve multiple issues in the one case. Therefore, there would be matters falling within the categories requested which we could not include in this data, as the case's primary categorisation was a different category.

To rectify these limitations would require our staff to manually sort through the thousands of cases we receive each year.

## Question 2: An improved model for mediation

### Question

The Hon. DAVID CLARKE: Will you take my question on notice and come back with a model for mediation that you believe would be successful for the Police Force?

Mr DAVID SHOEBRIDGE: And when it would kick in, which is crucial.

Mr WEBER: Timing.

### Answer

Existing mediation processes in the NSW Police Force work well *when implemented*.

The Police Association's recommendations relate more to the availability of mediation within existing policies (mainly the *Workplace Grievance and Conflict Resolution Procedures* and *Complaint Handling Guidelines*) and at what stage of those processes the mediation would occur.

The Police Association therefore proposes the following changes to the model of mediation provision in the NSW Police Force:

- Commanders, management teams and supervisors should have ready access to mediation services, in particular professional external mediators.
- Commanders, management teams and supervisors should be made aware of their ability to access these services, the desirability of utilising these services in workplace equity matters, and the organisational position should be to encourage use of these services.
- Commanders, management teams and supervisors should be referring those in need of mediation to external providers.
- Mediation should be utilised more frequently under the *Workplace Grievance and Conflict Resolution Procedures*, both for conflicts raised by affected staff, and when supervisors identify conflict in their team or workplace.
- The *Complaint Handling Guidelines* should include mandatory procedures to address ongoing workplace needs for complaints involving workplace equity matters, regardless of whether the complaint is sustained or unsustainable. This process should include the offer of mediation for all bullying complaints.
- Involved officers who are offered mediation as a resolution option should be provide with more information about what is involved, the uses of information provided during mediation, and the benefits of mediation.

PORTFOLIO COMMITTEE NO. 4 – LEGAL AFFAIRS  
INQUIRY INTO EMERGENCY SERVICES AGENCIES

Workplace Grievance and Conflict Resolution Procedures

Mediation is already available under the *Workplace Grievance and Conflict Resolution Procedures (Grievance Procedures)*.

No amendment to the *Grievance Procedures* are necessary to achieve an increase in the use of mediation. The *Grievance Procedures* already provide that mediation is the most desirable method to resolve conflict when parties will need to have an ongoing working relationship.

What is required is simply a higher take up rate of supervisors/management teams utilising mediation services. All Commanders, management teams and supervisors should be confident they have sufficient access to mediation services to utilise whenever their workplace is affected by conflict, and be encouraged to utilise these services.

This could be achieved by educating officers in relevant decision-making positions about the desirability of mediation services, and making mediators readily available when requested. The Police Association believes this should ideally involve access to the services of professional external mediators, as this improves the perception of independence and helps to address potential power imbalances.

Mediation is voluntary, so it is foreseeable that many offers for mediation will not be accepted by at least one involved party. This could be in part addressed by improved provision of information to involved parties outlining:

- What their involvement in mediation will entail,
- How the information provided in that process will and will not be used, and
- The benefits of mediation.

This provision of information should be included as a mandatory step in the *Grievance Procedures*.

This increased utilisation of mediation should be utilised both for:

- Grievances which officers bring to the attention of their supervisors or through other reporting mechanisms, and
- Workplace conflict which is identified by supervisors or management teams; on their own initiative, so to speak.

Managers and supervisors should not wait for workplace conflict to escalate before utilising mediation. Conflict should be resolved before it becomes a serious problem in the workplace. This will hopefully prevent conflict becoming more difficult to resolve and potentially escalating into bullying and harassment.

Complaint Handling Guidelines

The Police Association supports the principle that all allegations which amount to bullying or harassment should be treated as a complaint.

While maintaining that position, currently, the *Complaint Handling Guidelines* do not provide sufficient resolution processes for allegations of bullying or harassment.

This applies both when a complaint of bullying and harassment is sustained and when it is unsustainable.

When a complaint is sustained, it will result in action being taken under Part 9 of the Police Act. But not enough is currently done to alter and prevent the conduct which occurred in the workplace, nor

PORTFOLIO COMMITTEE NO. 4 – LEGAL AFFAIRS  
INQUIRY INTO EMERGENCY SERVICES AGENCIES

the conflict which likely exists between officers who have just been on either side of the complaint process. This means the previous action may be punished, but measures to facilitate a future, ongoing working relationship are neglected.

When a complaint is not sustained, it is treated as if it did not occur. Even if there is a finding that no misconduct has occurred, it is still unavoidable that two or more police officers now have a differing opinion over what constitutes respectful behaviours between them, and will likely have escalated conflict due to being on opposite sides of the complaint process.

Therefore, the Police Association proposes the *Complaint Handling Guidelines* incorporate a mandatory resolution process for complaints that involve workplace equity matters.

This process should specify that when such a complaint is finalised (either as sustained or unsustained) mediation is always offered to involved parties, along with information about mediation as outlined above. Mediation is voluntary, and therefore may not be accepted in all matters, but it should at least be made available.

One Committee member, the Hon. Trevor Khan, made the following observation:

The Hon. TREVOR KHAN: I am not disagreeing, but any mediation, I would have thought, would start with there being some common factual ground between the parties. If you do not have that then one of the problems is, what do you mediate? If the sergeant at the station says, "What was said at that meeting is bullshit. The reason I did not transfer him from that shift to that shift was simply because it could not be done because the others would not agree." The senior constable says, "He's bullying me. He's doing it for various reasons" so that you have got a factual disconnect. When you mediate, what are you going to mediate because they are still in profound disagreement. The senior constable says, "I know why he did it. It is because he dislikes me." He has that view. The sergeant says "It's all just crap."

Ms WILLIAMS: I will go back to my previous comment that external mediators are highly skilled at drawing out not did it occur or did it not occur, but how did that make you feel so common grounds can be reached by reaching a common understanding of the way that the experience affected both parties.

Mr DAVID SHOEBRIDGE: There are thousands of successful mediations where the two parties go in one thinking black, one thinking white, and a mediator gets a solution that they can both live with.

Mr SKINNER: I think if we said mediation would not work because two parties go in disagreeing about the facts we would never mediate anything. Mediation is to deal with that very disagreement.

The Hon. TREVOR KHAN: But this is at the end of the process, once there has been a finding, a determination.

That observation is entirely valid: the mediation we are proposing occurs at the end of a complaint investigation process, when two parties disagree about the facts, and the NSW Police Force has formed a position on that matter. The mediation process will therefore, not necessarily be able to reach a satisfactory resolution in relation to past conduct, the validity of allegations made and the status of the complaint.

PORTFOLIO COMMITTEE NO. 4 – LEGAL AFFAIRS  
INQUIRY INTO EMERGENCY SERVICES AGENCIES

However, effective mediation - and the reason we propose the use of qualified and experienced external mediators - should focus on how affected officers have been impacted by each other's actions, and how they can move beyond that and continue to work together in the future, irrespective of disagreement about past conduct and the outcome of the complaint.

The Police Association also supports more involvement by the Workplace Relations and Equity Unit (WREU), as outlined in our submission.

As identified above, the *Complaint Handling Guidelines* contain insufficient options for resolving conflicts in the workplace, even though the complaint may be considered 'resolved' under those Guidelines. The WREU provides assistance in the investigation and resolution of equity matters, but if there are insufficient resolution options available in the first place, this involvement may be limited.

Therefore, the Police Associations submits the *Complaint Handling Guidelines* should include mandatory quality review by the WREU for all bullying complaints. The WREU should also assess the workplace needs of affected officers to maintain ongoing working relationships. These functions should be performed by the WREU regardless of whether the complaint was sustained or unsustained, which may involve a change of WREU policy.

### Question 3: Access of workers compensation information for disciplinary purposes

#### Question

Mr DAVID SHOEBRIDGE: The concern has been raised—I know in my office—by a number of people that if you are dealing with your workers compensation insurer and the case manager and lining up medical reports and talking about maybe the trauma you suffered at work, that if that information then gets passed to your employer that is very traumatic and troubling for them and, indeed, the information has been given for your treatment for your injury but then it is passed on to the employer and might be used in a disciplinary process, and there are cases where that has happened. As a union surely you see the problem there?

Mr WEBER: That is right and that is why privacy and the protection of the members' rights is paramount in regard to these issues. So when it does occur we obviously step straight on it. But you are talking about incidents that previously occurred, because this does not come up too much—especially from my visibility, I do not see these issues occurring too much, but in the past.

Mr DAVID SHOEBRIDGE: How would somebody know about it?

Mr WEBER: They would have to raise it with us.

Mr DAVID SHOEBRIDGE: No—how would a police officer know about it if no-one is telling them? It seems to me you thought it was happening that the workers compensation insurer is sharing the information with Professional Standards. You would not necessarily know about that unless something slipped.

That is how we—

Mr WEBER: There would have to be requests and formal processes. There is a process around it, of course.

PORTFOLIO COMMITTEE NO. 4 – LEGAL AFFAIRS  
INQUIRY INTO EMERGENCY SERVICES AGENCIES

Mr DAVID SHOEBRIDGE: Are you saying this from knowledge or are you guessing?

Mr WEBER: I am guessing at the present moment—yes.

Mr DAVID SHOEBRIDGE: Perhaps it might be something—

The Hon. CATHERINE CUSACK: The concern is database access.

Mr WEBER: Okay.

Mr DAVID SHOEBRIDGE: Information that is given to the workers compensation insurer is being automatically shared on a common portal.

Mr WEBER: We will take this on notice but it is probably more a question for New South Wales police. In regard to the Police Association of NSW—

Mr DAVID SHOEBRIDGE: But you see it as problematic?

Mr WEBER: Yes. We would not want that. Unless there is a criminal investigation involved on some serious issues, no way would we want any member's medical records being passed over.

Mr DAVID SHOEBRIDGE: What if the standard workers compensation claim form included a box to tick where you purportedly consent to that?

Mr WEBER: Well, if you consented to it then it would be given, wouldn't it?

Mr DAVID SHOEBRIDGE: But if that has not been drawn to your attention and you are just filling in a medical certificate and it has a little box on there that says you consent, that would be a systemic problem, would it not?

Mr WEBER: That is where, obviously, we need to make sure that our members have a consultation with us. If there is a medical discharge process, or hurt on duty or a member is injured, that is why we head down this path of our welfare officer.

Mr DAVID SHOEBRIDGE: Perhaps have a close look at those—

Mr WEBER: On top of that, the Police Association provides financial legal assistance to members. They just need to request it. Therefore they can start to speak to a lawyer in regard to these issues as well or speak to someone like Catherine Williams in regard to their industrial and welfare rights. And we have organisers. We have gotten a lot better in regard to realising if someone has gone off sick, and we also follow up as a union as well. We are probably talking about issues in the past. Hopefully that does not occur any more. If it does, we need those members to come forward and actually speak to us, because then we can give them legal assistance and welfare assistance.

Mr DAVID SHOEBRIDGE: Just to be clear, Mr Weber, I am not talking about things in the past. I am talking about current practice with the current insurer.

Mr WEBER: Okay.

### Answer

The Police Association would be highly concerned if the NSW Police Force were accessing this category of documents for the purposes of commencing investigation or disciplinary action against the injured officer.

It is clear from the transcript from 10 November 2017 Commissioner Fuller agrees with this.

PORTFOLIO COMMITTEE NO. 4 – LEGAL AFFAIRS  
INQUIRY INTO EMERGENCY SERVICES AGENCIES

The Police Association has confirmed with Professional Standards Command that these categories of documents should not be accessed or used for disciplinary purposes, unless a complaint is directly related to the documents accessed.

Professional Standards Command have also indicated to the Police Association that they do not have access to the database in which that category of documents is stored.

The Committee asked questions regarding whether the consent component on standard medical certificates meant officers were inappropriately consenting to this type of use of medical records with proper knowledge of what they were consenting to.

As established by the discussion outlined below, the standard consent form does not permit the use of medical records for disciplinary purposes:

Mr DAVID SHOEBRIDGE: One of the primary concerns is if it is an injury in relation to bullying that may also be the subject of an internal complaints process or an internal grievance process. We do not need to speculate about the form of the current consent on the medical certificate. It says: "I consent to my treating medical practitioner, my employer, the insurer and other treating practitioners, workplace rehabilitation providers and WorkCover exchanging information for the purposes of managing my injury and workers compensation claim. I understand this information will be used by WorkCover and insurers et cetera." The question is: How far does that use of information go and what checks and balances are required so that it does not just get uploaded into a central pool which Professional Standards has access to? Because that would be a problem.

Mr WEBER: That would be a problem. From my reading of that, that should not go to Professional Standards.

The Hon. TREVOR KHAN: That is right. It has to be for the management of the injury.

Mr WEBER: It is solely dealing with the medical issues. If that does occur then those matters need to stop straight away.

Mr DAVID SHOEBRIDGE: That should stop.

According to all the information available to the Police Association, the NSW Police Force should not be accessing or using this category of documents for disciplinary purposes. Professional Standards Command have also indicated they are not capable of accessing those documents.

The Committee indicated individuals had raised concern that despite the above, medical records had in fact been accessed and used for the purposes of commencing investigation/disciplinary processes against individuals.

When an officer lodges an injury claim, the insurer will investigate the claim. This may involve making the officer's Command aware of the injury and surrounding facts according to the officer, and obtaining versions from other officers with knowledge of those facts.

As a result of this process, the injured officer's Command, and other officers within the Command, will have a degree of knowledge of the officer's injury claim.

Those same officers could subsequently be involved in investigative or disciplinary procedures against that officer.

PORTFOLIO COMMITTEE NO. 4 – LEGAL AFFAIRS  
INQUIRY INTO EMERGENCY SERVICES AGENCIES

This might be the circumstances which give rise to the concerns raised before the Committee, although we are not aware of what evidence the Committee received.

If, through the claim process, the NSW Police Force was made aware of any misconduct information, they would be required by the *Police Act 1990* and the *Law Enforcement Conduct Commission Act 2016* to deal with that information in accordance with Part 8A. This obligation exists even if the information was obtained otherwise than through a formal complaint, including through the workers' compensation process. If an investigation or disciplinary action was initiated for this reason, that would not be improper, it would simply be the NSW Police Force complying with their legislative obligations.

However, if knowledge of an officer's injury claim was motivating inappropriate investigation or disciplinary action against that officer, that would be highly concerning to the Police Association and if that member brought the issue to our attention we would make representations on their behalf.