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Misconduct risks associated with authorised secondary employment: A Review of Compliance with NSW Police Force Policies and Guidelines

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1. INTRODUCTION

The NSW Police Force *Secondary Employment Policy & Procedures* ('the policy') defines secondary employment as 'any paid work performed other than for the NSW Police Force' and requires that all employees seek approval prior to engaging in secondary employment.¹ As of March 2012 almost 10 per cent of NSW Police Force officers had authorisation to engage in secondary employment.²

The purpose of this project, codenamed Project Santuri, was to examine the extent to which officers of the NSW Police Force are complying with those aspects of the policy that are intended to manage conflicts of interest and misconduct risks associated with authorised secondary employment.

1.1. Aims of Project Santuri

The Police Integrity Commission ('the Commission') had four aims in carrying out Project Santuri, being to:

1. identify misconduct risks associated with authorised secondary employment
2. develop an understanding of the current processes and systems used by the NSW Police Force to authorise, monitor, and manage secondary employment
3. assess the rate of compliance by officers of the NSW Police Force with the policy by means of audit style review
4. identify if there are opportunities for the misconduct prevention aspects of the policy to be strengthened and, if required, provide advice and recommendations for managing conflicts of interest and misconduct risks associated with authorised secondary employment.

¹ NSW Police Force *Secondary Employment Policy & Procedures*, January 2010, p. 4.

² As of 20 April 2012, the NSW Police Force employed a total of 15,986 sworn officers; 1,538 had approved secondary employment (Letter from the NSW Police Force, Human Resources Command, received by the Commission on 20 April 2012).



1.2 Scope of Project Santuri

The NSW Police Force secondary employment policy provides information to sworn and unsworn employees on a broad range of procedural requirements as to the circumstances in which officers may undertake a second job. Significantly, Project Santuri did not seek to examine the extent to which *all* NSW Police Force employees are adhering to *all* aspects of the policy. Rather, it was concerned only with sworn officers and those aspects of the policy that are aimed at managing misconduct risks.

Project Santuri did not inquire into the conduct of individual officers nor did it try to examine the extent of unauthorised secondary employment in the NSW Police Force. The Commission recognises that unauthorised secondary employment exists and is a problem for the NSW Police Force; however it is a hidden problem conducted in secrecy and generally only comes to notice in the context of an investigation. For this reason it does not lend itself to this form of study.

The focus of Project Santuri was on the misconduct risks associated with *authorised* secondary employment and how well these are being managed by the NSW Police Force.

2. KEY TERMINOLOGY

The following section defines two key terms used throughout this paper: misconduct risk and conflict of interest. It is acknowledged that there are no universally agreed definitions for these terms. The definitions provided below are consistent with those used by the Commission in previous research and prevention publications.

2.1 What is a misconduct risk?

A misconduct risk may be regarded as 'a risk that arises from an opportunity or workplace vulnerability for an employee to engage in corruption or some other form of misconduct'.³ It is in the interests of any organisation to identify and assess its misconduct risks in order to take steps to treat them. Misconduct risks that are left untreated can potentially lead to corrupt conduct.

2.2 What is a conflict of interest?

A conflict of interest can be viewed as 'any relationship that is, or appears to be, not in the best interest of the organisation. A conflict of interest would prejudice an individual's ability to perform his or her duties and responsibilities objectively'.⁴ The

³ Police Integrity Commission, *Project Manta, Report 2, Managing Command Misconduct Risks*, March 2011, p. 147.

⁴ The Institute of Internal Auditors, *International standards for the professional practice of internal auditing*, 2010, pp. 18-19.



NSW Police Force recognises three different types of conflicts of interest that can arise from secondary employment: actual, potential and perceived conflict of interest.

1. An actual conflict of interest occurs when you hold a public position where **right now you can be influenced** by your private interests when doing your job.
2. A perceived conflict of interest occurs when you hold a public position where you **appear to be influenced** by your private interests when doing your job.
3. A potential conflict of interest occurs when you hold a public position where **you may in future be influenced** by your private interests when doing your job.⁵

For the purposes of this paper the Commission will simply use the term conflict of interest to cover the three types identified.

3. RESULTS OF PREVIOUS INVESTIGATIONS

Investigations by Australian anti-corruption agencies have revealed a number of instances of police officers engaging in different forms of misconduct resulting from, or in some manner connected with, secondary employment activities. In presenting the findings of their investigations, some of these agencies have also emphasised the importance of systems and controls within policing organisations as a means of managing the misconduct risks associated with these activities.

This section summarises the results from a selection of such investigations and outlines the findings and recommendations made to manage secondary employment misconduct risks.

3.1 Royal Commission investigations

The Royal Commission into the NSW Police Service ('the Royal Commission') was established in 1994 to investigate corruption in the NSW Police Service (as the NSW Police Force was then known). During the course of its hearings, the Royal Commission heard evidence from a number of witnesses regarding currently serving police officers who, without authorisation from the NSW Police Force, were engaged in other lines of work. In some of these cases clear conflicts of interest existed between the officers' obligation and duties as police officers, on the one hand, and the roles they were performing in their second jobs, on the other.⁶ The Royal

⁵ Independent Commission Against Corruption, *Identifying and managing conflicts of interest in the public sector*, July 2012.

⁶ Royal Commission into the NSW Police Service, *Final Report Volume II: Reform*, May 1997, p. 310.



Commission's investigations revealed instances of officers attending, on a social basis, various inner city night clubs and dance parties where drugs were known to be openly and readily available, and providing security services (without secondary employment approval), at those premises.⁷

The Royal Commission recognised that for officers engaged in secondary employment some industries carried greater risks than others. It noted that in order to maintain the integrity of the Service, 'it would be wise to rule out secondary employment in those industries in which police also have a regulatory or law enforcement role, for example, commercial and private enquiry agents, transport, liquor, security, and gaming and racing.'⁸ The Royal Commission made the following recommendations in relation to secondary employment:

60. Secondary employment be prohibited in those areas in which police have a regulatory role such as commercial and private enquiry agents, transport, liquor, security, and gambling and racing.⁹
61. Existing secondary employment applications be reviewed on an annual basis.
62. The Service develop effective mechanisms to audit officers undertaking secondary employment.¹⁰

In its final report, the Royal Commission recommended that the secondary employment activities of police officers 'are subject to a strict regime to prevent police being placed in a position of conflict of interest, or becoming vulnerable to inappropriate associations'.¹¹

3.2 Police Integrity Commission investigations

Operation Abelia (2005) was a Commission project that combined research and investigations into illegal drug use by NSW police officers. Former Officer B2 told the Commission how he became involved in the supply of illegal drugs. According to his evidence the head of security at a particular nightclub where he was engaged in unauthorised secondary employment threatened him, as he knew that former Officer B2 was using illegal drugs:¹²

⁷ Royal Commission into the NSW Police Service, *Final Report Volume I: Corruption*, May 1997, pp. 100-101.

⁸ Royal Commission into the New South Wales Police Service, *Final Report Volume II: Reform*, May 1997, p. 311.

⁹ The Police Association of NSW opposed any blanket ban on specific types of secondary employment. Police Association of NSW, Letter to the RCPS regarding secondary employment and transfers, 3/5/96, RCPS Exhibit 2465/17, p.1.

¹⁰ Royal Commission into the New South Wales Police Service, *Final Report Volume II: Reform*, May 1997, p. 312.

¹¹ Royal Commission into the New South Wales Police Service, *Final Report Volume I: Corruption*, May 1997, p. 101.

¹² Operation Saigon, Phase II, PIC Transcript, Private hearing, AFC, 15 December 1999, pp. 22-23.



He came up to me and said that he knew I was a police officer and I said, 'How did you know that?' He just said, you know, 'I found out'. He said, you know, 'You are running a risk taking drugs and being a police officer', and I said, you know, 'I don't really wish to talk about it'. And he said, 'There's a lot of money to be made through dealing in the club', and I said, 'Well, I'm not interested. I just party with my friends and that's it'. And he said, 'Well, I want you to deal for me. You know, I can't deal here myself'. And this went on. I refused at first and then he made a number of threats and I ended up dealing for him.¹³

When asked what sorts of threats were made, former Officer B2 replied:

That he would – he made two. One was informing the police and another one, which was the one, as I have already mentioned, I took more seriously, was – I was mixing with some people that I regarded as heavy individuals, nightclub owners and things of that nature, and they had included me in their inner group, so I was seeing a lot of drug use taking place and a lot of other activities that these people did – not criminally, so much, but morally – and if they knew that I was a police officer, I – you know, there was a large risk to my health because these people had no idea.¹⁴

On the evidence of this officer, his own use of drugs coupled with his involvement in unauthorised secondary employment at a night club created a situation where a fellow nightclub employee was able to pressure him into supplying drugs, and by so doing engaging in serious criminal activity. In this case, secondary employment provided the context for an officer already engaged in misconduct to become even further compromised.

Operation Saigon (2001) exposed some of the same abuses as those identified by the Royal Commission in connection with secondary employment. This investigation revealed some officers 'were attending nightclubs, some of which were "off-limits"¹⁵ to police officers due to the high level of drug activity, and some of the same officers were undertaking secondary employment as security guards without approval'.¹⁶ The evidence from three officers and one former officer revealed that the prospect of being subject to departmental action, if caught, did not deter them from pursuing secondary employment in the security industry without approval.¹⁷ In the circumstances of this case, the ability of these officers to fulfil their oath or affirmation of office to enforce the law was compromised due to their divided loyalty between their primary employer, the NSW Police Force, and their secondary employer, the nightclub, where the drug-related offences were occurring.

¹³ Operation Abelia, PIC Transcript, Private hearing, APJ, 16 August 2004, p. 16.

¹⁴ Operation Abelia, PIC Transcript, Private hearing, APJ, 16 August 2004, pp. 16-17.

¹⁵ Operation Saigon Phase II, PIC Transcript, R J W Podesta, 1 November 1999, p. 77.

¹⁶ Police Integrity Commission, *Report to Parliament, Operation Saigon*, June 2001, p. v.

¹⁷ Police Integrity Commission, *Report to Parliament, Operation Saigon*, June 2001, p. vi.



3.3 Previous Commission Projects

In 2007 the Commission commenced a project, codenamed Project Manta, to obtain a better understanding of the nature of the misconduct risks facing the NSW Police Force and how commands identify, communicate and manage their misconduct risks. Project Manta sought to inform strategies to minimise police misconduct by examining how NSW Police Force commands identify and manage those aspects of policing which may pose integrity hazards or vulnerabilities for misconduct, independent of the particular individuals who occupy these positions.

The Commission obtained information from a randomly selected sample of 25 NSW Police Force commands concerning: command demographics and staffing profile, how frequently different types of work are undertaken, the nature of misconduct risks facing NSW Police Force officers, and command processes used to identify and communicate misconduct risks. Five commands cited secondary employment as one of the misconduct risks identified by them. By way of example one metropolitan command identified in its most recent corruption resistance plan the need to review work performance to ensure that there are no conflict of interest issues regarding officers' secondary employment activities. Some commands described how they compare sick leave and secondary employment data to identify misconduct risks within their command. Project Manta concluded that the misconduct risk of secondary employment could apply to the majority of NSW Police Force commands.

In 2007 the Commission commenced a project examining improper associations that may be identifiable through secondary employment applications. The Commission wrote to the six Regions and the State Crime Command requesting all current authorised secondary employment applications. The copies of the applications provided by the NSW Police Force were analysed revealing a small number of police officers who were engaged in secondary employment with persons who have criminal records or who are the subject of criminal intelligence reports. The Commission's examination of the NSW Police Force *Secondary Employment Policy & Guidelines* 2001¹⁸ revealed that a more detailed level of scrutiny by the NSW Police Force was only required in relation to applications in 'high-risk industries' such as security, liquor, commercial and private inquiry agents, gaming and racing and transport industries. Based on the information obtained by the Commission, there did not appear to be a process in place for identifying and managing the risks that arise from officers engaging in secondary employment with persons who have criminal records or who are the subject of criminal intelligence reports. The Commission raised these issues with the NSW Police Force Professional Standards Command in 2009 and both agencies engaged in a consultative process as to how the current NSW Police Force systems might be strengthened. The NSW Police Force endorsed a new secondary employment policy in 2010. The revised NSW Police Force

¹⁸ This was the current policy at the time the Commission conducted its secondary employment project.



Secondary Employment Policy & Procedures 2010 included a requirement that a risk assessment must also be completed for all standard applications as part of the consideration and approval process by the Local Area Commander.¹⁹

3.4 Investigations conducted by other agencies

In 1991 the New South Wales Independent Commission Against Corruption ('the ICAC') conducted a corruption prevention project on secondary employment of NSW police officers. The report noted that since its establishment in March 1989 the ICAC had received many complaints about police officers involved in secondary employment. The complaints highlighted the potential for corruption and conflicts of interest to arise when police undertook secondary employment, particularly in the security and liquor industries.²⁰ The ICAC made a number of recommendations to improve and strengthen the secondary employment policy. One of the recommendations was that the policy 'should ensure that not only are officers prohibited from owning or accepting directorship of security or private investigation companies but that they also are prohibited from acting as agents on behalf of other officers'.²¹

In 2000 the Queensland Criminal Justice Commission ('the CJC') exposed a trade between police officers and private enquiry agents. The CJC identified that 'the demand for confidential information is created by end-users such as finance organisations and legal firms, whose staff are often trying to locate evasive individuals. Private investigators and commercial agents act as the intermediaries between the end-users and the suppliers of information'.²² During the course of its investigations, the CJC identified 11 serving police officers of the Queensland Police Service ('the QPS') who held a private investigator's licence. None of the officers claimed to be using the licence for secondary employment. One of the officers who held a private investigator's licence was a Senior Sergeant who admitted to using the QPS computer systems in the performance of his duties in his second job as a commercial sub-agent. He had declared to his supervisor that he had secondary employment but described the occupation as a courier/driver.²³

Q: But of course you'd agree with me that the examples that we've seen here [of a Senior Sergeant accessing QPS computer systems for secondary employment] are the hard ones, where you've resorted to the police computer to see if you can get any more information [other than through publicly available databases] in order to locate them?

¹⁹ NSW Police Force *Secondary Employment Policy & Procedures*, 2010, p. 9.

²⁰ Independent Commission Against Corruption, *Corruption Prevention Project: Secondary Employment of NSW Police Officers*, August 1992, p. 5.

²¹ *Ibid*, p. iv.

²² Criminal Justice Commission, *Protecting Confidential Information: A report on the improper access to, and release of, confidential information from the police computer systems by members of the Queensland Police Service*. Brisbane: Criminal Justice Commission, November 2000, p. xviii.

²³ *Ibid*, pp. xix & 60.



A: That's correct.²⁴

The CJC stated that a clear conflict of interest existed where the officer accessed confidential police information from the QPS computer system in order to locate debtors on behalf of his secondary employer. The CJC recommended that the QPS prohibit members from 'being registered and/or licensed as private investigators, commercial agent or sub-agent and/or process-server and prohibit members from undertaking employment with any private-investigation, process-serving or other agency/organisation that is concerned with locating people or obtaining personal and/or confidential information'.²⁵

In October 2011, the then Victorian Office of Police Integrity (OPI) published a report on an investigation into the conduct of a member of Victoria Police undertaking secondary employment as a Ministerial Adviser.²⁶ The OPI's report described the views of this officer's attitudes towards the then Chief Commissioner, Simon Overland, as ... *almost unreservedly negative* and used his position to promote these views. The investigation found that the officer:

- used the media to 'sharpen his attack' on the Chief Commissioner and other senior officers and actively encouraged the publication of critical articles
- provided information, including confidential information, to facilitate the publication of critical articles
- misled the Minister's Chief of Staff about his media activities.

The OPI report makes no findings of misconduct or corruption and presents no recommendations for criminal charges or disciplinary action. It concludes that the Victoria Police should not have approved the officer's application to undertake secondary employment in the Minister's Office. In addition to there being personal factors that made the officer a poor choice, OPI notes that the appointment created an ... *irreconcilable conflict of interest*.

The OPI Director concluded:

In hindsight, it is surprising and unfortunate that it was ever thought appropriate for a serving police member to occupy a position in the Minister's office where the police member's principal responsibility ... was to protect the Minister and the Government, not to serve the Chief Commissioner and Victoria Police. ... In my opinion it is impossible for a police member to reconcile the duties of Police Adviser to the

²⁴ Ibid, p. 34.

²⁵ Criminal Justice Commission, *Protecting Confidential Information: A report on the improper access to, and release of, confidential information from the police computer systems by members of the Queensland Police Service*. Brisbane: Criminal Justice Commission, November 2000, p. 60.

²⁶ *Crossing the Line, Report of an investigation into the conduct of a member of Victoria Police undertaking secondary employment as a Ministerial Adviser and his relationship with a Deputy Commissioner of Victoria Police*, October 2011, found at < <http://www.ibac.vic.gov.au/docs/default-source/opi-parliamentary-reports/crossing-the-line---oct-2011-.pdf?sfvrsn=4>>



Minister with the duty of that of a member to Victoria Police. There is a fundamental conflict of interest evident time and again in the narration of the events that occurred between April and June of this year.²⁷

4. MISCONDUCT RISKS ASSOCIATED WITH SECONDARY EMPLOYMENT

One of the aims of this project was to identify the misconduct risks associated with secondary employment. This section endeavours to isolate a list of the major misconduct risks associated with the secondary employment of police officers.

The definition presented earlier in this paper indicates that a misconduct risk may be regarded as 'a risk that arises from an opportunity or workplace vulnerability for an employee to engage in corruption or some other form of misconduct'.²⁸ Significantly, however, the misconduct risks associated with secondary employment can be seen to differ from other misconduct risks faced by police officers. Given that secondary employment, when authorised, is pursued by officers off duty and away from a police workplace, the misconduct risks associated with this activity cannot be regarded as having been caused by 'workplace vulnerabilities'. Rather, the opportunity or vulnerability arises as a result of officers' outside employment interests coming into conflict with their duties and obligations as police officers.

4.1 Misconduct risks in the NSW Police Force Secondary Employment Policy & Procedures

The NSW Police Force secondary employment policy does not explicitly refer to or identify any misconduct risks associated with this off duty activity. The policy does, however, recognise that there is the potential for officers, through their secondary employment activities, to form improper associations and act in manner contrary to the *Police Act 1990*. Further, it:

- highlights the need to manage conflicts of interest that may arise through secondary employment
- acknowledges that some industries, designated by the policy 'high risk industries', are riskier than others for police officers to work in.

Concerning the management of conflicts of interest, the policy indicates, amongst other things, that:

²⁷ Ibid, p. 77.

²⁸ Police Integrity Commission, *Project Manta, Report 2, Managing Command Misconduct Risks*, March 2011, p. 147.



- a risk assessment, including an evaluation of any conflicts of interest, must inform the decision to approve or reject a secondary employment application
- employees with secondary employment approval are required to report any conflicts of interest in the course of their secondary employment.

Those industries classified as high risk by the *Secondary Employment Policy & Procedures* are listed in section 5.2 of this paper and, to minimise repetition, have not been replicated here. It is relevant to note, however, that amongst the major questions considered by the NSW Police Force in designating an industry as 'high risk' is whether or not the industry is regulated or licensed through the NSW Police Force.

This approach to identifying high risk industries, consistent with Recommendation 60 from the Royal Commission as mentioned above, may be characterised as focusing on types of secondary employment where there is a *heightened* risk of a conflict of interest. This being so, though not referring to it in such terms, the policy effectively acknowledges only one misconduct risk: conflicts of interest.

4.2 Secondary employment misconduct risks faced by public employees

As part of the process of identifying the secondary employment misconduct risks faced by police officers, it is relevant to consider those that face public employees in general. Both the NSW Independent Commission against Corruption (ICAC) and the Queensland Crime and Misconduct Commission (CMC) have provided information on their websites as to the corruption risks that may be faced by public employees. In contrast to the NSW Police Force secondary employment policy, the ICAC and the CMC identified multiple corruption risks linked with secondary employment. These are summarised below.

The ICAC notes that some or all of the following corruption risks are likely to be identified by a public sector agency:²⁹

- An employee using public resources for secondary employment. For example, work time, vehicles, communication devices, stationery, photocopiers, tools and equipment, and confidential information.
- An employee falsifying timesheets, or taking paid sick leave under false pretences, to engage in secondary employment.

²⁹ Independent Commission Against Corruption, *Secondary Employment, Corruption risks*, found at < <http://www.icac.nsw.gov.au/preventing-corruption/known-your-risks/secondary-employment/4302>>



- An employee seeking secondary employment with clients of their public employer in return for promising to exercise their official functions to favour the client.
- Clients of an agency offering secondary employment to officers as an inducement to be favoured in their dealings with the agency.
- An employee who runs a business that offers goods and services used by the public agency submitting tenders for goods and services to the agency without declaring their interest in the business.
- An employee actively misrepresenting their secondary employment as being under the auspice of their public sector employer.
- An employee directing subordinates to perform tasks for the employee's own secondary employment.

The ICAC also notes that public employees must consider... *whether the secondary employment may adversely affect the performance of their public sector duty or give rise to a conflict of interest.*

The Queensland Crime and Misconduct Commission (CMC) indicates that the corruption risks associated with secondary employment depend on the job roles involved and the functions of the public agency. It lists the major misconduct risks as including:

- the creation of an actual or perceived conflict of interest between official and private business interests
- misuse of public resources, especially telephones, email and office consumables
- unauthorised use of information and intellectual property
- absenteeism due to clashing commitments
- diminished work performance resulting from tiredness, distraction or time pressures
- increased load on co-workers who must 'cover' the reduced performance of one employee
- adverse effects on the public's perception of the integrity of an organisation.

The CMC points out that the risks to an organisation are greatest when the second employer:

- has or is likely to have contractual dealings with the organisation
- is in, or may come into, commercial competition with the organisation



- has a regulatory relationship with the organisation.³⁰

4.3 Secondary employment misconduct risks faced by police officers

Are the secondary employment misconduct risks for public officials applicable to police officers? It is not in dispute that there are some duties performed by police that are unique to that profession and set officers apart from other public employees (for example, the power to use force in enforcing the law).

It is also true to say, however, that there are many responsibilities and obligations that police officers share with other public employees. Amongst other things, police officers, like other public employees are required to: use confidential information and public resources in the performance of their duties, ensure that their private interests do not interfere with public duties, ensure that their formal time records reflect the hours they have worked and use non-recreational leave in a manner consistent with its intended purpose. It is not surprising, therefore, that many secondary employment misconduct risks identified by the ICAC and CMC can be considered applicable to police officers.

A list of the major secondary employment misconduct risks may be distilled from the information presented above in this paper, namely: the findings of Australian anti-corruption investigations, the risk of conflict of interest referred to in the NSW Police Force policy; and the corruption risks identified by the ICAC and CMC for public employees. For the purposes of this paper, the major secondary employment misconduct risks facing the NSW Police Force can be taken to be:

1. unauthorised access and use of confidential information
2. misuse of public resources
3. conflicts of interest between public duties and private interests, including improper associations
4. abuse of time records, including absenteeism
5. abuse of non-recreational leave (especially sick leave)

5. AUTHORISED SECONDARY EMPLOYMENT IN THE NSW POLICE FORCE

This section provides a brief outline of the secondary employment application and approval process in the NSW Police Force.

³⁰ Crime and Misconduct Commission, Queensland, *Secondary Employment, Major misconduct risks*; last updated 22 February 2013, found at < <http://www.cmc.qld.gov.au/topics/misconduct/misconduct-prevention/major-risk-areas/secondary-employment> >



Secondary employment of NSW Police Force employees is principally governed by the secondary employment policy, most recently updated in 2010. The policy requires that all applicants complete a *Secondary Employment Application Form* ('the application') which includes full disclosure of the proposed employment and identification of any potential misconduct risks or conflicts of interest and how these can be minimised, managed or avoided. Applications for secondary employment are classified by the applicant in accordance with the policy as *standard*, *extraordinary* or *high risk*.

Local area and specialist commanders are authorised to either approve or decline *standard* applications, after conducting a risk assessment. However, they are required to forward applications assessed to be *extraordinary* or *high risk*, or *extraordinary* with *high risk* aspects, to Region Commanders (or officers of equivalent rank) for determination. Probity assessments are conducted by the Region or Specialist command Professional Standards Managers ('the PSM') for *high risk* applications and *extraordinary* applications with *high risk* aspects before they are considered by Region Commanders (or officers of equivalent rank).

Authorisation to pursue secondary employment lasts for a period of 12 months. Officers who have authorisation to engage in secondary employment, and who wish to continue with the same outside, non-police job, are required to submit a new application two months before the one in force expires. Applicants seeking to renew their authorisation are required to inform their commanders or managers of any changes in their circumstances. This includes, changes to such things as: the policing duties performed; the name or company of the secondary employer; and the duties performed in their second jobs. Officers who fail to comply with these requirements run the risk of having their secondary employment approval cancelled or of their request for renewal denied. Any officer who engages in secondary employment without prior approval or who continues to engage in secondary employment after being directed to cease such employment may be the subject of management or disciplinary action.³¹

Local area and specialist commanders and managers are required by the policy to monitor and manage their employees' secondary employment, particularly those employees engaged in *high risk* industries or *extraordinary* secondary employment. Commanders are responsible for arranging quarterly reviews of all secondary employment approvals within their commands. It is noted there is no organisation wide monitoring arrangements for secondary employment in the NSW Police Force.

According to the policy, decisions to approve or reject an officer's request to undertake secondary employment are made on the basis of: the information provided in the application, a risk assessment and, where applicable, a probity assessment.

³¹ NSW Police Force *Secondary Employment Policy & Procedures*, January 2010, p. 13.



Further information in relation to risk and probity assessments is provided below in section 6.

5.1 What is a *standard* application?

A *standard* application is any application not in the *high risk* industry or *extraordinary* category.

5.2 What is a *high risk* application?

As noted, *high risk* application refers to any application for employment in industries that have been identified as presenting a potential conflict of interest for employees of the NSW Police Force. *High risk* industries include:

- Security
- Firearms
- Liquor
- Commercial and Private Inquiry Agents
- Second Hand Dealing and Pawn Broking Industry
- Gaming and Racing
- Transport
- Sex Industry.³²

Applications for secondary work in *high risk* industries require particular consideration by the Region Commander or equivalent. According to the policy, approval to engage in secondary employment should not be granted where 'there is clearly a conflict of interest between the role of the NSW Police Force and the operations of the secondary employer; or there is a significant threat to the good reputation of the NSW Police Force'.³³

5.3 What is an *extraordinary* application?

Under the policy, *extraordinary* applications must be approved by the applicant's Region Commander or officer of equivalent seniority. As indicated by the term, these applications contain aspects that are out of the ordinary or are in some way unusual. *Extraordinary* applications include cases where the applicant is:

- a) on restricted duties as a result of illness or injury
- b) seeking any form of leave in conjunction with or to facilitate secondary employment
- c) suspended from duty

³² NSW Police Force *Secondary Employment Policy & Procedures*, January 2010, p. 7.

³³ *Ibid*, p. 7.



- d) seeking secondary work either overseas or interstate.³⁴

Cases where the duties or circumstances are in some other manner unusual are also classed as *extraordinary* applications, as are cases where the type of work has been the subject of recent controversy.

The policy recognises that an *extraordinary* application may have *high risk* aspects to it. In circumstances in which such an application is made, the policy requires the relevant Professional Standards Manager to complete a probity assessment prior to it being forwarded to the Region Commander for consideration. Absent from the policy, however, is advice as to what constitutes an *extraordinary* application with *high risk* aspects. While the guidelines present an example of an *extraordinary* application with *high risk* aspects, they, like the policy, do not describe this category of secondary employment.

6. METHODOLOGY AND SAMPLING PROCEDURES

As indicated in section 1.1 of this paper one of the aims of this project was to develop an understanding of the current processes and systems used by the NSW Police Force to monitor and manage secondary employment. The Commission examined NSW Police Force documents that provide corporate guidance on this off duty activity. The following documents were identified as being relevant and subsequently reviewed:

- *NSW Police Force Secondary Employment Policy & Procedures*
- *NSW Police Force Secondary Employment Guidelines for Commanders & Managers*
- *NSW Police Force Secondary Employment Risk & Probity Assessments*
- *NSW Police Force Secondary Employment Definition of High Risk Industries*
- *NSW Police Force Handbook.*

Based on the assessment of the documents³⁵ listed above and with the assistance of the NSW Police Force Human Resources Command, the Commission identified the following policy documents as assisting the management of conflicts of interest and other misconduct risks associated with authorised secondary employment by NSW Police Force employees:

- Secondary Employment Application Form (P445)
- Secondary Employment Renewal Form

³⁴ Ibid. p. 8.

³⁵ Secondary employment of police officers is referred to in the *Police Act 1990*, specifically section 73 which states: 'A non-executive police officer must not engage in any paid employment outside the duties of his or her position without the approval of the Commissioner to determine the legislative requirement in relation to secondary employment'.



- Secondary Employment Risk Assessment
- Secondary Employment Probity Assessment
- Secondary Employment Monitoring Report.

By analysing these documents the Commission identified five procedural requirements that play a part in the management of misconduct risks. These are the requirement for:

1. each applicant to submit an applications using the Secondary Employment Application Form
2. the commander or manager to complete a risk assessment for all applications, whether they be *standard*, *high risk* or *extraordinary*
3. the Professional Standards Manager or equivalent to complete a probity assessment in cases where an officer has applied for secondary employment in *high risk* industries or has submitted an *extraordinary* application with *high risk* aspects
4. each applicant to submit a renewal application to continue their existing secondary employment two months prior to the expiration of their current approval
5. Local Area Commanders and Branch Managers to ensure officers under their command comply with the policy and guidelines by, amongst other things, monitoring and conducting quarterly reviews of their secondary employment activities.

A question that arises is: have these procedural measures been tailored to manage the various misconduct risks that can be shown as being associated with secondary employment, such as those presented earlier in this paper? Two observations may be made in response.

First, it is evident from the policy that these five procedural requirements are intended to manage conflicts of interest associated with secondary employment. In this sense, it may be concluded that these requirements have been designed to directly manage one of the misconduct risks commonly associated with secondary employment: conflicts of interest. As noted, though, the policy does not refer to conflicts of interest as a misconduct risk.

Second, it may be inferred that the five measures listed above provide a mechanism for identifying potential misconduct risks other than conflicts of interest. Insofar as the emphasis of the above five procedural measures is on the assessment and review of applications and renewals, it may be said that they present an opportunity to identify some potential misconduct risks based on the industry and type of work the subject of the application and other information provided by the applicant. Since the policy does not identify or refer to misconduct risks, however, it will only be those commanders and managers who are alert to the types of such risks that may arise



who will identify them when reviewing new or renewal applications and associated documentation.

6.1 Role played by the procedural requirements in managing conflicts of interest and/or misconduct risks

Section 6.1 describes the roles played by each of the five procedural requirements presented above in managing conflicts of interest and risks of misconduct in connection with secondary employment by NSW Police Force employees.

6.1.1 Secondary employment application

Section 4.01 of the policy indicates that officers seeking secondary employment must complete a *Secondary Employment Application Form* ('the application'). Applicants are required, under the policy, to provide 'full disclosure of the proposed employment' and to provide 'identification of any potential risks or conflicts of interest' and comment how those risks can be managed. The application requires the applicant to provide details about the nature of the secondary employment, the employer, the category of secondary employment, i.e. *standard*, *extraordinary*, *high risk*, and the projected hours of work.³⁶

In completing this form, the officer must provide details about the nature of the secondary employment, the employer, the category of secondary employment (i.e. *standard*, *extraordinary* or *high risk*) and the number of hours they anticipate they will be working. The secondary employment application process can be seen to assist in the identification and management of misconduct risks insofar as officers are required to nominate on the application form any potential risks or conflicts of interest which may result from the proposed secondary employment. They are also required to indicate how these might be managed.³⁷

Once completed officers are required to submit their applications to their respective commanders for consideration.

6.1.2 Secondary employment risk assessment

Under the guidelines the commander or manager of an officer seeking secondary employment is required to conduct a risk assessment using the information presented in the officer's application.³⁸

³⁶ The application will be assessed by the manager/commander (or delegated officer) and will be assessed at the level of risk determined by the applicant.

³⁷ The application will be assessed by the manager/commander (or delegated officer) and will be assessed at the level of risk determined by the applicant.

³⁸ The NSW Police Force provides a risk assessment template which presents the risks that need to be considered and corresponding recommendations/actions taken by the commander/manager of the applicant.



The NSW Police Force is required to conduct risk assessments on all applications. There are no exceptions to this policy requirement

This process requires commanders or managers to consider a range of misconduct risks³⁹ including the risk of:

- officers giving other organisations or employers advice or access to confidential NSW Police Force information and skills
- conflicts of interest arising in connection with officers second job (including the risk that officers will form improper associations with persons who have criminal records)
- officers bringing the NSW Police Force into disrepute.

Commanders and managers are required to consider the following with regard to all secondary employment applications:

- the level of risk or injury to the officer
- the extent and nature of the public contact involved in the officer's proposed second job
- whether knowledge of the applicant's NSW Police Force status by the prospective employer could compromise the employee's primary responsibility.⁴⁰

The policy stipulates that risk assessments must be conducted for **all** secondary employment applications, regardless of whether they are classed as *standard*, *high risk*, or *extraordinary*.

6.1.3 Secondary employment probity assessment

Where a commander or manager has assessed a secondary employment application to be *high risk* or *extraordinary* with *high risk* aspects, a probity assessment must be conducted. A probity assessment is an integrity assessment of the applicant to determine if the proposed employment poses a conflict of interest or any other risks to the officer or the NSW Police Force. This process involves the checking of various NSW Police Force corporate information systems for any information of relevance relating to the applicant's integrity and conduct, including their complaints history⁴¹ and to verify whether or not they are the subject of a current investigation. Probity assessments are conducted by the Professional Standards Manager (PSM) and, once completed, are submitted to Region Commanders (or equivalent) for a decision.

If the probity assessment identifies issues with the applicant's integrity and/or conduct which suggest that the proposed secondary employment poses a risk both for the applicant and for the NSW Police Force, the guidelines advise that the application should be declined.

³⁹ The risk assessment process also requires the consideration of non-misconduct risks but given the scope of this project these risks are not examined in this paper.

⁴⁰ NSW Police Force *Secondary Employment Risk & Probity Assessment*, 10 November 2009, p.5.

⁴¹ NSW Police Force *Secondary Employment Risk & Probity Assessments*, 10 November 2009, p.5.



For every renewal application, the NSW Police Force is required to conduct a new risk assessment, and where applicable, a new probity assessment

6.1.4 Renewal of existing secondary employment approvals

As previously mentioned section 4.05 of the policy officers with existing approvals to conduct secondary employment must submit a new application⁴² at least two months prior to expiration of their secondary employment approval to continue with the same secondary employment. If advice of approval or rejection prior to the original expiry date is not received, at the commanders/managers discretion, the applicant can continue to engage in the same secondary employment until formal advice of a decision is received.⁴³

Renewal of existing applications provides information to enable commanders or managers to monitor and manage any conflicts of interest or other misconduct risks that may arise in their employees' secondary employment. Each time an employee renews an existing application, the NSW Police Force is required to conduct a new risk assessment, and where applicable, a new probity assessment as the risks for an employee or their secondary employer can change within twelve months.

6.1.5 Quarterly reviews of all secondary employment applications by commanders / managers

According to section 3.38 of the policy Local Area Commanders/Branch Managers⁴⁴ are responsible for the ongoing monitoring and effective management of their employees' secondary employment – particularly those engaged in *extraordinary* secondary employment or in *high risk* industries – to measure and enforce the employees' compliance with the policy.⁴⁵ More specifically the guidelines stipulate that commanders/managers are responsible for conducting quarterly reviews of all secondary employment within their command to ensure that employees are managed appropriately in terms of on-going risk assessments and in terms of welfare and OH&S issues.⁴⁶ The quarterly review is intended to assist commanders or managers to monitor that their officers do not engage in secondary employment outside the approved time frame for such employment and if necessary, to enforce their employees compliance with the policy.

The NSW Police Force does not provide corporate guidance on how to conduct quarterly reviews and no formal requirement exists for commands to keep copies of their quarterly reviews. Monitoring of secondary employment is the responsibility of

⁴²The Royal Commission into the NSW Police Service recommended that existing secondary employment applications be reviewed on an annual basis and expire automatically after a period of 12 months.

⁴³NSW Police Force *Secondary Employment Policy & Procedures*, January 2010, p.14.

⁴⁴The NSW Police Force does not conduct agency-wide monitoring of secondary employment.

⁴⁵NSW Police Force *Secondary Employment Policy & Procedures*, January 2010, p. 13.

⁴⁶NSW Police Force *Secondary Employment Guidelines for Commanders & Managers*, January 2010, p. 5.



individual commands and the NSW Police Force does not analyse secondary employment trends across the organisation.

6.2 Audit methodology

One of the aims of Project Santuri, as noted in section 1.1, was to assess if the NSW Police Force is observing those aspects of the policy which contribute to the management of conflicts of interest and other risks of misconduct. The Commission used a compliance audit methodology to address this aim. In carrying out this audit the Commission selected a sample of secondary employment applications and associated documents. Details of its sampling strategy are provided below.

The Commission then examined each application to determine the extent to which it complied with the five above-mentioned procedural requirements from the policy that are intended to manage the misconduct risks associated with secondary employment. In instances where further information in relation to a particular application(s) was required, the Commission wrote to the relevant local area command or specialist command requesting further information and/or documents before completing its review.

6.3 Sampling strategy

To obtain a comprehensive picture of the extent and nature of secondary employment in the NSW Police Force, the Commission wrote to the NSW Police Force in March 2012 requesting detailed information of sworn NSW Police Force employees who had approval for secondary employment as of 1 March 2012. The total number of sworn NSW Police Force employees having authorised secondary employment was 1538, out of a total workforce of 15,986 NSW police officers.⁴⁷ These figures show that nearly 10 per cent of officers had approved secondary employment as of 1 of March 2012.⁴⁸

Table 1 shows the number and percentage of all approved secondary employment applications as of 1 March 2012, broken down into industry types.

Table 1. Secondary Employment – Industry breakdown as of 1 March 2012

Industry	Secondary employment approvals	Percentage
Building & Trade	223	12.59%
Education	203	11.46%
Transport (high risk)	173	9.77%

⁴⁷ Letter from NSW Police Force Corporate Human Resources, received by the Commission on 20 April 2012.

⁴⁸ The exact percentage of officers having secondary employment approval was 9.62%.



Retail	150	8.47%
Sport	147	8.30%
Fire Fighting	107	6.04%
Professional & Administration	92	5.19%
Horticultural	83	4.68%
Health	75	4.23%
Food	62	3.50%
Primary Producer	57	3.22%
Entertainment	46	2.59%
Motor	37	2.09%
Social/Youth Work	36	2.03%
Photographic	33	1.86%
IT/Electronics	28	1.58%
Local Government	25	1.41%
Security	24	1.35%
Liquor	21	1.18%
Cleaning	19	1.07%
Electoral	15	0.86%
Beauty	12	0.67%
Legal	12	0.67%
Tourism	12	0.67%
Firearms	11	0.62%
Marine	10	0.56%
Real Estate	8	0.45%
Journalism	7	0.39%
Child Care	6	0.33%
Animal Care	5	0.28%
Aviation	5	0.28%
Gaming & Racing	5	0.28%
Funeral	3	0.16%
Trades	2	0.11%
Commercial & Private Inquiry Agents	2	0.11%
Industry not recorded	2	0.11%
Labouring	1	0.05%
Military	1	0.05%
Voluntary	1	0.05%
TOTAL	1770 ⁴⁹	

⁴⁹ Some officers had approval for more than one secondary employment. While 1538 employees had authorised secondary employment as at 1 March 2012, 1770 secondary employment applications had been submitted.



Building and Trade comprises 12.59 per cent of all applications and is the largest single industry group in all categories. Education is the second most popular industry with 11.45 per cent, followed by transport, which is classified as a *high risk* industry with 173 officers (9.77 per cent) having approved secondary employment. Retail (8.47 per cent) and sport (8.30 per cent) are the fourth and fifth most popular industries for secondary employment.

The liquor industry, which is also classified a *high risk* industry, comprises 1.37 per cent of all applications. The security industry, another *high risk* industry employs 24 officers (1.35 per cent). Other *high risk* industries such as firearms (0.62 per cent), commercial & private inquiry agents (0.11 per cent), and gaming & racing (0.28 per cent) employ smaller numbers of police officers.

For practical reasons, given the number of officers engaged in secondary employment, the Commission decided to audit a sample of secondary employment applications rather than all applications. The Commission randomly selected 20 local area and specialist commands. The sample included seven metropolitan local area commands (LACs), seven rural and regional LACs and six specialist commands.

In July 2012 the Commission wrote to each of the 20 commands within the sample requesting copies of all secondary employment applications made by their officers, together with copies of associated records relevant to this project (such as risk assessments). Responses were received from each command. A total of 578 secondary employment applications were provided to the Commission, representing 33 per cent of all approved secondary employment applications as of 1 March 2012

7. RESULTS

The following section presents the results of the audit in connection with the five procedural requirements contained in the policy that play a role in managing misconduct risks. In summary, these are the requirements for:

1. officers seeking secondary employment to submit a secondary employment application (using the designated NSW Police Force application form)
2. commanders and managers to complete risk assessments for all applications (*standard, high risk* or *extraordinary*)
3. professional standards managers to complete probity assessments for applications for *high risk* industries or *extraordinary* applications with *high risk* aspects
4. officers seeking to continue secondary employment to submit a renewal application two months prior to the expiration of the current approval



5. commanders and managers to ensure their officers are complying with the policy and guidelines through, amongst other things, monitoring and conducting quarterly reviews of their secondary employment activities.

A discussion on the results is presented in section 8 of this paper.

For the purposes of this paper, the commands within the sample have not been referred to by name but by the category to which they belong (that is, Metro LAC, Rural/Regional LAC and Specialist command). In addition, each command has been assigned a number. Hence, the seven metropolitan LACs within the sample have been referred to as Metro LAC 1 to Metro LAC 7.

7.1 Overall results

The Commission's audit revealed that a relatively high proportion of the total number of applications in the sample failed to comply with all five aspects of the policy that play a role in managing misconduct risks. Of the 578 secondary employment applications in the sample, the Commission identified 132 (23 per cent of all applications) that did not comply with the requirements of the policy. A number of applications had more than one policy breach. For example an application may not have a corresponding risk assessment and additionally the employee may not have disclosed that they have a business registered in their name.

7.2 Completion of a secondary employment application form

As noted, the Commission received copies of 578 secondary employment approvals within its sample. Based on a review of this material the Commission determined that 577 applications complied with the requirement of section 4.01 of the policy to complete an application. One command was unable to locate one application for an officer and provided the Commission with a copy of the renewal application instead.

It should be noted that this aspect of the audit was narrow in its focus and did not seek to assess any other area of compliance than whether or not an application, using the approved NSW Police Force application form, had been submitted. The fact that almost all applications in the sample complied with this requirement should not be taken to mean that the applications themselves contained all relevant information, were correctly filled out or were otherwise compliant with the policy at the point of submission by the applicant.



7.3 Completion of a risk assessment

Of the 578 applications sampled, 70 applications⁵⁰ (12 per cent) did not include a risk assessment. Commands within the sample provided the Commission with a number of reasons for not conducting risk assessments:

- Specialist Command 4 informed the Commission that only *high risk* applications require risk assessments. Of the 19 applications sampled from Specialist Command 4 nine applications did not include copies of risk assessments.
- Specialist Command 1 told the Commission that the majority of officers from within the command applying for employment are seeking approval to work as exam makers for a tertiary institution that provides training services to the NSW Police Force. Specialist Command 1 informed the Commission that because of the close ties between the tertiary institution and the NSW Police Force, conducting of risk assessments for its officers undertaking exam marking is unnecessary. It appears, however, that Specialist Command's 1 practice of not conducting risk assessments was not confined to officers marking exams for this institution. The Commission identified a number of other applications for secondary employment with other employers for which risk assessments were not prepared. Of the 38 applications received, 20 applications did not include a risk assessment.
- Metro LAC 7 advised the Commission that it was unable to locate copies of risk assessments for six applications but that the command was, at that time, in the process of implementing a local Secondary Employment Checklist to ensure all necessary information was included in all applications henceforward. Metro LAC 7 provided no information to the Commission as to how the introduction of a checklist will prevent the loss of risk assessments.
- Specialist Command 5 was unable to locate risk assessments for 15 applications. In relation to a further 13 applications Specialist Command 5 did not conduct new risk assessments for renewal applications but utilised the risk assessments from previous applications, stating, for example 'the risk assessment from 2010 was utilised for the 2011 renewal, as nothing had changed'.

Upon receipt of documents from commands within the sample the Commission examined whether each application was complete. In instances where further

⁵⁰ Metro LAC 5 informed the Commission that the officer with two secondary employment approvals had left the command and the secondary employment documentation, including copies of risk assessments, was no longer in its possession.



information in relation to a particular application(s) was required, the Commission wrote to the local area command or specialist command requesting further information and/or documents before completing its review. On receiving the initial response from Specialist Command 4 the Commission observed that it did not provide risk assessments for the majority of its applications. Consistent with its practice the Commission wrote to Specialist Command 4 requesting clarification as to the outstanding risk assessments. Specialist Command 4 advised the Commission that they conducted risk assessments for applications in high risk industries only.

7.4 Completion of a probity assessment for *high risk* applications

Under the policy, as noted earlier in this paper, all high risk applications must be the subject of a probity assessment. While a total of 111 applications were categorised as *high risk* by the NSW Police Force, the Commission received copies of only 100 probity assessments (a non-compliance rate of about 10 per cent). Commands within the sample that failed to comply provided the following reasons:

- Specialist Command 5 informed the Commission that the probity assessment for one *high risk* application was not attached to the relevant file and provided no further information why this was the case.
- Rural/Regional LAC 4 assessed two applications as *standard* rather than *high risk* and consequently did not conduct probity assessments in accordance with the policy and guidelines. The Rural/Regional LAC 4 informed the Commission that one of the applications was discussed at length by the command and that the commander did not consider it to fit the definition of a *high risk* industry. Rural/Regional LAC 4 assured the Commission that the renewal will be assessed as *high risk* and forwarded to the Region Commander for consideration. In relation to the second application the Rural/Regional LAC 4 told the Commission that this was an oversight and it should have been forwarded to the Region Commander.
- Specialist Command 4 informed the Commission that it did not have probity assessments for eight *high risk* applications. When the Commission sought clarification, it advised that 'whatever was on the file was sent'.

7.5 Incorrect categorisation of application

The Commission's review identified 29 applications that had been incorrectly categorised by applicants as to whether they were *high risk*, *standard* or *extraordinary* in nature. In each case, the officer's commander or manager had



endorsed this incorrect categorisation. The results of the Commission's review in this regard are presented in sections 7.5.1 to 7.5.3 below.

7.5.1 Overseas/interstate employment

According to section 3.22 d) of the policy an application that involves 'overseas/interstate employment' has to be assessed as an *extraordinary* application that requires particular consideration by the Region Commander (or equivalent).⁵¹ Commission enquiries with the NSW Police Force confirm that any application to undertake secondary employment overseas or interstate has to be considered as an *extraordinary* application and assessed accordingly; there are no grounds for such an application being assessed as a *standard* application.

The Commission's review identified 20 applications which involved overseas/interstate employment that had been categorised as *standard* by the respective applicants. In each case the officer's commander or manager had endorsed this categorisation. The Commission wrote to the relevant commands within the sample and requested clarification in relation to the categorisation of these applications. Their responses are listed below:

- Metro LAC 3 command advised the Commission that two applications that involved overseas/interstate employment were 'deemed "low risk" and processed accordingly' by the command.⁵²
- Specialist Command 2 informed the Commission that the applicant did not have a financial interest in the overseas company that employed him but acted only as an 'agent'. Specialist Command 2 indicated that the officer was required to travel overseas and interstate for business purposes.
- Metro LAC 2 reported that there was some confusion in relation to one officer who had two secondary employment approvals; one being in a *high risk* area which had been approved by the Region Commander.

The Commission queried Metro LAC 2 as to the officer's second secondary employment approval which indicated that the employment included overseas/interstate travel why it was assessed as *standard* rather than *extraordinary*. Metro LAC 2 provided no information why the second application was endorsed by the commander as *standard* rather than *extraordinary*.

⁵¹ NSW Police Force *Secondary Employment Policy & Procedures*, January 2010, p 8.

⁵² One of the major risks for the NSW Police Force in relation to overseas/interstate employment is travel fatigue and the risk that officers may be tired and less attentive when performing policing duties.



- Rural/Regional LAC 6 informed the Commission that it had overlooked one officer's application which indicated that overseas/interstate employment was involved and subsequently treated this application as *standard* rather than *extraordinary*.
- Rural/Regional LAC 2 stated that due to the close proximity of the command to a state border a number of officers resided and had second jobs in the neighbouring state. Rural/Regional LAC 2 advised the Commission that none of the applications involved overseas employment and therefore did not require consideration by the Region Commander.
- Specialist Command 5 informed the Commission that even though three applications had been assessed as *standard* rather than *extraordinary* the commander was 'aware of these applications', even though they have not been formally considered by him. Specialist Command 5 assured the Commission that when the officers submit their renewal applications they will be dealt with as *extraordinary* applications and forwarded to this commander for consideration.

7.5.2 Restricted duties

According to section 3.22 a) of the policy an application from an officer on restricted duties is considered *extraordinary* and must include a medical certificate to confirm that the duties of the secondary employment will not adversely impact on the applicant's illness or injury.⁵³ Unlike *standard* applications which are considered locally, *extraordinary* applications must be forwarded to the Region Commander (or equivalent) for consideration.

Seven applications which had been categorised as *standard* by applicants and approved by their commanders or managers as such indicated that the respective applicants were on restricted duties. A number of applicants that were on restricted duties when they submitted their applications also failed to provide copies of medical certificates as requested by the policy.

Commission enquiries with the NSW Police Force Human Resources Command confirmed that all seven applications should have been assessed as *extraordinary* applications. Commands within the sample provided the Commission with a number of reasons why applications of officers on restricted duties were assessed as *standard* rather than *extraordinary* and why, for some applications, no copies of medical certificates were provided to the Commission.

⁵³ NSW Police Force *Secondary Employment Policy & Procedures*, January 2010, p 8.



- Rural/Regional LAC 4 pointed out that applications had been made by two officers who live on hobby farms and, as the secondary employment related to the care of animals on the farms, they could not reasonably be refused. They also conceded, however, that the two applications should have proceeded to the Region Commander.
- Specialist Command 4 informed the Commission that the applicant had been on restricted duties for some time and the Commander was satisfied that the secondary employment 'is helpful for his injuries ...' and he had no issue approving the secondary employment. The specialist command did not provide information why the application was not forwarded to the Region Commander and failed to provide a copy of the medical certificate as requested by the Commission.
- Rural/Regional LAC 7 did not provide a copy of the medical certificate as requested by the Commission and did not indicate a reason why it had not been provided.
- Metro LAC 7 informed the Commission that the application was not referred to the Region Commander for consideration 'in accordance with the Secondary Employment policy' and did not provide the Commission with a reason why this occurred.
- Metro LAC 4 told the Commission that its understanding was that the policy was not intended for officers on permanent restricted duties.

7.5.3 High risk applications classified as standard applications

Of the 578 applications assessed by the Commission, 111 were classified as *high risk*. The Commission identified two applications that had been incorrectly classified and assessed as *standard* rather than *high risk*. Consequently no probity assessments were completed and the applications were assessed locally and not forwarded to the Region Commander as required by the policy. The reasons given by the command within the sample for classifying and assessing two applications as *standard* rather than *high risk* are outlined below.

Rural/Regional LAC 4 where the two applications were lodged informed the Commission that one application was discussed at length by the Commander and the Professional Standards Duty Officer (PSDO), however the application was not considered to fit under the mantle of 'transport' and was therefore assessed as *standard*. Rural/Regional LAC 4 told the Commission that in future this application will be referred to the Region Commander for consideration.



The second application related to an officer working as a musician in a band and was assessed by the command as a *standard* application. Commission enquiries with the NSW Police Force Human Resources Command confirm that working as a musician in licensed premises is considered to be *high risk* employment in terms of the secondary employment policy.

7.6 Renewal of existing secondary employment

As mentioned in section 6.1.2 of this paper the policy requires commanders and managers to conduct risk assessments for all secondary employment applications made by officers in their charge. The policy also requires risk assessments to be conducted each time officers apply to have their approval for secondary employment renewed.

Of the 578 applications sampled, the Commission identified 411 (71 per cent) renewal applications⁵⁴. The Commission was unable to verify if each applicant complied with section 4.05 of the policy which stipulates that an officer must submit a new application two months prior to their approval expiring. Nonetheless the Commission was able to assess that all 411 applications had been renewed and approved by the NSW Police Force.

The Commission's review identified four commands that failed to conduct risk assessments, and where applicable probity assessments, for renewal applications. When the Commission queried this with these four commands it received the following responses:

- Specialist Command 5 informed the Commission that it did not conduct new risk assessments for 13 renewal applications⁵⁵ but relied on the risk assessments conducted for previous applications. It advised that 'the risk assessment from 2010 was utilised for the 2011 renewal, as nothing had changed'. Specialist Command 5 assured the Commission that in future new risk assessments will be completed for every renewal application.
- Metro LAC 7 advised the Commission that it was unable to locate copies of risk assessments for six applications, two of them being renewal applications. It stated that it is in the process of implementing a 'local Secondary Employment Checklist' to ensure the necessary information is included in all applications henceforth.

⁵⁴ In July 2012 the Commission wrote to each of the 20 sampled commands requesting copies of all the secondary employment applications within their command for the period 1 March 2011 to 1 March 2012. The Commission also requested renewal applications, where applicable, for current secondary employment approvals for the last three years.

⁵⁵ Specialist Command 5 had a total of 103 officers with secondary employment approval for the time period 1 March 2011 to 1 March 2012.



- Specialist Command 4 informed the Commission that 'whatever was on the file was sent'. This command also stated that only *high risk* applications require the completion of a risk assessment and as a result did not conduct any risk assessments on *standard* applications and their renewals.
- Specialist Command 1 told the Commission that it did not consider it necessary to conduct risk assessments for either new or renewal applications as most of its officers' secondary employment duties are linked to the university that facilitates training for the NSW Police Force.

7.7 Quarterly reviews of all secondary employment applications

In its original request for documentation from the 20 commands sampled the Commission requested copies of secondary employment monitoring reports for the preceding twelve months period. None of the commands within the sample provided copies of monitoring reports per se. A small number of commands forwarded sick leave statistics to the Commission but failed to provide any comments or interpretation of this data. The majority of commands did not provide copies of monitoring reports or any other reports to the Commission. Some of the reasons given by commands within the sample for not providing copies of quarterly monitoring reports are outlined below.

- Metro LAC 1 informed the Commission that they do not run three monthly secondary employment monitoring reports but download monthly SAP⁵⁶ reports to identify discrepancies and then upload any discrepancies or changes into the Command Management Framework (CMF)⁵⁷ system for review.
- Metro LAC 6 told the Commission that quarterly reviews are conducted by the Professional Standards Duty Officer (PSDO) and the information is captured on the CMF.

Some commands within the sample informed the Commission they regularly generated and reviewed sick leave statistics for officers with secondary employment approval. These commands provided no additional information to the Commission as to why this practice occurs or how this data are used.

⁵⁶ SAP is the human resource and finance system used by the NSW Police Force..

⁵⁷ All commands within the NSW Police Force identify and manage local risks using the Command Management Framework (CMF). The CMF is a risk based; self-assessment process focused on compliance and is based on the Australian Business Excellence Framework and the Australia/New Zealand Risk Management Standard AS/NZS 4360:2004. It encourages the identification of local risks and the development of locally relevant process controls. All commands are encouraged to adapt the CMF to their own needs.



The majority of commands within the sample disseminated no copies of quarterly reviews or any other documentation to the Commission and did not provide any information in terms of how they conduct these reviews.

7.8 Failure to declare the registration of a business name

According to section 3.25 c) of the policy directorship of a company/business carrying out commercial enterprises including unpaid roles within small family companies requires secondary employment approval. Section 3.25 c) further states that 'an employee must not purchase a business or undertake preparatory acts such as entering a business arrangement without first obtaining approval to engage in secondary employment'. The policy requirement is reflected on page 3 of the application which has a section entitled 'Have you established, or do you intend to establish, either a company or registered business name'?⁵⁸ Applicants who have established or intend to establish either a company or registered business name are required to:

- a) provide the Company/Registered Business name
- b) name the principals or directors
- c) provide details of any other employees of the NSW Police Force associated with the company and
- d) declare whether any member of their family will be a Director of the Company.

While 123 applicants complied with the policy and disclosed that they had registered a business name, the Commission's review identified 27 cases where officers failed to declare on their applications that they had registered a business name.⁵⁹

8. DISCUSSION

The overarching question the Commission sought to examine in Project Santuri was: how well is the NSW Police Force managing the misconduct risks associated with secondary employment? This question can be broken down further in terms of assessing:

- the adequacy of the policy and associated systems in terms of the management of misconduct risks and

⁵⁸ NSW Police Force *Secondary Employment Policy & Procedures*, January 2010, p. 9.

⁵⁹ The Commission conducted NSW registered business checks only to verify the truthfulness of applications and did not check whether officers had established a company. A company is an independent legal entity, able to do business in its own right. It has shareholders, who own the company, and directors, who run the company. Registering a business, by contrast, does not create a legal entity and a business name has no legal status so the responsibility is on the owner to repay the debts incurred.



- the extent to which officers are complying with important aspects of the policy.

The remainder of this section considers these two points.

Prior to publication a draft version of this report was provided to the NSW Police Force. The NSW Police Force was invited to comment on the factual accuracy of the report, the interpretation of the data as well as the key findings and observations. The draft provided to the NSW Police Force did not contain recommendations, the Commission having decided to develop these after receiving feedback from the NSW Police Force. The NSW Police Force's comments have been incorporated into this section.

This section also presents a series of shaded text-boxes entitled 'Strengthening Systems & Practices'. These text-boxes contain recommendations from the Commission, as well as strategies proposed by the NSW Police Force in response to Commission findings, as a means of strengthening the internal systems and practices in need of improvement. The implementation of each of these strategies and recommendations will be monitored by the Commission. An evaluation of the actions taken by the NSW Police Force to implement each of these strategies and recommendations will be presented in the Commission's 2013-14 Annual Report. If required, the Commission will report on further implementation action taken by the NSW Police Force in subsequent annual reports.

8.1 Adequacy of the secondary employment policy and associated systems

This section is focused only on those aspects of the Secondary Employment Policy and Guidelines aimed at managing misconduct risks. As noted previously in this report, Project Santuri did not set out to examine the overall effectiveness of this policy.

8.1.1 Employer information requested by NSW Police Force

As noted in section 2 of this paper, there is a potential for officers to form improper associations through their secondary employment activities, for instance with business owners, employees or clients. The current secondary employment application form, while requesting the name of an officer's secondary employer, may not collect sufficient information to enable a full assessment of the improper association risks facing an officer in their place of secondary employment. Specifically it does not collect information about co-workers and potential clients.



NSW Police Force response

The extent to which this can be remedied in the present context, however, seems limited. While collecting information through the secondary employment application process on co-workers and potential clients would assist in the management of misconduct risks, the NSW Police Force response to the draft paper indicates that the logistical and other impediments to implementing such an arrangement are currently insurmountable. The Commission accepts that the obtaining of additional information on co-workers and potential clients is presently not feasible.

8.1.2 Probity assessments

The policy requires completion of a probity assessment for officers working in either *high risk* industries or for *extraordinary* applications with *high risk* aspects. However, the policy provides no corporate guidance on how to conduct probity assessments. The NSW Police Force *Secondary Employment Risk & Probity Assessments* briefly mentions that a probity assessment is an integrity assessment of the applicant and involves 'the checking of various corporate systems for any issues related to the applicant's integrity and conduct, including their complaints history'.⁶⁰ No further information is provided in terms of what information needs to be included in a probity assessment and how it differentiates from the risk assessment. While the NSW Police Force provides a corporate risk assessment template which cites a number of risks associated with secondary employment and the corresponding actions or recommendations taken by the applicant's Commander/Manager, there is no corporate template for probity assessments.

The Commission noted that there are a number of variations in the way commands perform probity assessments and the level of details they contain. Some commanders require that the PSM prepare a detailed probity assessment while other commands only require a recommendation as to whether the application should be approved or declined. In some commands the PSM signs directly on the secondary employment form if there are no adverse issues in relation to the application; if risks are identified the PSM records them in a letter which is forwarded to the Commander.

For auditing purposes, it was difficult, if not impossible for the Commission to assess the accuracy of the majority of probity assessments provided due to a lack of information in the documents examined. It is suggested that the NSW Police Force should develop a probity assessment template that includes, inter alia, information on the applicant, the type of secondary employment applied for, what types of checks are being conducted (i.e. officers complaint history; is the applicant the subject of a current investigation etc.) and any additional comments the NSW Police Force deems

⁶⁰ NSW Police Force *Secondary Employment Risk & Probity Assessments*, January 2010, p. 6.



relevant to assess if the proposed secondary employment poses too great a risk to the officer and the NSW Police Force.

The Commission's review also identified a number of commands that did not complete probity assessments for renewal applications in *high risk* industries. A new probity assessment must be completed each time a *high risk* application or an *extraordinary* application with *high risk* aspects is renewed to ensure that no new issues have emerged during the previous twelve months.

NSW Police Force response

The NSW Police Force responded that the Commission's draft report showed that across the organisation there is a variation in the quality of the probity assessments completed for high risk applications and that the issues considered are not always captured on the application form or as an attachment. The NSW Police Force has informed the Commission it intends to develop and implement a probity assessment template to be used for all *high risk* applications.

Strengthening Systems & Practices

1. The Commission supports the NSW Police Force's proposal to develop corporate guidance for the preparation of probity assessments in the form of a template to be used for all *high risk* applications. The guidance developed by the NSW Police Force should indicate the types of enquiries that need to be conducted and provide guidance how to record information obtained during this process.
2. It is recommended that the Secondary Employment Policy & Procedures be amended to include a clear statement that all renewal applications in *high risk* industries require the completion of a probity assessment.

8.1.3 Restricted duties

The Commission's review identified that there is some misinterpretation by the NSW Police Force of section 3.22 a) of the policy in terms of categorising and assessing applications by applicants on restricted duties as *standard* rather than *extraordinary*. The NSW Police Force distinguishes between two types of restricted duties: *temporary restrictions* are put in place while an officer is recovering from an injury and is on a return-to-work plan and *permanent restricted duties* (PRD), when an officer has reached 'maximum medical capacity' and will never be able to resume full pre-injury duties. Applications to undertake secondary employment by an officer on PRD should be assessed as *extraordinary*; applications to undertake secondary



employment while on restricted duties due to a return-to-work plan can be approved by the Local Area Commander for *standard* applications and by the Region Commander for applications in *high risk* industries.

From the responses from the NSW Police Force, it would appear that the policy does not provide sufficient guidance to commanders/managers in relation to the categorisation and assessment of officers on restricted duties. For example, as noted above Metro LAC 4 informed the Commission that the policy as it relates to restricted duties was not intended for officers on permanent restricted duties. This appears to be a local practice extrapolated from the policy as no such guidance is provided in that document.

NSW Police Force response

The NSW Police Force acknowledged that it was aware of previous examples where applications had been incorrectly categorised but that these were almost exclusively related to employment in a high risk industry. The NSW Police Force noted that the Commission's draft report had revealed some confusion about how applications submitted by officers on restricted duties are to be assessed. The NSW Police Force informed the Commission that as part of the *Secondary Employment Policy & Procedures* review, the Human Resources Command will endeavour to provide a clearer delineation between the requirements for an applicant who is temporarily performing restricted duties under a return to work plan and applications submitted by officers who have a permanent restriction after attaining maximum medical improvement.

Strengthening Systems & Practices

- 3. It is recommended that the NSW Police Force amend the policy and guidelines so as to provide detailed guidance regarding how to categorise and assess applications by officers who are on restricted duties.**

8.1.4 Quarterly reviews of secondary employment applications

None of the twenty commands sampled for this project provided the Commission with any documentation or explanation pertaining to quarterly reviews of secondary employment within their respective commands. Current NSW Police Force policy and guidelines provide no guidance in terms of what issues are to be considered in the quarterly review. For example are there any processes in place for commanders/managers to compare sick leave and other leave with secondary employment hours; do they track the number of hours worked in secondary and primary employment to measure the risk of fatigue; do they check that there is



sufficient travel time between secondary employment duties and NSW Police Force duties? As the NSW Police Force has no limit on how many hours an employee can work in secondary employment how does it monitor and manage the risk of fatigue and other issues related to officers being tired on the job? The Commission suggests that the NSW Police Force indicate the purpose of the quarterly reviews, the type of risks it manages and how it manages misconduct risks associated with secondary employment.

When the Commission queried this lack of documentation with a number of commands, it became apparent from their responses that it is up to individual commands to determine how to conduct quarterly reviews of secondary employment. Some commands appear to manage secondary employment via their Command Management Framework, however, the majority of commands provided no information on how this task is carried out.

The Commission is unable to assess how efficiently commands monitor secondary employment, what issues they consider during their review and how they manage any conflicts of interests or other misconduct risks that may emerge during their review.

NSW Police Force response

The NSW Police Force acknowledged that the Commission's draft report has revealed an ad hoc approach to the requirement for commands to complete quarterly reviews which would indicate that commands are either unaware of the requirement or unclear about what should be considered as part of the review.

In response the NSW Police Force is considering replacing the quarterly reviews with a review every six months by the employee's direct supervisor as part of the career management system. This would give the supervisor the opportunity to discuss the secondary employment with the employee while also providing sufficient time to review the current approval and the employee's compliance with the policy.

Strengthening Systems & Practices

- 4. It is recommended that the NSW Police Force develop and implement corporate level guidance for the use of commands regarding how to:**
 - a) conduct and record reviews of officers with secondary employment approval in their respective commands;**
 - b) use the information obtained in the reviews to manage employees with**



secondary employment.

c) manage potential misconduct risks that are identified during the reviews.

8.1.5 Failure to declare the registration of a business name

It is suggested that section 3.25 c) of the policy may require clarification as the title of this section refers to 'Directorship or Public Officers of Companies' and fails to mention business registrations. There may be some misunderstanding, on the part of the applicants, as to their obligations to declare that they had or have registered a business name and a belief that this section referred to the establishment of companies only.

The NSW Police Force distinguishes between *standard*, *high risk* and *extraordinary* applications. This categorisation ensures that the NSW Police Force conducts more in-depth risk and probity assessments depending on the nature of the secondary employment applied for. Case study 1 illustrates how the failure to declare the registration of a business name weakens the NSW Police Force's ability to assess and review secondary employment in a *high risk* industry.

Case study 1 – Failure to declare the registration of a business name in a *high risk* industry

The applicant works for a specialist command and has approval to conduct secondary employment in an industry that is classified as *standard* by the NSW Police Force.

The officer has failed to declare on his secondary employment application that he has registered a business name in the security industry since 1998. The NSW Police has classified the security industry as a *high risk* industry and applications by officers applying to work in a *high risk* industry require the completion of a probity assessment by the Professional Standards Manager prior to being forwarded to the Region Commander for consideration.

It is unknown if the officer works in the security industry, however, failure to declare the registration of a business name in a *high risk* industry raises questions as to the truthfulness of the applicant in declaring any business interests outside his employment with the NSW Police Force.



Applicants who have established or intend to establish either a company or registered business name are not required to provide information about employees (other than other employees of the NSW Police Force or family members) or to provide a list of all companies operated under that registered name and the nature of the businesses carried out by these companies. This limits the ability of the NSW Police Force in assessing the risks of conflicts of interest or improper associations occurring.

NSW Police Force response

The NSW Police Force acknowledged that the Commission's draft report highlighted a discrepancy between the policy document and the application form. In response, the NSW Police Force indicated that when the policy is reviewed, the policy will be amended to include disclosing the registration of a business name as part of the application process and there will be a requirement for that registration to be confirmed as part of the approval process.

Strengthening Systems & Practices

- 5. It is recommended that the NSW Police Force amend its policy to include a requirement that officers disclose the registration of a business name within their application.**

8.2 Compliance with secondary employment policy

This project sought to determine whether or not officers were complying with those aspects of the secondary employment policy that are intended to manage misconduct risks. Since this project is the first of its kind, there is no data available for comparative purposes. However, on the face of it, the non-compliance rates discussed below appear high.

8.2.1 Risk assessment

The results of project Santuri revealed that in 70 applications (12 per cent) sampled, the NSW Police Force did not conduct risk assessments as required by the policy.⁶¹ More specifically 9 out of the total sample of 20 commands did not comply with the requirement to conduct risk assessments for all applications within their respective commands.

⁶¹ The Commission examined all NSWPF documents that provide corporate guidance on secondary employment and liaised directly with the NSWPF to ascertain if there are any exceptions to this requirements; there were none.



As discussed in the results section of this report, one command informed the Commission that only *high risk* applications require risk assessments whereas another command was of the view that certain industries are exempt from this requirement. These comments seem to indicate that the policy requirement to conduct a risk assessment for every secondary employment application is not clearly understood by all sections of the NSW Police Force. Section 3.24 of the policy clearly states that:

'a risk assessment must be completed for all standard applications as part of the consideration and approval by the Local Area Commander (or equivalent)'.⁶²

This requirement to complete a risk assessment is further reinforced in the NSW Police Force *Secondary Employment Risk & Probity Assessments* which specify that:

A risk assessment must be conducted on all applications to undertake secondary employment, in order to identify any perceived or actual conflicts of interest between an employee's official duties with the NSW Police Force and the secondary employment.⁶³

The Commission's review also revealed that some commands do not conduct new risk assessments for renewal applications but instead rely on risk assessments from previous applications. This practice seems to occur in cases where the command formed the view that there have been no changes in NSW Police Force duties or the proposed secondary employment. This is contrary to policy intent, which requires a new risk assessment for every renewal application.

NSW Police Force response

The NSW Police Force acknowledged that the Commission's draft report confirms the experience of the NSW Police Force that some commands continue to apply their own interpretation of the policy requirements. While the NSW Police Force is satisfied that the current policy and procedures are sufficient with regards to the requirement to complete risk assessments it acknowledges that compliance with the policy needs to be more rigorously enforced. The NSW Police Force suggests that compliance can be achieved by a range of activities including the ongoing education of Commanders and managers.

Strengthening Systems & Practices

6. It is recommended that the NSW Police Force develop and implement

⁶² NSW Police Force *Secondary Employment Policy & Procedures*, January 2010, p 9.

⁶³ NSW Police Force *Secondary Employment Risk & Probity Assessments*, 10 November 2009, p. 4.



strategies aimed at improving compliance by all commands with the requirement to conduct risk assessments for all secondary employment applications as well as for all renewal applications.

8.2.2 OH&S issues

The risk assessment also determines whether the hours of work required for employee's secondary employment can have a detrimental impact on the employee's primary duties with the NSW Police Force, such as fatigue, capacity for recall to duty and other OH&S issues. The Commission's review identified a number of officers with more than one secondary employment approval and some officers having approval to work an excessive number of hours in their secondary employment. More specifically:

- 461 officers had approval for one secondary employment
- 47 officers had approval for two secondary employments
- five officers had approval for three secondary employments and
- two officers had approval for four secondary employments.

One officer who was on full-time duties with the NSW Police Force when applying for secondary employment had approval to work up to 45 hours per week in two secondary employments. One of the authorised employments involved the management of approximately 60 staff/contractors. One of the potential misconduct risks identified in the course of Project Santuri is that officers may be tempted to resort to sick leave and falsify timesheets in order to conduct their secondary employment. Excessive secondary employment commitments may increase the risk of officers trying to accommodate their secondary employment demands at the expense of the NSW Police Force.

It would appear that NSW Police Force authorisation for employees to work excessive hours is in conflict with section 3.02 of the policy which states:

Where secondary employment is approved, all employees must acknowledge and understand that the NSW Police Force remains their primary employer and that any other employment must not, under any circumstances, impinge upon their ability to satisfy the conditions of their primary employment.⁶⁴

To date the NSW Police Force has not restricted the number of hours an officer can work in secondary employment. It is the responsibility of Commanders and other senior personnel to monitor the performance of their officers in terms of welfare and OH&S issues and to ensure that employees do not continue in secondary employment outside the approved time frame for such employment.

⁶⁴ NSW Police Force *Secondary Employment Policy & Procedures*, January 2010, p. 5.



Case study 2 illustrates concerns raised by a local area command in relation to the risk that fatigue by an officer can pose to a command.

Case study 2 – Fatigue issues exacerbated by secondary employment

The applicant joined the NSW Police Force in mid-2010 and applied for secondary employment in early 2012. The officer indicated that the days of the week to be worked in secondary employment will be between Monday and Friday, however the officer did not specify the number of hours to be worked per week, stating only that this will depend on the officer's current shifts with the NSW Police Force and availability of work at the secondary employment. From the information provided in the application, it would appear that secondary employment shifts could become available on short notice as the officer was filling in when full-time employees were either sick or there was a shortage of staff.

The applicant's supervisor did not support this application and was concerned that the officer appeared lethargic at work and appeared to have difficulties in handling shift work. The supervisor was also concerned that the officer had numerous sick days since commencing work at the command and that in the majority of occasions no medical certificate had been provided. The risk assessment stated that there was a risk that the officer may work excessive hours due to the commands 12 hour shifts and mentioned that the officer had previously complained numerous times of fatigue during a shift. The risk assessment acknowledged that fatigue in this particular case posed a high risk for the command and stated that adding secondary employment would increase this risk.

Despite the concerns raised by the applicant's supervisor the Local Area Commander approved the application for a six month period. The risk assessment recommended that the officer's sick leave and work performance be monitored and that no excessive hours of secondary employment be completed.

Multiple secondary employment and authorisation to work excessive hours, without a daily hour limit, may increase the stress levels of officers and potentially place them and members of the community at risk due to decreased concentration and fatigue. It would appear that the policy does not provide adequate guidance to what constitutes 'sufficient breaks between the primary and secondary employment'⁶⁵ and that the concept of 'sufficient breaks' may be open to interpretations by officers engaged in secondary employment. Officers may underestimate the impact that

⁶⁵ NSW Police Force *Secondary Employment Policy & Procedures*, January 2010, p.5.



fatigue may have on their primary employment with the NSW Police Force and the Commission considers the absence of a daily hour limit and defined rest periods as being a problem to the NSW Police Force.

There is no clear and apparent link that can be identified between fatigue caused by secondary employment and misconduct risks. However, it is in at least one jurisdiction, Queensland, considered a misconduct risk. Though problematic to define, the term misconduct, when applied to public employees, can be taken to incorporate aberrant behaviour of a less serious nature than corrupt conduct. As noted above, the Queensland CMC identified the following misconduct risks arising from fatigue caused by secondary employment:

- diminished work performance resulting from tiredness, distraction or time pressures
- increased load on co-workers who must 'cover' the reduced performance of one employee.⁶⁶

The line between misconduct and performance is not always clear. Depending upon the definitions used by different jurisdictions for these two terms, fatigue caused by secondary employment may be regarded as a performance issue, a misconduct issue or both. It would, however, seem reasonable to exclude it as a corruption risk.

8.2.3 *Incorrect categorisation*

The Commission's review identified 29 applications that were wrongly categorised by the applicants and approved by their commanders/managers as *standard* rather than *high risk* or *extraordinary*. The correct categorisation of the application determines the level of risk assessment conducted by the NSW Police Force and is therefore an important component of managing conflicts of interest and/or other risks associated with secondary employment.

The majority of incorrect categorisations occurred in circumstances where overseas/interstate employment was involved or where applicants were on restricted duties, as further detailed below.

8.2.4 *Overseas/interstate employment*

The Commission's review identified that there was some misinterpretation of section 3.22 d) of the policy resulting in 20 applications that involved overseas/interstate employment being assessed locally rather than being forwarded to the Region Commander for consideration. Some of the confusion may be linked to the wording

⁶⁶ Crime and Misconduct Commission, Queensland, *Secondary Employment, Major misconduct risks*; last updated 22 February 2013, found at < <http://www.cmc.qld.gov.au/topics/misconduct/misconduct-prevention/major-risk-areas/secondary-employment> >



in the guidelines which emphasise that secondary employment at an overseas location may be declined if the nature of the secondary employment is considered to present an unusually high level risk to personal or physical safety, or if the risk or conflict of interest cannot be appropriately assessed.⁶⁷ The guidelines refer specifically to working in Iraq and the specific risks associated to officers and to the NSW Police Force. Even though secondary employment in overseas locations is determined by any potential risk or conflict of interest associated with the secondary employment another risk factor that appears to be overlooked by some commands is the risk of travel fatigue and the resulting decreased concentration of officers in their primary employment with the NSW Police Force. Some of the feedback the Commission received from a number of commands appears to confirm the Commission's assessment. Even though this is not a misconduct issue the Commission found that there is confusion in the policy.

It is acknowledged that there may be extenuating circumstances where overseas/interstate employment does not require an application to be evaluated as *extraordinary*. For example, a number of NSW Police Force local area commands are located on the NSW State border and a number of NSW police officers are working in NSW but residing in a neighbouring state. Their secondary employment, at times, is located in their state of residence. In these particular cases, it may be impractical for the Region Commander to consider such applications as *extraordinary*.

NSW Police Force response

The NSW Police Force acknowledged that it was aware of previous examples where applications had been incorrectly categorised but that these were almost exclusively related to employment in a *high risk* industry. The NSW Police Force noted that the Commission's draft report had revealed some confusion about how applications are to be assessed by officers seeking to work either interstate or overseas. The NSW Police Force informed the Commission that as part of its policy review, the requirement for officers who reside across state borders having any *standard* application assessed as *extraordinary* because it is categorised as interstate, will be reviewed.

Strengthening Systems & Practices

7. It is recommended that the NSW Police Force amend its policy and guidelines so as to:

- a) make clear that where a secondary employment application indicates the applicant will be travelling overseas and/or interstate travel, it must be**

⁶⁷ NSW Police Force *Secondary Employment Guidelines for Commanders & Managers*, January 2010, p. 5.



assessed as an '*extraordinary*' application;

- b) explain any exceptions that may relate to this requirement.

9. KEY OBSERVATIONS

Five key observations may be made about secondary employment in the NSW Police Force. These, it is suggested, form the context in which the secondary employment policy is applied, reviewed and in which risks arising from this practice – including misconduct risks – are assessed and managed.

1. **The off duty context in which secondary employment occurs presents particular difficulties for commanders and managers in managing misconduct risks.** The intent of the NSW Police Force secondary employment policy is that outside, non-police employment activities pursued by police should only occur in an off duty context. What flows from this, however, is that the secondary employment activities of officers are not observable by Commanders and other managers. Officers are, in effect, out of sight of their police managers when working their second jobs. Despite this, as indicated above, the behaviour of officers while pursuing outside employment can have adverse consequences for their primary employer – the NSW Police Force. The effect of this is that Commanders and managers may have little or no opportunity to respond to emerging integrity issues as they would when their officers are working on duty. Significantly, however, they may need to deal with any acts of misconduct that arise from such issues.

By necessity, Commanders and managers are forced to exercise high levels of trust with officers who engage in secondary employment. Though the policy requires reasonable steps to be taken in an attempt to manage the risk, the inescapable fact is that risk mitigation options are limited when it comes to regulating off duty activities. To some extent the only approach available to the NSW Police Force can be characterised as a trust model. This underscores the need for:

- a) high levels of scrutiny and rigour to be exercised by Commanders and managers in the review and examination of applications, renewals and the conduct of risk and probity assessments
- b) a low level of tolerance in circumstances where false or misleading information has been provided by officers in connection with the secondary employment or where they have not complied with the terms of their approval.



NSW Police Force response

The NSW Police Force responded that the Commission's draft report is correct in observing that because secondary employment is an activity that occurs off duty, applications are primarily considered, approved, monitored and renewed on the basis of the trust mode, i.e. the NSW Police Force trusting the integrity of officers. The NSW Police Force informed the Commission that as a consequence there does need to be high levels of scrutiny and rigour applied to the process and that the review of the policy will examine the current processes for approving, monitoring and renewing applications to support the management of misconduct risks. The NSW Police Force stated that while the consequences of non-compliance, especially when related to misconduct, are matters for the Professional Standards Command to determine, the Human Resources Command will be consulted during the review of the policy about how those processes are managed.

2. **Secondary employment is commonplace, involving officers from all geographical locations and duty types.** Nearly 10 per cent of sworn officers have approved secondary employment. The Commission's research showed that secondary employment could be found in local area commands in rural, regional and metropolitan areas across the state. It was also evident in specialist commands. The corollary of this is that it is not an activity limited by geographical location or duty type. It is an organisation-wide issue and as such the majority of commanders are required to play a role in managing the policy.

NSW Police Force response

The NSW Police Force responded that because secondary employment is an activity that involves officers from all geographical locations and duty types, achieving and maintaining a satisfactory level of knowledge across the organisation about policy considerations and compliance requirements remains a challenge for the NSW Police Force. As responsibility for ongoing monitoring and management of secondary employment has been delegated to the local level, i.e. Local Area Commanders and Branch Managers, the Human Resources Command remains focused on providing an appropriate level of support and guidance to these decision makers.

3. **There are clear and significant misconduct risks associated with secondary employment.** As indicated earlier in this paper, the major secondary employment misconduct risks confronting the NSW Police Force and its officers are:
 1. unauthorised access and use of confidential information
 2. misuse of public resources



3. conflicts of interest between public duties and private interests, including improper associations
4. abuse of time records, including absenteeism
5. abuse of non-recreational leave (especially sick leave)

NSW Police Force response

The NSW Police Force stated that the Commission's draft report makes the observation that with the exception of conflicts of interest, the secondary employment policy does not explicitly refer to or identify any misconduct risks associated with other paid employment. The NSW Police Force informed the Commission that while the policy may not list them under the heading of 'misconduct risks', the five major misconduct risks confronting the organisation and its officers identified by the Commission are included in the policy. The NSW Police Force told the Commission that the report's observation about the need to acknowledge the major misconduct risks has been noted and will be considered when the policy is reviewed.

4. **There is a 'hidden' problem with unauthorised secondary employment.** It is impossible to determine the extent to which unauthorised secondary employment is taking place amongst officers of the NSW Police Force. Furthermore, there are no reasonable means of establishing the size of the problem. Unauthorised secondary employment was outside the scope of this project and so has not been discussed or examined in this paper. It is the case, however, that investigations conducted by both the Commission and the NSW Police Force periodically identify officers engaged in outside, non-police employment without authorisation.

It is acknowledged that formulating an effective policy response to a hidden problem such as this, where reliable information on its nature and extent is not available, is problematic. It nonetheless represents part of the context in which the NSW Police Force applies, reviews and further refines and modifies its secondary employment policy.

NSW Police Force response

The NSW Police Force stated that a 'hidden problem' with unauthorised secondary employment is not a problem that is exclusive to the NSW Police Force and like any other large organisation, it is impossible for the NSW Police Force to monitor the off duty activities of its employees for the purpose of identifying unauthorised secondary employment.



According to the response by the NSW Police Force the most effective option is to ensure that the organisation has a robust secondary employment policy that clearly defines the expectations of the NSW Police Force and the responsibilities of every officer who seeks to engage in other paid employment. It is also noted that it is important that the policy is supported with appropriate and consistent management responses when non-compliance is identified.

The NSW Police Force told the Commission that while formulating an effective policy response is problematic, regular policy reviews that reflect contemporaneous issues and the recommendations from research projects such as the Commission's Project Santuri will assist the NSW Police Force in further refining the policy.

5. **Some local level practices are at odds with corporate expectations on secondary employment.** The NSW Police Force secondary employment policy is a corporate policy. It was endorsed at an agency level with the expectation that it will be applied across the entire NSW Police Force. All commands are obliged to adhere to it. All officers to whom it applies are required to comply with it. Like many other corporate policies of the NSW Police Force, it is administered at a local level by commands. As indicated in this paper, the Commission's study found that some local level practices are at odds with the corporate expectations articulated in the policy. For example, the policy requires Commanders and managers to conduct risk assessments each time an officer applies to have their secondary employment application renewed.

Two specialist commands within the study's sample provided advice to the effect that it was not their practice to undertake risk assessments for renewal applications (though one of these advised that in future, new risk assessments would be conducted for renewal applications). Another specialist command informed the Commission that only high risk applications require the completion of a risk assessment.

Further, in the absence of any centralised capacity to oversight compliance with the policy, the NSW Police Force does not have the means by which it can determine if there are commands that have adopted practices that are at odds with the policy. The secondary employment policy is not supported by a centralised compliance review process.

NSW Police Force response

The NSW Police Force acknowledged that the Commission's consultative draft report identified some local level practices that are inconsistent with the requirements of the secondary employment policy. The NSW Police Force, in addition to addressing those practices in the secondary employment policy



review will continue its ongoing education of Commanders, managers and employees about the NSW Police Force's requirement.

The NSW Police Force initially disagreed with the Commission's suggestion that the NSW Police Force does not have any centralised capacity to oversight compliance with the policy. The NSW Police Force informed the Commission that the Human Resources Review Tool in the NSW Police Force's CMF system asks six questions related to compliance with the secondary employment policy, including questions related to the completion of risks assessments. Every command in the NSW Police Force must use the CMF and compliance is oversighted by Corporate Service's Performance Improvement and Planning ('PI&P') Command.

Further liaison between the Commission and the NSW Police Force, however, revealed that:

- the use of the Human Resources Review Tool in the NSW Police Force's CMF system is not mandatory;
- the PI&P Command has no oversighting role within the NSW Police Force to ensure compliance with the secondary employment policy and guidelines..

The Human Resources Command has subsequently advised the Commission it will give consideration as to whether additional controls outside of the CMF are required and, if they are, how they will interact with the Compliance Management Framework.

The Human Resources Command indicated that the compliance issues identified in the Commission's draft consultative report and the advice from the PI&P Command confirm that the current compliance framework used for secondary employment needs to be examined in the review of the secondary employment policy.

Strengthening Systems & Practices

- 8. It is recommended that the NSW Police Force develop and implement a centralised capacity to oversight compliance by commands across the agency with secondary employment policy and procedures.**



9. SUMMARY OF RECOMMENDATIONS

1. The Commission supports the NSW Police Force's proposal to develop corporate guidance for the preparation of probity assessments in the form of a template to be used for all *high risk* applications. The guidance developed by the NSW Police Force should indicate the types of enquiries that need to be conducted and provide guidance how to record information obtained during this process.
2. It is recommended that the Secondary Employment Policy & Procedures be amended to include a clear statement that all renewal applications in *high risk* industries require the completion of a probity assessment.
3. It is recommended that the NSW Police Force amend the policy and guidelines so as to provide detailed guidance regarding how to categorise and assess applications by officers who are on restricted duties.
4. It is recommended that the NSW Police Force develop and implement corporate level guidance for the use of commands regarding how to:
 - a. conduct and record reviews of officers with secondary employment approval in their respective commands;
 - b. use the information obtained in the reviews to manage employees with secondary employment.
 - c. manage potential misconduct risks that are identified during the reviews.
5. It is recommended that the NSW Police Force amend its policy to include a requirement that officers disclose the registration of a business name within their application.
6. It is recommended that the NSW Police Force develop and implement strategies aimed at improving compliance by all commands with the requirement to conduct risk assessments for all secondary employment applications as well as for all renewal applications.
7. It is recommended that the NSW Police Force amend its policy and guidelines so as to:



- a) make clear that where a secondary employment application indicates the applicant will be travelling overseas and/or interstate travel, it must be assessed as an '*extraordinary*' application;
 - b) explain any exceptions that may relate to this requirement.
8. It is recommended that the NSW Police Force develop and implement a centralised capacity to oversight compliance by commands across the agency with secondary employment policy and procedures.



NSW Police Integrity Commission

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