

**Commonwealth Government Senate Inquiry into:**

**The role of Commonwealth, State and Territory Governments in addressing the high rates of mental health conditions experienced by first responders, emergency service workers and volunteers.**

**(‘Workplace culture and Management Practices’)**

**Submission Prepared by:**

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## **Submission into the role of Commonwealth, State and Territory Governments in addressing the high rates of mental health conditions experienced by first responders, emergency service workers and volunteers: ('Workplace culture and Management Practices').**

### **Introduction:**

1. The geneses of modern policing practices began in the 19<sup>th</sup> Century. Police agencies were formed to protect the traditional assets of an expanding middle and upper class produced by the industrial revolution.
2. Fraud offences introduced to criminal statutes in the mid-20<sup>th</sup> Century were characterised as 'white collar' crimes. Fraud offences were enacted to punish people who defrauded companies of their traditional assets. Like fraud offences, health and safety offences are criminal in nature making 21<sup>st</sup> Century health and safety offences the new corporate 'white-collar' crimes.
3. Health and safety legislation identifies people as the non-traditional primary workplace asset. The 'Mission'<sup>1</sup> of the NSW Police is to protect people:

***"The mission of the NSW Police is to work with the community to reduce violence crime and fear."***

4. This submission will argue that the NSW Police has a recorded history of poor health and safety governance relating to the implementation of safe systems of work or in this case, the identification, elimination and/or control of risks associated with workplace mental health issues.
5. A history that discloses a pattern of behaviour or 'modus operandi' that has resulted in the NSW Police corporate entity becoming a health and safety white collar criminal<sup>2</sup>. It is the culture of the NSW Police that must be changed in order to reduce the rates of mental health harm.
6. Only by working together with the NSW Police community can the NSW Police reduce '**violence, crime and fear**' (suicide & mental health issues) within its own ranks. In doing so, the NSW Police would move away from being a 'command and control' organisation to a 'quality control' organisation<sup>3</sup>.
7. I am a former member of the NSW Police. Since leaving the police in 1999, I have worked in the corporate sector as a health safety and security consultant. I have also worked as the health and safety manager for a not-for-profit NGO mental health services provider. I am a Fellow in the Safety Institute of Australia and a Certified Practitioner Occupational Health & Safety Professional (CPOHSP). I am also a Certified Protection Professional (CPP) with the American Society for Industrial Security.
8. The evidence supporting this submission is based on the work health and safety (WHS) criminal history of the NSW Police between 2000 and 2018.
9. Over that time National harmonised WHS legislation introduced in 2012, replaced the earlier 2001 NSW Occupational Health and Safety (OHS) legislation. Principle elements of both sets of legislation remain relatively the same.

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<sup>1</sup> NSW Police Act 1990 Section 6 (1)

<sup>2</sup> See Attachment A - Examples of NSW Police 'white collar' crimes 2000 to 2018

<sup>3</sup> See Attachment B - Glossary

## Submission:

10. Under OHS/WHS legislation, it was and still is a requirement that organisations:
  - A. Are responsible for health and safety of workers and others in the workplace that may be impacted by organisational undertakings, and
  - B. Where reasonably practicable, organisations must provide safe systems of work.
11. Examples of 'safe systems of work'<sup>4</sup> are described in the OHS/WHS legislation, as well as Australian and International Standards<sup>5</sup>. A common 'safe system of work', one that eliminates and/or mitigates risks to the health and safety of workers and others, is risk management<sup>6</sup>.
12. The OHS/WHS legislated risk management system is based on ISO 31000:2009 Risk Management (Risk Standard) protocols. Differences between OHS/WHS legislated risk management and the Risk Standard are explained in the answers to the following questions:
  - A. **What is an acceptable risk?**

No OHS/WHS risk is acceptable; all risk(s) must be reasonably mitigated following a strict hierarchy of controls until that risk(s) is eliminated. Additionally, OHS/WHS risk acceptance is not the sole domain of executives. OHS/WHS risk acceptance must include the view of workers and other interested parties.

The Risk Standard contradicts this view as it deals with general business risk(s).
  - B. **What about consultation?**

OHS/WHS consultation must be meaningful, that is, the view of ordinary workers is listened to and where reasonable, acted upon. Consultation under OHS/WHS is not a closed system operating top down. Consultation provides a feedback loop for organisational learning as people on the ground are the ones who are most likely to know site or task specific operational risk(s) especially in a large organisation.

OHS/WHS consultation is different to the form described in the Risk Standard.
  - C. **Can you transfer risk?**

OHS/WHS risk(s) cannot be transferred.

The Risk Standard contradicts this view.
  - D. **What are risk control(s)?**

The OHS/WHS control of risk is based on the Risk Standard. The principle differences are related to the application of OHS/WHS risk controls. All OHS/WHS risk(s) must, where reasonably practicable, be eliminated. If OHS/WHS risk(s) cannot be eliminated residual risk(s) must be controlled using a strict hierarchy described by the legislation.

The Risk Standard contradicts this view.
  - E. **How does my organisation comply?**

In addition to the legislated form of risk management, OHS/WHS requires the development of safe systems of work and the provision of training, instruction, information and supervision to workers so that safe systems of work are applied. The

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<sup>4</sup> [State of New South Wales v Briggs \[2016\] NSWCA 344 \(9 December 2016\)](#)

<sup>5</sup> See Attachment B- Glossary (Reference List)

<sup>6</sup> WHS Regulations 2011 Clause 34, 35, 36, 37, & 38

OHS/WHS systems of work are open systems, living systems (evolving) as well as organisational learning systems.

The Risk Standard has similar principles, but those principles are not legislated.

F. **What if my organisation does not comply?**

Failing to follow an applicable standard may result in civil liability and reputational damage. Insurance would probably cover some costs. Today, failing to comply with WHS legislation can see a corporation fined up to \$3M and an executive fined up to \$600K and/or five years imprisonment. Insurance does not cover criminal offences and the corporation and/or individual may be exposed to increased civil liability.

13. Another element to consider in respect of OHS/WHS legislation is that criminal case law has precedent over civil case law. Criminality associated with OHS/WHS legislation means that the civil concept of 'due diligence'<sup>7</sup> has a lower threshold as OHS/WHS legislation requires executives to **"identify reasonably foreseeable hazards that could give rise to risks to health and safety"**<sup>8</sup>. If executives know and can foresee hazard(s) and/or risk(s) what is stopping them from acting to eliminate or mitigate risk(s) in a reasonable and timely manner?
14. In 2014 the President of the Police Association of NSW Scott Weber talking about a WHS crime committed by the NSW Police said that the NSW Police had, **"shown its inability to protect its officers from injury"** and (the NSW Police) **"needs to finally step up, and do what's expected by all of us to protect police officers from preventable injury and illness"**.
15. Justice Boland sentencing comments relating to the same matter were more scathing of the NSW Police poor corporate approach to OHS/WHS due diligence<sup>9</sup> than that of Scott Weber.
16. By 2014 the NSW Police had been convicted on nine occasions for crimes under OHS/WHS legislation. A tenth matter was pending.
17. NSW Police convictions for OHS/WHS crimes are all evidence of unsafe systems of work. Common themes disclosed relate to failures in risk management systems, consultation systems, disciplinary systems and in providing training, instruction, information and supervision. It is argued that these specific failings in management are the result of a toxic OHS/WHS culture operating in the NSW Police.
18. Attachment A provides examples of the NSW Police OHS/WHS criminal history and poor corporate governance in OHS/WHS management between 2000 and 2018.
19. None of the historical OHS/WHS criminal matters in Annexure A directly relate to mental health issues. Mental health issues are qualitative in nature. It is very likely, given the evidence, that the Annexure A material would have been an indirect or latent causal factor triggering mental health issues in police and resonating throughout the ranks.
20. Reasons that the NSW Police have not been prosecuted for mental health OHS/WHS crimes by SafeWork NSW include the following. Firstly, SafeWork does not have the forensic and/or investigative resources and competence to properly investigate mental health matters as is evidenced by the need to use NSW Police resources for investigations.

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<sup>7</sup> NSW WHS Act 2011 Section 27

<sup>8</sup> NSW WHS Regulations 2017 Clause 34

<sup>9</sup> [Inspector Cook v State of New South Wales \(NSW Police Force\) \[2013\] NSWIRComm 114](#)

21. In January 2004 the NSW Police joined with then NSW WorkCover and the NSW Director of Public Prosecutions (DPP). NSW Police provided their professional forensic and investigative personnel services to enhance investigations into the death and serious injury of workers.
22. Secondly, NSW Police OHS/WHS methodologies are primarily based on process safety. The effect is that personal safety is, more or less, an indirect outcome of process safety as opposed to being a directed outcome. This is arguably in keeping with the legislation and the evolution of the legal view of causality which is similar to that applied in engineering and can be best described by the domino effect.
23. The domino effect reduces a workplace incident to single quantifiable units. The end result is that an incident investigation identifies an event pathway based on failure points (falling dominos), leading to a negative health and safety outcome, or near miss. Event pathways can be direct, indirect, latent, lineal or multi-dimensional (i.e. complexly dynamic).
24. Finally, as evidenced by their OHS/WHS criminal history, the NSW Police do not regard their people as the primary workplace asset. Criminal OHS/WHS convictions are an expression of the NSW Police organisational culture. Culture<sup>10</sup> is a qualitative essence that influences workplace OHS/WHS attitudes and drives motivations<sup>11</sup> it's ***“...the way we do things round here...”***
25. Arguably, organisational culture can be expressed as attitude in action. For example, all organisations have an accounts ledger. A simple business accounts ledger is divided into two sections, a capital ledger and an expense ledger.
26. Traditional business assets (cash, bonds, machines and property) are listed on the capital side of the ledger. People, are seen as a business expense and not an asset, although this is contrary to best practice and OHS/WHS legislation. The outcome is; people are not valued.
27. This analogy is given more weight considering the ‘cultural’ revelations from the ‘Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry’. The culture of commerce, as disclosed by the Royal Commission, is one based on the accounts ledger. The influence of banking culture on financial programs has resulted in corrupt practices. An example of attitude in action that flows on to other commercial organisations and emergency services.
28. OHS/WHS legislation identifies the primary workplace asset as people. It is also the only criminal legislation that makes it an offence for an organisation not to protect a workplace asset (people). The very fact that OHS/WHS legislation had to be enacted at all is also evidence supporting the view that people are not valued by organisations
29. One qualitative traditional asset that organisations value highly is business reputation. Being charged and convicted of OHS/WHS crimes does not add value to your business reputation. One way to avoid being charged with a crime is to cover-up that crime.
30. A report by Christine Ronalds SC into Sexual Harassment within the NSW Police<sup>12</sup> found that there was a culture of silence and bullying within the NSW Police protecting aggressors by demonising victims. The report called for a change in the police culture. The need for this current Inquiry indicates that the police culture has not changed since that report in 2007.

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<sup>10</sup> See Definition ‘Culture’ Attachment B - Glossary

<sup>11</sup> Hopkins A & Maslen S (2015) ‘Risky Rewards: How company bonuses affect safety; CRC Press; London

<sup>12</sup> Inquiry into Sexual Harassment and Sex Discrimination in the NSW Police (2007)

31. Other evidence showing a corrupt OHS/WHS management culture within the NSW Police can be found in the 2016 NSW Auditor General Report<sup>13</sup>.
32. The report shows an increase in workers compensation payments to police from \$5M in 2011/2012 to \$72M in 2015/2016. Again, this is evidence of unsafe systems of work, at work.
33. The 2016 Auditor General Report (P. 10) also found:

***“An area of concern we identified during our site visits was that some officers were worried about the leadership culture in relation to welfare. Officers reported that some managers were not able to effectively converse with their staff on these matters, and were overly procedural in their approach. For these managers, welfare and well-being conversations were a tick-the-box exercise. A number of officers also reported that badly handled performance management contribute to higher rates of sick leave and mental stress.”***
34. The Auditor General does commend the NSW Police for recent mental health programs including some in the return to work area. Some programs include the participation of the insurance provider. Evidence<sup>14</sup> indicates that insurance providers create yet another dimension of risk to already injured police.
35. In 2017 the NSW Government created the Law Enforcement Conduct Commission (LECC). The LECC replaced the Police Integrity Commission, NSW Ombudsman and NSW Crime Commission involvement with investigations relating to complaints of serious misconduct against police.
36. As NSW State public servants, police are exempted from having complaints against police, by police (whistle-blowers) being heard by the Fair Work Commission. This makes the LECC the only independent organisation to hear police complaints about police management practices.
37. According to a March 2018 news article from ‘The Guardian’, the LECC is under resourced and refers many complaints about serious police misconduct back to the NSW Police even when those complaints are made by police whistle-blowers. The effect is, the NSW Police investigates itself.
38. This is a closed system of complaint handling and investigation. Closed systems are corrupt systems as they are not sustainable. Police investigating complaints against police was the reason behind a 2018 Victoria Police inquiry<sup>15</sup> which found the closed ‘complaint’ system was less than effective and open to corruption.
39. On the topic of complaints and investigations, OHS/WHS investigative outcomes usually identify three common patterns. Firstly, incidents are usually caused by the convergence of multiple causal factors, not just one domino falling. Secondly, precursor causal factors that result in injury or harm, existed in the workplace before the incident, but were not identified until after the incident. Finally, OHS/WHS criminal investigators rely more on quantifiable and not qualitative causal factors. Quantifiable evidence is easier to identify, measure, replicate, mitigate and use in a prosecution.

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<sup>13</sup> Auditor General’s Report (2016) ‘Preventing and managing worker injuries.’

<sup>14</sup> [Hahn v Commissioner of Police \[2014\] NSWIRComm 13 \(10 April 2014\)](#)

<sup>15</sup> Independent Broad Based Anti-Corruption Commission (March 2018) Audit of Victoria Police’s Oversight of Serious Incidents.

40. PTSD is a qualitative mental health issue that has a range and intensity of symptoms that affect individuals differently. PTSD symptoms can include licit or illicit drug abuse, violence, hedonistic behaviour, social withdrawal, poor judgement, fatigue, anxiety, paranoia and tremors<sup>16</sup>. PTSD may be an outcome of ‘*occupational stress*’<sup>17</sup>.
41. PTSD is a result of workplace personal safety hazards and/or risks and not machine failures, explosions or adverse chemical reactions. Process safety incidents like machine failure and the like, can trigger PTSD. In policing, it is usually an officer’s exposure to violent crime scenes, traffic incidents or other critical stress events that sows PTSD seeds.
42. Evidence from Industrial Relations Commission (IRC) hearings (Attachment C) shows a pattern of behaviour from police managers that increases the likelihood of PTSD.
43. In the IRC matters, appellants were police officers who had lost the confidence of the NSW Police Commissioner and were subject of a Section 181D application under the Police Act 1990. Although the sample size is small and research resources limited 75% of police appellants had their appeals upheld. The appellants were all suffering from mental health issues (PTSD) prior to being subjected to the Section 181D application or as a result of the 181D process. Three police suicides identified in the research<sup>18</sup> were not included in results.
44. Three criteria for upholding a Section 181D appeal is the Court finding the appellant was treated in a manner that was harsh, unjust and/or unfair.
45. Given the research findings and the fact that Section 181D applications by police managers are part of the disciplinary system, it would seem that the NSW Police are improperly using the judiciary as a performance management tool.
46. The concept of judicial performance management is supported by other evidence. Police when investigating allegations of serious misconduct can apply to a Judge for electronic surveillance. Once a warrant is granted a surveillance operation begins.
47. Operation Mascot ran between 1999 to 2001 and saw 113 police being electronically targeted as part of a disciplinary investigation which, at the end, was apparently a waste of time and money. It appears that if there had been a legitimate reason for commencing Operation Mascot that reason diminished over time as the operation continued.
48. Operation Mascot generated a number of parliamentary inquiries which have only recently concluded and resulted in at least one suicide, one attempted suicide and generated mental health issues for officers subject of the investigation.
49. Porter and Prezler (2009)<sup>19</sup> recommend Early Intervention Strategies (EIS) to identify, address and reduce misconduct issues at the early stage. EIS is the essence of a OHS/WHS approach to reducing health risks.
50. The ‘attitude in action’ of NSW Police culture provides a silent message to police officers that contradicts its public voice. Miscommunication can lead to misunderstanding and conflict. To reduce the risk of misunderstanding a referenced Glossary of words and terms has been prepared and is attached to this submission.

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<sup>16</sup> Based on Attachment C case studies.

<sup>17</sup> See Attachment B - Glossary

<sup>18</sup> Example [Guff v The Commissioner of Police \(No 2\) \[2007\] NSWDC 290 \(24 October 2007\)](#)

<sup>19</sup> Porter L & Prezler T (2009) “*Police Integrity Management in Australia – Global lessons for combating police misconduct*”; CRC Press; New York

## Submission Recommendations

51. Process safety attitudes and solutions should not be applied to address issues identified by this Inquiry. A workplace culture cannot be changed overnight. Mental health issues are complexly dynamic, and a one shoe fits all approach will not work. Therefore, any solution should be based on best practice, be tested for effectiveness, monitored, reviewed, adapted or changed to suit individual needs and circumstances before being rolled out organisationally.
52. Current programs recently initiated by the NSW Police, may already be showing positive results. These first-generation mental health promotion 'seed' programs should also be reviewed, and any learning included in future programs.
53. Consideration should also be given to the following:
  - A. Empanelling a group to oversee the research and development of risk controls within the NSW Police. The panel should consist of, mental health professionals, WHS professionals, and members of the broader police community including officers who have been diagnosed with mental health issues ('lived experience').
  - B. The panel's objective should be to oversee the implementation of a 'wellbeing' change program(s) to reduce the risk(s) of mental health within the NSW Police.
  - C. The wellbeing change program could include:
    - (a) Development of a Mental Health Early Intervention Strategy.
    - (b) Training at all levels in mental health survival techniques and well-being exercises. Tai Chi would be a suitable exercise program to promote fitness and well-being. Training would also include identifying the early warning signs of a developing mental health issue as well as situations that may trigger a mental health issue.
    - (c) Operational peer support focused on individual 'mindfulness' (intrinsic approach) and a buddy system (extrinsic approach) where officers look after their own as well as the welfare of their colleagues.
    - (d) Actioning identified mental health issues (EIS). Engagement with a non-police mental health service provider(s) to source:
      - i. 24HRS call centre mental health support.
      - ii. Home visits;
      - iii. Rehabilitation & Return to Work Support
      - iv. Face to face counselling.
      - v. Services should be confidential and extend to cover:
        - The workplace.
        - Sick leave.
        - Return to work.
        - Disengagement from the police, and
        - Post-police re-employment.
    - (e) Services provided by mental health service providers could be a feeder employment opportunity for officer's exiting the police who want to contribute their knowledge and skills to help other officers.
  - D. Train senior executives in the OHS/WHS duties and responsibilities.

- E. The LECC should be properly resourced to:
  - (a) To investigate and respond to serious misconduct complaints by police or members of the public against serving police.
  - (b) To include NSW Police WHS offences (corporate and/or individual i.e. bullying) as serious misconduct offences.
  - (c) Oversee and/or mediate any conflict between the Panel and NSW Police.
- F. The current disciplinary system should be reviewed and aligned more with performance management practices that focus on personal development, coaching, mentoring and support before discipline, so as to make the process, fair, just and not harsh.
- G. NSW Police identify past failure to inform future programs and thereby become a learning organisation.
- H. The Inquiry is most likely to generate stress and/or anxiety to various respondents. The submission process should include advice and contact details for mental health service providers at various stages throughout the Inquiry especially.

## Conclusion

- 54. There is a degree of hypocrisy in the fact that the most professional OHS/WHS criminal investigative organisation in NSW, charged with reducing violence and fear in the broader NSW community; is also a serial corporate OHS/WHS white collar criminal recidivist, who propagates violence and fear in its own community.
- 55. The pattern of behaviour shown by the NSW Police culture in addressing mental health issues is one of denial, avoidance, procrastination and inconsistency. The NSW Police know that police work exposes officers to critical stress situations that can lead to mental health issues. Knowing this, the NSW Police have not acted in a timely manner resulting in violence and harm spreading throughout the policing community.
- 56. The inputs, processes and outputs of the NSW Police are people focused. Yet, although the NSW Police is not in manufacturing, the organisation applies a process safety culture to deal with personal safety issues.
- 57. It is unlikely that this Inquiry will lead to positive change in a timely manner. Many police exposed to unsafe systems of work now, need help immediately. The longer it takes to change the NSW Police culture and that of other emergency service operators, the more people will die or be harmed.
- 58. A point to consider that is not addressed in this submission is what value do you place on an emergency service worker as a person? Should the Inquiry address this issue, that value should be seen through the eyes of the people who have called on emergency services for help and not some accounting formula.

# Attachment A

## Examples NSW Police 'White Collar' Crimes

## **Attachment A – Examples of NSW Police ‘White Collar’ Crimes**

1.	<a href="#">2002 NSW Police Lead Poisoning Conviction</a>
2.	<a href="#">2004 NSW Police Vaccination Conviction</a>
3.	<a href="#">2007 NSW Police Riot Squad Preparation Conviction</a>
4.	<a href="#">2007 SMH NSW Police Harassment victims demonised</a> (Report unable to be provided)
5.	<a href="#">2012 NSW Police Repeat OHS Offender Conviction -HWP</a>
6.	<a href="#">2013 NSW Police Failure of OHS Management System Conviction</a>
7.	<a href="#">2015 NSW Police WC Conviction “Insensitive” Employer</a>
8.	<a href="#">2016 NSW Auditor General’s Report - Negligence Claims</a>

# Attachment B

## Glossary

## Attachment B – Glossary

1. For the purposes of this submission the following definitions will apply:

<b>Word/Term</b>	<b>Definition</b>	<b>Reference</b>
Acceptable Risk	<p>There are two definitions for ‘acceptable risk’. In business an ‘acceptable risk’ is a risk that the business accepts as part of its operations.</p> <p>In health and safety there are no acceptable risks. WHS legislation requires businesses to eliminate or mitigate risks following a strict hierarchy of controls.</p>	<p>ISO 31000:2009 Risk Management</p> <p>WHS Regulations 2011</p>
Asset	Is an item, thing, or entity that has potential or actual value to an organisation. The value will vary between different organisations and their stakeholders and can be tangible or intangible, financial or non-financial.	ISO 55000:2014 Asset Management (p. 2)
Command and Control	A situation in which managers tell employees everything that they should do, rather than allowing them to decide some things for themselves.	<p>Cambridge Dictionary (Sourced 01.05.18)</p> <p><a href="https://dictionary.cambridge.org/dictionary/english/command-and-control">https://dictionary.cambridge.org/dictionary/english/command-and-control</a></p>
Communication and Consultation	<p>Continual and iterative processes that an organization conducts to provide, share or obtain information and to engage in dialogue with stakeholders regarding the management of risk.</p> <p>The information can relate to the existence, nature, form, likelihood (2.19), significance, evaluation, acceptability and treatment of the management of risk.</p> <p>Consultation is a two-way process of informed communication between an organization and its stakeholders on an issue prior to making a decision or determining a direction on that issue. Consultation is:</p> <p>a process which impacts on a decision through influence rather than power</p>	ISO 31000:2009 Risk Management (P. 3)
Competence	Ability to apply knowledge and skills to achieve intended results	ISO 45001:2018 (E) Occupational health and safety management systems — Requirements with guidance for use (P. 5)
Consequence	<p>Outcome of an event (2.17) affecting objectives.</p> <p>An event can lead to a range of consequences. A consequence can be certain or uncertain and can have positive or negative effects on objectives. Consequences can be expressed qualitatively or quantitatively. Initial consequences can escalate through knock-on effects.</p>	ISO 31000:2009 Risk Management (P. 5)

Continual Improvement	Recurring activity to increase performance	ISO 45001:2018 (E) Occupational health and safety management systems – Requirements with guidance for use (P. 7)
Corporate Governance	Generally, refers to the processes by which organisations are directed, controlled and held to account. It encompasses authority, accountability and stewardship, leadership, direction and control exercised in the organisation.  It also focuses on the conduct of and relationships between the board of directors, managers and the company shareholders.	AS 8000:2003 'Good Governance Principles' (p. 8)
Critical Asset	Asset having potential to significantly impact on the achievement of the organisations objectives.	ISO 55000:2014 Asset Management (p. 14)
Culture (OHS)	A culture that supports an organization's OH&S management system is largely determined by top management and is the product of individual and group values, attitudes, managerial practices, perceptions, competencies and patterns of activities that determine the commitment to, and the style of proficiency of, its OH&S management system. It is characterised by, but not limited to, active participation of workers, cooperation and communications founded on mutual trust, shared perceptions of the importance of the OH&S management system by active involvement in detection of OH&S opportunities and confidence in the effectiveness of preventative and protective measures. An important way top management demonstrates leadership is by encouraging workers to report incidents, hazards, risks and opportunities and by protecting workers against reprisals, such as the threat of dismissal or disciplinary action, when they do so.	ISO 45001:2018 OHS Management Systems (p. 27)
Customer Satisfaction	Customer's perception of the degree to which the customer's requirements have been fulfilled.  Customer complaints are a common indicator of low customer satisfaction, but their absence does not necessarily imply high customer satisfaction.	ISO 9000:2005 Quality Management Systems – Fundamentals and vocabulary (p. 7)
Due Diligence	Taking reasonable steps: (a) To acquire and keep up-to-date knowledge of work health and safety matters; and (b) To gain an understanding of the nature of the operations of the business or undertaking of the person conducting the business or undertaking and generally of the hazards and risk associated with those operations and (c) To ensure that the person conducting the business or undertaking has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking, and (d) To ensure that the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information, and (e) To ensure that the person conducting the business or undertaking has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act; and To verify the provision and use of the resources and processes referred to in paragraphs (c) to (e)	WHS Act 2011 Section 27

Effectiveness	Extent to which planned activities are realised and planned results achieved.	ISO 55000:2014 Asset Management (p. 10)
Efficiency	Relationship between the result achieved and the resources used.	ISO 9000:2005 Quality Management Systems – Fundamentals and vocabulary (p. 9)
Harm	The environmental, physical, emotional, economic, social, political and other intangible consequences that could result from a real or potential occurrence of the security threat being considered	Standards Australia HB 167:2006 - Security Risk Management (p.93)
Hazard	Source with a potential to cause injury and ill health	ISO 45001:2018 (E) Occupational health and safety management systems – Requirements with guidance for use (P. 5)
Hazard identification	The process of recognizing that a hazard exists and defining its characteristics	AS/NZS 4801:2001 OHS Management Systems (p. 3)
Health	Includes psychological health;	Victorian OHS Act 2004; Section 5 Definitions
Health surveillance	Monitoring of individuals for the purpose of identifying changes in health status that may be due to occupational exposure to a hazard.	AS/NZS 4801:2001 Management Systems (p. 4)
Incident	Occurrence arising out of, or in the course of, work that could or does result in injury and ill health	ISO 45001:2018 (E) Occupational health and safety management systems – Requirements with guidance for use (P. 4)
Injury and ill-health	Adverse effect on the physical, mental or cognitive condition of a person.  These adverse effects include occupational disease ill-ness and death.  The term “injury and ill-health” implies the presence of injury or ill-health either on their own or in combination.	ISO 45001:2018 OHS Management Systems (p. 4)
Interested parties (See also Stakeholder)	Person or organisation that can affect; be affected by or perceive itself to be affected by a decision or activity.	ISO 45001:2018 OHS Management Systems (p. 5)
Level of Service	Parameter, or combination of parameters, which reflect social, political, environmental and economic outcomes that the organisation delivers.	ISO 55000:2014 Asset Management (p. 15)
Likelihood	Chance of something happening.  In risk management terminology, the word “likelihood” is used to refer to the chance of something happening, whether defined, measured or determined objectively or subjectively, qualitatively or quantitatively, and described using general terms or mathematically (such as a probability or a frequency over a given time period).	ISO 31000:2009 Asset Management (P. 5)

	<p>The English term “likelihood” does not have a direct equivalent in some languages; instead, the equivalent of the term “probability” is often used. However, in English, “probability” is often narrowly interpreted as a mathematical term.</p> <p>Therefore, in risk management terminology, “likelihood” is used with the intent that it should have the same broad interpretation as the term “probability” has in many languages other than English.</p>	
Management	Coordinated activities to direct and control an organisation.	ISO 9000:2005 Quality Management Systems – Fundamentals and vocabulary (p. 8)
Occupational Stress	The physiological and psychological responses of workers who perceive that their work demands exceed their resources and/or abilities to cope with the work.	SIA Body of Knowledge ( ) Chapt 19 Psychosocial Hazards & Occupational Stress (p. 2)
Organisation	Person or group of people that has its own functions with responsibilities, authorities and relationships to achieve its objectives.	ISO 55000:2014 Asset Management (p. 11)
Organisational Culture	The system of shared beliefs and values that develops within an organisation or within its sub-units, and that guides the behaviour of its members.	Wood et al (2001; p. 391) 'Organisational Behaviour', John Wiley & Sons, Australia
Predictive Action	Action to monitor the condition of an asset and predict the need for preventative action	ISO 55000:2014 Asset Management (p. 15)
Preventative Action	Action to eliminate the cause of a potential nonconformity or other undesirable potential situation.	ISO 55000:2014 Asset Management (p. 14)
Process	Set of interrelated or interacting activities which transforms inputs into outputs	ISO 45001:2018 (E) Occupational health and safety management systems – Requirements with guidance for use (P. 6)
Process Safety	Managing the integrity of operating systems by applying inherently safer design principles, engineering and disciplined operating practices. It deals with the prevention and mitigation of incidents that have the potential for a loss of control of a hazardous material or energy. Such loss of control may lead to severe consequences with fire, explosion and/or toxic effects, and may ultimately result in loss of life, serious injury, extensive property damage, environmental impact and lost production with associated financial and reputational impacts.	Managing Process Safety, (2017) SIA Body of Knowledge, (P. 3)
Procedural Fairness/Justice	A dispute resolution concept which provides an employee a fair process in resolving disputes. The concept requires transparency, equal communication and fairness in allocation of resources used to resolve the dispute. Also called procedural justice.	<a href="http://www.businesdictionary.com/definition/procedural-fairness.html">http://www.businesdictionary.com/definition/procedural-fairness.html</a>

Psychosocial Hazards	Work-related psychosocial risks concern aspects of the design and management of work and its social and organisational contexts that have the potential for causing psychological or physical harm.	SIA Body of Knowledge Chapt. 19 Psychosocial Hazards & Occupational Stress (p. 2)
Quality Control	Part of quality management focused on fulfilling quality requirements.  Inherent means existing in something, especially as a permanent characteristic.  A characteristic assigned to a product, process or system (e.g. the price of a product, the owner of a product) is not a quality characteristic of that product process or system.	ISO 9000:2005 Quality Management Systems – Fundamentals and vocabulary (p. 9)
Quality Management	Coordinated activities to direct and control an organisation with regard to quality.	ISO 9000:2005 Quality Management Systems – Fundamentals and vocabulary (p. 9)
Reasonably Practicable	In relation to a duty to ensure health and safety, means that which is or was at a particular time, reasonably able to be done to ensure health and safety, taking into account and weighing up all the relevant matters.	See Work Health & Safety Act 2011 Section 18 and 'How to Determine What is Reasonably Practicable to Meet a Health & Safety Duty' COP-2013, page 4 for more)
Residual Risk	risk remaining after risk treatment  Residual risk can contain unidentified risk.  Residual risk can also be known as “retained risk”.	ISO 31000:2009 Risk Management (P. 6)
Resilience	The ability or capacity to recover from harm	Standards Australia HB 167:2006 - Security Risk Management (p.93)
Review	Activity undertaken to determine the suitability, adequacy and effectiveness of the subject matter to achieve established objectives.  Review can be applied to a risk management framework, risk management process, risk or control.	ISO 31000:2009 Risk Management (P. 7)
Risk	Effect of uncertainty on objectives. (An <b>effect</b> is a deviation from the expected — positive and/or negative.)  <b>Objectives</b> can have different aspects (such as financial, health and safety, and environmental goals) and can apply at different levels (such as strategic, organization-wide, project, product and process). Risk is often characterized by reference to potential events and consequences, or a combination of these. Risk is often expressed in terms of a combination of the <b>consequences</b> of an event (including changes in circumstances) and the associated <b>likelihood</b> of occurrence.	ISO 31000:2009 Risk Management (P. 1)

	<b>Uncertainty</b> is the state, even partial, of deficiency of information related to, understanding or knowledge of an event, its consequence or likelihood.	
Risk Analysis	<p>Process to comprehend the nature of risk (2.1) and to determine the level of risk.</p> <p>Risk analysis provides the basis for risk evaluation and decisions about risk treatment.</p> <p>Risk analysis includes risk estimation.</p>	ISO 31000:2009 Risk Management (P. 4)
Risk Assessment	Overall process of risk identification risk analysis and risk evaluation	ISO 31000:2009 Risk Management (P. 4)
Risk Attitude	Organization’s approach to assess and eventually pursue, retain, take or turn away from risk.	ISO 31000:2009 Risk Management (P. 1)
Risk Control	<p>Measure that is modifying risk.</p> <p>Controls include any process, policy, device, practice, or other actions which modify risk.</p> <p>Controls may not always exert the intended or assumed modifying effect.</p> <p><b>Note:</b> Different to WHS risk control which is based on the <u>Hierarchical Order of Risk Controls WHS Regulations 2011</u></p>	ISO 31000:2009 Risk Management (P. 6)
Risk Criteria	<p>Terms of reference against which the significance of a risk is evaluated.</p> <p>Risk criteria are based on organizational objectives, and external and internal context.</p> <p>Risk criteria can be derived from standards, laws, policies and other requirements.</p>	ISO 31000:2009 Risk Management (P. 4)
Risk Evaluation	<p>Process of comparing the results of risk analysis with risk criteria to determine whether the risk and/or its magnitude is acceptable or tolerable.</p> <p>Risk evaluation assists in the decision about risk treatment.</p>	ISO 31000:2009 Risk Management (P. 6)
Risk Identification	Process of finding, recognizing and describing risks. Risk identification involves the identification of risk sources, events, their causes and their potential consequences. Risk identification can involve historical data, theoretical analysis, informed and expert opinions, and stakeholder's needs.	ISO 31000:2009 Risk Management (P. 4)
Risk Management	Coordinated activities to direct and control an organization with regard to risk	ISO 31000:2009 Risk Management (P. 1)
Risk Management Process	systematic application of management policies, procedures and practices to the activities of communicating, consulting, establishing the context, and identifying, analysing, evaluating, treating, monitoring (2.28) and reviewing risk	ISO 31000:2009 Risk Management (P. 2)
Risk Owner	Person or entity with the accountability and authority to manage a risk	ISO 31000:2009 Risk Management (P. 1)
Risk Profile	<p>Description of any set of risks.</p> <p>The set of risks can contain those that relate to the whole organization, part of the organization, or as otherwise defined.</p>	ISO 31000:2009 Risk Management (P. 5)

Safe Systems of Work	Are the total set of methods adopted for carrying out the operations required in a particular workplace. They cover all aspects of the employment situation including: the organisation of work processes <ul style="list-style-type: none"> <li>• the methods of using machinery, plant and equipment the methods of hiring labour</li> <li>• job training, instruction and supervision about associated hazards and their management</li> <li>• what to do when things go wrong (SafeWork SA, 2003).</li> </ul>	SIA Body of Knowledge (2013) 'Systems' (p. 6)
Safety	A state in which the risk of harm (to persons) or damage is limited to an acceptable level	AS/NZS 4801:2001 OHS Management Systems (p. 5)
Security	The preparedness, protection and preservation of people, property and information both tangible and intangible	Standards Australia HB 167:2006 - Security Risk Management (p.11)
Stakeholder	Person or organization that can affect, be affected by, or perceive themselves to be affected by a decision or activity  See also "interested party"	ISO 31000:2009 Risk Management (P. 4)
System	Set of interrelated or interacting elements	ISO 9000:2005 Quality Management Systems – Fundamentals and vocabulary (p. 8)
Threat	Anything that has the potential to prevent or hinder the achievement of objectives or disrupt the processes that support them.  A source of, or potential for harm to occur  A threat can be a source of risk ( <b>specific, general</b> )	Standards Australia HB 167:2006 - Security Risk Management (p.94)
Unsafe Conditions	Conditions that allow hazards/risks to manifest	Standards Australia HB 167:2006 - Security Risk Management (p.94)
Whistleblowing	... the disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers to persons that may be able to effect action.	Parliament of Australia, 14 February 2005, 'Whistleblowing in Australia', no. 31, 2004–05, ISSN 1449-8456
Work Environment	Set of conditions under which work is performed.  Conditions include physical, social, psychological and environmental factors (such as temperature, recognition schemes, ergonomics and atmospheric composition)	ISO 9000:2005 Quality Management Systems – Fundamentals and vocabulary (p. 10)

# Attachment C

## Section 181D IRC Cases

## Attachment C Section 181D IRC Cases

The list below is sourced from a cursory search of the Austlii NSW Industrial Relations Commission Database only between 2000 and 2018.

The cases are examples of those matters where police were diagnosed suffering from mental health issues (e.g. PTSD) prior to the commission of the incident that resulted in a Section 181D application or caused as a result of the Section 181D process. The matter of Van Huisstede (No. 9) is the exception. Mr Van Huisstede spent 10 years trying to clear his name after being charged and acquitted.

	Appeal Upheld		Appeal Dismissed
1.	<p><a href="#">Carangelo v State of New South Wales (2015) NSWSC 655 (29 May 2015)</a></p> <p>Long standing Internal Investigation that resulted in S181D recommendation that was declined. Officer had history of mental health issues.</p>	1.	<p><a href="#">Allison v Commissioner of Police (2018) NSWIRComm 1005 (7 February 2018)</a></p> <p>PTSD evidence minimal. Misconduct offences.</p>
2.	<p><a href="#">Commissioner of Police v Ross (2012) NSWIRComm 17 (29 March 2012)</a></p> <p>Officer seeking re-instatement. Suffering PTSD, excessive use of force (capsicum spray). Re-instatement, then medical discharge which was earlier denied.</p>	2.	<p><a href="#">Vouden v Commissioner of Police NSW Police Force (2014) NSWIRComm 25 (29 May 2014)</a></p> <p>Mental health issues, failure to investigate crime, COPS data breaches.</p>
3.	<p><a href="#">Lawrance v Commissioner of Police (No 2) (2010) NSWIRComm 173 (2 December 2010)</a></p> <p>Dismissal harsh under circumstances (Police party, exposed himself to a small group who didn't find it offensive).</p>	3.	<p><a href="#">Paul Gardiner and Commissioner of Police. Application by Paul Gardiner under s 181D of the Police Act 1990 for review of an order of the Commissioner of Police (2009) NSWIRComm 84 (2 June 2009)</a></p> <p>AVO, assault PTSD, Alcohol, non-participation in rehabilitation.</p>
4.	<p><a href="#">Commissioner of Police v Smith (2010) NSWIRComm 162 (30 November 2010)</a></p> <p>Psychological injured officer made errors at work (after medical diagnosis) which led to discharge.</p>		
5.	<p><a href="#">Raymond Sewell v New South Wales Police Force. Application by Raymond Sewell for review of an order under s 181E of the Police Act 1990 (2008) NSWIRComm 93 (6 May 2008)</a></p> <p>History of mental health issues resulting from disciplinary action.</p>		
6.	<p><a href="#">Craig Eric Allchin and the NSW Police (2007) NSWIRComm 76 (5 April 2007)</a></p> <p>Mental health issues and alcohol abuse. Misconduct off duty.</p>		
7.	<p><a href="#">Dobbie v New South Wales Police (2006) NSWIRComm 12 (30 March 2006)</a></p> <p>Alcohol related vehicle collision. Drinking to adjust to suicide of friend.</p>		

8.	<a href="#">Cassel v Commissioner of Police (2003) NSWIRComm 73 (16 April 2003)</a> Misconduct and late reporting of a vehicle collision. Mental health issues		
9.	<a href="#">Van Huisstede and the Commissioner of Police (2000) NSWIRComm 97 (26 June 2000)</a> Acquitted of child prostitution. Mental health arising from trial and 181D application.		
10,	<a href="#">Wells and Commissioner of Police (2000) NSWIRComm 157 (18 August 2000)</a> Rejoinee suffered mental health after being assaulted. Later charged with assault but discharged under Section 32 Mental Health Act before the Section 181D proceedings.		

Other incidents involving PTSD issues were reported outside the Industrial Relations Court, but were not included:

Example:

[Thatcher v Commissioner of Police \[2002\] NSWCC 26 \(12 April 2002\)](#)