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NSW Police Force

MISCONDUCT MATTER ALLOCATION RISK APPRAISAL (MARA) GUIDELINES

Professional Standards Command

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Summary

If an assessing officer identifies themselves as an involved employee or subject officer in the triage process, they must refer the matter to the commander immediately.

Misconduct matters relating to the conduct of the Commander must be referred to the relevant region or specialist command. The region/specialist complaint management team (**CMT**) will maintain responsibility for investigation of commanders.

The triage officer must disclose any actual or perceived conflicts of interest to their commander and cease all involvement in the triage process until the Commander determines a management strategy.

Any identified risks, of conflicts of interest and management and/or mitigation strategies are to be clearly documented.

Completion of the *MINUTES – CMT ASSESSMENT - MARA PART A – MANDATORY (P1088)* form is **mandatory** for all CMT managed investigations. This form addresses issues of potential CMT conflicts of interest and evaluation of command/investigation resources.

Completion of the *MARA PART B – DISCLOSURE OF CONFLICT OF INTEREST BY INVESTIGATOR / RESOLUTION MANAGER – MANDATORY (P960)* form is **mandatory** for **all** misconduct matters. This form allows investigators to declare and conflicts of interest and risks.

Document Control Sheet

Document Properties

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2	December 2012	Professional Standards Command	Consideration of conflicts of interest or identified risks by triage officers Requirements for the inclusion of details of any identified risks, the strategies developed to manage or mitigate those risks and the reasons for the strategies on the CARA form Expansion of requirements for CARA B declarations to be completed for ALL complaint investigations Amendments to both CARA A and CARA B form to support these changes
3	January 2016	Professional Standards Command	Transfer to corporate template Apply protective marking
4	July 2017	Professional Standards Command	Changes made with the implementation of the <i>Law Enforcement Conduct Commission Act 2016</i> Changes to the <i>Police Act 1990</i> and the <i>Police Regulations 2015</i>
5	January 2018	Professional Standards Command	Change reference of <i>complaint</i> to <i>misconduct matter</i> or <i>matter</i> in accordance with Division 2 of the <i>Law Enforcement Conduct Commission Act 2016</i> Update document classification to 'Unclassified'
6	August 2020	Professional Standards Command	Remove reference to c@ts.i
7	11 January 2021	Professional Standards Command	Update security classification
8	August 2021	Professional Standards Command	Change security classification to Official and Suitable for Public Disclosure Amend Essential Summary Reordering of paragraphs between 4.2 and 4.3 Include with reference to IAPro - Misconduct Matters Information System Minor technical updates
9	March 2024	Professional Standards Command	Transfer to corporate template Remove reference to employee and change to member

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1. Commander's Foreword

Handling police misconduct is a highly complex function governed by statutes, regulation and agreements.

Handling misconduct effectively is essential in an ethical police force. Any police force that is accountable for the conduct of its police officers must be prepared to deal with misconduct openly, efficiently and fairly.

The Misconduct Matter Allocation Risk Appraisal (**MARA**) process has been developed to assist professional standards practitioners in identifying and managing conflicts of interest and risks which may affect the investigation of misconduct.

As part of the misconduct management practices adopted by the NSW Police Force the MARA process formalises the identification of risks or conflicts of interest and provides scope for professional standards practitioners to manage any identified risks or conflicts while conducting inquiries into the conduct of officers within their command.

The completion of the MARA process provides assurance that risks and conflicts are considered by professional standards practitioners and appropriate strategies are adopted to ensure that any identified risks or conflicts do not interfere with the transparency and probity of the investigations being conducted.

Professional standards practitioners are expected to adhere to these guidelines at all times.

**Assistant Commissioner
Professional Standards Command**

2. Scope

The Misconduct Matter Allocation Risk Appraisal (**MARA**) is a process that assists professional standards practitioners to determine whether misconduct matters should be managed locally or transferred to another location for investigation or other action.

This process also ensures decision making processes in relation to risk identification and management strategies are documented.

3. Procedure

Formal application of the MARA process commences once a determination has been made that a misconduct matter should be subject to investigation under Part 8A of the *Police Act 1990*.

However, some consideration of, conflicts of interest and risks needs to be made during the assessment and triage stages of the misconduct management process.

3.1 Assessment

If an assessing officer identifies themselves as an involved employee or subject officer in the triage process, they are to refer the matter to the commander immediately.

If the misconduct matter relates to the conduct of the commander, the matter must be referred to the relevant region or specialist command for action. It is not appropriate for a commander to manage or investigate misconduct matters relating to their own conduct.

3.2 Triage

Initially, the triage officer will need to consider whether they have any conflicts of interest that may affect their ability to complete the triage of the misconduct matter in an effective and objective manner. The triage officer must disclose any actual or perceived conflicts to their commander so that these matters can be appropriately managed. In some circumstances, the matter may need to be reassigned.

Should a triage officer become aware that they are either the subject officer, involved in the misconduct matter or a potential witness, they are to cease any involvement in the misconduct matter process and consult with the commander.

It is mandatory for all misconduct matters involving a commander or equivalent to be referred to the respective region / specialist commander or Professional Standards Manager (**PSM**) for appropriate management. The region / specialist CMT will maintain responsibility for the management of all investigations involving commanders or equivalent.

3.3 Investigation

At the completion of the triage process a recommendation will be made as to how the further investigation of the misconduct matter is to be managed. The following sections of these guidelines provide advice on the requirements of the MARA process for both CMT managed investigations and matters that are to be investigated under the resolution process.

3.4 Document considerations

It is important to properly record the details of any identified risks or conflicts of interest to ensure the transparency. Documenting this information provides evidence of **the** command's considerations and assists in the formulation of treatment strategies to address the identified risks.

In all cases where a risk or conflict of interest is identified, details of the risk and risk management strategies must be clearly recorded **in writing**, at the time the decision is made.

A comprehensive record must be made, either on the *MARA Part A* form, on a separate report or in the CMT minutes. All documents MUST be recorded on IAPro (the NSW Police Force Misconduct Matters Information System¹) in a timely manner.

Risks and conflicts of interest may also become evident after an investigation has commenced. It is important that any identified conflicts or risks are addressed, regardless of when they are identified. Appropriate strategies must then be put in place to manage or mitigate the effect they may have on the ongoing management of the misconduct matter. These details should also be appropriately recorded.

4. Part A – CMT selection of investigating command, investigators and investigative response

MARA Part A requires the CMT to conduct a comprehensive risk appraisal to identify and manage risks, including conflicts of interest, which may affect the command's ability to conduct the investigation. The *Minutes - CMT Assessment- MARA Part A – Mandatory (P1088)* form is provided as a risk appraisal tool to assist in both the identification of risks and the development of strategies to manage or address those risks.

The completion of the *MARA Part A* form is **mandatory** for all CMT managed investigations. Once completed, the form must be scanned onto IAPro.

The Risk Assessment section of the *MARA Part A* form is separated into two categories, CMT Conflict of Interest and Command / Investigation resources.

4.1 CMT – conflict of interest

To assist CMTs in determining whether they should retain or transfer a misconduct matter a number of risk factors should be considered. These include consideration of whether the misconduct matter:

- is about the commander or any member of the CMT
- is about unknown officers
- contains unusual or unexpected risks

The *MARA Part A* form requires CMTs to record the details of any identified conflict and / or risk and any treatment strategies proposed to manage those risks. It is important to properly record the details of the risks and the reasons for the proposed strategies to maintain a record of the CMT deliberations.

Apply the following: *“Will this information provide sufficient detail to stand the test of scrutiny in five years?”*

Commanders always retain the option of transferring a misconduct matter if they believe the identified risks are not able to be managed locally or the risk in retaining the investigation of the misconduct matter is too high.

4.2 Misconduct matters concerning CMT members

Misconduct matters concerning CMT member/s must be managed effectively to ensure they are not compromised in any way. If, on convening a CMT, any member of the CMT believes they are somehow involved in the misconduct matter, they must declare this information

immediately and consideration must be given to risk treatment strategies. There will be occasions where this situation is unavoidable and cannot be anticipated. The following issues must be considered when conducting a risk appraisal of a misconduct matter involving CMT member/s.

If the triage process identifies the crime manager, a duty officer or another CMT member as a subject officer the following action will occur:

- If the allegation was to be proven and would attract a reviewable sanction or criminal charge, it must be referred to the next level of command such as the region / specialist commander or relevant PSM for assessment and allocation for investigation.
- If the allegation was to be proven and likely to attract a non-reviewable sanction, the matter may be retained by the subject officer's command with the subject officer excluded from deliberations concerning the misconduct matter.

Misconduct matters involving a senior officer (crime manager, duty officer) can be dealt with by the CMT as long as the subject officer is excluded from the CMT and this fact is documented. Appropriate records such as CMT minutes and the completion of the *MARA Part A* form must be maintained to record identified risks and selected treatment options.

4.3 Misconduct matters concerning Police Area or District Commander or equivalent

Misconduct matters relating to the conduct of the Commander must be referred to the relevant region or specialist command. The region/specialist CMT will maintain responsibility for investigation of commanders.

4.4 Misconduct matters about unknown officers

When dealing with misconduct matters about unknown officers, there is a risk the unknown officer may be a member of the CMT or one of a number of officers who generally undertake misconduct investigations on behalf of the CMT.

Where the triage inquiries indicate that the misconduct matter does not relate to a member of the CMT, the matter will be assessed in the normal manner. All matters that relate to the commander must be referred to the next level of command.

If triage inquiries indicate that the misconduct matter relates to a member of the CMT (not being the commander) the actions outlined above should be taken.

In the event the CMT is unable to determine the identity of the subject officer, appropriate risk management needs to be considered and recorded. All efforts are to be made to ensure the investigation is not allocated to an officer who may be subject of or a witness in the misconduct matter. This will avoid situations whereby an investigation is allocated to an officer who is later confirmed as being involved in the matter.

Appropriate records and the completion of MARA documents must be maintained and scanned onto IAPro to record the identified risks and selected treatment options.

4.5 Commander / investigation resources

While the misconduct matter may not relate to a CMT member there may be other risks which may affect the command's ability to conduct the investigation, including whether:

- the investigation requires more resources than those available at the command

- the command does not have investigators who possess suitable skills, knowledge, experience and rank to conduct the investigation
- there is likely to be an impact on the work environment within the section / command if an investigation was conducted locally i.e. internal police complainants (**IPCs**).

4.6 Misconduct matters requiring extra or special resources or skills

In certain circumstances, commands will not possess adequate resources or skills to undertake investigations of a serious and / or complex nature.

If the CMT considers that these risks will have an adverse effect on the outcome of an investigation, it is recommended that advice is sought from the region / specialist commander or PSM prior to requesting assistance from the Professional Standards Command (**PSC**).

Appropriate records such as CMT minutes and the completion of MARA forms must be maintained and scanned onto IAPro to record identified risks and selected treatment options.

4.7 Misconduct matters received from internal police complainants or anonymous complainants

In the event that misconduct information is received from an internal police complainant or an anonymous complainant and appears to originate internally, the CMT should consider the impact the investigation may have on the command.

This is especially critical if a CMT believes that during the investigation there is a potential the complainant's identity may be disclosed to witnesses or subject officers. This situation has the greatest potential to occur when the complainant works in the same command as the subject officer/s.

Depending on the nature of the allegation/s, the CMT must decide whether the matter can be managed by their CMT or should be outsourced to another location. This should be conducted in consultation with the relevant next level commander or PSM.

Similarly, the region / specialist CMT / PSM should consider the impact the misconduct matter may have on the command, prior to it being forwarded to that location.

The *MARA Part A* form is to be completed and include a detailed record of the risks identified and treatment strategies to be adopted. These documents must be scanned onto IAPro.

4.8 Investigation type

The *MARA Part A* form will assist CMTs to document and select the most appropriate investigator and investigative response.

Allegations, which if proven are likely to result in reviewable sanction, require a formal investigative response. Allegations, which if proven are likely to result in nonreviewable sanctions, may require a non-criminal investigation or the resolution investigative process.

4.9 Selecting an investigator

If the CMT determines a matter can be investigated locally, a suitable investigator will be selected. The CMT must select an investigator who possesses the necessary skills, knowledge, experience and rank to conduct the investigation in a professional manner.

The CMT will also use their local knowledge of staff to establish if there are any issues which may adversely affect an investigator's ability to conduct the investigation in an impartial and effective manner. If the CMT believe a risk exists, they should:

- manage the identified risks (i.e. provide a suitable mentor), or
- select another investigator, or
- contact the region / specialist commander or PSM.

The CMT must consider any known risk which would preclude an officer from conducting the investigation. Detailed records of the CMTs deliberations should be included within the CMT minutes.

4.10 Misconduct matters containing unusual or unexpected risks

The MARA process cannot cover every situation where a conflict of interest may present itself to a CMT. There may be risks identified which are unexpected or unusual in nature.

Every proposed CMT managed investigation must be assessed using *MARA Part A*, before a decision is made to either retain or transfer an investigation. If the CMT believe that the investigation of the issue by the command will have an adverse effect on the outcome, it is recommended either the region / specialist commander or PSM be contacted for advice.

Appropriate records such as CMT minutes and the completed *MARA Part A* form must be maintained and scanned onto IAPro, recording the identified risks and selected treatment options.

5. Part B – disclosure of conflicts by the investigator

The completion of this form is mandatory for the investigation of **all** misconduct matters. The form assists investigators to declare any conflicts of interest or other risk they may feel would affect their ability to conduct an impartial investigation of the matter.

The form must be signed by the nominated investigator and returned to either the Commander for CMT managed matters, or the Professional Standards Duty Officer (**PSDO**) for resolution matters, for endorsement before the investigation is commenced.

The investigator must acknowledge that if at any time during the investigation they believe a conflict may arise, they will immediately bring it to the attention of the commander, a member of the CMT or the PSDO.

The form must be scanned onto IAPro.

5.1 CMT managed investigations

For CMT managed investigations, the *MARA Part B – Disclosure of Conflict of Interest by Investigator / Resolution Manager – Mandatory (P960)* form should be completed at the same time the *Terms of Reference – Investigation – Mandatory (P1013)* is given to the investigator by the CMT member.

In cases where the investigator discloses a conflict of interest, the CMT or commander must determine whether the conflict can be managed or whether the investigation should be assigned to another investigator.

If the investigation is reassigned, the CMT or commander must implement suitable treatment options to minimise risks associated with possible disclosure of information or collusion.

Where a decision is made to reallocate a matter, the investigator disclosure process will recommence.

The proper use of this process will avoid any potential prejudice to an investigation and embarrassment to the NSW Police Force if it were revealed that an investigator had a conflict of interest investigating the matter. If managed effectively, the reallocation process should cause minimal delay.

5.2 Resolution investigation

Where a matter is referred for a resolution investigation, the PSDO must provide the *MARA Part B* form to the resolution manager for completion. Where the PSDO is to fulfil the role of resolution manager, the *MARA Part B* form must be completed by that officer. In cases where the resolution manager discloses a conflict of interest, the PSDO or commander must determine whether the conflict can be managed or whether the investigation should be assigned to another resolution manager.

If the resolution investigation is reassigned, the PSDO or commander must implement suitable treatment options to minimise risks associated with possible disclosure of information or collusion. Where a decision is made to reallocate a matter, the disclosure process will recommence.

The proper use of this process will avoid any potential prejudice to a resolution investigation and embarrassment to the NSW Police Force if it were revealed that an investigator had a conflict of interest investigating the matter. If managed effectively, the reallocation process should cause minimal delay.

6. Endnote References

Nil