



Law Enforcement  
Conduct Commission

Office of the Chief Commissioner

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Mr Lee Evans  
Chair  
Parliamentary Joint Committee on the Ombudsman, the Law Enforcement  
Conduct Commission and the Crime Commission  
Parliament of NSW  
6 Macquarie Street  
Sydney NSW 2000

Dear Mr Evans

### Update on operations of the Law Enforcement Conduct Commission

I wish to provide you with an update of the operations of the Law Enforcement Conduct Commission (LECC) in advance of the upcoming hearing on 12 March 2018. The Commission's inaugural Annual Report covered the transition arrangements of the Commission, prior to our operational start date of 1 July 2017. The Commission has now been operational for a period of 7 months. This submission is intended to supplement the 2016-17 Annual Report with detailed information regarding important operations and budgetary matters.

I am pleased with the progress that the Commission has made in the short period of operation. In summary the LECC has:

- Received and assessed 1975 complaints;
- Commenced monitoring of 26 NSWPF critical incident investigations, and attended the scene of 16 critical incidents
- Delivered five briefs of evidence to the NSW and Commonwealth Director of Public Prosecutions
- Seen 259 charges laid in relation to three investigations
- Conducted 25 private examinations
- Commenced a range of research projects to identify and analyse systemic issues in collaboration with the NSWPF
- Commenced 73 integrity investigations (including preliminary inquiries and investigations)

The abovementioned achievements have been accomplished in the context of reduced funding and increased statutory functions included in the *Law Enforcement Conduct Commission Act 2016 (the LECC Act 2016)*, than previously existed in the former agencies of the Police Integrity Commission and the Police

and Compliance Branch of the NSW Ombudsman's office. The creation of a single oversight agency was done so with the aim of reducing complexity and duplication, streamlining functions and reducing the risk of matters not being dealt with and I believe, in the short period of operation, the LECC is well on its way to achieving these goals.

However despite the realisation of the Government's goal of a single oversight body, with continued increasing workload and reduced resourcing, I am obliged to advise you of some of the challenges that confront the Commission continuing to exercise its functions to the standard I, and I expect the Committee, would insist on for such an important agency, given the budgetary issues we are now facing. I also expect that this pressure will continue to escalate in future years.

I expand upon these challenges and their practical implications in the attached submission. I look forward to working with yourself and the Committee on how these challenges might be addressed in the future to ensure that the LECC continues to deliver on the expectations of the government, the public and the agencies that it oversees.

It is also important to note the restrictive financial position in place at the time of the commencement of the Commission. I have detailed this position and the limitations it places on the LECC in section 5 of the attached submission.

A handwritten signature in black ink, appearing to read 'M F Adams', written in a cursive style.

The Hon M F Adams QC  
Chief Commissioner

# Submission for the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission

8 March 2018

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## 1. Oversight

The Oversight Division monitors and reviews (including where necessary, real time monitoring) investigations by the NSWPF and NSWCC of misconduct matters involving the conduct of their officers. The Oversight Division also monitors the NSWPF's investigations of critical incidents.

### 1.1 Oversight investigations

The oversight investigation team consists of eight staff members when fully staffed, and they undertake many of the functions previously undertaken by the Police and Compliance Branch of the Ombudsman's office, including the review and monitoring of NSWPF investigations of misconduct matters. The investigation team at the Ombudsman's office when at full capacity was 15 FTE. Insufficient budget to allow for this number of staff was transferred to LECC from the Ombudsman's office. The significant reduction in the number of investigations being overseen by the Commission, when compared to the Ombudsman, is due to this reduced resource.

Whilst operating at significantly less staff than the Ombudsman's office, the Commission's jurisdiction is far broader, meaning a greater amount of NSWPF investigations are subject to oversight. The jurisdiction is broader due to a number of reasons, including -

- misconduct matters, a concept introduced with the LECC Act, incorporate not only complaints but also now misconduct information; and
- misconduct matter investigations by the NSWPF into civilian employees are now overseen by the LECC.

It is clear that the Commission does not have the capacity to (and it was never envisaged that it would) review all police investigations. The oversight team focuses on those which appear, on initial review, as potentially involving more serious misconduct. Since 1 July 2017, it is estimated that the Commission has conducted oversight reviews on something less than 20% of all NSWPF misconduct matter investigations, and actively monitored four investigations. The filtering process is under review at present in the hope of permitting more intensive analysis in areas of particular interest.

### 1.2 Need for increased active monitoring

The Commission envisages more live monitoring of NSWPF investigations. This

requires more resources than merely reviewing the final NSWPF investigation report. It enables the Commission to assess the adequacy of a NSWPF investigation in a timely manner. In a number of cases where investigations have been less than optimal, significant delay has reduced or removed the utility of monitoring. Live monitoring is also necessary to familiarise team members with the various approaches available to and undertaken by police to the investigation of misconduct matters. An adequate program of active monitoring requires at least three additional staff in the Oversight Investigations team.

It is recognised that the primary responsibility for investigating allegations of police misconduct is the NSWPF and it is not appropriate for the LECC to second-guess experienced officers going about their business. The process of monitoring required by the LECC Act is consistent with this approach. Over time, increased mutual understanding will lead to improved processes. The fundamental object is to give the public confidence that the NSWPF and the NSWCC manage issues of potential misconduct in a professional, objective and timely manner.

### 1.3 Key Oversight Statistics

The following table highlights key statistics of oversight complaints reviewed, monitored and finalised for from 1 July 2017 to 28 February 2018.

<b>Key Oversight Statistics</b>	
Transitioned from the NSW Ombudsman's Office	586
Currently available for review, or being reviewed	497
Oversight matters finalised	376
Fully reviewed NSWPF misconduct investigations	130
Formally monitored pursuant to Part 7 of LECC Act	4
Taken on as integrity investigation (during or after finalisation of NSWPF investigation)	2
Finalised review, where the misconduct investigation by police not deficient, however officer still referred for integrity investigation	1
Referred back to NSWPF pursuant to s104 of the LECC Act (request for further investigation)	1
Additional NSWPF misconduct investigations instigated on LECC advice pursuant to s104 of the LECC Act	1
Request to NSWPF pursuant to s105 of the LECC Act to review decision of investigation outcome	1
Decisions changed after s105 request	0
Matters where formal feedback provided	8

## 1.4 Statements of Claim

Whilst it was clear that, pursuant to the *Police Integrity Commission Act*, litigation against the State of NSW alleging significant misbehaviour by police officers would amount to a written complaint, only a very small proportion of these matters were brought to the attention of the PIC. The reasons are not clear but are not now relevant. Statements of claim alone, in recent years, average something over 300 per annum. The LECC has, in discussions with NSWPF, made arrangements to ensure that this litigation, whether commenced by a letter of demand or statement of claim is brought to its attention as a complaint. Of course, this is a significant addition to the workloads of the assessments team as well as the oversight investigation team. Sometimes the investigation is appropriately delayed pending the outcome of proceedings but this will often not be the case, especially in the more serious and time sensitive matters. Concurrent civil proceedings add a degree of complexity to the investigation. At present, the Commissioner for Oversight, Mr Saidi is actively supervising this process but it is evident that, as the work accumulates, a dedicated staff member with legal qualifications will be required to assist with assessment and oversight.

In the six months from 1 July to 31 December 2017, the Commission received 144 Statements of Claim or Letters of Demand, of which under the Commission's prioritisation model (including type and significance of the misconduct) it is estimated that 65% would be investigations likely to be subject to review by the Commission with sufficient resources.

In summary, the additional work in this area will equate to several hundred more NSWPF investigations that were previously not subject to oversight by the Ombudsman's office or the Police Integrity Commission, that are now subject to Commission oversight.

## 1.5 Critical incidents

The Critical Incident Monitoring (CIM) team consists of five staff members. This function within the LECC was not funded at all, despite the recommendation of Mr Tink in his Review of Police Oversight (recommendation 22). In order to establish an adequate dedicated team, funding for the staff required was transferred from the Integrity and other Oversight functions; this has clearly impacted the capacity of all three teams.

It should be noted that four members of the CIM Team are authorised by the Commission to be primary on-call, with two members being on-call at any one time. All staff within the CIM Team have each been on-call at least 25%, and as

much as 45%, of the time since July 2017.

In order to reduce the on-call burden within CIM, Investigators from other business units (Oversight Investigation and Audit) are assisting with on-call rostering. Other units have assisted with on-call approximately once every three weeks. Whilst this method has been able to be utilised to date due to the delay in LECC taking up its full responsibilities, budget constraints do not allow for this kind of make-up when the Commission is at full capacity. Without other staff being able to assist with on-call, CIM staff would be on-call at least 40% of the time, which is untenable in the long-term. The CIM team have undertaken a total of 14 nights' travel since 1 July 2017. They have also worked approximately 131 additional hours outside of flex time arrangements.

Currently, there is one critical incident in NSW about every 10 days (40 per year). From 1 July 2017 to 18 February 2018 there were 26 critical incidents in NSW. The Commission is monitoring all of these critical incidents and has attended the scenes of 16. (A number of critical incidents have occurred within a short time frame, which has resulted in non-attendance to the scene of the subsequent critical incident.) As the year proceeds, more incidents will regrettably occur. The Commission believes that it is important that all critical incidents are independently monitored from their commencement until finalisation, certainly those involving a fatality. It is estimated that the average number of critical incident investigations needing to be monitored at any stage will be around 80-100 representing a significant increase on the current workload. It is obvious that, in order to appropriately monitor all critical incidents, the team would need to be increased. It is important to ensure, so far as practicable, the development of professional relationships and familiarity between LECC investigators and the relevant NSWPF officers. The incidents themselves are often highly charged and scenes complex. Ready mutual understanding between those in attendance is important. To achieve an on-call roster predominantly staffed by CIM staff, whilst also keeping a staff members required on-call available to 25%, an increase of three to the team is necessary.

As of 1 July 2017 there were approximately 81 active critical incident investigations outstanding. In addition to monitoring all new critical incident investigation from that date onwards, the Commission commenced monitoring 29 of the most significant pre-existing critical incident investigations. With more staff the Commission would have commenced monitoring more of the pre-existing critical incidents.

Largely because the NSWPF will not finalise an investigation until Coronial proceedings have been completed, it can, and often does, take years before a



final report is submitted and LECC permitted to make its report. The delay in Coronial hearings is a matter of considerable concern, especially because of the considerable adverse impact, not only on the family of the deceased but also the affected officers. The LECC intends to raise this matter with the State Coroner in the hope of helping to ameliorate the situation.

## 2. Prevention and Education

The Prevention and Education team is responsible for undertaking systems and issues focused projects relevant to misconduct and maladministration. The team works collaboratively with the NSW Police Force, the Crime Commission and others where appropriate and to develop policy and evidence-based solutions to address the identified issues. A number of significant projects are presently underway in the Prevention and Education team.

### 2.1 The application of Suspect Targeting Management Plan to young persons

The Suspect Targeting Management Plan (STMP) is a proactive policing policy adopted by NSWPF in January 2000 that seeks to reduce serious crime in the community by targeting repeat offenders.

In late 2017 the Commission commenced inquiries into the use of the STMP on children and young people (10-17 year olds), following the October 2017 release of a report *'Policing Young People in NSW: A Study of the Suspect Target Management Plan'* by the Youth Justice Coalition. The Commission decided it should explore concerns regarding application of the STMP to 10-17 year olds, especially given the complex statutory and policy framework of juvenile justice, of which law enforcement is a part and the importance of maintaining the civil protections provided by the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA).

Since the initial inquiry stage of late 2017, the Commission has initiated five investigations into complaints and misconduct information where a young person (aged 12-17 years) who was subject to the STMP was also allegedly subject to unlawful police conduct.

A multidisciplinary team of three Commission staff is allocated to these investigations consisting of a Senior Investigator; a Senior Project Officer; and an Intelligence Analyst. Due to the number and nature of complaints about the NSWPF use of the STMP on young people, it is expected that additional

investigations will be commenced by the Commission, calling for the ongoing attention of this full complement of staff.

## **2.2 Part 6A of LEPR**

Section 87O of LEPR requires the Commission 'to keep under scrutiny the exercise of powers conferred on police officers' under Part 6A of LEPR and report on this in the Commission's Annual report.

Part 6A of LEPR relates to emergency powers for police for the management of large-scale public disorder. Part 6A was initially included in LEPR following the Cronulla riots in 2005. This role is inherited from the NSW Ombudsman's office.

The powers available to police officers if authorised under Part 6A are varied and significant. They include the power to search persons within an authorised area without warrant or reasonable suspicion, search and seize vehicles, set up cordons and roadblocks, and prohibit the sale or supply of liquor among other things. Any use of Part 6A by the NSWPF will require the Commission to obtain and analyse significant numbers of a variety of police records in order to scrutinise use of the relevant powers. It may also necessitate interviews or hearings to be conducted. The projected resources required to undertake this work include a Senior Investigator/Project Officer, a Project Officer, and an Intelligence Analyst working for 4 to 6 months. The length of time required to analyse the relevant police records and additional tasks will, of course, ultimately be determined by the extent of the use of the emergency powers by police.

In order to facilitate the performance of the Commission's scrutiny function and to inform the NSWPF regarding the types of information likely to be necessary for it to provide, the Commission has drafted a Memorandum of Understanding. The Commission will liaise with the NSWPF regarding this draft document.

## **2.3 Operation Tusket; a systems-focused investigation**

The Commission received misconduct information that, if established, may amount to agency maladministration by the NSWPF. An investigation under s 51(1) of the LECC Act was initiated in August 2017, focused on a particular area of practice within a specialist command of the NSWPF. The issues that have emerged in the investigation have implications for the resourcing and management of a particular area within a specialist command, compliance by the NSWPF with specific legislation, and the policing of certain offenders. There are currently three Commission staff allocated to this investigation.

A collaborative approach has been adopted between the Commission and the NSWPF and Commission staff have received significant assistance from senior officers in their work. This approach is proving to be productive and resource-sensitive. To date, the Commission has issued three legal notices to produce information and documents, all of which have been readily complied with. For example, a plan for the Commission to undertake an audit of a large quantity of police records was not required as the issues it was designed to explore were acknowledged and agreed by the NSWPF.

The Commission will continue to work collaboratively with the NSWPF to refine the issues under investigation and develop policy solutions to improve identified problems. It is expected the Commission will table a public report at completion of the investigation in due course.

#### **2.4 Analysis of critical incident investigations open at 1 July 2017**

There were 81 open critical incident investigations at 1 July 2017. The Commission assessed 29 of these to be high-risk according to a number of criteria, including the nature of the incident and the vulnerability of persons involved. The Prevention and Education team has analysed NSWPF records for this subset of critical incident investigations. The purpose includes benchmarking compliance by the NSWPF with critical incident investigation guidelines, informing Commission practice, and ascertain the reasons for delays in finalisation. The Commission will also identify and report on any outstanding recommendations arising from the Police Integrity Commission's, Project Harlequin (2017).

A preliminary analysis of records has been completed and provided to the Commissioner of Police and the Professional Standards Command in February 2018. Further inquiries are being undertaken with both the NSWPF and the Coroner to explore emerging issues. This analysis is being conducted by a Senior Project Officer. Preliminary information suggests that, although the analysis exposed some non-compliance issues, these have since been either addressed or are in the process of being so.

#### **2.5 Policing of domestic and family violence**

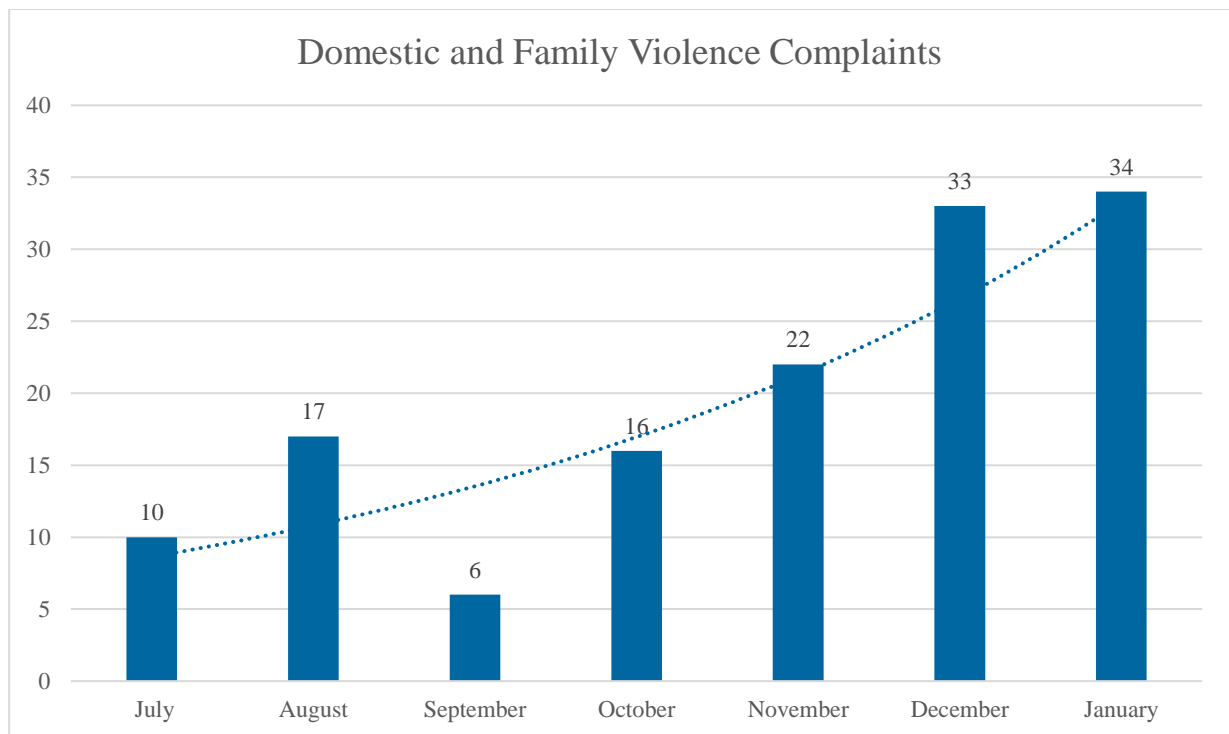
The Prevention and Education team is collating data on a number of policing issues with a view to undertaking more detailed work in the future, resources permitting. One focus area is the policing of domestic and family violence. Of concern is that complaints in this area have increased four-fold since July 2017.

Approximately two thirds of complaints were made directly to the NSWPF and one third to the Commission. Members of the public made 66% of all domestic and family violence complaints considered in this analysis. The most common allegations were:

- failing to apply for apprehended violence orders (55.8%) and<sup>1</sup>,
- failing to record domestic and family violence incidents (37.5%).

Other allegations included the attitude/behaviour of the subject officer when recording details of the incident or when interviewing victims of domestic and family violence.

**Number of ‘notifiable’ Domestic and Family Violence complaints between July 2017 and January 2018**



This complaint trend, when cross-referenced with the average number of recorded domestic and family related incidents (as published by the Bureau of

<sup>1</sup> This includes the application for interim AVOs and ADVOs

Crime Statistics and Research in 2016) indicates that a higher incident rate of domestic and family violence does not necessarily result in a higher number of complaints. For example, the Western Region recorded the highest number of incidents per 100,000 in NSW in 2016 but the lowest number of complaints in Commission data. Further analysis is likely to reveal policing regions and commands that may benefit from targeted inquiry by the Commission. Ideally, such an inquiry would proceed in collaboration with the NSW Police Force.

## **2.6 Terrorism (Police Powers) Act**

From 1 July 2017, the Commission is required to ‘keep under scrutiny’ the exercise of:

- i. The powers conferred on police and correctional officers under Part 2A of the *Terrorism (Police Powers) Act 2002*;<sup>2</sup>
- ii. The powers conferred on police officers under Part 3 of the Act.<sup>3</sup>

Part 2A of the Act relates to Preventative Detention Orders (PDOs). Part 3 relates to covert search warrants. The Commission is statutorily required to report to the Attorney General and Minister for Police every three years. The Commission’s first report must address the period July 2017 to June 2020. This function is inherited from the NSW Ombudsman’s office.

## **2.7 Statutory review of the Terrorism (Police Powers) Act 2002**

A statutory review of the Act is currently being undertaken by the Department of Justice. In January 2018, the Commission provided detailed comments in response to the proposals circulated by Justice for legislative reform to the Act. Our comments were focused on proposals that included an adjusted role for the Commission.

The Commission agrees with recommendations by the NSW Ombudsman, the NSW Bar Association and Legal Aid NSW that the Act be amended to provide the Commission with the same scrutiny functions concerning the use of the investigative detention powers in Part 2AA as it currently has in relation to Part 2A. Part 2A has a sunset clause of 16 December 2018. The Ombudsman recommended it be allowed to expire in his final report on the topic published in

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<sup>2</sup> Section 26ZO *Terrorism (Police Powers) Act 2002*

<sup>3</sup> Section 27ZC *Terrorism (Police Powers) Act 2002*

June 2017. The Commission agrees with this recommendation.

The resources required to keep under scrutiny use of the police powers under Part 2AA is dependent on the extent to which it is used. The Commission envisages, at a minimum, the role will require 1 x Senior Project Officer (clerk grade 9/10) and 1 x Project Officer (clerk grade 7/8) for 18 months each three year period.

There are a number of additional parts of the Act where stakeholders have proposed an expanded role for the Commission. The Commission also supports the recommendation that its role be expanded to keep under scrutiny use of Part 2AAA of the Act – use of force in relation to a terrorist attack.

The Commission considers that, given the particular pressures operating in the context in which force is authorised under Part 2AAA, and the Commission's existing and proposed scrutiny functions in this area of policing, it is appropriate that it be able to scrutinise the use of such force. This would provide consistency in the Commission's role, and an additional layer of public confidence in the exercise of unconventional powers. Such incidents are rare but, if one or more occurs in any review period, the Commission would require at least 1 x Senior Project Officer (clerk grade 9/10) and 1 x Project Officer (clerk grade 7/8) for 18 months each three year period.

## **2.8 Future research projects**

The Commission has in mind other important research projects, for example, reviewing the approach of the NSWCC to settlement of Proceeds of Crime litigation and the level of compliance with LEPR requirements but these cannot be undertaken for some time because of limited resources.

## **3. Integrity**

The Integrity Division detects, investigates and exposes serious misconduct within the NSW Police Force and the NSW Crime Commission. The Integrity Division comprises investigations, covert services and electronic collections.

### **3.1 Conduct unable to be investigated for want of investigative resources**

The Integrity Investigations team is comprised of dedicated investigators and analysts. The current team comprises a 19 FTE, which is a reduction of five FTE

when compared to staffing levels within the PIC. In addition to the 93 investigations commenced (comprising seven full investigations and 86 preliminary investigations or enquiries) by the Commission in the period 1 July 2017 to 31 January 2018, there are 51 additional matters that warranted investigation by LECC that could not be investigated due to insufficient staffing resources.

Since commencing operation on 1 July 2017, the Commissioners have held 25 private examinations relating to various investigations. The Chief Commissioner, in consultation with the two Commissioners is currently considering conducting a public examination relating to a current investigation.

### **3.2 Sexual discrimination within NSWPF – possible maladministration**

The Commission is currently conducting an investigation into allegations of sexual harassment, bullying and discrimination by several male and female complainants against a senior officer of the NSWPF. Preliminary analysis of the allegations has identified a range of systemic issues, including allegations of systematic bullying within the command, the use of derogatory and sexually explicit terms by male officers when referring to female officers, a failure to maintain the confidentiality of the complainant and complainants being ostracised and bullied.

Similar issues were identified more than ten years ago by an independent inquiry into allegations of sexual misconduct at the Goulburn Police Academy, commissioned by the NSWPF. That review found, among other things, that many officers had an inadequate level of knowledge and understanding of what constitutes sex discrimination and harassment; discrimination, harassment – including serious incidents – and bullying were occurring within pockets of NSWPF; a ‘culture of bullying’ within parts of the Force; complainants were often abused and ostracised; and there were some ‘serial sexual harassers’ and a culture of harassers being protected.

The Commission is of the view that it is important to further explore if the issues currently being investigated are isolated incidents or if they permeate more broadly throughout the NSWPF. A number of recent independent reviews into sexual harassment, bullying and discrimination have been conducted in other jurisdictions, namely VicPol, the AFP and NSW State Emergency Services. The Commission is of the view that a comprehensive review of a similar kind could be timely and valuable. The Prevention and Education Team is therefore engaged in initial scoping of a review into the nature and prevalence of sexual harassment, bullying and discrimination among NSWPF personnel.

## **4. Additional Commission-Wide Functions and Costs**

### **4.1 Inclusion of the appointment of two full-time Commissioners and CEO, with additional staff**

The LECC Act 2016 requires the Commission to include three full time Commissioners, and a Chief Executive Officer. The addition of two full time Commissioners and a CEO (and support staff), compared to previous agencies results in an additional cost of \$1,763,422. However, additional budget was not provided to fund these appointments and as such, it necessarily reduced positions within the operational areas of the Commission.

### **4.2 Community Engagement**

The Commission considers that its work should involve engagement with the public through community organisations, to build trust in the Commission and ensure our services are widely known and accessible. The Manager, Community Engagement identifies areas of opportunity to increase reach, develop resources for culturally and linguistically diverse communities and make recommendations for improvements to service delivery in hard-to-reach communities

Significant steps have already been taken by the Manager, Community Engagement to identify and meet with community organisations which are likely to have a particular interest in our work, including the Aboriginal Legal Service, Legal Aid, Community Legal Centres, Youth Justice Coalition, Justice Disability and Multicultural Advisory Councils, Shopfront Youth Legal Centre and others. The relevant bodies are widely distributed over the State and, with only one available officer, the extent of contact and interaction has been far less than optimal. Various communities also conduct forums, multicultural and youth-specific events, and have non-lawyer but important organisations, such as Aboriginal Land Councils, with which contact would be advantageous. It is obvious that at least another FTE position is necessary but, at present, unavailable. It would also be desirable to have representation on a range of intra-government outreach committees.

An overview of Community Engagement meetings can be found in Appendix 1.

### **4.3 Interaction with Police management**

In addition to the frequent meetings between the Commissioners and various



senior police officers to deal with interagency arrangements such as statutory agreements and guidelines, the Commissioners meet regularly with the Police Commissioner and the Professional Standards Command (PSC) to discuss matters of policy and approaches to various issues raised in particular investigations. This has resulted in a considerable and positive level of mutual trust and cooperation. Both senior police and the Commissioners are committed to mutual collaboration to the maximum possible extent in dealing with issues where our responsibilities interact.

The Commissioners have also regularly attended the monthly Internal Review Panel (IRP) and Commissioners Advisory Panel (CAP) which consider appropriate disciplinary outcomes respecting officers against whom findings of misconduct have been made. It is fair to make the point that, to the Commissioner's observation, these panels (chaired by the Commander of the PSC) act with an objective and careful professionalism which has given the Commissioners a high degree of confidence in the correctness of the decisions made. One of the practical results of this conclusion is that the Oversight Investigations team have been directed to give only limited consideration to those cases where misconduct findings have been sustained since it can be accepted that there is a high likelihood that the outcome will not be inappropriate (of course, with random checks to ensure this approach remains acceptable).

In addition, the Commissioners have attended a number of regional meetings: in March 2017 with the PSM's Forum in Kiama; the Southern Region PSDO Forum at Goulburn in May; the Northern Region PSDO Forum at Port Macquarie in September; and, in November, the Crime Manager Conference at Goulburn. The purpose of these attendances has not only to inform these senior officers of the work of the LECC and its approaches to the various standards issues that concern them but also to provide an opportunity for the Commissioners to get to know the business of the NSWPF and, through informal interaction, become personally acquainted with officers and locations which otherwise would simply be names on reports or complaints. Accordingly, we have stayed for the whole of the forums as an audience (sometimes asking questions), rather than simply delivering a lecture and going. The response, initially (and justifiably) cautious has been positive. As is usually the case, it is the informal conversations over a cup of tea or a drink and a meal that are the most valuable. These occasions have been very valuable from the Commissioners' point of view and it is intended to make these attendances a regular part of our activities.

Furthermore, every two weeks a meeting between LECC Commissioners and Executive is held with senior members of NSWPF Professional Standards Command to discuss relevant matters. The CEO is a member of the Police

Aboriginal Strategic Advisory Committee (chaired by the Commissioner of Police) that meets quarterly.

#### **4.4 The Police Association of NSW**

It will not come as a surprise to members of the Committee that, for various reasons that is not necessary or useful to enter into, relations between the PANSW and the PIC were considerably less than optimal. Shortly after his appointment, the Chief Commissioner met with the Executive of the Association for mutual introductions and made it clear that, whatever had been its attitude to the PIC, the LECC was a new organization and that he hoped to develop a professional and working relationship that respectfully recognized the legitimate functions of each organization. It must be acknowledged that this meeting remained courteous despite the obvious caution which the Executive members exhibited.

The Commission has attempted to engage the Association in areas where interaction was thought to be mutually beneficial. Thus, when serving a summons on an officer which, at times, can be somewhat traumatic for the officer concerned, the LECC has taken steps to ensure a welfare officer from the Association is able to be present or available. The Association was invited to become involved with the LECC in the development of its arrangements with the NSWPF in respect of notification and dealing with complaints and the Critical Incident Guidelines. It is appropriate to record that its suggestions were timely, professional and useful. The Commission has also met with the Executive to discuss other matters of mutual interest. Recently, in respect of a particular investigation where the LECC is considering a public hearing, it has been invited to make a submission about the issue, which is one of considerable importance to its members and, it may be anticipated, to the subject officers themselves. (The Commissioner of Police has also been invited to make a submission on the question, should he think it desirable to do so.)

Of course, there will be cases where the Association will be bound by its obligations to its members to take approaches that differ and, perhaps, even conflict with those of the Commission. Given their different roles and obligations this is inevitable, but there is no reason why these differences cannot be, if not resolved, at least dealt with on the basis of mutual respect.

## 4.5 Assessments

The principal function of the LECC is to detect misconduct and maladministration. Overwhelmingly, it receives “notifiable matters” (as agreed between the LECC and the Commissioner of Police) from complaints that have been made to police and placed on a database (c@ts.i) accessed by the LECC’s assessment team. Increasingly, as LECC’s presence in this space becomes more widely known, complaints are made directly to it by use of its website as well as letter and telephone calls. These are also considered, as an initial process, by the LECC’s assessment team. The team generates reports which summarise the issues and recommend appropriate responses. These reports go to the weekly Complaints Action Panel, comprising the Commissioners, the Directors of Investigations, Oversight and Covert Services, and various others. Matters thought suitable for investigation or further enquiry are identified and referred to the relevant teams for action. Otherwise, the recommendations are taken as approved and are dealt with accordingly – overwhelmingly by referral to the NSWPF for investigation, subject to either live oversight or review following report.

In the first six months of operation, 1429 new complaints plus 187 phone call enquiries were assessed. It follows that, if this trend continues (and, if anything, it is likely to increase, given initiatives relating to litigation and notifications of prosecutions that fail for reasons adverse to the police and increased public exposure), the Commission can expect to manage over 3232 new complaints and enquiries a year. However, the team processes about 155 complaints a week (inclusive of new complaints and notifiable matters), which would bring the total number of complaints the team needs to manage to roughly 8060 matters in 12 months. This total, however, contains a significant number of matters referred to the NSWPF and requiring review before transfer to the Oversight Investigation team and also duplicates needing to be identified before they can be actioned (duplicates occur when multiple parties send a complaint or when, for example, a complaint is sent both by an MP and by a member of the public or when a complaint is both to the LECC and to the Police). The Commission is looking at ways to streamline this process to avoid double handling.

As to the types of complaint received, most concern alleged improper association, misusing authority for personal benefit or the benefit of an associate (may include obtaining sexual favours, unauthorised/improper disclosure of information, failure to investigate; and protection of person(s) involved in drugs). Allegations of these kinds appear at face value to be serious misconduct, but few allegations have resulted in further enquiries by the LECC, once consideration of the requirements under s45 and 46 of the LECC Act have been taken into

account. The assessment officer must therefore conduct significant preliminary research to test the veracity of the complaint and provide thorough reasoning justifying the recommendation to the CAP as to future action.

The LECC assessment team consists of five Assessment Officers and one Team Leader, totalling 6 FTE. By comparison, despite a lesser combined workload, the Assessment Team within the Police Compliance Branch of the Ombudsman had 6FTE, and the Police Integrity Commission had 4.6FTE within its assessment team. The assessment team has also taken on a number of additional duties. For example, the Ombudsman had a dedicated enquiries team answering phone queries about complaints as well taking complaints where there was a problem with written communications. This is a function that does not exist at the LECC, as proportional funding was not transferred from the Ombudsman in the transition, and this function is now undertaken by the assessment team.

The Commission has also introduced an Inmate Engagement strategy whereby inmates across NSW Correctional Centres are able to contact the Commission directly to make a complaint. As correctional officers have a requirement under the *LECC Act* to facilitate a complaint, a direct pathway was established for inmates to contact the LECC. The assessment team are responsible for the contact with these inmates, including triaging whether their complaint is within jurisdiction. The Ombudsman used their enquiries team for this purpose, especially where the inmate was requesting an information pack to lodge a complaint in writing. While the inmate referral pathway is an important avenue for receiving complaints, there are many administrative processes required to send or receive correspondence with an inmate. There are also a number of calls received by inmates that do not involve a complaint about the Police or NSWCC, currently 4-6 calls a week fall outside the jurisdiction of the LECC but must still be dealt with by an assessment officer.

It is obvious that the present caseload of a LECC assessment officer, at 130 matters a month is excessive – not to speak of allowance for sickness and leave. An acceptable caseload per assessment officer is 60 to 70 matters a month, given the level of analysis required. The Commission has undertaken to respond to complainants and triage all direct complaints within ten days of receipt. This is presently being managed but only just. Despite best efforts, [c@ts.i](#) complaints are about four to five weeks behind, and growing. This is unacceptable.

It is important to recognise that the assessment team has effectively dealt with complainants and continues to maintain a high standard of work under great pressure. However, sustaining, let alone increasing, this level of work is detrimental to the wellbeing of the assessment team, not to speak of the handling

of complaints. It is neither efficient nor reasonable to maintain it, quite apart from the challenges it creates for the retention of staff. Additional resourcing is required at least to the level formerly enjoyed by the Ombudsman and the PIC.

The Commission has accepted that, in the meantime, it is necessary to introduce a more brutal (and necessarily arbitrary) filtering process focusing on the more significant cases, though this will necessarily entail a greater degree of risk that some such cases will slip through. Random checks should minimise the risk.

At the same time, it is fair to note that it is the Commission's present experience that NSWPF investigations are overwhelmingly conducted competently and professionally. Moreover, the statutory recognition of the primary responsibility of the NSWPF for the conduct of investigations into potential misconduct must be conscientiously acknowledged in the Commission's procedures. This is a work in progress.

#### **4.6 Referrals by the judiciary**

The Commission has become aware that findings by Magistrates which are critical, even highly critical, of the honesty or reliability of police witnesses or the adequacy of investigations or competence of prosecutions have not, except in rare cases (usually where a complaint is subsequently made by the defendant's lawyer) been notified either to the PIC or to the LECC. It appears that these findings were mistakenly regarded as not notifiable because they were not the subject of a written complaint (the same reason for not notifying statements of claim or letters of demand). The arrangements now agreed between the NSWPF and the LECC now cover this matter. In addition, the Commission has reached out to Magistrates to inform them of the LECC's functions and to introduce a convenient mode of communicating matters which are thought to justify further investigation. Not all critical conclusions find themselves in the text of judgments, for obvious reasons but nevertheless might well warrant independent investigation. The Chief Commissioner will shortly have discussions with the Chief Judge of the District Court in the hope of agreeing similar arrangements. As this referral method gains recognition within the judiciary, the LECC can expect to receive additional complaints for consideration which, again, will increase the workload of the assessment team.

#### **4.7 Administrative officers**

From 1 July 2017 complaints and misconduct information about administrative officers of the NSWPF fall within the jurisdiction of the Commission as had been

the case with the PIC. Recent changes to the Police Regulation 2015 and s 211F of the *Police Act 1990* mean that both sworn officers and administrative employees have a statutory obligation to report suspected misconduct. Previously, only sworn officers of the NSWPF had this obligation. This is likely to result in an overall increase in complaints, including complaints against administrative employees. It follows that, at least, Final Reports are now required for all notifiable matters involving administrative officers.

Administrative employees currently number around 4,000 and account for roughly 20% of the total NSWPF workforce. The Prevention and Education team has undertaken an analysis of 30 complaints referred to the Commission by the NSWPF between 1 July 2017 and 21 September 2017. Ten of the 30 complaints included allegations of criminal conduct (n=6) or serious misconduct (n=4). One third of the 30 matters examined involved serious allegations which resulted in an investigation leading to criminal charges.

## **5. LECC Budget Position for Financial Year 2017/18**

### **5.1 Tink recommendations**

Recommendation 22 of the Review of Police Oversight stated that the creation of a new oversight model is not designed to realise cost-savings in the immediate or short term. Specifically recommendation 22 states the following;

‘To ensure the new commission is properly resources to perform all of its functions, while ensuring that the Ombudsman’s Office can continue to perform the functions it retains, the budget for the new model should be developed with the following factors in mind:

- i. The creation of a new oversight model is not designed to realise cost-savings in the immediate or short-term, although it is reasonable to expect that some efficiencies may be gained over time with greater sharing of skills and information across functional areas (such as investigations of complaints and audits);
- ii. The existing budget for the Police Integrity Commission and the Police Division of the Ombudsman’s Office, including any ad hoc funding for special projects in the Ombudsman’s Office involving police, should be made available in full to the new Commission for at least four years, adjusted for any additional functions conferred on the entity during that time as is required;
- iii. Additional allowance should be made at the time of establishing the new commission for the transitional costs associated with the transfer of staff, the establishment of new premises for the Oversight Division, and the

- movement or purchase of equipment and services from the Ombudsman's Office, particularly information technology costs;
- iv. Some additional employee-related costs may be incurred since the new commission will not be able to leverage the work of staff in other divisions of the Ombudsman's Office, such as the Aboriginal Unit in the Strategic Projects Division;
  - v. Some additional employee-related costs will need to be included to ensure there is sufficient capacity to monitor critical incident investigations by the NSW Police Force'

As explained in this submission, whilst accepted in principle by government, the recommendation above has not been applied to the transition process and set up of the new Commission. No additional funding was provided for additional functions, or for the increased costs for additional Commissioners and a CEO and it is not clear whether the complete existing budget from the Ombudsman's Office was transferred to the LECC. More information on these matters are detailed in point 5.2.

## **5.2 NSW Ombudsman's office budget related to the Police and Compliance Branch (PCB)**

It is important to advise the Committee that the expected level of budget to be produced by the PCB, as per the Tink recommendation (22) and standard 'Machinery of Government' procedures was not allocated to the LECC at the beginning of financial year 2017/18.

Whilst no definitive figures can be produced to the Committee on this 'shortfall' this is of concern to the LECC and significantly contributes to the challenges the Commission is now facing. Furthermore, it is disappointing that the Ombudsman has publically supported the fact that in order to effectively run an oversight function for NSWPF, the level of staffing that previously existed in the PCB Branch, claimed to have been between 32-36 staff, was required, yet did not transfer the amount of funding to LECC to maintain such a staffing level.

In addition to the above, efficiencies were expected (and realised) from treasury of \$350k as per an ERC decision implemented prior to the formation of LECC. This has been applied across the whole of the agency as per government processes.

Overall, the impact of the above means that Mr Tink's view that the budget of the Commission 'to establish itself effectively and maintain focus on all it's vital functions, its budget in the first four years should not be less that the combined

total of the current PIC and PDOO budgets, after adjustment for inflation and additional transition costs' has not been met and the LECC is now analysing the best method of operating with a reduced budget.

## 6. Appendix 1: Community Engagement Visits

Interested parties:	
Organisation	Date
NSW Ombudsman	28 Sept 2017
Department of Justice	1 Sept 2017 and 19 Sept 2017
Legal Aid	4 Sept 2017
Aboriginal Legal Service	18 Sept 2017
Corrective Services NSW	10 August 2017
Shopfront Youth Legal Service	5 Sept 2017
Redfern Legal Centre	7 Sept 2017
Mid North Coast Community Legal Centre	13 Sept 2017
Parliamentary Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission	18 Sept 2017
Community Legal Centres head office	2 Nov 2017
Justice Disability Advisory Council	6 Nov 2017
Youth Justice Coalition	21 November 2017
Granville TAFE	22 November 2017
Justice Multicultural Advisory Council	23 November 2017
Corrective Services NSW Governors' Meeting	12 Dec 2017



NSWPF - Working with Aboriginal Communities training	13 Dec 2017
Public Interest Advocacy Centre	30 Jan 2018
NSWPF Operational Programs	6 Feb 2018
Children's Legal Service conference	24 Feb 2018
Community Legal Centres Conference	28 Feb 2018
Corrective Services NSW	22 August 2017
PSC and OGC	1 Nov 2017
Coroners Court, PSC and OGC	9 Nov 2017
State Coroner	19 Feb 2018