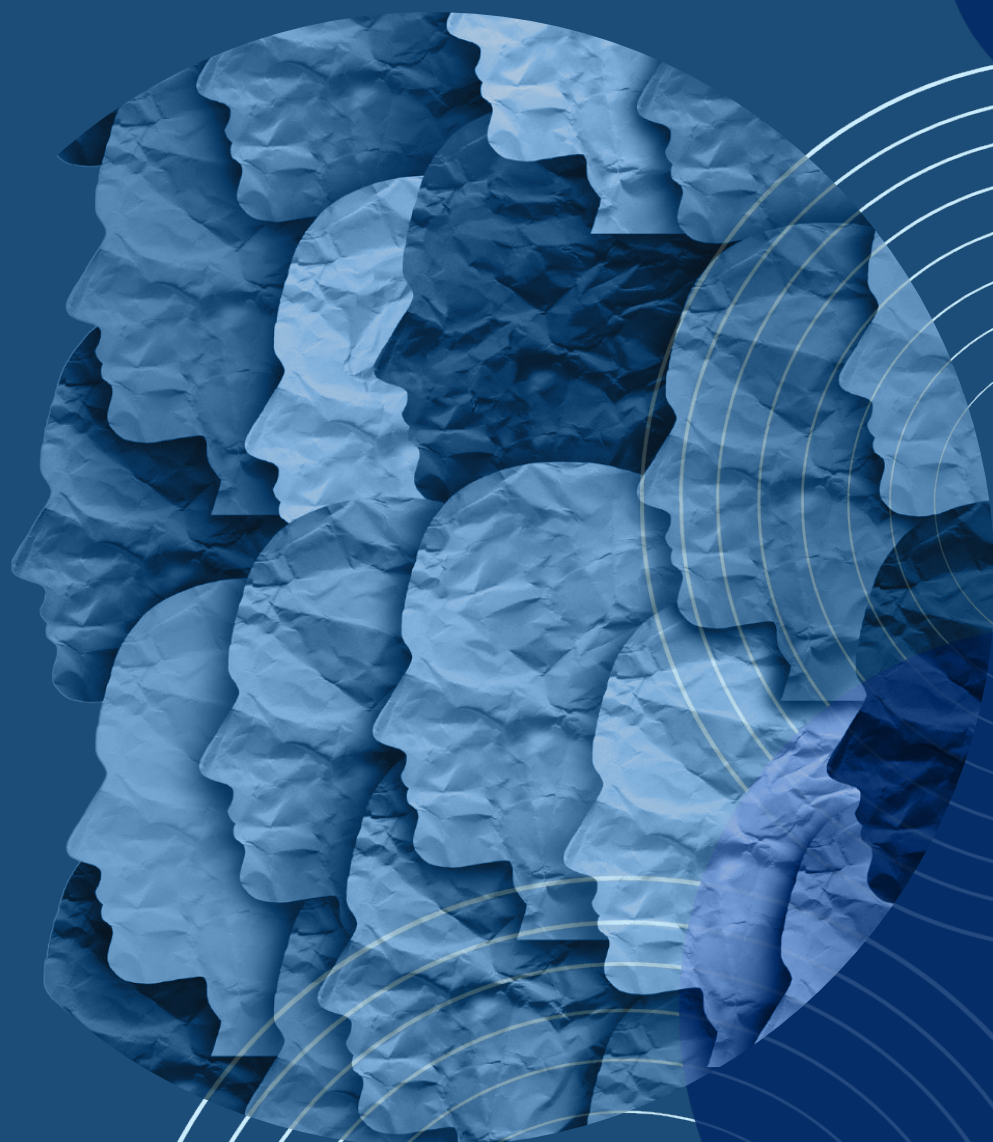


# LECC

Law Enforcement  
Conduct Commission

## 2021-22 Annual Report



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# LECC

Law Enforcement  
Conduct Commission

Level 3, 111 Elizabeth Street  
Sydney NSW 2000

Email: [contactus@lecc.nsw.gov.au](mailto:contactus@lecc.nsw.gov.au)

Postal address  
GPO Box 3880  
Sydney NSW 2001

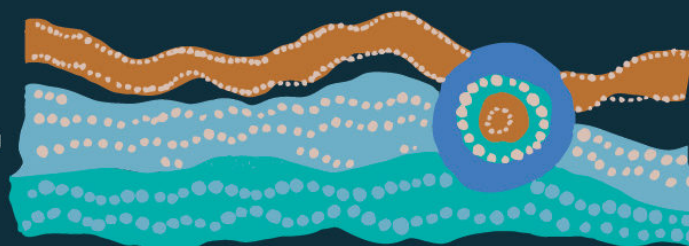
Phone: (02) 9321 6700  
Toll free: 1800 657 079  
Fax: (02) 9321 6799

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The Law Enforcement Conduct Commission acknowledges and pays respect to the Traditional Owners and Custodians of the lands on which we work, and recognises their continuing connection to the lands and waters of NSW. We pay our respects to the people, the cultures, and the Elders past and present.



25 October 2022

The Hon Wes Fang MLC  
Deputy President  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

The Hon Jonathan O’Dea MP  
Speaker  
Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

Dear Mr Deputy President and Mr Speaker

**Law Enforcement Conduct Commission Annual Report**

In accordance with section 12 of the *Annual Reports (Departments) Act 1985* and section 139 of the *Law Enforcement Conduct Commission Act 2016*, the Commission hereby furnishes to you the Law Enforcement Conduct Commission Annual Report for the year ended 30 June 2022.

The Annual Report has been prepared in accordance with the requirements of the *Annual Reports (Departments) Act 1985* and the *Law Enforcement Conduct Commission Act 2016*.

We draw your attention to section 142(2) of the *Law Enforcement Conduct Commission Act 2016*, pursuant to which we recommend that this Annual Report be made public forthwith.

Yours sincerely



The Hon Peter Johnson SC  
Chief Commissioner



Anina Johnson  
Commissioner

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# From our Commissioners

We are pleased to present the Law Enforcement Conduct Commission Annual Report for 2021-2022. The year was one of change in leadership of the Commission with Commissioner Lea Drake completing her term on 11 April 2022 and Commissioner Anina Johnson commencing her term as Commissioner on 16 May 2022. Chief Commissioner Blanch AM QC completed his term on 3 July 2022 with Chief Commissioner Peter Johnson SC taking up his appointment on 4 July 2022.

We wish to express thanks on behalf of all at the Commission, and on behalf of the State, to Chief Commissioner Blanch and Commissioner Drake for their outstanding leadership and service which has left the Commission in excellent shape for the new team of Chief Commissioner and Commissioner.

The impact of the COVID-19 pandemic continued to manifest itself in 2021-2022.

The optimism of late 2021 was met by the Omicron wave in the early months of 2022 which affected the operation of the Commission in various respects. However, as noted in the 2020 – 2021 Annual Report, much of the work of the Commission could be carried out by staff working remotely so that the impact of the pandemic upon

the Commission's work was limited.

The work of the Commission is set out in full in this Annual Report. We wish to highlight a few key aspects. In 2021-2022, the Commission assessed over 5000 complaints, which is a 31% increase in complaints compared with the previous financial year. This year, 36 new critical incidents were declared and monitored by the Commission, which is an increase of 33%. The number of current investigations dropped from 125 to 78 compared to the previous financial year. Prosecutions were commenced in relation to two individuals, as a result of Commission investigations.

In addition, the Commission tabled eight reports in Parliament under s 132 of the *Law Enforcement Conduct Commission Act 2016*. A further four reports were provided to the Minister for Police and the Commissioner of Police under s 135 of the Act. A report relating to the Commission's oversight function was also provided to the Minister and Commissioner of Police under s 134.

Several significant reports were presented to Parliament, prepared by the Prevention and Education team at the Commission. The Commission reviewed the

effectiveness of NSW Police Force Conduct Management Plans. In November 2021, the NSWPF made significant changes to its misconduct management model including improvements to the timeliness of investigations and a focus on remediation of officers. A discussion paper on the operation of the amendments to the consorting laws under the *Crimes Act 1900* was tabled in October 2021. The Commission also tabled its report on the use of covert search warrants and preventative detention orders under the *Terrorism (Police Powers) Act 2002* (NSW), for the period 1 January 2017 to 30 June 2020 in June 2022.

We wish to thank the staff of the Commission for their dedicated service in the work of the Commission during what was a year with ongoing challenges to the community generally.



The Hon Peter Johnson SC  
Chief Commissioner

Anina Johnson  
Commissioner

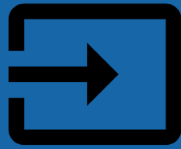
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# Snapshot 2021-2022

Law Enforcement Conduct Commission

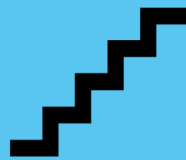






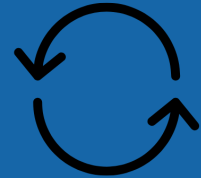
**5,095**

Number of  
complaints  
assessed



**2,424**

Number of cases  
monitored by  
Oversight



**129**

Number of  
critical incidents  
monitored



**78**

Number of  
investigations



**18**

Number of  
examination  
days



**14**

Number of  
reports tabled





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# 3

Who we  
are

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The Law Enforcement Conduct Commission (Commission) was established as a permanent independent investigative commission to provide oversight of the NSW Police Force (NSWPF) and NSW Crime Commission (NSWCC)

# Our purpose

The Commission has clearly defined functions: detecting and investigating misconduct and corruption, and overseeing complaints handling.

The Commission provides the NSW public with a simplified, strong, fair and impartial system of law enforcement oversight in NSW.



## Accountability

Self honesty | Values others | Keep records |  
Take responsibility | Do the right thing |  
Act promptly with care

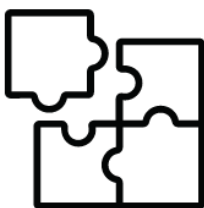


## Trust

Appreciate difference | Learn from others |  
Uphold the law | Be transparent | Keep commitments |  
Mutual respect

## Integrity

Tell the truth | Give credit where it's due |  
Value diversity | Meet deadlines |  
Strong moral standards | Meet challenges with  
courage



## Collaboration

Focus on strengths | Set goals | Have an open mind  
Teamwork | Celebrate success together

## Service

Focus on quality | Positive engagement |  
Be reliable | Maintain fairness | Deliver outcomes |  
Flexibility and innovation



# Our work and focus

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The Commission has its functions defined within the Law Enforcement Conduct Commission Act 2016 (NSW) (LECC Act).

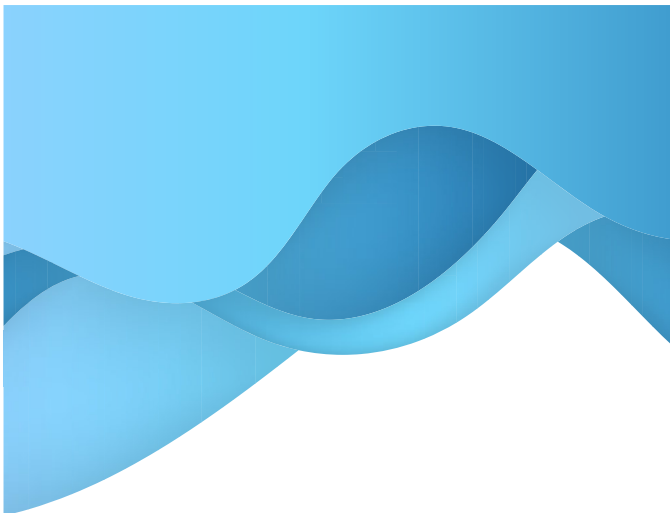
The LECC Act guides our work and objectives which include:

- to promote the integrity and good repute of the NSWPF and the NSWCC by ensuring that they properly carry out their functions and responsibilities in relation to the handling of complaints (and information that the Commission becomes aware of otherwise than through a complaint that indicates or suggests conduct is (or could be) officer misconduct or officer maladministration or agency maladministration),
  - to provide for the independent detection, investigation and exposure of serious misconduct and serious maladministration within the NSWPF and the NSWCC that may have occurred, be occurring, be about to occur or that is likely to occur,
  - to prevent officer misconduct and officer maladministration and agency maladministration within the NSWPF and the NSWCC by—
    - i. providing for the identification of systemic issues that are likely to be conducive to the occurrence of officer misconduct, officer maladministration and agency maladministration, and
    - ii. assessing the effectiveness and appropriateness of their procedures relating to the legality and propriety of activities of their members and officers, and
- iii. encouraging collaborative evaluation of opportunities for, and implementation of, desirable changes in such procedures, and
  - iv. making recommendations with respect to education and training about prevention of officer misconduct, officer maladministration and agency maladministration,
- to ensure that agencies work collaboratively to support and promote the prevention of officer misconduct, officer maladministration and agency maladministration and to improve their processes and systems,
  - to recognise the primary responsibilities of the NSWPF and NSWCC to investigate and prevent officer misconduct and officer maladministration within those agencies and agency maladministration while providing for oversight of those functions,
  - to foster an atmosphere in which complaints, provision of other information about misconduct and independent oversight are viewed positively as ways of preventing officer misconduct, officer maladministration

and agency maladministration,

- to provide for independent oversight and real-time monitoring of critical incident investigations undertaken by the NSWPF,
- to provide for the scrutiny of the exercise of powers by the Law Enforcement Conduct Commission and its officers by an Inspector and for the Commission and for the Inspector to be accountable to Parliament,
- to provide for the oversight by the Inspector of the use of covert powers under various Acts.





## Assessing complaints

Complaints come to the Commission in several ways, including:

- members of the public,
- the NSWPF complaints management database,
- NSWCC complaints and
- Public Interest Disclosures (PID).

The assessment of complaints is a core function of the Commission. All complaints are assessed by the Assessments team who refer the complaints and recommendations to the internal Complaint Action Panel (CAP). The CAP consists of the Chief Commissioner, the Commissioner and other senior staff. Complaints which may indicate employees of the NSWPF or NSWCC have engaged in serious misconduct or serious maladministration may be investigated by the Commission, independently of police.

The balance of complaints not directly investigated by the Commission are referred to police for action and may be the subject of either oversight monitoring (where Commission investigators monitor the police's investigation of a complaint in real-time) or oversight review (where Commission investigators review the police's investigation of a complaint, when the investigation is complete).

Further information about the assessment process can be found in chapter 4 of this report.

## What is serious misconduct and serious maladministration?

One of the primary functions of the Commission is to detect, investigate and expose serious misconduct and serious maladministration in the NSWPF and NSWCC. Serious misconduct or serious maladministration may:

- result in a prosecution for a serious offence,
- result in serious disciplinary action,
- demonstrate a pattern of misconduct or maladministration,
- be deemed corrupt conduct,
- be oppressive or improperly discriminatory; or
- arise wholly or in part from improper motives.



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# Monitoring critical incident investigations

The Commission has the power to independently monitor the investigation of critical incidents by the NSWPF, if it decides that it is in the public interest to do so. The Commission monitors all declared critical incidents. The Commission may cease monitoring if it later considers that it is no longer in the public interest.

A critical incident is an incident involving a police operation that results in death or serious injury to a person. The Commission's monitoring of critical incident investigations provides assurance to the public and the next of kin that police investigations into critical incidents are conducted in a competent, thorough and objective manner. In doing so, the Commission considers whether the NSWPF has adequately considered the following:

- the lawfulness and reasonableness of the actions of NSWPF officers involved in the critical incident,
- the extent to which the actions of the NSWPF officers complied with relevant law and policies and procedures of the NSWPF,

- any complaint about the conduct of involved NSWPF officers and any evidence of misconduct; or
- the need for changes to relevant policies, practices and procedures of the NSWPF; and
- any systemic, safety or procedural issues arising from the actions of NSWPF officers.

If the Commission forms the view that the investigation is not being conducted in an appropriate manner, it can advise the NSWPF and/or the Coroner of its concerns and make recommendations. The NSWPF is required to consider and respond to concerns and recommendations raised by the Commission. The Commission may make the advice that it has given to the NSWPF or the Coroner public after the conclusion of the critical incident investigation if it considers it to be in the public interest to do so.

Further information about critical incident investigation monitoring can be found in chapter 6 of this report.





## Oversight of complaint handling

Oversight of the handling of misconduct investigations by the NSWPF and NSWCC is a core function of the Commission as most complaints about misconduct are dealt with by those agencies. The Commission may monitor, in real-time, the progress of serious or significant misconduct matters but usually considers the adequacy of the investigation once investigation reports are completed by the relevant law enforcement agency.

If the Commission is not satisfied with the way the complaint has been investigated by the relevant agency or with the management action taken, the Commission advises the NSWPF or NSWCC of the concerns and the reason for these concerns, and may:

- request further information or advice about the reasons for a decision,
- request further investigation in relation to the misconduct matter; and
- request reconsideration of the findings made or the remedial action to be taken.

In response, the NSWPF and the NSWCC must provide the information or advice requested and must notify the Commission of their decision in relation to a request for further inquiries or reconsideration of the findings or remedial action to be taken. If the NSWPF and the NSWCC do not decide to conduct further inquiries, reconsider findings, or reconsider management action to be taken, they must provide reasons for their decision. If the Commission is not satisfied with the decision, it may provide a report to the Minister or a special report to Parliament.

If the complaint concerns serious misconduct or maladministration, the Commission may decide to conduct its own investigation.

Further information about Commission's oversight functions can be found in chapter 6 of this report.

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# Investigating serious officer misconduct

A core function of the Commission is to detect and investigate allegations of serious misconduct by NSWPF and NSWCC officers.

The Investigations and Intelligence Units in the Integrity Division of the Commission consist of multi-disciplinary teams conducting investigations. Teams operate under the supervision of the Director Integrity and consist of senior investigators, a senior financial investigator, investigators, investigations officers, a team leader intelligence and intelligence analysts. The Director Integrity reports to the Executive Director Operations.

Investigations and Intelligence functions within the Integrity Division operate with,

and are supported by, other teams within the Division and from other sections of the Commission. These include the Oversight Division, Legal Services, Assessments, Prevention and Education, Electronic Collection and Covert Services.

Further information about the Commission's Integrity Division can be found in chapter 5 of this report.



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# Strategic Plan 2020-2023

The Commission's strategic plan 2020-2023 recognises that the Commission is an independent body responsible for the oversight of the NSWPF and the NSWCC. As such it must carry out its functions without fear or favour and with a view to assuring the community that policing in this state is carried out in a responsible and appropriate manner. The Commission recognises that the law enforcement bodies of NSW have the same ambitions and often the Commission will act collaboratively with them. However, there are other times when the Commission acts independently and has been given the power of investigation to enable it to do so.

The plan sets out our aims for 2020- 2023. Key priorities are to build trust with the NSWPF and NSWCC; improve efficiency and effectiveness; and increase the impact and awareness of the Commission's work. Supporting these are 2 priorities focusing on our people and culture.

This is the second year of the Commission's strategic plan, details of the work the Commission has undertaken towards each focus area is covered in this report.

## Purpose

Improve community trust in law enforcement by maintaining and enhancing the accountability and integrity of NSW law enforcement agencies.

## Vision

A highly effective, independent oversight body that works constructively with the NSW Police Force and the NSW Crime Commission to prevent, detect and investigate serious and systemic corruption, misconduct and maladministration.

## 2020-2023 Strategic Priorities

### Build trust with the NSWPF and NSWCC

Develop and maintain productive and collaborative relationships with the NSWPF and the NSWCC whilst demonstrating independence and objectivity to achieve greater accountability in the provision of law enforcement in NSW.

### Improve efficiency and effectiveness

Improve efficiency and effectiveness with a focus on the integration of technology and contemporary analytical processes, whilst ensuring all the LECC's functions are underpinned by structured, proportionate and accountable decision making.

### Increase impact and awareness

Maintain and build confidence in the LECC's work and impact by providing practical research and recommendations, reporting on outcomes and achievements, and enhancing community awareness of our independent role.

### People focus

The LECC is comprised of high performing people who have a common sense of purpose and strive for continuous improvement. The organisation values people as its most important asset.

### Collaborative culture

The LECC has an inclusive and collaborative culture that benefits from our shared knowledge and capability.

## Values

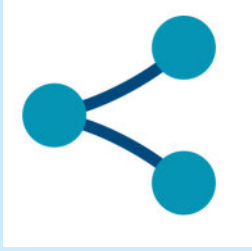
Accountability

Trust

Integrity

Collaboration

Service



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## Building trust with the NSWPF and NSWCC

- The Commission has initiated a program of open and shared communications with the NSWPF and NSWCC.
- We have conducted awareness and engagement sessions: Including two training seminars with NSWPF on Critical Incidents.
- A Commission representative attends as a panel member on the NSWPF Mastery Program's CMT day.
- Initiate and participate in joint projects: Oversight Division established a cross-jurisdictional forum with law enforcement integrity agencies throughout Australia.



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## Improve Efficiency and Effectiveness

- The Commission has implemented the use of a new ultra-secure file sharing and collaboration platform Dekko.
- Developed our analytical strategic capability by identifying emerging issues and trends and making recommendations as to the best course of action for the Commission to take.
- Work has commenced on developing PowerBI to strategically analyse and report on the information from the case management system, LOIS.
- Creation of the Audit, Prevention, Integrity and Oversight (APIO) committee. The APIO committee builds on and supports the Misconduct Themes Committee through the sharing of issues identified in Integrity investigations.



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## Increase Impact and Awareness

- The Commission continues to build its community engagement framework. Strengthening awareness of and confidence in the Commission.
  - Commissioner Drake presented on the functions of the Commission to NSW Parliament as part of their Vital Information Series for 2022.
  - Covid and a change in Commissioners saw a reduction in direct engagement during the reporting period. Since the appointment of new Commissioners in May and July 2022 meetings with several external groups have either taken place or been scheduled including Redfern Legal Centre, NSW Ombudsman and Youth Justice Coalition.
  - Provided the NSWPF with a list of Commission focus priority areas, including a strategic priority around domestic violence.
-



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## People Focus

- We invest in our staff by ensuring they have a meaningful performance and development plan that aligns with our strategic plan and values.
- Increased the people leadership capacity of our senior executive through participation in the NSW Public Service Leadership Academy.
- Commenced a mentoring program in which members of the senior executive mentor junior staff not currently in leadership roles.
- Creation of the Training Advisory Group (TAG) - To collate ideas and topics, ascertain staff interest and present recommendations to the Senior Executive for consideration/approval.



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## Collaborative Culture

- We continue to build an inclusive and cohesive culture through our values, the sharing of knowledge and collaborative work practices.
- Supported the LECC Staff Consultative Committee (LSCC) to provide an open communication channel between staff and the executive. The Committee includes representation across all areas of the Commission allowing staff to put forward suggestions, ideas and concerns in a more relaxed manner. The LSCC actively reviews Commission policies impacting all staff.
- Invited several external guest speakers to share their experience and knowledge including; Merv Heal presenting on the 7 Pillars of Personal and Professional Health; Mr Tim Cubitt provided insights into the management of serious police misconduct; Matt Ciantar, Commander at the AFP presented Operation Ironside.

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# Strategic Plan 2020-2023

The Commission's Strategic Plan 2020-2023 can be found on the Law Enforcement Conduct Commission website [www.lecc.nsw.gov.au](http://www.lecc.nsw.gov.au)

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# Our people

The Commission employs a variety of experienced people with professional and specialised skills.

The Commission has a policy of not employing serving or former NSWPF or NSWCC officers. Integrity Investigators employed at the Commission are drawn from police services in other jurisdictions in Australia or overseas.

## Our senior executive team



### CHIEF COMMISSIONER | THE HON PETER JOHNSON SC

The Hon Peter Johnson SC was appointed as the Chief Commissioner of the Law Enforcement Conduct Commission in July 2022.

Chief Commissioner Johnson graduated with a Bachelor of Arts in 1972, a Bachelor of Laws in 1975 and a Master of Laws in 1982, all from the University of Sydney. He was admitted as a solicitor in 1976 and worked from 1976 to 1982 in the Public Solicitor's Office (now Legal Aid NSW), appearing in criminal proceedings in Courts of Petty Sessions, the District and Supreme Courts. He was admitted as a barrister in 1982, and appointed as Senior Counsel in 1997, and practised at the private bar in a range of matters including criminal trials and appeals, administrative law and health disciplinary proceedings, as well as extensive experience as Counsel Assisting (or Counsel for an interested party) before Royal Commissions,

Special Commissions of Inquiry, the Police Integrity Commission, the Independent Commission Against Corruption, coronial inquests and inquiries under s 475 *Crimes Act 1900*.

Inquires with a policing context in which Chief Commissioner Johnson appeared included the Blackburn Royal Commission in 1988-1989 (as junior Counsel Assisting), the inquest concerning the suspected death of Christopher Dale Flannery in 1994 - 1996 (as Counsel Assisting), the Royal Commission into the NSW Police Service in 1995 - 1996 (as Counsel for the Police Board of NSW) and the Police Integrity Commission Phase II and Phase III Operation Saigon hearings in 1999 - 2001 concerning the fatal shooting by police officers of Roni Levi (as Senior Counsel Assisting).

In 1998 - 1999 Chief Commissioner Johnson sat from time to time as an Acting Judge



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of the District Court of NSW, hearing and determining civil proceedings.

In 2003 – 2004, Chief Commissioner Johnson was an Assistant Commissioner at an inquiry by the Independent Commission Against Corruption, which recommended prosecuting a member of Parliament for having made deliberately false and misleading statements to the Commission about using his official staff to help establish a private gaming consultancy which he proposed to operate after his retirement from Parliament.

In 2005, Chief Commissioner Johnson was appointed as a Judge of the Supreme Court, where he sat in the Common Law Division. He served as Possession List Judge (2005 - 2009) and Criminal List Judge (2013 - 2017).

He presided at a wide range of criminal and civil trials and sat frequently as an appellate judge in the Court of Criminal Appeal. He has also served as a part time Commissioner of the NSW Law Reform Commission, contributing to criminal law reform in the areas of sentencing and criminal appeals.

As a trial and sentencing Judge, Chief Commissioner Johnson presided in a wide range of proceedings including charges of murder, manslaughter, terrorism, female genital mutilation, tax fraud and money laundering.

Since 1986 Chief Commissioner Johnson has been a Joint author of “Criminal Practice and Procedure (NSW)”, LexisNexis.

## COMMISSIONER | ANINA JOHNSON

Ms Johnson has degrees in law and sociology from Murdoch University and a Masters (Research) in Law from the Australian National University, which she completed with the help of a Lionel Murphy Scholarship.

She was appointed as Commissioner of LECC in May 2022.

Ms Johnson held the position of Deputy President (Forensic) at the NSW Mental Health Review Tribunal from 2012 to 2022, where she sat in both the Forensic and Civil Divisions of the Tribunal. She was also involved in strategic issues in relation to forensic mental health, including significant legislative reform.

Prior to her appointment to the Tribunal, Ms Johnson was a Senior Solicitor and Solicitor Advocate in the NSW Crown Solicitor’s

Office for 12 years, where she appeared in complex matters, including as Counsel Assisting the Coroner in coronial inquests relating to policing matters.

Ms Johnson is an Adjunct Associate Professor with the University of NSW and has published and presented in the areas of mental health, criminal law and administrative law.

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## CHIEF EXECUTIVE OFFICER | CHRISTINA ANDERSON

Ms Anderson is a member of CPA Australia, has a strong background in Government finance having worked in several agencies including the Royal Commission into the NSW Police Service, Sydney Opera House Trust and the Department of Environment.

She returned to the Police Integrity Commission as Finance Manager in 2008 before joining the Commission in 2017. Ms Anderson was appointed as CEO in May 2021.

As CEO Ms Anderson leads and directs the day-to-day management of the affairs

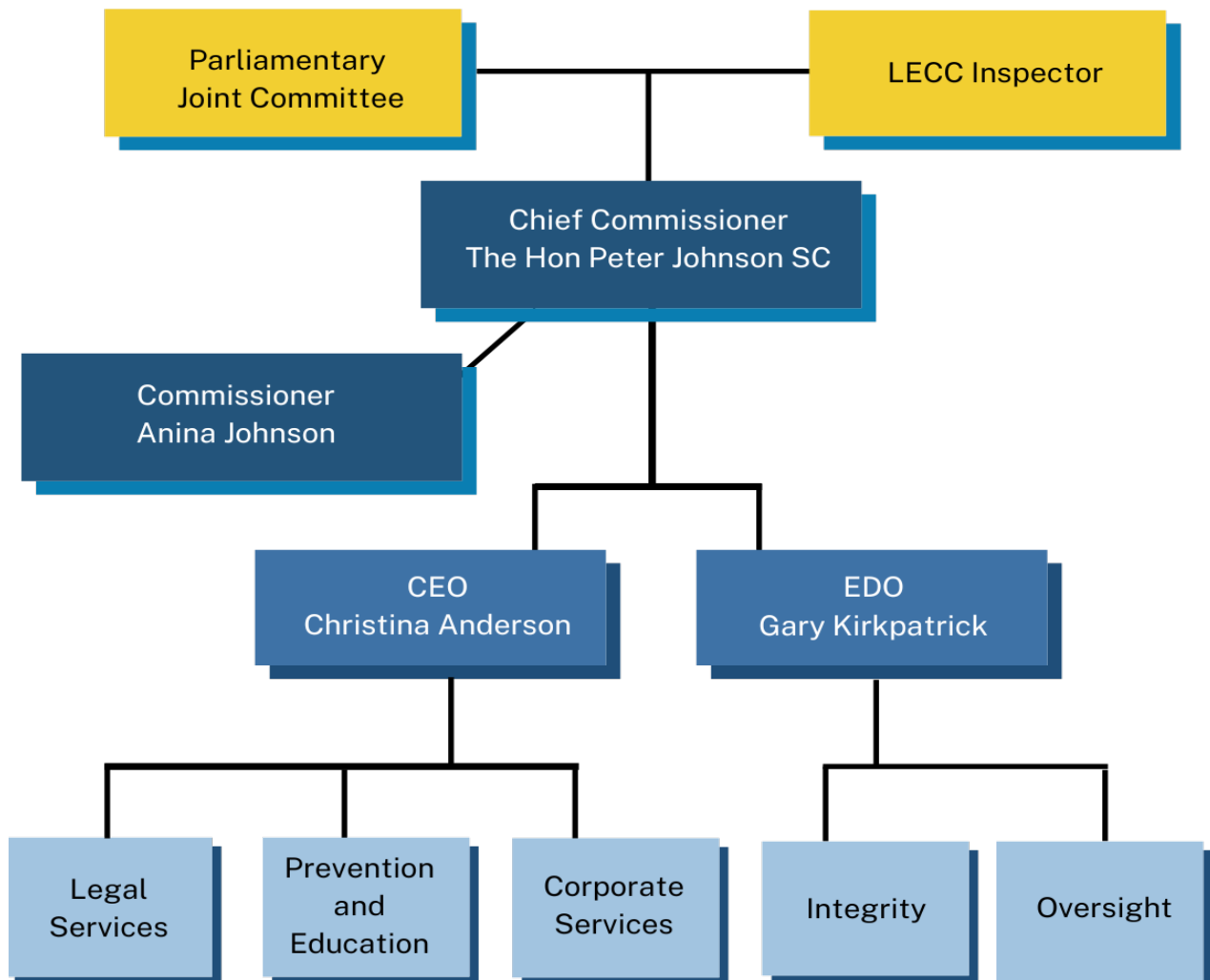
of the Commission and is responsible for implementing the decisions of the Commissioners. Having responsibility for governance and the delivery of corporate services, including the employment of staff with the necessary skills and experience to perform the functions of the Commission within its statutory and budgetary framework, Ms Anderson provides advice to assist the Commissioners in their decision-making, and provides leadership and guidance to the executive management team.

## EXECUTIVE DIRECTOR OPERATIONS | GARY KIRKPATRICK

Mr Kirkpatrick holds the position of Executive Director Operations and is responsible for the performance and conduct of the Oversight and Integrity Divisions of the Commission.

Mr Kirkpatrick was a Federal Agent in the Australian Federal Police prior to being appointed a Manager then later the Director Operations within the Police Integrity Commission. At the commencement of the Law Enforcement Conduct Commission, he was appointed as Director Integrity and was later appointed the Executive Director Operations.

# Our structure





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# 4

## Assessing complaints



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# Overview

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The Assessments function plays a vital role in the Commission's statutory responsibilities. Firstly, the Assessments team assesses all complaints made directly to the Commission to identify whether the Commission will exercise its investigative functions or whether the complaint will be referred to the NSWPF for their action. Secondly, the Assessments team assesses all complaints made to the NSWPF that are classified as notifiable misconduct matters to determine whether the Commission will exercise its statutory functions or whether it agrees with the decision of the NSWPF to investigate (or decline to investigate) the misconduct matter.

In many instances, the Commission must conduct two assessments of the same complaint. In addition to assessing complaints made directly to the Commission, the Commission will also assess any notifiable complaints it refers to the NSWPF to determine whether the NSWPF has dealt with them appropriately, as well as consider whether the Commission will monitor that NSWPF investigation. Before the new case management system's implementation, the Commission could not

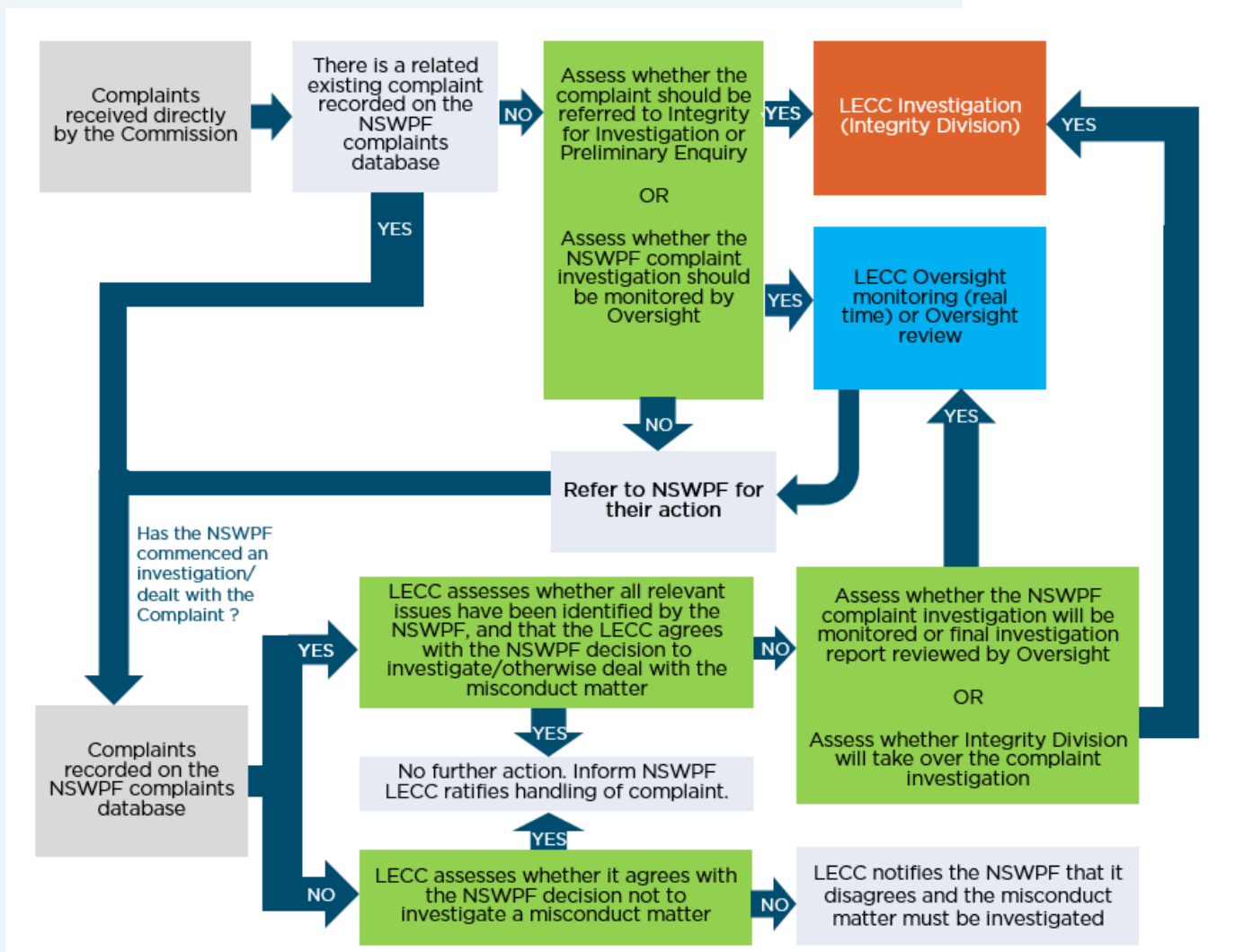
report on this second assessment. This year's report now includes these second assessments, which are required under the LECC Act.

Of the complaints made directly to the NSWPF, the Commission assesses all complaints which are notifiable and determines whether:

- the Commission will take over the investigation of the complaint,
- the Commission will monitor the NSWPF investigation,
- the NSWPF has identified all relevant issues; and
- the Commission agrees with the NSWPF decision to investigate, or otherwise deal with, the misconduct matter.

If the Commission disagrees with the police's decision to decline to investigate a notifiable misconduct matter, it will require the NSWPF to investigate the matter and notify the complainant of that fact.

## NSWPF complaints assessment workflow





# Complaints assessed

The Commission has experienced a significant increase in the number of complaints it has assessed. Excluding the previously unreported secondary assessments undertaken by the Commission, this has included a 31% increase from last year and a 69% increase from three years earlier.

One likely contributor to the increase of complaints in the last financial year is implementing the Commission's case management system, LOIS, and the automation of complaints received from the NSWPF database.

## Total number of matters assessed by the Commission during the year

|                           | 2018-19 | 2019-20 | 2020-21 | 2021-22 |
|---------------------------|---------|---------|---------|---------|
| Total complaints assessed | 2,547   | 3,452   | 3,276   | 5,095   |

## Total % of complaints that were direct to the Commission vs complaints assessed from NSWPF databases

|  | 2018-19        | 2019-20        | 2020-21                     | 2021-22        |
|--|----------------|----------------|-----------------------------|----------------|
| Total direct complaints assessed                                       | 1,478<br>(58%) | 1,624<br>(47%) | 1,611 <sup>1</sup><br>(49%) | 1,811<br>(35%) |
| Total complaints assessed following referral to the NSWPF <sup>2</sup> | Not reported   | Not reported   | Not reported                | 794<br>(16%)   |
| Total complaints assessed from NSWPF databases (non-referred)          | 1,069<br>(42%) | 1,828<br>(53%) | 1,665<br>(51%)              | 2,490<br>(49%) |

1 Two complaints were self-generated by the Commission

2 Prior to the implementation of the new case management system, the Commission was unable to track the additional assessment undertaken on a complaint once it was referred to the NSWPF. This assessment is required to determine whether the Commission is satisfied with the NSWPF decision to deal with the complaint. (i.e., investigate or decline).

# Mandatory reporting

Section 33 of the LECC Act requires various public officials to report to the Commission any matter they suspect on reasonable grounds may concern officer misconduct or serious maladministration. This includes the NSW Ombudsman, the Independent Commission Against Corruption (ICAC) Commissioner and the NSW Crime Commissioner.

## Reports of misconduct matters by other agencies made pursuant to s 33 of the LECC Act

|   | 2018-19 | 2019-20 | 2020-21 | 2021-22 |
|---|---------|---------|---------|---------|
| NSW Crime Commission                      | 4       | 11      | 5       | 2       |
| Independent Commission Against Corruption | 63      | 38      | 70      | 97      |

## Breakdown of complaints directly to the Commission: police vs public

|   | 2018-19        | 2019-20        | 2020-21        | 2021-22        |
|---|----------------|----------------|----------------|----------------|
| Officers who identified themselves as police <sup>3</sup> | 94<br>(6%)     | 118<br>(7%)    | 110<br>(7%)    | 142<br>(8%)    |
| Members of the public                                     | 1,384<br>(94%) | 1,506<br>(93%) | 1,501<br>(93%) | 1,669<br>(92%) |

## Notifiable misconduct matters

The Commission and the NSWPF entered into an agreement pursuant to s 14 of the LECC Act (referred to as the s 14 Guidelines) in November 2017. This agreement constitutes guidelines outlining the categories of complaints required to be notified to the Commission and upon which it primarily focuses its oversight functions.

The types of misconduct frequently referred to the Commission include allegations of:

- failing to comply with the *Law*

*Enforcement (Powers and Responsibilities) Act 2002 (NSW),*

- protection of person(s) involved in drugs or other criminality,
- unreasonable use of force,
- failure to investigate; and
- Statements of Claim raising questions of serious misconduct.

The s 14 Guidelines are published on the Commission's website. The Commission and the NSWPF are in the process of reviewing and updating these s 14 Guidelines.

<sup>3</sup> Complainants who identified themselves as or are reasonably suspected of being employees of the NSWPF. It is also strongly suspected, based on the contents of the complaints, that several other anonymous complaints to the Commission have been received by NSWPF employees; however, this cannot be confirmed.

# Requests for information

The Commission does not have electronic access to numerous items used by the NSWPF to determine misconduct matters. In particular, body-worn videos, in-car videos and other electronic media. The Commission anticipates that the number of complaints containing electronic evidence will likely increase over the coming years with technological advancements and the deployment of new body-worn cameras.

To assess some notifiable misconduct matters, the Commission is required to request the provision of further information from the NSWPF. Providing access to the database where most of the electronic material is stored would expedite the Commission's handling of complaints and reduce delays <sup>4</sup>.

These requests for information are either made under s 41(1) of the LECC Act, if it relates to a complaint made directly to the Commission, or s 102 of the LECC Act if it relates to a complaint already on the NSWPF complaints database.

In the 2021–2022 period there were 15 Requests for information under s 41 of the LECC Act.

## Requests for information (at assessment<sup>5</sup>) under s 102 of the LECC Act

|                          | 2019-20 | 2020-21 | 2021-22 |
|--------------------------|---------|---------|---------|
| Requests for information | 95      | 122     | 108     |


<sup>4</sup> For instance, it would significantly reduce the time between the NSWPF declining to investigate a complaint and notifying the subject officer of that decision, and the Commission disagreeing with that decision and requiring the NSWPF to undertake an investigation (s 99(3) of the LECC Act).

<sup>5</sup> Oversight investigations report separately on requests it makes under s 102 of the LECC Act.

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# Recommendations

The Commission can make recommendations to the NSWPF regarding how to investigate or deal with a misconduct matter. While the NSWPF do not have to undertake the recommendations, they are required to take those recommendations into account when considering the misconduct matter<sup>6</sup>. Recommendations can include, for instance, requesting additional complaint issues be triaged, or that a complaint should be investigated at a higher level such as an evidence-based investigation.



In the 2021–2022 period there were 62 Recommendations to the NSWPF under s 131(4) of the *Police Act 1990*.

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<sup>6</sup> S 131(4) of the *Police Act 1990* (NSW)

## Timeliness to investigate

The average time to commence a preliminary investigation or investigation of a misconduct matter that was investigated by the Commission was 20 business days. It should be noted on several occasions, after assessment, the Commission may also conduct a preliminary enquiry prior to commencing an investigation.

The time interval between the receipt of each misconduct matter by the Commission and the Commission deciding to investigate the misconduct matter is outlined in the table below:

| Time interval | Preliminary investigation | Investigation |
|---------------|---------------------------|---------------|
| 0-5 days      | 3                         | 6             |
| 6-10 days     | 3                         | 1             |
| 11-15 days    | 3                         | 2             |
| 16-20 days    | 2                         | 2             |
| 21-30 days    | 2                         | 4             |
| 31-60 days    | 2                         | 1             |
| 61+ days      | 2                         | 2             |

## Disagreement with the NSWPF decision to decline investigation

Section 99(3) of the LECC Act provides that if the Commission disagrees with the NSWPF decision to decline to investigate a misconduct matter, the Commission must notify the NSWPF of that disagreement and the misconduct matter must be investigated.

**Disagree with the decision to deal with misconduct matter under s 99 of the LECC Act.**

|                            | 2019-20 | 2020-21 | 2021-22 |
|----------------------------|---------|---------|---------|
| Requirement to investigate | 117     | 17      | 16      |

Two matters where a s 99(3) requirement to investigate was issued resulted in at least one sustained finding being made. Eleven matters resulted wholly in no sustained findings being made. Two s 99(3) requirements to investigate were later withdrawn by the Commission after further representations were made by the NSWPF and one investigation was not finalised at the time of reporting.

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## Case study

# Requirement to investigate (EXT2021-1729)

In October 2020, the Commission received a short email from an individual that believed they were unlawfully arrested. The Commission had insufficient information to assess the complaint and requested additional information. The complainant responded that solicitors had notified them to be careful in making a formal complaint at that time, and as such, they would wait for the trial's outcome before making a formal complaint.

In December 2020, following the dismissal of the charges, the complainant indicated they wished to proceed with a formal complaint, requesting the Commission investigate. The Commission determined that the complaint was not a matter requiring investigation by the Commission and requested consent to refer it to the NSWPF.

Instead, the complainant made a formal complaint to the Police Command in which the arrest occurred. The NSWPF triaged the complaint, declining

issues of deficient/inadequate investigation and unprofessional conduct. The triage indicated that the first complaint issue was frivolous, vexatious or not made in good faith. The NSWPF notified the complainant of their decision in February 2021

In June 2021, the complainant sent additional material to the Commission, including the court hearing transcript<sup>7</sup>. The Commission reviewed all complaint material, including the transcript, and in August 2021, required the NSWPF to investigate the complaint (s 99(3) of the LECC Act).

The NSWPF investigated the allegations and made sustained findings against one officer about a deficient or inadequate investigation. The investigation also identified complaint issues against a further two officers attached to the Command in relation to the arrest, as well as the prosecutor for failing to report adverse comments by the magistrate.

The complaint about failing to comply with LEPRA during

the arrest was investigated, with sustained findings being made against two officers. These officers were formally counselled and were required to undergo further education on LEPRA and the powers of arrest.

The complaint relating to the prosecutor was triaged and declined on the basis that the prosecutor was junior and had limited experience as a prosecutor. Nonetheless, advice and guidance were provided to this officer.

The Commission was satisfied with the outcomes and management actions.

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7 The Commission is not an exempt agency from paying for court transcripts.

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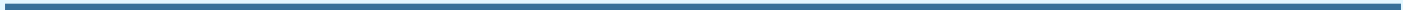
## Requests for information regarding investigation timeliness

If the Commission is satisfied that a NSWPF investigation of a misconduct matter is not

being conducted in a timely manner, it may request information that demonstrates how the matter is being investigated or explain why it is not being investigated in a timely manner.

### Requests for information on timeliness under s 103 of the LECC Act

|  | 2019-20 | 2020-21 | 2021-22 |
|--|---------|---------|---------|
| Requests for information on investigation timeliness | 22      | 1       | 1       |







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# 5

## Investigating serious officer misconduct

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# Overview

A key function of the Commission is to detect and investigate allegations of serious misconduct by members of the NSWPF and NSWCC officers.

In 2021-22 the Commission conducted 34 Preliminary Enquiries and 78 Investigations, comprising of 36 Preliminary Investigations and 42 Full Investigations.

A profile of significant Integrity investigations can be found at the end of this chapter.

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# Process

Complaints are assessed by the Assessments team (see Chapter 4) and presented to the CAP. The CAP determines which matters are appropriate for investigation by the Commission.

The Commission may choose to initiate an investigation, a preliminary investigation or to make some further enquiries before any decision is made (called a preliminary enquiry). This may include contacting the complainant (if one is identified), another person or another agency in order to seek further information and clarification.

An investigation can then be conducted using covert and overt investigative techniques as appropriate to each matter. Information is gathered and assessed. If coercive powers are deemed necessary and appropriate, an examination may be proposed.

On completion of an investigation, a s 132 report may be tabled in Parliament, or a s 135 report may be provided to the Minister for Police and the Commissioner of Police.

## Commission examinations

The Commission may hold examinations as part of its investigation process. The decision to hold an examination in private or public must have regard to the relevant considerations under the LECC Act, particularly those factors set out in s 63(5). The Commission can summon persons

to appear at examinations and compel witnesses to produce documents or answer questions.

During 2021-22 the Commission conducted 27 private examinations.

No public examinations were conducted.

# Profile of active investigations during 2021-22

During 2021-22 the Commission undertook 34 Preliminary Enquiries and 78 Investigations, comprising 36 Preliminary Investigations and 42 Full Investigations. Of these, 70 matters were completed, and 42 were ongoing at 30 June 2022. The average time taken to complete a misconduct investigation varies, given the various issues and circumstances that affect each case. For example, if an investigation results in a criminal prosecution, the Commission will not close its file until the conclusion of the proceedings, which may take several years.

A description of the types of allegations investigated during the reporting year is presented in the following table.

## Profile of 2021-22 investigations, preliminary investigations and preliminary enquiries

| Allegation  | INV | PI | PE |
|---|-----|----|----|
| Administration – Fail to create records   | 1   |    |    |
| Corruption - Bribery  |     |    | 1  |
| Corruption – Misuse of authority  | 1   | 5  | 1  |
| Corruption – Protection of person involved in criminal activity                   | 1   | 2  | 2  |
| Custody – Fail to caution/give information/communicate rights                     |     | 1  |    |
| Evidence – Pervert the course of justice  | 1   |    |    |
| Evidence – Tamper with evidence   |     | 1  |    |
| Evidence – Withhold or suppress evidence  |     |    | 1  |
| Fabrication of evidence (other than perjury or verballing)                        | 1   |    |    |
| Fail to comply with LEPRA - Searching   | 1   |    |    |
| Fail to comply with policy/procedures – Conflict of Interest Policy and Procedure | 4   | 2  |    |
| Fail to comply with policy/procedures – Declarable Associations Policy            |     | 1  | 4  |

| Allegation  | INV | PI | PE |
|---|-----|----|----|
| Fail to comply with policy/procedures – Email and Internet Policy   |     |    | 1  |
| Fail to comply with policy/procedures – Other   |     |    | 1  |
| Fail to comply with policy/procedures – Secondary Employment Policy                                       | 1   |    | 1  |
| Fail to keep informed – Victim/witness/colleague follow-up  |     |    | 1  |
| Falsify official records  | 1   |    |    |
| Improper association  | 1   | 3  | 1  |
| Improper use of discretion  | 1   |    |    |
| Indictable offence  | 3   | 2  | 3  |
| Loss of property and exhibits   |     | 1  |    |
| Misuse authority for personal benefit or the benefit of an associate (including obtaining sexual favours) |     | 1  | 3  |
| Offence punishable upon conviction by a max sentence of not less than 3 years and not more than 5 years   |     | 1  |    |
| Outcome – Deficient/inadequate investigation - other  |     | 1  |    |
| Prosecution – Fail to charge/prosecute/initiate proceedings   | 1   |    |    |
| Prosecution – Fail to subpoena witness  |     |    | 1  |
| Prosecution – False/improper/malicious proceedings  | 1   |    |    |
| Protection of person(s) involved in drugs   |     | 1  | 1  |
| Sexual misconduct   |     |    | 2  |
| Supply – Prohibited drug  | 1   |    | 2  |
| Tampering with or destroying – Property and exhibits  |     | 1  |    |
| Telecommunications misuse   |     |    | 1  |
| Timeliness – Delay investigation  |     |    | 1  |

| Allegation  | INV | PI | PE |
|---|-----|----|----|
| Unauthorised/improper disclosure of information                                     |     | 1  |    |
| Unauthorised/improper disclosure of information -Complaints                         |     |    | 1  |
| Unauthorised/improper disclosure of information –Other NSWPF information            | 4   | 1  |    |
| Unauthorised/unlawful access –For personal gain/use – Information/telecommunication | 1   | 2  |    |
| Unauthorised/unlawful access –On behalf of another – Information/telecommunication  |     | 1  | 2  |
| Unprofessional conduct –Disrespectful behaviour                                     | 1   |    |    |
| Unreasonable/unprofessional behaviour (not customer service related)                | 1   | 1  |    |
| Unreasonable use of force (on duty) –Weaponless force                               | 3   |    |    |
| Unreasonable use of force (on duty) –with arms/appointments                         | 1   |    |    |
| Unreasonable use of force (on duty) –with vehicle/vessel                            |     | 1  |    |
| Untruthfulness –Lie during enquiries  |     | 1  |    |
| Use –Prohibited drug  |     |    | 1  |
| Victimisation/bullying  |     | 1  |    |
| Withholding or suppression of evidence  |     | 1  |    |

# Investigation outcomes

The following tables report on the Commission's investigation outcomes for all investigations finalised during 2021-22.

## Finalised full investigation outcomes<sup>1</sup>

| Investigation outcome   | Investigations |
|---|----------------|
| Full investigations referred to the ODPP for consideration of prosecution action                      | 0              |
| Full investigations that resulted in a dissemination of information to the NSWPF                      | 2              |
| Full investigations that resulted in information being disseminated to other law enforcement agencies | 0              |
| No further action   | 17             |

## Preliminary investigation outcomes

| Preliminary investigation outcome  | Preliminary investigations |
|--|----------------------------|
| Preliminary investigations that progressed to become full investigations                                     | 5                          |
| Matter referred to current full investigation  | 0                          |
| Preliminary investigations that resulted in a dissemination of information to the NSWPF                      | 3                          |
| Preliminary investigations that resulted in information being disseminated to other law enforcement agencies | 1                          |
| No further action  | 14                         |

<sup>1</sup> An investigation may have more than one outcome.

## Preliminary enquiry outcomes

| Preliminary enquiry outcome   | Preliminary enquiries |
|---|-----------------------|
| Preliminary enquiries that progressed to become full investigations                                     | 0                     |
| Preliminary enquiries that progressed to become preliminary investigations                              | 7                     |
| Preliminary enquiries that resulted in a dissemination of information to the NSWPF                      | 1                     |
| Preliminary enquiries that resulted in information being disseminated to other law enforcement agencies | 0                     |
| No further action   | 11                    |

The Commission made the following referrals from ongoing investigations during the reporting period.

## Referrals from on-going investigations

| Investigation    |      | No. of proposed offences | No. of individuals |
|------------------|------|--------------------------|--------------------|
| Operation Denali | CDPP | 2                        | 1                  |
| Operation Tambre | ODPP | 3                        | 1                  |

## Court Attendance Notices or charges being served

| Operation         | Number of CANs Served | Number of Individuals | Charges |
|-------------------|-----------------------|-----------------------|---------|
| Operation Denali  | 1                     | 1                     | 2       |
| Operation Ramberg | 1                     | 1                     | 10      |



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# Timeliness

Time interval between the completion of each public examination conducted during the year and the furnishing of a report on the matter; The Commission did not conduct any public examinations during the reporting period.

## Actual time taken to investigate any matter in respect of which a report is made

| Investigation      | No of days |
|--------------------|------------|
| Operation Krosno   | 404        |
| Operation Kurumba  | 21         |
| Operation Kainite  | 21         |
| Operation Hosta    | 581        |
| Operation Mokeno   | 308        |
| Operation Torrens  | 430        |
| Operation Tabourie | 415        |
| Operation Kimbla   | 71         |
| Operation Tambre   | 130        |
| Operation Cowal    | 48         |
| Operation Celsian  | 411        |
| Operation Sulfur   | 419        |

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# Significant Commission investigations

**Operation Cadwal** is an investigation conducted by the Commission concerning allegations that an officer in a specialist command is involved in the supply of prohibited substances. The Commission executed several search warrants, which resulted in the NSWPF taking management action and suspending a serving NSWPF officer. The officer has since resigned from the NSWPF. Specialist capabilities of the Commission have been utilised during this investigation. The investigation is ongoing.

**Operation Celsian** was an investigation conducted by the Commission stemming from the assault of a Police Officer concerning serious misconduct of several officers within a metropolitan Command. The Professional Standards Command assisted the Commission. Several private examinations were conducted, and information was disseminated to the NSWPF to help with an Investigation conducted by the Professional Standards Command. As a result of the investigation conducted by the Commission and the NSWPF, several officers have disengaged from the NSWPF.

**Operation Hosta** was an investigation conducted by the Commission into allegations of unreasonable use of force and inappropriate behaviour by an officer from a specialist command. A private examination was conducted. During the investigation, the Commission was assisted by the Professional Standards Command and the specialist Command. A s 132 Report was

tabled in Parliament on 24 March 2022. The Commission recommended that the NSWPF consider taking action against the officer under s 181D of the *Police Act 1990*. The NSWPF agreed with this recommendation; however, the subject officer was medically discharged before finalising this action.

**Operation Tabourie** was an investigation conducted by the Commission into allegations that a NSWPF officer had released confidential information. The NSWPF has taken management action against the officer resulting in the officer receiving an Assistant Commissioner's Warning Notice. A s 132 Report was tabled in Parliament on 24 March 2022.

**Operation Torrens** was an investigation conducted by the Commission into allegations of prohibited drug use by a NSWPF officer. The officer was found not to have used prohibited drugs. Material was disseminated to the NSWPF to deal with issues related to declarable associations. A s 132 Report was tabled in Parliament on 24 March 2022.

**Operation Mokeno** was an investigation conducted by the Commission concerning allegations of excessive use of force by a NSWPF officer. Several private examinations were conducted. A s 132 Report was tabled in Parliament on 24 March 2022.

**Operation Venti** is an investigation conducted by the Commission into

allegations regarding unreasonable use of force and unlawful detention of a young Aboriginal person by NSWPF officers. Several private examinations have been conducted. The investigation is ongoing.

**Operation Woden** is an investigation conducted by the Commission into allegations that members of a NSWPF specialist unit have been involved in serious misconduct. Specialist capabilities of the Commission have been utilised during the investigation. The NSWPF specialist unit is assisting the Commission. The investigation is ongoing.

**Operation Dartmoor** is an investigation conducted by the Commission into allegations that a NSWPF officer is involved in money laundering offences. Specialist capabilities have been utilised during this investigation. The investigation is ongoing.

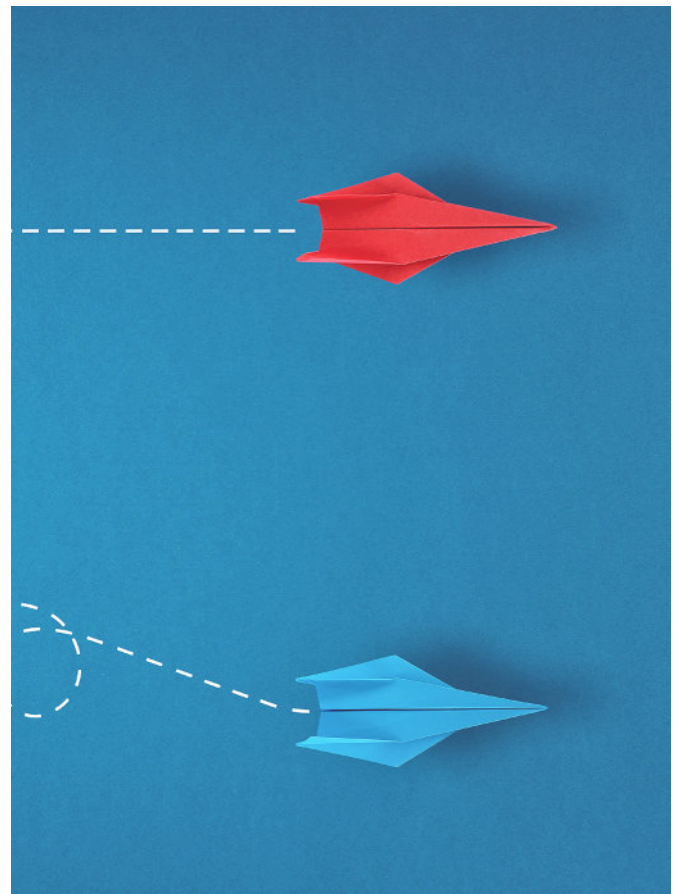
**Operation Sulfur** was an investigation conducted by the Commission concerning allegations of several instances of misconduct committed by a senior ranking NSWPF officer from a metropolitan Command. Several private examinations were conducted. A s 135 report was provided to the Minister and the Commissioner of Police on 23 May 2022.

**Operation Kimbla** was an investigation conducted by the Commission into allegations of unreasonable use of force and inappropriate touch of a young male while in NSWPF custody. The Commission conducted several private examinations. The Commission found that the officer's actions amounted to serious misconduct and recommended that the NSWPF act against the officer under s 173 of the *Police Act 1990*.

A s 132 Report was tabled in Parliament on 5 April 2022.

**Operation Kurumba** was an investigation conducted by the Commission into allegations that the former NSW Police Commissioner failed to declare a conflict of interest regarding the ownership of racehorses. Several private examinations were conducted. A s 132 Report was tabled in Parliament on 14 March 2022.

**Operation Kainite** was an investigation conducted by the Commission into allegations of serious misconduct by an officer from the NSWPF. It was alleged that the subject officer failed to declare a conflict of interest (actual or perceived) regarding the procurement process and awarding of a catering contract. Several private examinations were conducted. A s 132 Report was tabled in Parliament on 14 March 2022.



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# Responses to recommendations made by the Commission

**Operation Errigal** was an investigation by the Commission into allegations of serious police misconduct by former Superintendent Michael Rowan. The investigation dealt with complaints about the officer's conduct with staff, the creation of official records which did not disclose all the material facts, failure to declare a conflict of interest and failure to follow NSWPF standard operating procedures. Several private examinations were conducted. A s 132 Report to Parliament in July 2019 made several recommendations, including that the Director of Public Prosecutions consider whether Mr Rowan had committed any criminal offences.

In September 2020, the Commission received advice from the DPP that there was sufficient evidence to charge Mr Rowan with:

- Four counts of knowingly giving false or misleading evidence at examinations under s 151(1) of the Act; and
- One count of failure to produce documents required by summons etc., under s 150(1)(d) of the Act.

Mr Rowan entered a guilty plea to two charges, and on 19 July, Mr Rowan was sentenced to eight months in prison with a non-parole period of six months. Mr Rowan appealed the severity of the sentence and was granted bail. The matter is set down before the District Court on 4 February 2023.

**Operation Krosno** was an investigation conducted by the Commission into allegations of unreasonable use of force by

officers of a specialist Command. Several private examinations were held. A s 132 report was tabled in Parliament on 26 October 2021. Following consultation with the NSWPF during this investigation, the NSWPF published updated Body Worn Video Standard Operation Procedures in November 2021; this outlines when NSWPF officers must wear Body Worn Video devices.

**Operation Ramberg** was an investigation conducted by the Commission into allegations of misconduct by a NSWPF officer from a regional Command. As a result of the investigation, a brief of evidence was provided to the Office of the Director of Public Prosecution to consider criminal offences. The officer resigned from the NSWPF. The Office of the Director of Public Prosecution provided advice that the proceedings should be commenced, and the former officer was charged with the following offences;

- Five counts of obtaining financial advantage by deception (s 192E(1) (b) of the *Crimes Act 1900*); and in the alternative
- Five counts of intention to defraud by false or misleading statement (s 192G(b) of the *Crimes Act 1900*).

The former officer entered a guilty plea to four charges at Bathurst Local Court and was sentenced to an Intensive Corrections Order for 9 months and a Community Corrections Order of 18 months.

**Operation Denali** was an investigation conducted by the Commission concerning allegations of serious police misconduct by several mid-ranking police officers at a specialist command. During the investigation, the Commission identified that serving NSWPF Sergeant Michael Mannah had accessed over 5,000 images of child abuse material. Search warrants were executed on Mr Mannah's car and home on 22 January 2021, where various items were seized. He was subsequently arrested and charged with one charge of using a carriage service to access child abuse material pursuant to section 474.22(1) of the Criminal Code 1995 (count 1). The Commonwealth Director of Public Prosecutions took over carriage of the prosecution and on 27 July 2021 they laid a further charge of possessing or controlling child abuse material obtained or accessed using a carriage service pursuant to section 474.22A of the Criminal Code 1995 (count 2).

On 30 September 2022, a jury at the Downing Centre District Court returned a verdict of guilty on count 1 and not guilty on count 2. Mr Mannah was granted bail and will be sentenced on 11 November 2022.

At the time of the offence, Mr Mannah was a serving officer of the NSW Police Force. Mr Mannah resigned from the NSW Police Force prior to the matters being heard at court.

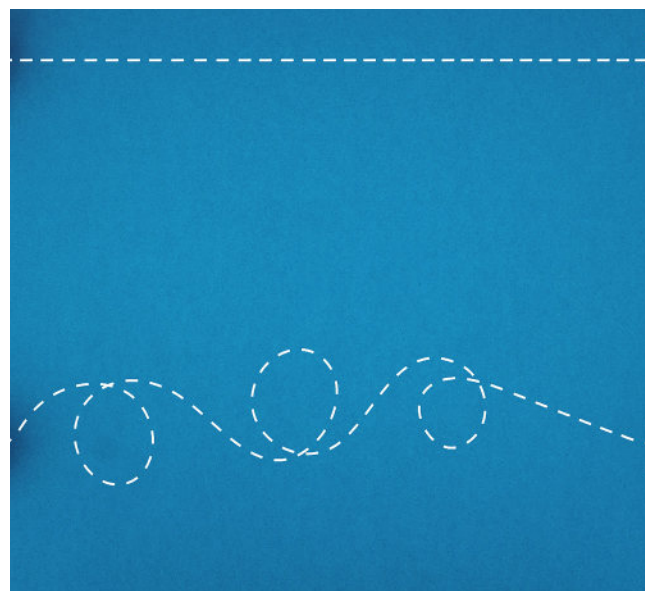
**Operation Tambre** was a Commission investigation into allegations of serious misconduct by a NSWPF officer that commenced in late 2021 and included a private examination in January 2022. The Commission provided a private report to the Commissioner of Police and the Minister for Police under s 135 of the Act in April 2022, which included a recommendation

that consideration should be given to obtaining advice from the Director of Public Prosecutions concerning the prosecution of Constable Daniel Keneally.

The Commission determined that a s 135 Report was appropriate and not, at that time, a s 132 Report (which may become public) given the prospect of criminal proceedings being instituted and to guard against interference with any criminal proceedings.

Following receipt of advice recently from the Director of Public Prosecutions, criminal proceedings have been commenced against Constable Keneally by an officer of the Commission alleging an offence of fabricating false evidence with the intent to mislead any judicial tribunal contrary to s 317(b) of the *Crimes Act 1900*. Following usual practice, a lawyer from the Office of the Director of Public Prosecutions will appear on the return date of the criminal proceedings and take over the prosecution under s 9 of the *Director of Public Prosecutions Act 1986*.

The Commission will provide a s 132 Report to Parliament when criminal proceedings conclude.







# 6

## Oversight and critical incident monitoring

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# Overview

The LECC Act places primary responsibility for the investigation of allegations of misconduct against employees of the NSWPF and NSWCC, upon those respective agencies. A core function of the Commission is to ensure those misconduct matters are dealt with, and where necessary investigated, in an appropriate manner by the relevant agency.

The Oversight Investigations team reviews finalised misconduct matter investigations conducted by the NSWPF pursuant to Part 8A of the *Police Act 1990* in order to ensure that those investigations were conducted reasonably and satisfactorily, with appropriate outcomes.

The Oversight Investigation team also monitors ongoing investigations conducted by the NSWPF or the NSWCC pursuant to s 101 of the LECC Act. This may include the investigation of new complaints or investigations which are considered by the Commission to be deficient.

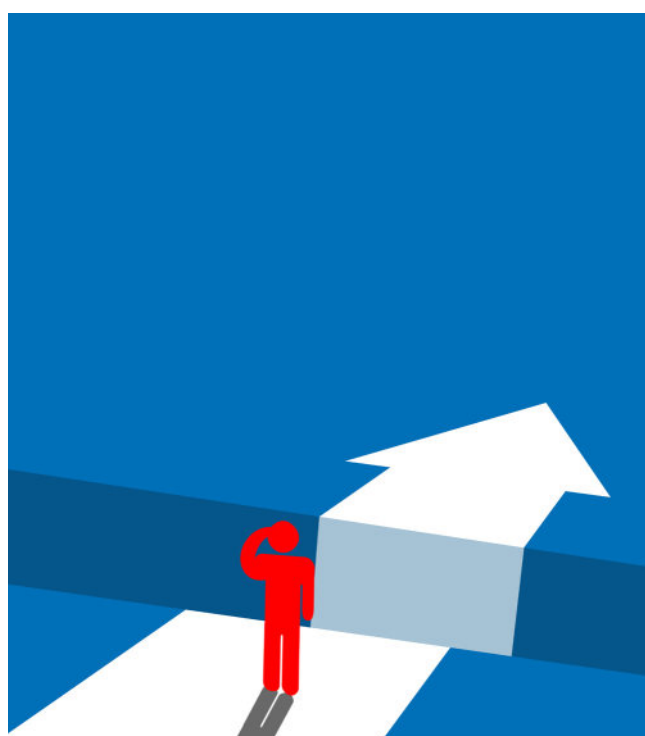
The team also supports the Commission's objective of identifying opportunities to address systemic issues in complaint handling by the NSWPF and in the exercise of police powers.

The Commission has finite resources and undertakes varying levels of oversight of NSWPF and NSWCC misconduct investigations. In order to determine the level of oversight required, the Oversight Investigations team conducts a preliminary review of all notifiable misconduct matters

to assess their level of risk and priority. The team then finalises oversight or conducts a further targeted or detailed review of the investigation.

At capacity, the Oversight Investigation team structure comprises a Manager and ten (FTE) staff members.

During the reporting period, the Oversight Investigations team received 2,302 NSWPF misconduct matter investigations for oversight under Part 7 of the LECC Act, a 52% increase on last year and over 100% increase from three years earlier. The Commission finalised review of 2,402 notifiable misconduct matter investigations during the reporting year which included matters brought forward from the previous year.





## Requests for information

The Commission does not have electronic access to numerous items used by the NSWPF to determine misconduct matters, in particular, body worn video, in-car video and other electronic media. In order to undertake its oversight function under Part 7 of the LECC Act, the Commission is required to request additional information from the NSWPF in relation to specific investigations. This information includes:

- electronic files,
- an explanation of policies, procedures and practices relating to the conduct,
- documentary and other information in respect of inquiries made by the NSWPF into the misconduct matter; and,
- explanation, comment of information in connection with the misconduct matter.

The provision of direct access to the NSWPF database where most of the electronic material is stored would expedite the Commission's review of NSWPF misconduct investigations and reduce delays in undertaking its oversight. This includes reducing the time taken to request the NSWPF to undertake a further investigation or review of findings, which ultimately provides greater procedural fairness to subject officers<sup>1</sup>.

## Requests for information (oversight) under s 102 of the LECC Act

|                          | 2019-20 | 2020-21 | 2021-22 |
|--------------------------|---------|---------|---------|
| Requests for information | 102     | 128     | 142     |

Section 102, LECC Act, requires the NSWPF or NSWCC (as relevant) to provide the information requested. The Commission can withdraw the request if the NSWPF or NSWCC objects to the provision of the material and the Commission is satisfied the grounds of the objection are well-founded.

## Case management system, LOIS

The Commission's case management system, LOIS, has automated the creation of finalised misconduct investigations from the NSWPF, alleviating ongoing errors in the previous methodology of manual notification to the Commission. This has resulted in a significant increase in the number of finalised investigations reports the Commission is receiving and is required to oversight.

<sup>1</sup> In most instances, the NSWPF have already notified subject officers of the finalisation of the misconduct investigation and findings.

# NSWPF and NSWCC misconduct investigations and critical incident investigations subject to oversight

The *Police Act 1990* and the *LECC Act* facilitate the Commission's oversight of misconduct matter investigations by the NSWPF. The Commission can oversee any misconduct matter investigation. However, the Commission primarily restricts that

oversight to matters classified as notifiable misconduct under the s 14 Guidelines. The below table of matters received includes only matters classified as notifiable misconduct.

## Matters received

|  | 2019-20 | 2020-21 | 2021-22           |
|--|---------|---------|-------------------|
| Completed NSWPF notifiable misconduct matter investigations received | 1,396   | 1,511   | 2385              |
| Completed NSWCC notifiable misconduct matter investigations received | 1       | 0       | 1                 |
| New NSWPF critical incident investigations declared and received     | 27      | 27      | 36                |
| Total  | 1,424   | 1,538   | 2422 <sup>2</sup> |

## Matters finalised

|   | 2019-20 | 2020-21 | 2021-22 |
|---|---------|---------|---------|
| NSWPF notifiable misconduct matter investigations where oversight was finalised by the Commission | 969     | 1,984   | 2402    |
| NSWPF critical incident investigations where monitoring finalised by the Commission               | 18      | 21      | 22      |
| Total   | 987     | 2,005   | 2424    |

<sup>2</sup> This includes misconduct matter investigations and critical incident investigations that were received by the Commission and for which oversight was not finalised as of 30 June 2021.

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## Correspondence pursuant to s 104 and s 105 of the LECC Act

The Commission has responsibility for reviewing misconduct matter investigations undertaken by the NSWPF and NSWCC in order to ensure that they have been undertaken in an appropriate manner with well-reasoned outcomes and findings.

Where the Commission considers that a misconduct matter has not been properly investigated, it can request the NSWPF or the NSWCC (as appropriate), pursuant to s 104 of the LECC Act, to conduct a further investigation.

If the Commission is not satisfied with the NSWPF or NSWCC decision concerning

action to be taken as a result of a misconduct investigation, it may request a review of that decision, pursuant to s 105 of the LECC Act.

The NSWPF and NSWCC are not obliged to undertake a further investigation or make a different decision on the outcome of the investigation. They are nonetheless required to provide an explanation as to why they did not conduct a further investigation or make a different decision.

During the reporting period the following actions were taken under ss 104 and 105 of the LECC Act.

### Requests pursuant to s 104 and s 105 of the LECC Act

|  | 2021-22 |
|--|---------|
| Section 104 requests issued  | 10      |
| Total number of reinvestigations following s 104 notices   | 4       |
| Total number of reinvestigations that resulted in a different finding                                | 2       |
| Total number of declined further investigations that resulted in new or amended findings             | 1       |
| Total number of reinvestigations that resulted in the same findings, but management action was taken | 0       |
| Section 105 requests issued  | 3       |
| Total number of different findings following a s 105 notice for review of decision                   | 0       |

On occasions the NSWPF decline to conduct a further investigation. However, as a result of the review by the NSWPF to determine whether a further investigation would be undertaken they may make a different finding. Similarly, the Commission may make a request under both ss 104 and 105 of the LECC Act for a further investigation and/or review of the finding.

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## Case study

# MIR2021-1167

In July 2021, a medical professional attended a local police station to report harassment and intimidation by a former patient. Approximately one week later the medical professional followed up on the report and was asked by police to attend the station to provide a statement.

When the medical professional attended the station to make a statement they brought with them around 700 pages of screenshots of messages, which included a male displaying a knife in their waistband and several threats. In the statement the medical professional stated they had concerns for their safety. No Personal Violence Order was applied for.

In August 2021, the case officer for the matter was reallocated. Following review of the statement and the messages by the new case officer, several threatening messages were identified targeting the medical professional's son, who was a serving police officer.

The case officer took steps to immediately arrest the person making the threats.

The NSWPF investigated whether the original case officer, who had obtained the statement and screenshots had adequately investigated the report. The investigator recommended that a sustained finding should be made. However, the NSWPF review officer disagreed with the recommendation, indicating the subject officer was not the officer in charge of the investigation and that the subject officer had not been given specific instructions to review the screenshots. The Commander agreed with the review officer and made not sustained findings.

In January 2022, the Commission sent a request under s 104 of the LECC Act, to the NSWPF for a further investigation of the matter, including details of what it considered were deficiencies in the earlier investigation.

In February 2022, the NSWPF responded to the

Commission's request indicating that the matter had been given to a Chief Inspector to review the investigation and the relevant material. Following that review, the Commander<sup>3</sup> overturned the original decision and made a sustained finding. The Command also introduced mechanisms that ensured all personal violence / domestic violence incidents are reviewed by the domestic violence team daily and reported on.

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3 This Commander was not the decision maker for the original not sustained findings.

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## Case study

# MIR2022-0238

In July, September and November 2021, the Subject Officer conducted COPS enquiries on POIs of theft incidents at his son's place of employment. The subject officer then disclosed information about the suspects identities and criminal history to his son.

During the misconduct investigation the Command did not investigate whether the Subject Officer's COPS accesses were unlawful/unauthorised, and only considered whether he improperly disclosed information obtained from COPS. The investigator considered there was insufficient evidence to prove on the balance of probabilities that the subject officer disclosed this information, and rather concluded the son had identified the suspects' identities through his own enquiries. The son then provided the subject officer with the names of the suspects, who in turn conducted searches on COPS. While the Command made a not sustained finding,

the subject officer received advice and guidance in relation to appropriate recording of reasons for access, particularly in matters where there is an actual or perceived conflict of interest.

In April 2022, the Commission requested a further investigation under s 104 of the LECC Act. The Commission considered on the available evidence that a sustained finding could be made in relation to Unauthorised/Improper Disclosure and Unauthorised/Unlawful Access. Specifically, the subject officer conducted various unlawful COPS accesses on suspects in theft incidents at his son's place of employment. The Commission queried whether such accesses were in accordance with the subject officer's duties and noted the conflict of interest suggesting he was acting out of personal interest rather than in his official capacity. In relation to the Unauthorised/Improper Disclosure, the Commission

noted that during his interview, the subject officer acknowledged he disclosed information obtained from COPS pertaining to the suspects criminal history to his son.

The NSWPF responded to the Commission on in June 2022, indicating that a revised investigation report had been completed and a sustained finding for Unauthorised/Improper disclosure of information – COPS had been made. The Commander also provided the subject officer with further advice and guidance.



# Second requests for further investigation

The NSWPF model for dealing with misconduct matters is a decentralised model, which means that the Commander for the subject officer is the delegate for investigation outcomes and findings, as well as the decision maker for any management actions required.

This decentralised model includes that if the Commission considers a misconduct investigation to be deficient and requests consideration of a further investigation, that request is usually dealt with by the delegated Commander.

As a result, there may be times when the Commission disagrees with the Commander's decision not to further investigate a misconduct matter, and on those occasions the Commission may issue a second request under s 104 of the LECC Act for further investigation.

In any second s 104 requests for further investigation, the Commission will generally request that the request be considered independently of the delegated Commander. However, this is a decision for the NSWPF.

The Commission did not issue any second requests under s 104 of the LECC Act during the reporting period.

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## Other matters raised as a result of oversight

# Case study | Strip search in NSWPF cells (EXT2020-4210)

In May 2021, the Commission finalised a review of a misconduct matter that resulted in not sustained findings against the NSWPF subject officers. While the Commission was satisfied with the NSWPF misconduct investigation it nonetheless raised some concerns and questions as to whether the Command needed to update procedures.

The matter related to Corrective Service NSW officers attending the cell area and strip searching an inmate that they believed had been remanded in custody<sup>4</sup>. One of the issues was that the individual was in police custody at the time of being strip searched and had not been transferred into the custody of Corrective Services. While being strip searched it was identified that the person had in fact been granted bail by the courts.

The Commission asked the

Commander whether they had considered a need to clarify or update procedures around the transfer of inmates into the custody of Corrective Services, indicating:

“The concern for the Commission is that Corrective Services don’t have power to strip search (or even generally search) individuals until they are in their custody, and it appears that they were able to take, and strip search the complainant without that custody being transferred from police. With the relative ease that this occurred it may have been a common practice, and may be one that has developed over time to expedite the transfer process, but does not appear to be compliant with the two relevant legislations”

Following further review, the Commander took positive and timely steps to prevent a reoccurrence. This

included communications with Corrective Services in order to remind them of their obligations to present themselves to the custody manager on arrival, and prior to interactions with inmates. A large sign was also affixed to the doorway leading into the cells reminding staff of this obligation.

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4 The person had been granted bail by the court and was awaiting the formal processing of documentation.

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# Case study | Police Dogs SOPS (LMI1702925 and MIR2021-0212)

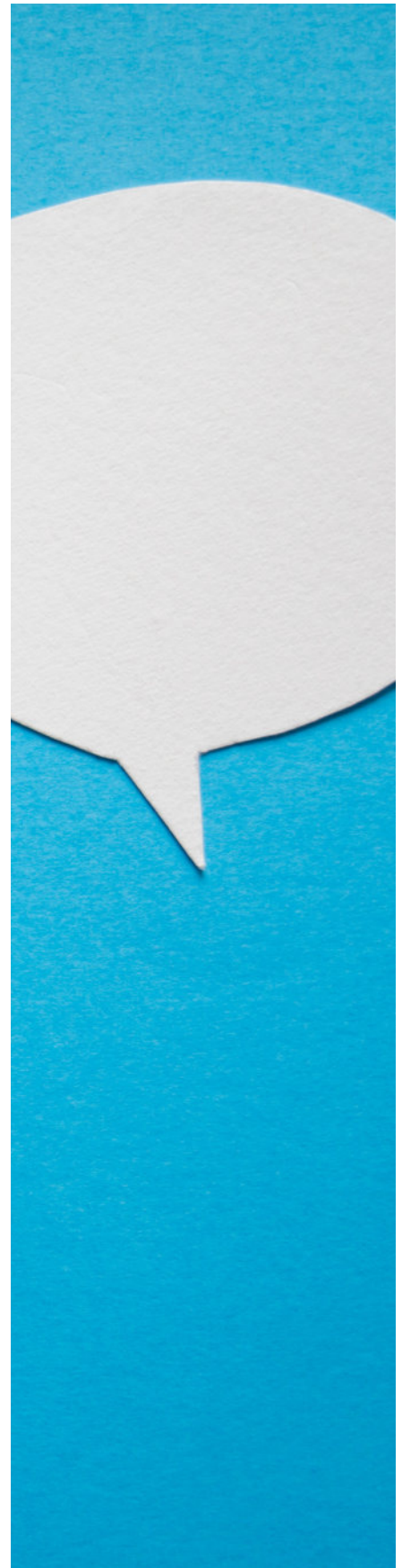
Last year the Commission reported on a matter (LMI1702925) in which it raised some policy considerations and recommendations. These primarily related to protocols around the use of general purpose dogs to locate people that are not offenders and may have mental health concerns, drug induced issues or experiencing medical conditions such as dementia, Alzheimer's and autism. The NSWPF responded in November 2020 that they were in the process of revising the General-Purpose Manual.

In March 2021, the Commission identified another misconduct matter (MIR2021-0212) which had similar issues to the earlier matter. In July 2021, the Commission sent correspondence to the NSWPF requesting further information about the status of the General-Purpose Manual.

In December 2021, the Commission was given a copy of the updated

General-Purpose Manual and provided with details of the improvements to the Manual and associated training. Amongst other things the new manual included a module addressing Mental Health and Vulnerable Persons, while the training also included mental health training to all operational general purpose dog handlers.

The NSWPF response to the concerns raised by the Commission are positive.





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# Section 134 reports

The Commission provided the Minister, the Commissioner of Police and complainant with one report, pursuant to s 134 of the LECC Act, relating to its oversight of NSWPF misconduct investigations.

## **Report on the monitoring of misconduct matter investigation EXT2020-0962**

In February 2020, a complaint was submitted to the Commission from a solicitor representing the complainant. This complaint indicated that in March 2018, while waiting at a Sydney metropolitan light rail station, the complainant was approached by several police officers and questioned for several minutes in a sarcastic tone. The complaint further indicated that after repeated questioning, the complainant was pushed and punched by one of the police officers and that he and his vehicle were searched by the police.

After police left, the complainant attended the nearest police station and attempted to make a complaint. The complainant alleged that officers told him that a complaint could not be taken.

The Commission assessed the complaint and determined that it was not a matter to be investigated by the Commission and referred it to the NSWPF. The NSWPF triaged the complaint and declined to investigate, indicating that the incident occurred outside of the Command's area of responsibility, there were no records of the incident in COPS, the description of officers was not consistent with usual deployments in the PAC and the incident occurred 2 years earlier.

Following further correspondence from the complainant's solicitor the Commission requested the NSWPF provide additional information to the solicitor. Following receipt of the additional information the legal representative made further representations to the Commission, which resulted in the Commission undertaking its own COPS audit. That audit identified numerous officers undertaking COPS searches on the complainant and his vehicle. As a result, the Commission issued a request to the NSWPF under s 99(3) of the LECC Act to investigate the complaint. The Commission also commenced monitoring the investigation under s 101 of the LECC Act.

Two separate investigations were undertaken. The first investigation related to officers attached to the Command where the complainant attempted to make a complaint. While several officers could not recall the complainant, the Sergeant indicated that their normal practice is to tell complainants to put their complaints in writing. Not sustained findings were made for this investigation, but officers were reminded of obligations to report misconduct and the importance of record keeping.

The second investigation looked at the initial stop and search of the complainant. Notebooks for eleven officers were obtained and none contained a record the incident. Numerous police were required to formally

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respond to the allegations and three officers were interviewed. None of the officers had a recollection of the incident.

The investigation concluded that there appeared to be sufficient evidence to indicate there was an interaction between the NSWPF and the complainant. Not sustained findings were recommended for the original allegations, as it could not be determined who undertook what actions given the passage of time and lack of evidence. The investigator considered there was a concern that three officers failed to make sufficient records to justify the COPS accesses. These recommendations were referred to the two Commanders that were responsible for the subject officers. One Commander made sustained findings against two officers, while the other Commander deemed that it was not misconduct and made a not sustained finding. Regardless, the management action for all officers was similar. That being advice and guidance.

In the s 134 report, the Commission made several recommendations relating to:

- a. Making identical findings for the two officers that were both present at the incident.
- b. Ensuring employees are reminded of responsibilities in undertaking inquiries in response to Information Access Applications, or properly communicating the inquiries undertaken.
- c. Providing greater support for the making of complaints to people attending police stations to report misconduct.
- d. Consideration be given to implementing a procedure to ensure greater consistency

and collaboration between Commands dealing with outcomes from the same complaint.

A summary of the report, including the recommendations and response by the NSWPF, will be published on the Commission's website.

# Monitoring

The Commission may choose to monitor the carrying out of a misconduct investigation being conducted by the NSWPF or the NSWCC if it is of the opinion that it is in the public interest to do so, pursuant to s 101 of the LECC Act. That monitoring provides real-time oversight of misconduct investigations.

When monitoring a misconduct investigation, the LECC Act allows the Commission to be:

- i. present as an observer during interviews,
- ii. confer with police officers about the conduct of the investigation; and
- iii. request the provision of reports on the progress of the investigation.

On 1 July 2020 the Commission and the NSWPF agreed to guidelines regarding the monitoring of Part 8A of the *Police Act 1990*, misconduct matter investigations.

As of 30 June 2022, the Commission was actively monitoring 11 NSWPF misconduct matter investigations in accordance with s 101 of the LECC Act.

|  | 2019-20 | 2020-21 | 2021-22 |
|--|---------|---------|---------|
| On hand monitoring matters at commencement of reporting year | 15      | 11      | 11      |
| New monitoring matters commenced during reporting year       | 9       | 23      | 20      |
| Total monitored by the Commission during reporting year      | 24      | 34      | 31      |
| Finalised monitoring matters during the reporting year       | 13      | 23      | 20      |
| On hand monitoring matters as of end of reporting year       | 11      | 11      | 11      |

Misconduct investigations monitored by the Commission during the reporting period included allegations of:

1. Use of force during the arrest of a young Aboriginal man in Surry Hills on 1 June 2020 (MIR2020-0655)
2. Use of force during the arrest of a man on the Central Coast (EXT2020-4139)
3. Providing false evidence during criminal proceedings (EXT2021-2467)
4. Excessive use of force and unlawful arrest of producer for YouTube channel 'FriendlyJordies' (MIR2021-0798)
5. Use of force against a transgender woman in custody at Surry Hills (MIR2021-0851)
6. Unreasonable use of discretion and excessive use of force in responding to a noise complaint in December 2020 (EXT2021-0532)
7. Excessive use of force against an Aboriginal man on New Year's Eve (EXT2020-0091)
8. Assault by an off-duty police officer

in June 2021 (MIR2021-0812)

9. Unlawful disclosure of information (EXT2021-0213)
10. Pervert the course of justice, unlawful arrest and use of force in relation to the arrest and prosecution of a female (MIR2021-1601)
11. Inadequate investigation into reported domestic violence (MIR2022-0223)

The Commission exercises varying levels of monitoring and each matter is dependent upon many individual factors. Regardless of the type of monitoring undertaken, the Commission encourages the relevant Commands to provide the investigation report in a timely manner to allow the Commission to review it and, if necessary, raise any concerns prior to the subject officers and complainants being notified of the outcomes. This timely interaction provides greater fairness to subject officers and complainants and may prevent the Commission from having to send a formal notice under s 104 of the LECC Act request for a further investigation, and for that investigation to be reopened.

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# Referrals to the integrity division

Having one agency with responsibility for overseeing NSWPF misconduct investigations and undertaking investigations into serious misconduct has provided several opportunities for the internal referral of matters to the Integrity Division. These referrals have included officers with concerning complaint histories, as well as the takeover of NSWPF misconduct investigations where the Commission had serious concerns about the outcomes and considered there was a public interest for further investigation. The integrity division may conduct preliminary enquiries into the referred information and may commence an investigation under Part 6 of the LECC Act.

The Commission's oversight team referred one matter for investigation takeover by the integrity division as a result of deficiencies identified in the original NSWPF investigation.

## Witness protection

The NSWPF administers the Witness Protection program, which is governed by the *Witness Protection Act 1995* (NSW). The aim of the program is to protect the safety and welfare of significant crown witnesses and others who give information about criminal activities.

The Commission has three primary areas of

responsibility under the *Witness Protection Act 1995* (NSW). These responsibilities relate to appeals by the witness protection applicant or participant against a decision of the Commissioner of Police relating to -

- i. non-inclusion onto the witness protection program,
- ii. suspension from the witness protection program; and
- iii. termination from the witness protection program.

The Commission did not exercise any functions under the *Witness Protection Act 1995* (NSW) during the reporting period.

## Audit

The Commission's audit team consists of two staff and has a responsibility to keep under scrutiny the systems established for dealing with misconduct matters within the NSWPF and NSWCC.

### Number of audits completed and outcomes

NSWCC: The Commission conducted one on-site inspection of the NSWCC, in accordance with s 32 of the LECC Act, in May 2022.

NSWPF: The Commission conducted a targeted desktop audit relating to the NSWPF complaint handling system. This desktop audit considered the handling of complaints relating to domestic violence in a regional police district.

The Commission has not produced any reports in accordance with s 32(5) of the LECC Act.

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# Critical incidents

The Commission has the power to independently oversight and monitor the investigation of critical incidents by the NSWPF if it decides that it is in the public interest to do so. The Commission's policy is to monitor all declared critical incidents. The Commission's role in monitoring is important and ensures public confidence that the NSWPF investigate critical incidents in a competent, thorough and objective manner.

The Commission's critical incident monitoring team consists of three investigators and provides 24 hour on-call coverage for notification and attendance every day of the year.

Where a critical incident results in the death of a person the Coroner is required to hold an inquest into the manner and cause of death. In contrast, critical incidents which result in serious injury to a person are not subject to the Coroner's jurisdiction but most often are linked to criminal proceedings.

In February 2018 the Commission entered into formal arrangements with the NSWPF regarding the monitoring of critical incident investigations. In October 2018 the Commission also finalised a Memorandum of Understanding with the NSW State Coroner in relation to monitoring of critical incident investigations which are also subject to the coronial jurisdiction. These agreements will be refined over time and the Commission will continue to work cooperatively with the NSWPF, the NSW Coroner and the Crown Solicitor's office in relation to our critical incident monitoring function.

During 2021-22 the Commission monitored the NSWPF investigation of 129 critical incidents. Of these, 36 were newly declared critical incident investigations and 86 were still ongoing at 30 June 2022.

The Commission commenced monitoring all 36 critical incident investigations declared in 2021-22 from the time the Commission was notified of the declarations.

During 2021-22, the NSWPF ceased four critical incident investigations shortly after declaration as the injuries were either less serious than first considered or preliminary investigations indicated that there was no relationship between the injury to the person and the actions of police. The Commission ceased monitoring a further five declared critical incidents. These incidents involved suicides in which the Commission considered there was no significant causal connection between the actions of police and the death or serious injury. The NSWPF continue to investigate these matters as critical incidents.

## Critical incidents declared

|   | 2019-20 | 2020-21 | 2021-22 |
|---|---------|---------|---------|
| Declared by NSWPF   | 27      | 27      | 36      |
| Monitoring commenced by the Commission                    | 27      | 27      | 36      |
| Attended location   | 16      | 13      | 23      |
| Ceased being classified as critical incident by the NSWPF | 1       | 2       | 4       |
| Finalised investigation by the NSWPF                      | 18      | 21      | 13      |
| Finalised by the Commission                               | 18      | 21      | 22      |

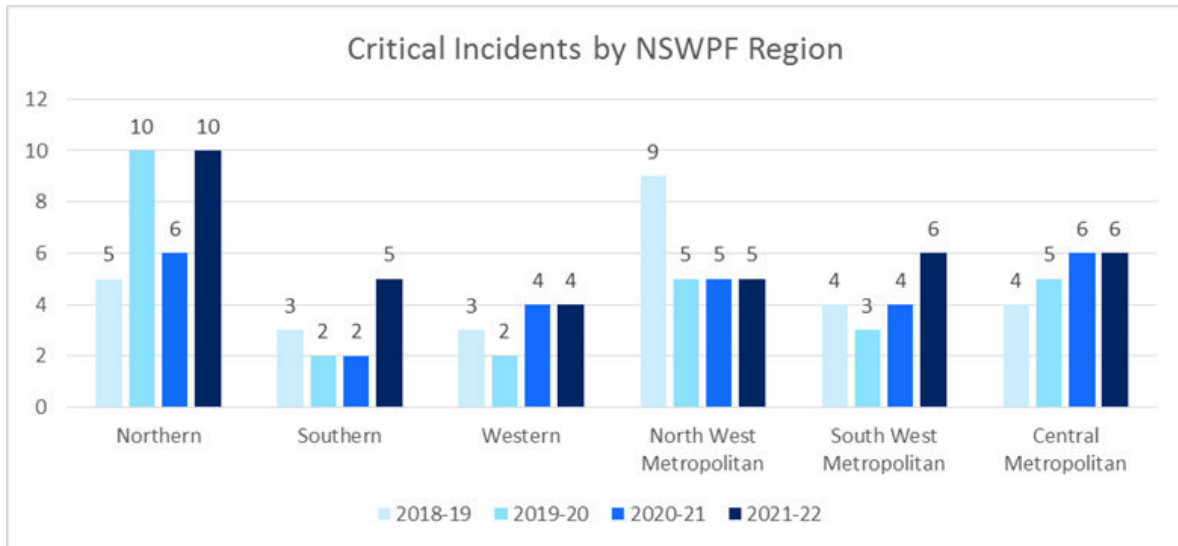
## Features of critical incidents

|                | 2019-20 | 2020-21 | 2021-22 |
|----------------|---------|---------|---------|
| Death          | 22      | 16      | 18      |
| Serious Injury | 5       | 11      | 18      |
| TOTAL          | 27      | 27      | 36      |

## Categories of critical incidents\*

|   | 2019-20 | 2020-21 | 2021-22 |
|---|---------|---------|---------|
| Death or serious injury arises from a discharge of a firearm  | 5       | 6       | 6       |
| Death or serious injury arises from the use of defensive equipment  | 0       | 1       | 0       |
| Death or serious injury arises from the application of physical force   | 0       | 0       | 3       |
| Death or serious injury arises from the use of a police vehicle   | 4       | 7       | 11      |
| Death or serious injury arises while the person is in custody or while escaping or attempting to escape from custody                        | 0       | 1       | 1       |
| Death or serious injury appears likely to have resulted from any police operation   | 17      | 12      | 15      |
| Declared under s111(b) of the LECC Act – the Commissioner of Police has other grounds for considering it is in the public interest to do so | 0       | 0       | 0       |
| TOTAL   | 26#     | 27#     | 36#     |

\*These categories are drawn from ss 110, 111, of the LECC Act. # Critical incident investigations ceased by the NSWPF are excluded.



## What is a critical incident?

A critical incident is an incident involving a police officer or NSWPF employee that results in death or serious injury to a person. It must also be declared to be a critical incident by the Commissioner of Police or her delegate. The LECC Act provides guidance about the features of a critical incident. These include incidents where death or serious injury arises:

- from the discharge of a firearm by a police officer,
- from the use of force or defensive equipment by a police officer,
- from the use of a police vehicle by a police officer,
- while in police custody or while attempting to escape police custody; or
- during any police operation where the injury or death is likely to have resulted from the police operation.

There is no requirement for the

Commissioner of Police or her delegate to declare an incident that contains these features, to be a critical incident. The Commission has no jurisdiction to monitor a police investigation of a critical incident unless, or until, a declaration is made.

## Notification to Commission

The NSWPF is required to notify the Commission immediately after the declaration of a critical incident.

The average time between the declaration of a critical incident being made and the Commission being notified of the critical incident was around 58<sup>5</sup> minutes during the reporting year. This is similar to the last reporting year. The earliest notification to the Commission was approximately 15 minutes after declaration.

The time taken to notify the Commission of the critical incident declaration has had no tangible impact on the Commission's functions in monitoring the investigation.

<sup>5</sup> This excludes two critical incidents. One outlier in which the Commission was not notified until 9 hours and 35 minutes after the declaration, and another incident in which the timings were not specified.

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## Future report on critical incident monitoring

The function of an independent agency monitoring critical incident investigations commenced upon the establishment of the Commission in 2017. Since this time the Commission has monitored 156 critical incidents investigations.

The Commission is currently drafting a report to contain relevant information and observations from the monitoring of critical incidents between 2017 and 2022. This report is anticipated to be presented to Parliament, pursuant to s 138 of the LECC Act, prior to the end of 2022.

## Critical incident investigations

Critical incident investigations are lengthy and often complex investigations. Once declared, critical incidents are investigated by the homicide squad or a criminal investigation team from a police area command or district that is independent from the command in which the incident occurred. In addition, every critical incident investigation is reviewed by the NSWPF Professional Standards Command.

A critical incident investigation is broader in scope than a standard criminal investigation. The Senior Critical Incident Investigator (SCII) is required to consider the actions of police officers leading up to the incident as well as at the time of the incident. Investigating police must also consider the need for any changes to policies, practices, or procedures that arise during the critical incident investigation, in order to mitigate future risks of a similar incident occurring in the future.

The NSWPF keep critical incident

investigations open until all related coronial and criminal proceedings have been finalised. Nearly all critical incident investigations have either related coronial or criminal proceedings, or both, attached. Some of these criminal proceedings involve the most serious of criminal charges such as murder and are expected to take several years to be finalised by the courts.

On average, it has taken 2 years and 3 months for critical incident investigations involving a coronial inquest, and 1 year and 6 months for critical incident investigations involving any other court outcome for those court proceedings to be finalised. It has also taken on average, another 5 months for the NSWPF to finalise critical incident investigations reports following that court process.

The Commission also continues to see some delays in the provision of final critical incident investigation reports to the Commission, which impacts upon the Commission's completion of advice under s 117 of the LECC Act.

In highlighting the time taken until the finalisation of critical incident investigations, during the report period the Commission received a finalised report from a 2017 critical incident. While the Commission was ultimately satisfied the investigation was fully and properly investigated, and it also acknowledges that the investigator had another very high-profile investigation, it still took two years from the inquest findings being handed down until the report was finalised and provided to the Commission.



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## Section 113 of the LECC Act

A critical incident investigation is to include an examination on any of the following that are applicable:

- a. the lawfulness and reasonableness of the actions of the members of the Police Force involved in the critical incident,
- b. the extent to which those members complied with relevant legislation and policies, practices and procedures of the NSWPF,
- c. any complaint about the conduct of those members that has been referred to the senior critical incident investigator,
- d. any evidence of officer misconduct by those members,
- e. the need (if any) for changes to relevant policies, practices and procedures of the NSWPF,
- f. any systemic, safety or procedural issues arising from the actions of those members.

On occasions the NSWPF may deal with one or more of the above separately from the investigation by the senior critical incident investigator. The Commission still considers the handling of those aspects when it provides advice as to whether an investigation has been fully and properly conducted.

### Monitoring critical incident investigations

The LECC Act provides that Commission investigators may be present as observers at interviews conducted in relation to the

critical incident, attend the location of critical incidents, and be provided access to all documents (including interview recordings and transcripts) obtained during the investigation when monitoring critical incidents.

Commission investigators have monitored the investigation of all critical incidents declared in 2021-22, have attended around 64% of critical incident locations and generally have been provided access to all documents within a reasonable timeframe. However, unlike monitoring functions outlined within Part 7 of the Act (oversight of misconduct matter investigations), consent must be provided by the person being interviewed and, the senior critical incident investigator, to allow Commission investigators to be present as an observer during an interview, either in person or by audio visual link.

In every critical incident investigation to date, involved police officers have refused consent for the Commission investigator to be present or to remotely observe their interviews. This appears to be a consistent and state-wide position taken by police officers involved in critical incidents. The power to observe interviews of involved officers in critical incident investigations, as it currently stands in the LECC Act, appears to be an illusory power. As the Act does not require that a reason be provided for refusal, the reasons that involved police officers choose to refuse are unclear.

During monitoring critical incident investigations, the Commission will raise questions or potential concerns with the NSWPF at an early stage. These are normally dealt with by the NSWPF prior to finalisation of the investigation.

At the conclusion of critical incident investigation by the NSWPF, the Commission is required to notify the NSWPF (and Coroner where relevant) either that it considers the investigation to have been fully and properly conducted, or, that it considers an aspect of the investigation was inappropriate.

### Misconduct allegations relating to critical incidents

In 2021-22 the Commission consulted with the NSWPF, pursuant to s 119(3) of the LECC Act, in relation to one complaint about the investigation of a critical incident. The Commission was satisfied with the NSWPF response, as well as that the complaint did not require further investigation.

Throughout the course of critical incident investigations, the monitoring team and/or the NSWPF may also identify issues not directly related to the critical incident being investigated which could be considered to amount to officer misconduct. Where these issues have been raised, they are generally dealt with by the NSWPF as separate misconduct matter investigations under Part 8A of the *Police Act 1990*. The Commission oversees these investigations

in accordance with its Part 7 of the LECC Act oversight function.



### Advice relating to the investigation of critical incident investigation under s117

|  | 2021-22 |
|--|---------|
| Advice after finalisation of critical incident investigation that it was fully and properly conducted (s 117(1)(a) of the LECC Act)                            | 12      |
| Advice upon Commission's cessation of monitoring that the critical incident investigation was being fully and properly conducted (s 117(1)(a) of the LECC Act) | 5       |
| Advice that an aspect of the critical incident investigation was inappropriate (s 117(1)(b) of the LECC Act)   | 1       |

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## Case study

# Advice that an aspect of the investigation was inappropriate (SF Gari)

In November 2018 a critical incident was declared in relation to serious injuries sustained following a police pursuit. Early in the investigation the SCII identified several breaches of the NSWPF Safe Driving Policy (SDP).

In February and March 2019, the Commission made several enquiries into what actions had been taken in relation to the breaches of the SDP, and copies of all the relevant material. The Commission was notified on several occasions that involved officers had had their driving dealt with.

In March 2019, the SCII's report was made available to the Commission, which identified eight breaches of the SDP. It also indicated that the involved officers had not already been dealt with for the breaches.

The Commission made further enquiries into the

actions taken in relation to the breaches of the SDP. The PSC review officer indicated that it was their belief that some officers had received training or had been decertified, and that the breaches were not matters that should be dealt with under Part 8A of the *Police Act 1990*, as misconduct.

In September 2019, the Commission was notified that the Safe Driving Panels had convened, and findings were made. Management action, of advice and guidance, was provided approximately 9 months after the breaches, and no interim risk management was taken during the intervening period. The advice also indicated that there was no intention to conduct a Part 8A investigation.

The Commission considered the breaches should have been recorded under Part 8A as misconduct matters. In January 2020,

the Region's Professional Standards Manager also raised concerns around the handling of the matter and strongly recommended that a Part 8A misconduct matters be created.

The Commission made numerous inquiries to identify why no action was taken for 9 months. However, there were limited available records to identify the reasons.

In December 2021, the Commission provided notification that it intended to provide advice under s 117(1)(b) of the LECC Act, that an aspect of the investigation was inappropriate. Namely:

1. failure to take interim management action in relation to identified breaches of the Safe Driving Policy; and,
2. delay in creating a record in IAPro in relation to identified

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breaches of the Safe Driving Policy.

The Commission also noted that these issues did not appear to be the fault of the Senior Critical Incident Investigator, who raised the issue at an early stage, but were more a systemic issue.

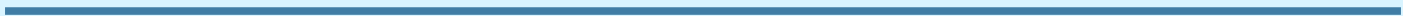
The Commission later issued the advice under s 117(1)(b) of the LECC Act, and made the following recommendations:

1. the NSWPF consider introducing safeguards, to ensure that action is taken in a timely manner to mitigate the risk of future breaches of the Safe Driving Policy. These safeguards might include a clarification of the procedure that should be followed when breaches of the Safe Driving Policy are identified arising from a critical incident
2. the NSWPF consider introducing an objective test and guidelines to assist investigators in determining when a breach of the Safe Driving Policy meets a threshold such that it amounts to misconduct or otherwise.

The NSWPF responded to the recommendations, indicating that they had been referred to the Traffic and Highway Patrol Command, and that the Command was in the process of undertaking a comprehensive review of the SDP. The recommendations, and other concerns raised, will be considered during that review, which is expected to be completed in late 2022. The Commissions has advised that it looks forward to a further response to the recommendations after the SDP review has been completed.







# 7 Crime Commission

In November 2017, the Commission entered into an agreement and guidelines with the NSWCC in accordance with s 14 of the LECC Act. These guidelines outline the categories of misconduct matters that are required to be notified to the Commission, and upon which the Commission primarily focusses its oversight functions.

In June 2019 these Guidelines were amended to clarify that the reporting of notifiable misconduct matters pursuant to the s14 Guidelines related only to complaints involving employees of the NSWCC. Alleged misconduct relating to employees of the NSWPF was still required to be reported to the Commission in accordance with s 33 of the Act.

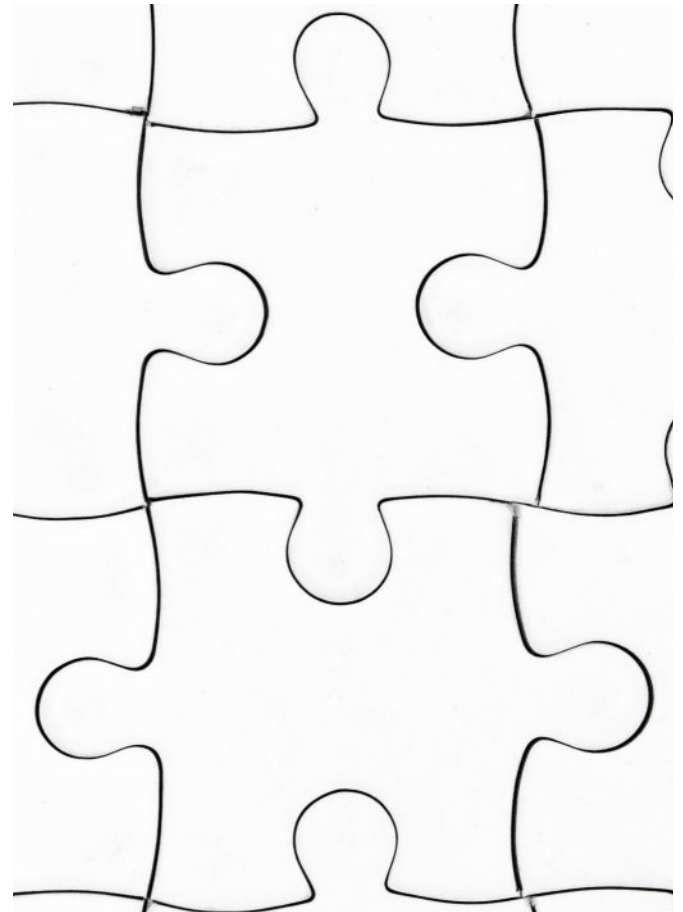
In addition, the Commission issued s 33 Guidelines, indicating the types of complaints about the NSWPF that are required to be reported to the Commission by the NSWCC.

During the reporting period, the Commission assessed three misconduct matters involving members of the NSWCC referred by the NSWCC under the s 14 Guidelines, two misconduct matters involving members of the NSWPF referred by the NSWCC under the s 33 Guidelines, one misconduct matter involving members of the NSWCC referred by the ICAC and two complaints about the NSWCC made directly to the Commission.

There were two full investigations and no preliminary enquiries conducted within the 2020-21 period.

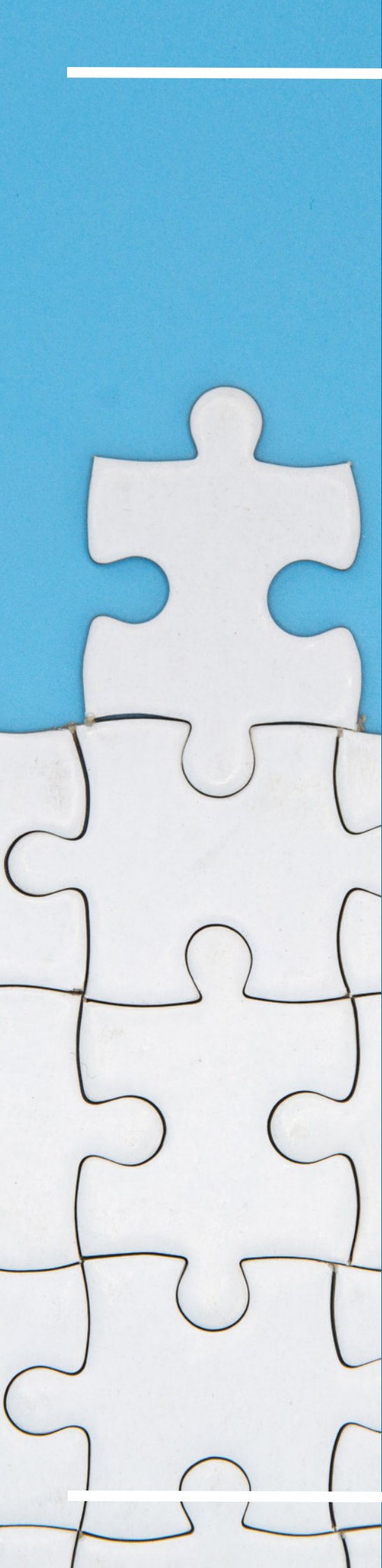
**Operation Tabina** was an investigation conducted by the Commission into an allegation of serious misconduct by a senior officer within the NSWCC. The Commission provided material and conducted extensive consultation with the Commissioner of the NSWCC

**Operation Broadstone** was an investigation conducted by the Commissions into allegations of serious misconduct by staff of the NSWCC. The investigation did not identify any misconduct.









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# 8

Prevention  
and  
education

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# Overview

The Commission's Prevention and Education team undertakes research and investigations that focus on systemic misconduct or maladministration in the NSWPF and NSWCC, such as conduct or practices which might be unlawful or unreasonable.

The team considers the practices and processes of these agencies, as well as compliance with legislation and policies. The team makes recommendations aimed at improving the way the agency can identify and prevent misconduct, unlawful actions and unreasonable practices. The recommendations address issues such as the clarity of policies and instructions given to officers, the level of supervision officers receive and officer training and education.

In addition to the major projects outlined below, the Prevention and Education team significantly progressed a review of 501 complaints about domestic and family violence matters that were made in the four years up to 1 July 2021. The NSWPF has a range of comprehensive policies and procedures which provide detailed instructions to police officers responding to domestic and family violence incidents with a view to arresting and charging offenders. The review aims to identify potential systemic issues in the way the NSWPF manages and investigates D&FV incidents. The review looks at two categories of complaints:

- matters where officers were involved in D&FV incidents; and
- matters where officers have been

investigated for conducting inadequate or deficient investigations into reported D&FV incidents.

The Commission acknowledges that the NSWPF is preparing to significantly reform the way it deals with domestic and family violence matters. The Commission will present its analysis of complaints to the NSWPF in 2022-3. We hope this work will assist the NSWPF to strengthen its processes for dealing with domestic and family violence.

The Commission had hoped to undertake a further review of changes the NSWPF introduced to its misconduct matters management model following our July 2020 report Operation Shorewood in 2021-22. That report considered the way the NSWPF deals with complaints about workplace bullying and harassment. While this did not transpire, we have started analysis of complaints registered by the NSWPF between 1 July 2021 and 1 July 2022 about such workplace equity matters. We anticipate finalising this work in 2022-23.

This year, the work of the team culminated in two significant reports tabled in Parliament. These dealt with the effectiveness of conduct management plans on the use of covert search warrants and preventative

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detention orders under the *Terrorism (Police Powers) Act 2002* (NSW), for the period 1 January 2017 to 30 June 2020. The Commission also published a discussion paper on review of the amendments to the consorting law under Part 3A Division 7 of the *Crimes Act 1900*. These reports are discussed below along with updates on some of the other major project work conducted by the Prevention team.



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# Operation Tusket: the NSWPF's administration of the child protection register

In 2021-22 the Commission continued to monitor progress towards reform of the *Child Protection (Offenders Registration) Act 2000* (NSW) (CPOR Act).

It has been three years since the Commission published its final report of its investigation into the administration of the Child Protection Register (Operation Tusket). In that report the Commission found that the NSWPF had made over 700 errors in implementing the Register. These errors had resulted in child sex offenders being unmonitored in the community, and in other cases people being wrongly convicted, and even unlawfully imprisoned.

Operation Tusket established that one of the main reasons for these errors was that the CPOR Act is so complex and ambiguous in key aspects that it creates an inherent risk of errors occurring in the Register, which police cannot mitigate. The Commission's report contained detailed analysis of the problems with the legislation. In response to the Commission's report the Commissioner of Police described the legislative framework for the Register in the CPOR Act as 'unworkable' and agreed with the Commission that a new framework is required.

Since the Commission's report the NSWPF has performed a significant amount of work

in developing a proposal for reform of the CPOR Act, informed by our report.

In June 2021 the Commission published a Supplementary Report on Operation Tusket. We noted in that report that the NSW Government had acknowledged the work being done by the NSWPF to develop a proposal for law reform but had not made any commitment to amend the Act.

On 16 February 2022 Chief Commissioner Blanch wrote to the Attorney General the Hon Mark Speakman SC MP to raise concerns that the fundamental problems with the CPOR Act had not been addressed.

In May 2022 the Deputy Premier the Hon Paul Toole MP wrote to the Commission in his capacity as Minister for Police and therefore the Minister responsible for the CPOR Act. He noted that the NSWPF's review of the CPOR Act was 'in its final stages and the Government is planning to consider its position on possible legislative changes later in 2022'.

The Commission met with members of the NSWPF in June 2022 to discuss the progress of the NSWPF's review of the CPOR Act.

On 24 August 2022 Chief Commissioner Johnson wrote to the Deputy Premier and the Attorney General to emphasise the need for prompt action to address the problems with the CPOR Act. The Chief Commissioner highlighted that the problems with the CPOR Act affect the administration of justice in several respects.

On 31 August 2022 the Deputy Premier stated in Parliament that the review of the CPOR Act was continuing. The Deputy Premier stated that the NSWPF was

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leading the work, but the Department of Communities and Justice and the Attorney General have been brought into the process. The Deputy Premier confirmed that fixing the problems with the CPOR Act is a high priority.

## Strip search inquiry

Following the Commission's final report of the Inquiry into NSWPF strip search practices, the NSWPF implemented a range of changes to both its procedures and officer training to improve strip search practices at music festivals. Recommendation 13 from the Commission's final report was that the NSWPF and the Commission collaboratively conduct an audit of strip searches occurring at music festivals as a means of evaluating the impact of the new Music Festivals Field Processing Form and pre-event education package. The NSWPF agreed to this recommendation on 16 August 2021.

Originally the Commission recommended that the audit should commence in December 2021. However, the impact of Covid-19 outbreaks resulted in disruptions to many music festivals, and the NSWPF and the Commissions agreed to postpone the audit. Work planning this audit has recently commenced, and the results will be reported in 2022-23.

The response from the NSWPF and Minister for Police to all the recommendations contained in the final report of the Inquiry into NSWPF strip search practice are on the Commission's website.

## Operation Tepito: Application of the suspect targeting management plan to young people

The Suspect Targeting Management Plan (STMP) is a proactive policing policy applied to adults and young people, adopted by the NSWPF in January 2000. It seeks to reduce serious crime in the community by targeting repeat offenders known to local police. The Commission commenced an investigation into the use of the STMP on people under 18 years of age in late June 2018, publishing an interim report in February 2020. The interim report is available on the Commission's website.

The interim report analysed how the STMP had been applied to a state-wide cohort of more than 400 children and included 15 recommendations for the NSWPF. In November 2020 the NSWPF implemented a re-designed policy, called 'STMP III' across the state, in response to the Commission's report.

In mid-2021, the Commission commenced analysis of a cohort of all people under the age of 18 who were selected for STMP III targeting in the first six (6) months of its operation – a total of 133 young people. The Commission has conducted detailed analysis of the information held on NSWPF systems. This has allowed the Commission to assess compliance against the STMP III policy, looking at the quality of the processes used by police and the types of interactions

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between police and young STMP targets over that period. It has also allowed us to consider whether the changes introduced under STMPIII adequately address the concerns the Commission identified in its interim report. The Commission has also received submissions from a range of external stakeholders including Aboriginal Legal Service, the Youth Justice Coalition, Legal Aid NSW and the Public Interest Advocacy Centre.

The Commission's analysis was ongoing throughout 2021-22 and suggests that several of the concerns previously identified by the Commission remain under STMPIII. In September 2022 the Commission provided the NSWPF with its observations along with a range of questions aimed at gauging what further action the NSWPF may take to address those concerns. The Commission is working towards finalising its report under Operation Tepito and hopes to publish it in early 2023.

## Conduct management plans

In October 2021 the Commission published its report on the Review of the effectiveness of NSWPF Conduct Management Plans. Conduct Management Plans are a framework for the use of management action to modify officers' behaviours. The Commission's focus was on Conduct Management Plans implemented after the resolution or investigation of officer misconduct.

The Commission reviewed all officers who had been placed on a Conduct Management

Plan between January 2017 and January 2018, tracking any previous or subsequent misconduct by those officers. Some important issues identified in the review include:

- over 40 per cent of officers received further sustained findings from complaints after having been placed on a Conduct Management Plan; 13 per cent of them for similar misconduct,
- several officers continued to engage in misconduct while they were still on a Conduct Management Plan,
- the implementation and finalisation of a Conduct Management Plan can take many months, or even years.

The Commission emphasised that improving the timely implementation of Conduct Management Plans and transparent record keeping practices are key to improving the effectiveness of Conduct Management Plans.

In November 2021, the NSWPF revised its Conduct Management Plan Guidelines and made significant changes to its misconduct management model including improvements to the timeliness of investigations and a focus on the remediation of officers.

Of the 10 recommendations in the report, the NSWPF supported or revised its Guidelines to address recommendations 1, 2, 6, 8 and 10. The NSWPF's responses to each recommendation is contained in our report, which is available on the Commission's website. The Commission will consider the impact of the new Guidelines, specifically its changes to our ongoing work overseeing

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the NSWPF’s investigation of complaints about misconduct of its officers.

## Use of Force reporting

In March 2022 the Commission presented the NSWPF with a draft report presenting analysis of the way the NSWPF records and reports on use of force. The project consisted of an information analysis examining key Standard Operating Procedures, instructional documents and training material provided by the NSWPF in relation to use of force reporting, as well as a data analysis of 286 COPS events. Between May 2020 and May 2021, the Commission’s Complaint Action Panel identified these COPS events through its review of complaints where the category was listed as “excessive use of force.”

Use of force was under reported in the sample of matters reviewed by the Commission. The draft report contains several proposed recommendations aimed at improving the reliability of data the NSWPF collects about officers’ use of force, as well as improving the training, policy and governance processes surrounding the reporting of the use of force.

In July 2022, in response to the draft report, the NSWPF created a new Use of Force Manual which aims to provide some increased instruction around when the use of force is generally deemed appropriate, as well as how such force is to be recorded in police databases. In late September 2022 the NSWPF responded to the proposed recommendations in our draft report,

indicating a range of policy guidance and training would be implemented in response to our analysis. We will work with the NSWPF to ensure that policy and training for police about how to record use of force is clear and consistent. The Commission aims to finalise its report in late 2022.



# Legislative reviews

## **Terrorism (Police Powers) Act 2002 (NSW) - Covert search warrants and preventative detention orders**

On 29 June 2022 the Commission presented the Attorney General and Minister for Police with its report on the use of covert search warrants and preventative detention orders under the *Terrorism (Police Powers) Act 2002* (NSW) (TPP Act), for the period 1 January 2017 to 30 June 2020 (the reporting period). The Attorney General tabled the report in Parliament on 1 July 2022. The report and a fact sheet are available on our website.

During the reporting period the NSWPF executed four covert search warrants to prevent terrorist acts from being committed. The NSWPF did not use the preventative detention powers in the reporting period.

The Commission’s review revealed that police did not comply with certain legal requirements when the covert search powers were used. Significantly, none of the occupiers whose premises were covertly searched by police received occupier’s notices after the searches as required under the TPP Act.

There were also several issues that arose in relation to the execution of the four warrants. For example, only one of the four covert searches was (partially) recorded on video. Also, during three of the covert searches police took DNA samples from the premises, or from items seized from the premises. The covert collection of DNA samples by police is currently unregulated in New South Wales.

Table: **Exercise of covert search warrant powers by NSWPF Jan 2017- June 2020**

| Warrant | Items seized? | DNA samples collected? | Re-entry of premises to return items? | Search recorded on video? | Occupier’s notice provided? |
|---------|---------------|------------------------|---------------------------------------|---------------------------|-----------------------------|
| 18-001  | Yes           | Yes                    | Yes                                   | No                        | No                          |
| 18-002  | Yes           | Yes                    | Yes                                   | No                        | No                          |
| 19-001  | No            | Yes                    | No                                    | Partially                 | Yes, but incomplete         |
| 19-002  | Yes           | No                     | Yes                                   | No                        | No                          |



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The Commission found that the policies the NSWPF had on file for using covert search and preventative detention powers had not been finalised, and both were out of date. Also, the NSWPF's forms for the use of the powers contained errors. Some of these errors led to police failing to comply with certain requirements in the TPP Act when exercising the covert search powers.

The Commission made 13 recommendations to prevent future issues with the use of the powers. Five of the Commission's recommendations were directed to Parliament and relate to consideration of legislative amendments.

The NSWPF stated it supported seven of the eight recommendations directed at police, including improving policies and forms and delivering training to officers. The NSWPF has updated its forms to fix the errors the Commission identified. In the Commission's next review under the TPP Act, due to commence in July 2023, the Commission will evaluate to what extent the NSWPF has implemented our recommendations.

Two of the recommendations the Commission made regarding law reform related to amendments to the TPP Act to ensure a person detained under a preventative detention order is permitted to contact the NSW Ombudsman, and that the person is informed of this fact by police.

Other recommended amendments related to the covert collection of DNA. The NSWPF informed the Commission that over the last couple of years a draft DNA Profiles and Forensic Procedures Bill has been developed. The Commission recommended amendments to the TPP Act and inclusion

of provisions in the draft DNA Profiles and Forensic Procedures Bill to ensure collection of DNA during a covert search is appropriately regulated and is included in the annual reports the NSWPF is required to provide to Parliament.

The Commission also recommended that Parliament consider repealing the preventative detention powers in the TPP Act. Police and others have long expressed concerns about the utility of the preventative detention powers. In 2016 the NSW Parliament introduced new pre-charge 'investigative detention' powers under the TPP Act which effectively make the preventative detention powers redundant. The Commission's review revealed that the NSWPF does not have appropriate policies, forms or inter-agency arrangements in place to support the use of the preventative detention powers and to ensure they would be used in accordance with the law. The powers are due to expire in December 2023. Given the NSWPF's lack of operational readiness to use the powers and the consequent risk of non-compliance with the unique requirements in the TPP Act and considering the investigative detention powers now available to police, the Commission recommended that Parliament consider repealing the preventative detention powers immediately.

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## Amendments to consorting powers used by the NSWPF

The Commission is reaching the final stages of its review of amendments to consorting laws under Part 3A of the *Crimes Act 1900* (NSW). The review considers the impact of the amendments from February 2019 to February 2022.

In October 2021, the Commission published a discussion paper analysing the use of the consorting powers over the first half of the review period. The discussion paper is available on the Commission's website. That discussion paper identified a range of issues, including the continued high representation of Aboriginal people in the number of consorting warnings issued, as well as several outstanding recommendations from the Ombudsman's earlier review of consorting laws. The Commission has also received submissions in response to the discussion paper.

The Commission has now received all the relevant information from the NSWPF regarding consorting warnings issued throughout the three-year period, along with body worn video for a select group of warnings issued. The Commission drew on the information collected during the review to provide the NSWPF with some suggestions for how its consorting standard operating procedures could be improved. Commission staff also met with Commanders, Crime Managers and other officers from a range of commands to discuss how they use the consorting laws within their commands.

The Commission hopes to finalise the review in late 2022.

## Report under section 870 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW)

The Commission is required to keep under scrutiny the exercise of powers conferred on police under Part 6A, *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (LEPRA).

Part 6A allows police to authorise the use of special powers to prevent or control large-scale public disorder. The special powers were created as a response to the Cronulla riots in 2005. They include powers to establish a cordon around a specified target area, or a roadblock in a specified target road. Part 6A also gives police special powers to do things in the target area that would ordinarily require a warrant or the formation of reasonable suspicion of criminal activity. For example, police may stop, search and detain vehicles and people, seize property and disperse groups.

In 2021-22, the NSWPF did not use the powers under Part 6A LEPRA. The powers have not been used since March 2011.



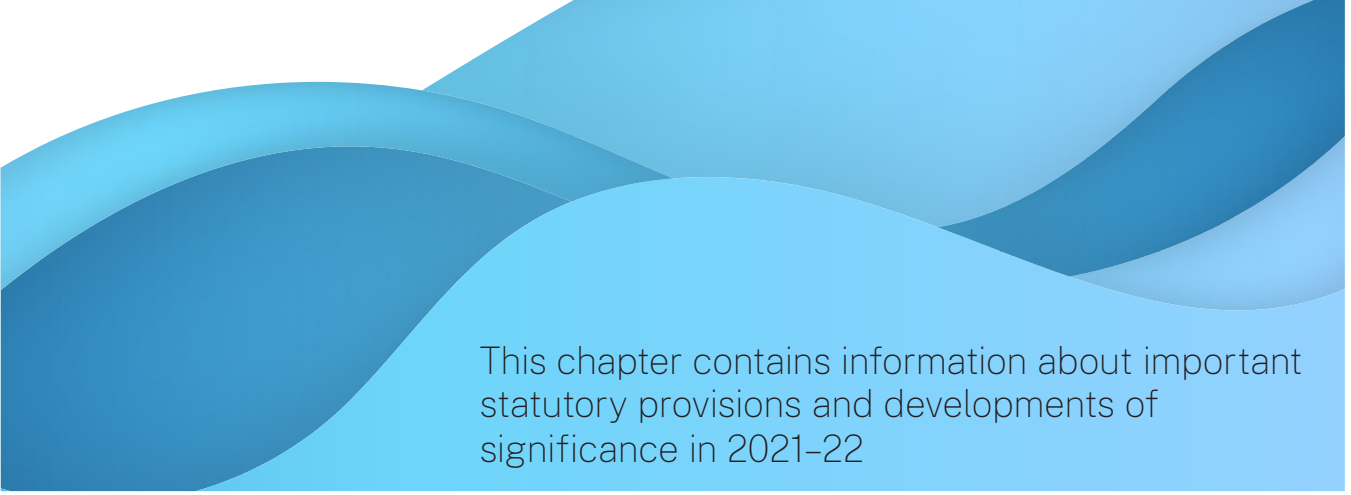
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# 9

Legal  
matters

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This chapter contains information about important statutory provisions and developments of significance in 2021-22

# Public Interest Disclosures Act 2022

The *Public Interest Disclosures Act 2022* (the PID Act) received assent on 13 April 2022. The current *Public Interest Disclosures Act 1994* will continue to operate for a period of 18 months following the date of assent to allow time for agencies to prepare for the implementation of the new Act.

While the objects of the new Act are generally the same as the current Act with respect to the handling of Public Interest Disclosures (PIDs), the new Act has been completely rewritten to ensure the Act is simpler and easier to navigate. It includes a new object to promote a culture in which public interest disclosures are encouraged. It simplifies the disclosure process to remove 'trip hazards' so that whistle blowers do not miss out on the protections of the Act due to technicalities in the current PID Act around who they make a disclosure to. It also strengthens the protections available for whistle-blowers, witnesses and those

investigating PIDs, and places more obligations on agencies to minimise the risk of detrimental action against a PID maker.

The NSW Ombudsman is providing support for NSW government agencies in preparing for the commencement of the new PID Act. The Commission is awaiting advice from the Ombudsman regarding the rollout of resources including public and agency guidelines and training material. The Commission will review its policies and procedures with respect to the handling of PIDS under the new Act during the 2022-2023 financial year to ensure compliance with the new Act from the time of its commencement towards the end of 2023.

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# Prosecution outcomes

## Operation Montecristo

Operation Montecristo was an investigation by the Police Integrity Commission ('the PIC') into allegations of fraudulent betting practices involving NSWPF officers and civilian professional gamblers. The investigation focused on the association of various officers of the NSWPF, including W and S, with a professional gambler identified as F.

The PIC held private and public hearings in November and December 2013 to examine whether the two police officers, or any other person associated with them, had been involved in police misconduct or criminal activity. Subsequently, the PIC sought the advice of the DPP in April 2015 in relation to the prosecution of the two officers, F and A, (also a professional gambler and an associate of F) for possible criminal offences. Due to various issues, this advice was ultimately sought from the Office of the General Counsel, which subsequently recommended criminal charges be brought against officers W and S, F and A.

In relation to F, it was recommended that he be charged with 78 sequences pursuant to s 192E(1)(b) of the *Crimes Act 1900*, namely dishonestly obtain financial advantage or cause disadvantage by deception, with court proceedings commencing on 7 December 2017. The court proceedings against the two officers and A were listed to follow. By this stage, the PIC had been abolished and the

LECC had taken over the handling of the matter.

F entered pleas of not guilty to all charges and a trial in the NSW District Court commenced on 2 October 2019. At the conclusion of the Crown case, counsel for F sought verdicts of acquittal by direction on all counts on the basis that a prima facie case had not been established with respect to certain elements of the offences. On 22 October 2019, the trial judge accepted this argument, finding that the Crown had not proven a causal connection between the deceptions and the financial advantages obtained or the financial disadvantages suffered. The trial judge directed verdicts of acquittal in respect of all 78 charges against F. In respect of the two police officers and A, nolle prosequis were entered in the NSW District Court, meaning that those proceedings were terminated without adjudication, and that there was no bar to subsequent prosecutions against those individuals for the same offences. On 5 August 2021 the Solicitor General advised that those prosecutions should not be reinstated.

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## Operation Ramberg

Operation Ramberg was an investigation into the conduct of K, an officer of the NSWPF, who was married to B and in a business relationship with A. The relationship between Officer K and A involved the lending of significant amounts of money from A to Officer K. For example, A provided financial assistance to Officer K for the purchases of a Holden Omega sedan and a VW Golf. Additionally, A provided large sums of money for Officer K's purchase of land. A also played a significant role in enabling Officer K to prematurely access the funds from his self-managed superannuation fund held jointly with B. Officer K would also provide false or misleading information on various occasions when submitting applications for finance, including credit cards, home loans and car loans. In July 2018, both Officer K and A attended the Commission to give evidence in separate private examinations, with the focus being on whether Officer K was involved in serious misconduct as a police officer and in respect of his personal financial dealings.

At the conclusion of the investigation, the Commission recommended that consideration be given to the obtaining of advice from the DPP for the prosecution of criminal offences in relation to the false information Officer K submitted in his applications for finance. In August 2021, the DPP determined that there was sufficient evidence to commence proceedings against Officer K in relation to five counts of dishonestly obtain financial advantage by deception pursuant to s 192E(1)(b), and in the alternative, five counts of intention to defraud by false or misleading statement

pursuant to s 192G(b) of the *Crimes Act 1900*.

Prosecution against Officer K for these offences commenced on 11 May 2022 in the NSW Local Court. On 22 June 2022, Officer K entered pleas of guilty to four charges of intention to defraud by false or misleading statement pursuant to s 192(G)(b) of the *Crimes Act 1900*, with one charge under the same section placed on a Form 1. All other charges were withdrawn at court. On 9 August 2022, Officer K was sentenced in the Local Court and received the following penalties:

- Charge 1 under s 192(G)(b): Community Correction Order for a period of 12 months
- Charge 2 under s 192(G)(b): Community Correction Order for a period of 15 months
- Charge 3 under s 192(G)(b): Community Correction Order for a period of 18 months; and
- Charge 4 under s 192(G)(b): term of imprisonment of 9 months to be served by way of intensive correction in the community

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# Response to subpoenas

From time to time, the Commission is served with subpoenas requiring the production (in court) of documents, or other information acquired during the exercise of its functions.

Officers of the Commission cannot be required to produce documents or divulge information which has been obtained in the exercise of functions under the LECC Act.

This is subject to certain limited exceptions. These exceptions are for the purposes of a prosecution, disciplinary proceedings, or proceedings under Division 1A or 1C of Part 9, *Police Act 1990* arising out of an investigation conducted by the Commission in the exercise of its functions.

Where the Commission is served with a subpoena falling outside these limited exceptions, the issuing party is invited instead to make an application to the Commission to exercise its discretion to release information pursuant to s 180(5)(d) of the LECC Act. Under that section, the Commission has broad discretion to authorise the release of documents or information held by the Commission, if satisfied that it is necessary to do so in the public interest.

## Section 180(5) disseminations

The LECC Act imposes strict obligations of secrecy upon officers of the Commission in relation to information acquired in the exercise of their functions under the Act.

Generally, the disclosure of information other than for the purposes of the LECC Act, purposes connected with prosecution or disciplinary proceedings arising from a Commission investigation, or law enforcement and investigative purposes is dealt with under s 180(5)(d) of the LECC Act.

The Commission can direct that confidential information held by the Commission be released, but only if it is considered necessary in the public interest to do so.

During 2021-22, the Commission disseminated information under s 180(5)(d) of the LECC Act on five occasions.

## Integrity checks

One of the Commission's responsibilities is to respond to requests from the NSWPF or other law enforcement agencies, to conduct integrity checks for integrity information relating to current or former NSWPF officers. Most requests come from the NSWPF, specifically, Police Promotions within the Workforce Capability Branch of the Human Resources Command. The NSWPF requests integrity checks on all appointments/promotions to the rank of Sergeant and above, as well as any transfers that may be particularly sensitive. During 2021-22, the Commission conducted 491 integrity checks on NSWPF officers.







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# 10

Governance &  
accountability

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# Overview

Governance refers to the ways in which the Commission is held to account both internally and externally.

The LECC Act provides the Commission with extensive statutory powers. A compliance framework is in place to ensure the Commission does not abuse these powers and complies with relevant legislative requirements.

Internal governance is achieved through the Commission's internal structure and committees, delegations and authorisations, policies and procedures, risk and compliance management and planning.

External governance includes the roles and relationships between the Commission and Parliament, the Inspector of the LECC, the Audit and Risk Committee and other NSW Public Sector agencies.



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## The Inspector of the Law Enforcement Conduct Commission

The Inspector is an independent statutory officer whose function is to provide oversight of the Commission and its officers.

The Hon Terry Buddin SC was appointed as the Inspector of the Law Enforcement Conduct Commission on 1 July 2017. Mr Buddin completed his 5-year term as Inspector on 31 June 2022.

Mr Bruce McClintock SC commenced his appointment as the Inspector of the Law Enforcement Conduct Commission on 1 July 2022.

The principal functions of the Inspector are to:

- undertake audits of the operations of the Commission,
- deal with (by reports and recommendations) complaints made to the Inspector about maladministration and/or misconduct on the part of the Commission and/or its officers, including former officers; and
- assess the effectiveness and appropriateness of the Commission's policies and procedures.

## The Parliamentary Joint Committee

The functions of the Parliamentary Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (the Committee), as they relate to the Commission, are set out in s 131, LECC Act.

The Committee reviews the Commission's performance, examines its annual and other reports, and reports to Parliament on matters relating to the Commission's functions.

The Committee can examine trends and changes concerning NSWPF or NSWCC officer misconduct, practices and methods relating to such conduct, and report on changes needed to the Commission and the Commission Inspector's functions, structures and procedures.

Due to ongoing Covid restrictions the Executive of the Commission did not meet with the Parliamentary Joint Committee during the reporting period. A meeting has been scheduled for September 2022.

At the time of writing, members that serve on the Committee include:

Chair: The Hon Wes Fang, MLC

Deputy Chair: Mr Dave Layzell, MP

Members:

- The Hon Aileen MacDonald, OAM MLC
- Mr Paul Lynch, MP
- Dr Hugh McDermott, MP
- The Hon Adam Searle, MLC
- The Hon Leslie Williams, MP

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## Information and communications technology management

The Commission's IT department renewed its ISO 27001 ("Information technology - Security techniques - Information security management systems - Requirements") compliance and certification in May 2022. Certification was first achieved in 2019 and has been satisfactorily maintained since then, ensuring the Commission's compliance with the NSW Government Cyber Security Policy.

Further works are continuously being undertaken throughout the year to ensure the Commission maintained effective and efficient technology support for its operations. The provisioning of the Nutanix HCI is progressing and due for completion in December 2022. Another set of laptop fleet are configured to fully support the staff's flexible working arrangements, and a full refresh of the IT policy documentation is constantly refined to keep information accurate and up to date.

During the reporting period, the Commission received a grant through the Digital Restart Fund for a security uplift. The objective of the Cyber Security Uplift Project is to increase and enhance the Commission's cyber security posture, addressing current deficiencies in identified areas to meet mandatory cyber security requirements and maturity.

During 2021-22 the Commission's public website attracted 24,291 visitors, at an average of 67 visitors per day.

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# Digital information security attestation

The Commission is required to annually attest to the adequacy of its digital information and information systems security. The attestation statement can be found below.

## Digital Information Security Annual Attestation Statement for the 2021-22 Financial Year for Law Enforcement Conduct Commission

I, Christina Anderson, am of the opinion that Law Enforcement Conduct Commission (LECC) had an Information Security Management System (ISMS) in place during the 2021-22 financial year that is consistent with the Core Requirements set out in the NSW Governments Cyber Security Policy. Furthermore, the LECC achieved compliance with ISO 27001 “Information technology – Security techniques-information security management systems-Requirements” as independently assessed and reviewed by SAI Global during the 2021-22 financial year.

The controls in place to mitigate identified risks to the digital information and digital information systems of the LECC are adequate. This regime is monitored by an appropriate cyber security governance forum at the LECC which also ensures that the agency is making continuous improvements to the management of cyber security governance and resilience. Regular cyber risk reporting is also provided to the agency’s independent Audit and Risk Committee.

There is no agency under the control of the LECC which is required to develop an independent ISMS in accordance with the NSW Government Cyber Security Policy.



Christina Anderson  
Chief Executive Officer

## Internal Audit and Risk Management Attestation Statement for the 2021-22 Financial Year for the Law Enforcement Conduct Commission

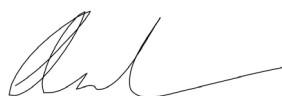
I, Christina Anderson, am of the opinion that the Commission has internal audit and risk management processes in operation that are compliant with the eight core requirements set out in the Internal and Audit Risk Management Policy for the NSW Public Sector, specifically:

|   |   |
|---|---|
| Core Requirement  | Compliant, non-compliant or in transition |
| Risk Management Framework   |   |
| 1.1 The agency head is ultimately responsible and accountable for risk management in the agency.  | Compliant                                 |
| 1.2 A risk management framework that is appropriate to the agency has been established and maintained and the framework is consistent with AS/NZS ISO 31000:2018.   | Compliant                                 |
| Internal Audit Function   |   |
| 2.1 An internal audit function has been established and maintained.   | Compliant                                 |
| 2.2 The operation of the internal audit function is consistent with the International Standards for the Professional Practice of Internal Auditing.   | Compliant                                 |
| 2.3 The agency has an Internal Audit Charter that is consistent with the content of the 'model charter'.  | Compliant                                 |
| Audit and Risk Committee  |   |
| 3.1 An independent audit and risk committee with appropriate expertise has been established.  | Compliant                                 |
| 3.2 The audit and risk committee are an advisory committee providing assistance to the agency head on the agency's governance processes, risk management and control frameworks, and its external accountability obligations. | Compliant                                 |
| 3.3 The audit and risk committee have a Charter that is consistent with the content of the 'model charter'.   | Compliant                                 |

### Membership

The Chair and members of the Audit and Risk Committee are:

- Independent Chair – Ms Carolyn Walsh, appointed 1 July 2017, for a 5-year term ending 30 June 2022.
- Independent Member – Mr Peter Scarlett, appointed 1 July 2017, for a 8-year term ending 30 June 2025.
- Independent Member – Ms Marcia Doheny, appointed 1 April 2018, for a 8-year term ending 31 March 2026.



Christina Anderson  
Chief Executive Officer

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## Internal governance

The Commission has several internal governance committees to monitor its day-to-day functions. The internal governance committees include:

### Executive committee

The Executive Committee meets weekly to discuss matters concerning the management and functioning of the Commission. Members of the Committee include:

- Chief Commissioner
- Commissioner
- Chief Executive Officer
- Executive Director Operations
- Director, Investigations (Integrity)
- Director, Investigations (Oversight)
- Director, Electronic Collections and IT
- Director, Covert Services
- Manager, HR
- Manager, IT

### Strategic operations committee

The Strategic Operations Committee (SOC) meets monthly to ensure the effective administration of operational resources, provides strategic direction to investigations, and acts as a consultative forum for investigative research and prevention reports, as well as auditing proposals.

### Audit and risk committee

The Commission's Audit and Risk Committee works to a charter aligning with NSW Treasury's Internal Audit and Risk Management Policy for the General Government.

The Committee comprises three external independent members. The role of the Committee is to provide independent assistance to the CEO by monitoring, reviewing and advising on the Commission's governance processes, risk management and control frameworks, and its external accountability obligations. Remuneration for the external members during the reporting period totalled \$22,600 (excluding GST).

The Audit and Risk Committee met quarterly on 16 July 2021; 17 September 2021; 2 December 2021 and 28 April 2022.

## Staff vetting

Commission staff occupy positions of trust and work with sensitive and confidential material. The Commission's Security and Vetting Policy ensures staff are aware of their responsibilities regarding the integrity of Commission information and systems.

All staff employed by the Commission are required to comply with the Commission's Employment Suitability Check and Australian Government Security Vetting Agency (AGSVA) security clearance process. The Commission has a policy of not employing current or former NSWPF or NSWCC officers.







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# 11

Community  
engagement

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# Senior officer engagement

The Commission has had to adapt and change its usual means of communicating and engaging with our stakeholders due to the COVID-19 pandemic public health orders and the change in Commissioners. Our use of digital communication continues to mature and has helped us meet communication challenges.

The former Commissioners, Directors and other senior officers met with and attended several events including meetings with a range of law enforcement, public sector and integrity agencies including:

- Australian Commission for Law Enforcement Integrity (ACLEI)
- Australian Federal Police (AFP)
- Australian Criminal Intelligence Commission (ACIC)
- Australian Cyber Security Centre (ACSC)
- Commonwealth Director of Public Prosecutions
- Independent Broad-based Anti-Corruption Commission (IBAC)

- Independent Commission Against Corruption (ICAC)
- Judicial Commission of New South Wales
- Legal Aid
- NSW Audit Office
- NSW Coroners Court
- NSW Department of Parliamentary Services
- NSW Department of Premier and Cabinet
- NSW Ombudsman
- NSW Parliamentary Budget Estimates Committee; and,
- NSW Treasury
- Office of the Director of Public Prosecutions NSW

Since joining the Commission in May and July 2022, our new Commissioners have attended several meetings to connect with Government and external organisations.



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# Collaboration with the NSWPF and other integrity agencies

We engage continually with the agencies we oversight, the NSWPF and NSWCC. This includes providing presentations about our work, as well as receiving presentations that inform Commission staff about operational issues, including new tools and technology.

In 2021-22, the Commissioners and other senior staff participated in several meetings, forums and training, including but not limited to:

- Fortnightly operational meetings with NSWPF and the Commission Executive Director of Operations, Director of Investigations (Integrity) and Director of Investigations (Oversight).
- Introductory meetings between the new Chief Commissioner and Commissioner with the Police Commissioner Karen Webb and NSW Crime Commissioner Michael Barnes.
- Meetings with Deputy Commissioners and Assistant Commissioners in relation to a range of matters including the NSWPF's proposed new approaches to dealing with sexual violence, domestic and family violence, use of body worn video, use of force.
- The Commander of Education and Training Command, the Crime Prevention Command and the Manager of the Mental Health Intervention Team met with Commissioners and some senior staff to outline the NSWPF's Mental Health training program.
- NSWPF Internal Review Panel and Commissioner's Advisory Panel
- Professional Standards Managers Forum Western Region
- The Executive Director, Operations and the Director Investigations, Oversight participated as panel members in the NSWPF's Mastery Program. This program is a leadership program for the development of senior police destined to become Superintendents.
- Staff attended the annual Corruption Prevention Practitioners Forum, a meeting of senior corruption prevention staff from integrity bodies across Australia to share relevant work and experience.
- National Anti Corruption Investigation Network.



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## Engagement with non-government community groups

The Commissioners are actively involved in the Commission's engagement activities. The Commissioners, Directors and other senior officers met with and attended several events including meetings with a range of law enforcement and community organisations and integrity agencies including:

- Aboriginal Legal Service
- Police Association of NSW
- Public Interest Advocacy Centre
- Redfern Legal Centre (RLC)
- Women's Legal Service NSW
- Youth Justice Coalition

## Australian Public Sector Anti-Corruption Conference

The Commission, along with the Australian Centre for Law Enforcement Integrity and the Independent Commission Against Corruption NSW is co-hosting the Australian Public Sector Anti-Corruption Conference for 2022.

The conference is Australia's leading anti-corruption event. It brings together Australian and international anti-corruption experts to speak on risk identification and management, emerging trends and innovative approaches to combat corruption and heighten workplace integrity systems. The conference includes plenary sessions, discussion panels and workshops, and provides opportunities for developing professional networks across a wide range of jurisdictions and expertise.

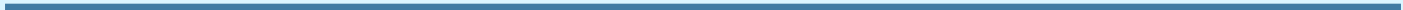
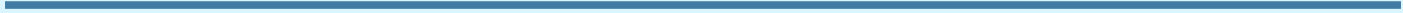
The conference will take place in November 2022 at the Fullerton Hotel in Sydney.

## Speakers and presentations

The Commission hosted several speakers who made presentations to the Commission throughout the year to develop our knowledge of matters relevant to our work. Speakers in 2021-22 included:

- Dr Tim Cubitt about his academic research on analysing and anticipating police misconduct
- Mr Matt Ciantar about his management of major and complex law enforcement investigations in the Australian Federal Police.
- Surveillance Devices Commissioner, Mr Don McKenzie, to discuss the State's new Drug Prohibition Orders scheme.
- Mr Merv Neal, CEO of Laughter Yoga Australia to share strategies for maintaining staff wellbeing during the pandemic.





# Appendix 1

## Industrial relations policies and practices

The terms and conditions of employment for non-executive officers of the Commission are governed by the Crown Employees (Law Enforcement Conduct Commission) Award 2018 and the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009. Senior Executive Officers of the Commission are employed under the provisions of the Government Sector Employment Act 2013 (NSW).

### Number of officers and employees by category & comparison to the prior year

|                               | 2019  | 2020 | 2021 | 2022 |
|-------------------------------|-------|------|------|------|
| Statutory appointments        | 3     | 2/3  | 2    | 2    |
| Male Executive appointments   | 5     | 5    | 5    | 4    |
| Female Executive appointments | 2     | 1    | 1    | 1    |
| Operational staff             | 52    | 56   | 57   | 68   |
| Support staff                 | 46.6  | 44   | 44   | 32   |
| Total                         | 108.6 | 108  | 109  | 108  |

### Senior Executives–Remuneration Band determination, number of officers and gender breakdown comparison

| Band                        | Female 2021-22 | Male 2021-22 |
|-----------------------------|----------------|--------------|
| Band 4 (Secretary)          | 0              | 0            |
| Band 3 (Deputy Secretary)   | 0              | 0            |
| Band 2 (Executive Director) | 1              | 1            |
| Band 1 (Director)           | 0              | 4            |

### Senior Executives–Remuneration range comparison

| 2021-22                     | Remuneration Range         | Average Remuneration |
|-----------------------------|----------------------------|----------------------|
| Band 4 (Secretary)          | \$487,051pa to \$562,650pa | n/a                  |
| Band 3 (Deputy Secretary)   | \$345,511pa to \$487,050pa | n/a                  |
| Band 2 (Executive Director) | \$274,701pa to \$345,550pa | \$330,000 pa         |
| Band 1 (Director)           | \$192,600pa to \$274,700pa | \$246,814 pa         |

## Staff movement 2021-22

| Number of staff who commenced employment | Number of staff who ceased employment |
|--|---------------------------------------|
| 14                                       | 18                                    |

### Personnel policies

Several existing personnel (HR) policies were reviewed and updated throughout the reporting period. These included:

- Guide to managing positive Covid in the workplace
- Drug and Alcohol Testing Policy and Procedure
- Discrimination, Harassment and Bullying Policy
- Probation Procedure
- Learning and Development Policy
- Gift and Benefit Policy
- Drug and Alcohol Testing Policy

### Training and development

The Commission continued to provide a broad range of Training and Development opportunities to staff throughout the 2021-22 reporting period. All staff have access to Affiliate Membership to the NSW Institute of Public Administration Australia and LinkedIn learning allowing access to a variety of training and development opportunities.

Training covered specialist areas including:

- Investigation Interviewing Techniques
- Briefs of Evidence – writing course
- 9/10 Leadership opportunity
- Fundamentals of Complaint Handling

- Leadership Academy

Generic training opportunities provided to staff throughout 2021-22 included:

- First Aid & CPR Training
- Fire warden Training
- Cultural Awareness Training
- Cyber Awareness Training
- NSW Government Community of Financial Professionals
- NSW Government Community of HR Practice
- NSW Government Community of Policy Professionals
- Wellness classes

### Workplace health and safety

The Commission is committed to the health, safety and wellbeing of all staff and visitors, effective procedures are in place to ensure adherence to the requirements of workplace health and safety (WHS) legislation. The Commission Executive are informed of all relevant workplace health and safety matters through the receipt of WHS Committee meeting minutes every 4 months. There were no workplace health and safety related prosecutions under the Work Health and Safety Act 2011 (NSW) during this reporting period.

As part of meeting this commitment during 2021-22, the Commission:



- Continued to develop, support and maintain safe working practices and principles in line with current NSW Health guidelines to ensure the health and safety of all during the COVID pandemic, including the provision of ongoing information and guidance to staff and managers.
- Promoted the Employee Assistance Program (EAP) which is available to all staff to enhance the emotional and psychological wellbeing of employees and their families.
- Included EAP details in all communications to staff related to the COVID pandemic, to support to staff during these challenging periods
- Refreshed our Work, Health and Safety Committee membership to ensure representation across all groups within the Commission.
- Encouraged all staff to be vaccinated against the flu and provided an opportunity to be vaccinated at the office.

## Diversity and inclusion

The Commission understands the value people with diverse life and work experiences bring to the workplace. The Commission is committed to building a talented, responsive and inclusive workforce, reflective of the diversity of the people of NSW.

We recognise that by embracing the different contributions, perspectives and talents that make up our organisation we not only create a culture of participation, contribution and respect, but also increase innovation, creativity and organisational

performance.

The Commission aims to enhance our employee experience through supporting staff to balance their work and personal life commitments and encourage overall wellness and ongoing learning opportunities.

This included:

- Support for flexible working arrangements and providing tools to enable hybrid working
- Supporting and acknowledging key events and culturally significant days including NAIDOC Week 2021, International Women's Day 2021 and Harmony Day 2021
- Providing vicarious trauma training to staff who felt traumatised or at risk of same because of confronting material they were exposed to in the course of their duties at the Commission
- Ensuring all staff are included in the operations of the Commission through weekly CEO catch ups and fortnightly information sessions delivered in person and virtually
- Encouraging and enabling women to participate and have a voice at all levels and functions of the Commission
- In the 2022-23 reporting period we will continue to look for ways to instil positive change that will lead to a more inclusive workplace, including:
  - Revising and updating our diversity and inclusion framework,
  - Continuing to recognise and celebrate key multicultural events
  - Continuing development of a community

engagement strategy

- Development of a Reconciliation Action Plan

## Measuring employee engagement through the People Matter Survey

The annual employee engagement survey again provided important insight into the experiences of our workforce. The Commission's overall employee engagement score for 2021 was 58%, up from 53% in 2020.

The Commission scored well in the areas of flexible working satisfaction (91%), risk and innovation (86%), inclusion and diversity (85%) and health and safety (83%).

We have undertaken actions to respond to our lowest scoring areas: communication and change management (30%), learning and development (35%), grievance processes (40%), customer service (41%) and recruitment (43%). These include:

- Continuing the CEO weekly email and a commitment to providing timely communication which includes the why, how and when
- Creation of a training advisory group
- Pilot of a mentoring program
- Undertaken to provide clear communication around recruitment processes and decisions

## Action plan for women

| Objective  | Results/Plans  |
|--|--|
| An equitable and balanced workplace responsive to all aspects of women's lives   | <p>Approximately one quarter of the Commission's female employees were employed on approved part-time and other special working arrangements throughout the reporting period.</p> <p>Policies and procedures are in place at the Commission to ensure that women who are seeking a better work/life mix are given the opportunity to do so by accessing a variety of flexible work practices. This applies to women returning from parental leave as well as those with other personal responsibilities and obligations.</p> |
| Equitable access for women to educational and training development opportunities | Approximately 60% of higher duties and staff development opportunities across the Commission that were filled by women during this reporting period.   |
| Promote the position of women  | Women made up a total of 52% of the Commission's workforce throughout the reporting period. A total of 60% of the Commission's management level positions are held by women and 96% of the Commission's female staff are remunerated above the equivalent of NSW Public Sector Administrative & Clerical Officers Grade 5.   |

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## Executive remuneration

The Commissioners for the Law Enforcement Conduct Commission are appointed by the Governor pursuant to s 18 of the LECC Act, and, pursuant to clause 9 of Schedule 1 of the Act, are not subject to the Government Sector Employment Act 2013.

Section 18 of the LECC Act was amended by the LECC Amendment Act commencing on 17 June 2021 to enact a two-commissioner model. The office of Commissioner for Oversight was removed, and the office of Commissioner for Integrity renamed as Commissioner. For remuneration purposes the Commissioner is listed in Schedule 1 of the SOOR Act as the 'Full-time Commissioner of the Law Enforcement Conduct Commission' commencing on 17 June 2021.

The Hon R O Blanch AM, QC was appointed as Chief Commissioner effective from 3rd February 2020. His remuneration is set annually by the Statutory and Other Officers Remuneration Tribunal. For this reporting period the Chief Commissioner's salary was \$521,955pa.

The Hon Lea Drake was appointed as Commissioner for Integrity effective from 14th April 2017. Her remuneration is set annually by the Statutory and Other Officers Remuneration Tribunal. For this reporting period the Commissioner's salary was \$391,465pa. This appointment ended on 11 April 2022.

Anina Johnson was appointed as Commissioner effective from 16th May 2022. Her remuneration is set annually by the Statutory and Other Officers Remuneration

Tribunal. For this reporting period the Commissioner's salary was \$391,465pa.

As holders of independent public offices, the Commissioners are not subject to an annual performance review and are responsible to Parliament in the performance of the functions of their respective offices.

The Commissions Senior Executive are employed under the Government Sector Employment Act 2013. During the reporting period two officers were employed within Executive Band 2, and four within Executive Band 1. All members occupying Public Service Senior Executive Service roles at the Commission are employed under individual Public Sector Senior Executive employment contracts, the terms of which provide for regular performance assessment.

## Executive employee expenditure

The percentage of total employee related expenditure of the Department in the reporting year that relates to senior executives, compared with the percentage at the end of the previous reporting year is shown below. The 2022 percentage is lower than the previous reporting period as the figures for 2021 included termination payments made to 2 senior executive members.

| 2021   | 2022   |
|--------|--------|
| 20.98% | 16.58% |

## Cost of the operations of the Commission

Cost of the operations of the Commission under each of Parts 6, 7 and 8 of the LECC Act (s 139(5))

|                          | Employee related | Other        | Total        |
|--------------------------|------------------|--------------|--------------|
| Integrity                | \$ 6,797,631     | \$ 1,503,549 | \$ 8,301,180 |
| Oversight Investigations | \$ 1,506,827     | \$ 34,643    | \$ 1,541,471 |
| Critical Incidents       | \$ 540,891       | \$ 37,348    | \$ 578,239   |

## Audits

The Commission's financial statements are prepared in accordance with legislative provisions, Treasury Directions issued under the GSF Act, and all applicable Australian Accounting Standards. They are audited by the Auditor-General for New South Wales, who is required to express an opinion as to whether the statements fairly represent the financial position, financial performance, and cash flows of the Commission and the consolidated entity. The audit report and our financial statements are included at Appendix 6.

The Financial Statements for 2021-22 was prepared and submitted to the Audit Office of New South Wales.

## Insurance

Major insurance risks for the Commission include the security of its employees, property and equipment and the risk of work-related injuries, which may result in workers' compensation claims according to NSW statute. The Commission's insurance coverage is provided by the NSW Treasury Managed Fund through icare self-insurance.

The annual insurance premiums are determined based on a combination of benchmarks and any actual claims historically made by the Commission in previous years. The current reporting period saw a slight increase to the general insurance premium of \$3,925 or 2.08%, while the worker's compensation premium decreased by \$10,515 or 8.21% reflecting lower FTE staff numbers.

## Accounts payable policy

The Commission has set a benchmark for paying 95% of all accounts received within creditors' trading terms. This benchmark was achieved in all quarters. Most delays in paying invoices outside our creditors' payment terms are as a result of invoicing for goods not yet delivered, or for incorrect goods in which case the Commission withholds payment until it is satisfied that the goods and/or services have been received as contracted.

The Commission was not required to pay interest to creditors due to late payment of accounts during the 2021-22 financial year.

### Aged analysis at the end of each quarter 2021-22

#### All Suppliers

| Qtr. | Current<br>(i.e., within due date)<br>\$'000 | Less than 30<br>days overdue<br>\$'000 | Between 30<br>and 60 days<br>overdue<br>\$'000 | Between 61<br>and 90 days<br>overdue<br>\$'000 | More than 90<br>days overdue<br>\$'000 |
|------|--|--|--|--|--|
| Sept | 1,356  | 0                                      | 0  | 0  | 0                                      |
| Dec  | 1,416  | 8                                      | 0  | 0  | 0                                      |
| Mar  | 1,035  | 34                                     | 0  | 0  | 0                                      |
| Jun  | 2,413  | 19                                     | 0  | 0  | 0                                      |

#### Small business suppliers

| Qtr. | Current<br>(i.e., within due date)<br>\$'000 | Less than 30<br>days overdue<br>\$'000 | Between 30<br>and 60 days<br>overdue<br>\$'000 | Between 61<br>and 90 days<br>overdue<br>\$'000 | More than<br>90<br>days overdue<br>\$'000 |
|------|--|--|--|--|---|
| Sept | 55   | 0                                      | 0  | 0  | 0   |
| Dec  | 33   | 0                                      | 0  | 0  | 0   |
| Mar  | 59   | 0                                      | 0  | 0  | 0   |
| Jun  | 84   | 0                                      | 0  | 0  | 0   |

## Accounts due or paid within each quarter 2021-22

### All suppliers

| Measure  | Sept        | Dec         | Mar         | Jun         |
|--|-------------|-------------|-------------|-------------|
| Number of accounts due for payment                                       | 198         | 248         | 222         | 310         |
| Number of accounts paid on time  | 198         | 242         | 216         | 306         |
| Actual percentage of accounts paid on time (based on number of accounts) | 100%        | 97.6%       | 97.3%       | 98.7%       |
| Dollar amount of accounts due for payment                                | \$1,355,518 | \$1,423,676 | \$1,069,489 | \$2,432,825 |
| Dollar amount of accounts paid on time                                   | \$1,355,518 | \$1,415,942 | \$1,035,142 | \$2,413,348 |
| Actual percentage of accounts paid on time (based on \$)                 | 100%        | 99.5%       | 96.8%       | 99.2%       |
| Number of payments for interest on overdue accounts                      | Nil         | Nil         | Nil         | Nil         |
| Interest paid on overdue accounts  | Nil         | Nil         | Nil         | Nil         |

### Small business suppliers

| Measure  | Sept     | Dec      | Mar      | Jun      |
|--|----------|----------|----------|----------|
| Number of accounts due for payment                                       | 22       | 29       | 28       | 40       |
| Number of accounts paid on time  | 22       | 29       | 28       | 40       |
| Actual percentage of accounts paid on time (based on number of accounts) | 100%     | 100%     | 100%     | 100%     |
| Dollar amount of accounts due for payment                                | \$55,406 | \$32,533 | \$58,869 | \$83,992 |
| Dollar amount of accounts paid on time                                   | \$55,406 | \$32,533 | \$58,869 | \$83,992 |
| Actual percentage of accounts paid on time (based on \$)                 | 100%     | 100%     | 100%     | 100%     |
| Number of payments for interest on overdue accounts                      | Nil      | Nil      | Nil      | Nil      |
| Interest paid on overdue accounts  | Nil      | Nil      | Nil      | Nil      |

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# Modern Slavery

Modern Slavery is a serious violation of dignity and human rights from situations where coercion, threats or deception is used to exploit victims and undermine or deprive them of their freedom, including:

- slavery, servitude, forced labour, deceptive recruiting for labour or services, forced marriage
- trafficking in persons, trafficking in children
- debt bondage
- sexual servitude
- forced child marriage
- the use of a child in the production of child abuse material and related offences
- the slavery, servitude, or forced labour of a child.

The Commission is committed to respecting human rights and is taking action to identify and address the risks of modern slavery in its operations and procurement.

From 1 January 2022, the Modern Slavery Act 2018 requires reasonable steps to be taken to ensure that goods and services procured by and for government are not the product of modern slavery.

Under the Modern Slavery Act 2018, the Commission is required to prepare and publish in an annual statement the steps taken to identify and address the risk of modern slavery in its operations and supply chains.

Our efforts throughout the reporting period focused on understanding modern slavery risks and developing processes for

identifying and addressing modern slavery include:

- Undertaking risk assessments across our supply chain
- Engaging with our suppliers to identify and confirm their commitment to ending modern slavery practices
- Embed ethical buying practices in business processes and organisational culture.
- Update policies, procedures, and systems to reflect the agency's commitment to addressing modern slavery risks.

The Commission aims to reduce the likelihood of contributing to modern slavery issues by implementing recommended sustainable supply chain practices such as:

- paying suppliers within fair timeframes
- avoiding undue delays to payments
- avoiding unreasonable contract variations
- avoiding less reputable suppliers

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## Consultants

The Commission did not engage consultants during the reporting period.

## Disclosure of controlled entities

The Commission, as a reporting entity, comprises itself and the Office of the Law Enforcement Conduct Commission (the Office). The Office is a special purpose entity; its only function is to provide personnel services to the Commission.

## Credit card certification

To ensure operational requirements are met in an efficient manner, eligible staff are issued with corporate credit cards to enable minor expenditures and emergency travel to be purchased as needed. Staff are required to adhere to the Commission's policy which meets NSW Treasury guidelines, the Premier's Memoranda, as well as the Treasurer's Directions.

It is certified that corporate credit card usage by Commission officers has been in accordance with the appropriate government policies, Premier's Memoranda and Treasurer's Directions, and meets best practice guidelines. The Commission routinely monitors the use of all cards issued. There were no known instances of misuse of corporate credit cards during the year.

## Energy management plan

The Commission is committed to sustainable energy management principles. The Commission regularly reviews energy, water consumption and purchasing practices to minimise the impact of its operations on the environment.

This year as part of an on-going program to replace older air-conditioning units with more energy efficient units, the Commission upgraded 2 supplementary air-conditioning units including a large unit servicing the hearing room. A further 2 units will be replaced in the 2022/23 financial year. This project continues to see ongoing reductions in energy costs and usage as reflected on NSW Government CASPER website as a high score rating based on year-on-year reductions. Government directions mandate the minimum sourced green power at 6%. The Commission sources green power at 25% which is well above the minimum standard.

During the extended COVID19 work from home periods all programmed AC units, lighting and other non-essential appliances have been monitored and scaled back where possible. The programming of AC and lighting continues to be monitored weekly and is adjusted depending on current staff attendance in the workplace.

The Commission promotes initiatives to reduce overall energy consumption including:

- Carrying out regular maintenance and monitoring of energy use.
- Enabling energy saving features on office equipment, placing a high emphasis on energy ratings when purchasing new office and ICT equipment and staff education.
- Incorporating lighting and AC within the Building Management System to allow time management of use with the ability to switch to manual controlling as required.



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## Waste management plan

In accordance with the government's resource efficiency policy the Commission continues to implement measures which enable increased use of recycled material and better management of waste reduction.

Measures currently in place include:

- All purchased white copy paper contains 100% recycled content.
- All corporate printed paper products sourced using recycled content.
- Reducing the number of public reports printed by making these available online.
- Staff are encouraged to minimise printing, print double sided and use online forms/templates where available.
- Recycle bins have been placed on all floors allowing staff to recycle all recyclable products including paper, plastic, glass as well as toner cartridge, mobile phones and batteries.
- Redundant office furniture and equipment together with computer equipment is recycled by an endorsed recycling centre.

## Major assets

During the reporting period the Commission spent a total of \$779,271 on specialized IT infrastructure and equipment including upgrading storage, and security systems, as well as routine replacement of laptops, monitors and printers.

Building works undertaken during the year included continued carpet works and replacement as well as workstation desks in the Registry totalling \$45,588.

The Commission has a policy of purchasing operational vehicles as this allows greater flexibility in the management of the fleet. Three operational vehicles were replaced at a cost of \$122,354. Purchases of other plant and equipment totalled \$115,432 and included air-conditioning unit replacements, photo-copier maintenance, as well as the purchase of other specialised operational equipment.

## Overseas visits

No overseas travel took place during the reporting period.

# Appendix 2 LECC Act statutory reporting compliance checklist

| Section of the Act   | 2021-22 Annual Report   |
|--|---|
| Section 139(2)(a) description of the types of matters that were referred to the Commission   | Chapter 4 – Assessing complaints  |
| Section 139(2)(b) a description of the types of matters investigated by the Commission   | Chapter 5 – Investigating serious police misconduct                                     |
| Section 139(2)(c) the total number of matters dealt with by the Commission during the year   | Chapter 4 – Assessing complaints  |
| Section 139(2)(d) the number of police investigations, Crime Commission investigations and critical incident investigations that were the subject of oversight by the Commission under Parts 7 and 8 during the year | Chapter 6 - Oversight and critical incidents  |
| Section 139(2)(e) the number of matters that were investigated by the Commission under Part 6 during the year  | Chapter 5 – Investigating serious police misconduct                                     |
| Section 139(2)(f)(i) the time interval between the receipt of each misconduct matter by the Commission and the Commission deciding to investigate the misconduct matter  | Chapter 4 – Assessing complaints  |
| Section 139(2)(f)(ii) the number of misconduct matters commenced to be investigated but not finally dealt with during the year   | Chapter 5 – Investigating serious police misconduct                                     |
| Section 139(2)(f)(iii) the average time taken to deal with misconduct matters and the actual time taken to investigate any matter in respect of which a report is made   | Chapter 4 – Assessing complaints<br>Chapter 5 – Investigating serious police misconduct |
| Section 139(2)(f)(iv) the total number of examinations and private and public examinations conducted during the year   | Chapter 5 – Investigating serious police misconduct                                     |
| Section 139(2)(f)(v) the number of days spent during the year in conducting public examinations  | Chapter 5 – Investigating serious police misconduct                                     |

| Section of the Act  | 2021-22 Annual Report  |
|---|--|
| Section 139(2)(f)(vi) the time interval between the completion of each public examination conducted during the year and the furnishing of a report on the matter  | Chapter 5 – Investigating serious police misconduct                                  |
| Section 139(2)(g) an evaluation of the response of the Commissioner of Police, relevant members of the Police Service Senior Executive Service and other relevant authorities to the findings and recommendations of the Commission | Chapter 5 – Investigating serious police misconduct                                  |
| Section 139(2)(h) an evaluation of the response of the Crime Commissioner, relevant members of the Crime Commission Senior Executive Service and other relevant authorities to the findings and recommendations of the Commission   | Chapter 7 – Crime Commission   |
| Section 139(2)(i) any recommendations for changes in the laws of the State, or for administrative action, that the Commission considers should be made as a result of the exercise of its functions                                 | Chapter 9 – Legal matters  |
| Section 139(2)(j) the general nature and extent of any information furnished under this Act by the Commission during the year to a law enforcement agency   | Chapter 5 – Investigating serious police misconduct                                  |
| Section 139(2)(k) the extent to which its investigations have resulted in prosecutions or disciplinary action in that year  | Appendix 4 – Prosecutions conducted  |
| Section 139(2)(l) the number of search warrants issued by authorised justices and the Commissioner respectively under this Act in that year   | Appendix 3 – Statistical data on exercise of Commission powers                       |
| Section 139(2)(m) a description of its activities during that year in relation to the exercise of its functions under ss 27 and 32  | Chapter 6 - Oversight and critical incidents<br>Chapter 8 – Prevention and Education |
| Section 139(3) any such information that relates to investigations or other matters involving Crime Commission officers must be kept separate from other matters in the report  | Chapter 7 – Crime Commission   |
| Section 139(5) The financial report for the year to which the annual report relates is to set out the separate cost of the operations of the Commission under each of Parts 6, 7 and 8.   | Appendix 6   |

# Appendix 3 Statistical data on exercise of Commission powers

The following table indicates the frequency with which the Commission exercised its various powers in 2021-22.

| Functions  | 2021-22 |
|--|---------|
| <b>Under the LECC Act</b>  |         |
| S 24 – Establishment of task forces within the State   | 0       |
| S 54 – Requiring public authority or public official to produce a statement of information                                     | 9       |
| S 55 – Requiring a person to attend before an officer of the Commission and produce a specified document or other thing        | 129     |
| S 58 – Commission may authorise an officer of the Commission to enter and inspect premises etc                                 | 0       |
| S 63 – examination days:   |         |
| · Public   | 0       |
| · Private  | 18      |
| S 69 – Commissioner may summon a person to appear before the Commission and give evidence or produce documents or other things | 23      |
| S 79 (1) – Authorised justice may issue search warrant   | 4       |
| S 79 (2) – Commissioner may issue a search warrant   | 0       |
| S 84 – Number of warrants obtained under the Surveillance Devices Act 2007   | 6       |
| S 99(3) – Requirement for the NSWPF to investigate a misconduct matter   | 16      |
| S 102 – Commission request for information relating to a misconduct matter (total from assessments and oversight)              | 246     |
| S 103 – Commission request for information concerning the timely investigation of misconduct matter                            | 1       |
| S 104 – Commission may request further investigation of misconduct matter  | 10      |

| Functions  | 2021-22 |
|--|---------|
| S 105 – Commission may request a review of the decision on action to be taken as a result of the misconduct matter | 3       |
| S 132 – Reports on examinations  | 9       |
| S 134 – Commission may report on Commissioner of Police’s or Crime Commissioner’s decision on Commission’s request | 1       |
| S 135 – Report following Commission’s investigation of misconduct matter relating to police                        | 4       |
| S 138 – Special reports of Commission  | 0       |
| <b>Under the <i>Law Enforcement (Controlled Operations) Act 1997</i></b>   |         |
| Applications granted by Commission for authority to conduct controlled operations                                  | 1       |
| <b>Under the <i>Law Enforcement and National Security (Assumed Identities) Act 2010</i></b>                        |         |
| Approval granted by Commissioner for acquisition and use of an assumed identity                                    | 0       |
| Applications granted for variation of assumed identity   | 6       |
| Applications granted for cancellations of assumed identify   | 2       |
| <b>Under <i>Telecommunications (Interception &amp; Access) Act 1979</i></b>  |         |
| Warrants issued for the interception of communications   | 17      |
| Warrants issued for access to stored communications  | 0       |
| <b>Under the <i>Surveillance Devices Act 2004 (Cth)</i></b>  |         |
| Number of surveillance device warrants obtained  | 5       |

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## Appendix 4

# Prosecutions in 2021-22 arising from Commission investigations

### Name

Michial GREENHALGH

### Updates and outcomes

A request for advice was sent to the DPP in relation to one count of assault occasioning actual bodily harm pursuant to s 59 of the Crimes Act 1900.

On 24 September 2019, advice was received from the DPP that there was sufficient evidence to commence criminal proceedings against Mr Greenhalgh for common assault pursuant to s 61 of the Crimes Act 1900.

On 23 October 2019, Mr Greenhalgh was served with a Court Attendance Notice.

During the first mention on 2 December 2019 the defence made an unsuccessful application to have Mr Greenhalgh's name suppressed. Mr Greenhalgh pleaded not guilty to the

offence of common assault.

The hearing in this matter was part heard before Magistrate Dakin at Lismore Local Court from 9 to 12 November 2020 and resumed on 23 February 2021 over the course of two days.

On 24 February 2021, Magistrate Dakin found Mr Greenhalgh not guilty of the offence of common assault.

On 15 June 2021, the DPP instituted an appeal in the Supreme Court seeking that the order made by Magistrate Dakin on 24 February 2021, to dismiss the charge of common assault, be set aside and that the matter be remitted to the Local Court to be dealt with according to law.

The grounds of the appeal were that Magistrate Dakin erred in law by:

- i. Failing to consider or determine whether, for the purposes of s 230 of the Law Enforcement (Powers and Responsibilities) Act 2002, the defendant's use of force was objectively "reasonably necessary"; and
- ii. Failing to provide

adequate reasons for dismissing the charge.

On 25 August 2021, the DPP filed a supplementary notice seeking, in the alternative, judicial review of Magistrate Dakin's decision pursuant to s 69 of the Supreme Court Act 1970.

The appeal was heard in the Supreme Court before Justice Ierace on 6 December 2021. Judgment was reserved.

On 29 July 2022, Justice Ierace delivered his judgment. The appeal was allowed and the matter was remitted to the Local Court to be dealt with according to law. His Honour found that the Magistrate had not considered the objective reasonableness of the use of force by Greenhalgh. The matter is listed for hearing on 14 February 2023 at Lismore Local Court.

### Name

Michael ROWAN

### Updates and outcomes

A request for advice was sent to the DPP concerning one count of obstruction of the Commission pursuant to s 148 of the LECC Act and one count of knowingly

giving false or misleading evidence pursuant to s 151(1) of the LECC Act.

On 21 September 2020, advice was received from the DPP that there was sufficient evidence to commence criminal proceedings against Mr Rowan in relation to four counts of knowingly giving false or misleading evidence pursuant to s 151(1) of the LECC Act and one count of failing to produce a document or other pursuant to s 150(1)(d) of the LECC Act.

On 3 December 2020, Mr Rowan was served with a Court Attendance Notice.

On 15 April 2021, Mr Rowan pleaded not guilty to all five charges.

Following consideration by the DPP of a plea offer, on 11 March 2022 Mr Rowan entered a plea of guilty in relation to two counts of knowingly give false or misleading evidence at a LECC examination pursuant to s 151(1) of the LECC Act. The remaining three charges were withdrawn.

On 19 July 2022, the sentence matter was heard at Downing Centre Local Court before Magistrate Greenwood. Rowan was sentenced to a term of

imprisonment of 8 months with a non-parole period of 6 months. Rowan immediately lodged an appeal and was granted bail. The hearing of the appeal on sentence is listed for 7 February 2023 at Downing Centre Local Court.

### **Name**

Blaze KONESKI

### **Updates and outcomes**

A request for advice was sent to the DPP in relation to five counts of intention to defraud by false or misleading statement pursuant to s 192G(b) of the Crimes Act 1900.

On 6 August 2021, advice was received from the DPP that there was sufficient evidence to commence criminal proceedings against Mr Koneski in relation to five counts of obtain financial advantage by deception pursuant to s 192E(1)(b) of the Crimes Act 1900, and in the alternative, five counts of intention to defraud by false or misleading statement pursuant to s 192G(b) of the Crimes Act 1900.

On 25 March 2022, Mr Koneski was served with a Court Attendance Notice.

On 22 June 2022, at

Bathurst Local Court Mr Koneski entered a plea of guilty to four counts of intention to defraud by false or misleading statement pursuant to s 192(G)(b) of the Crimes Act 1900, with one charge under the same section placed on a Form 1. All other charges were withdrawn.

The matter was listed for sentencing on 9 August 2022 and will be reported on in the next annual report.

### **Name**

Michael MANNAH

### **Updates and outcomes**

On 22 January 2021 the Commission executed search warrants on Mr Mannah's car and home. He was subsequently arrested and charged with one count of use carriage service to access child abuse material pursuant to s 474.22(1) of the Criminal Code 1995 (Cth), and one count of not keep firearm safely pursuant to s 39(1)(a) of the Firearms Act 1996 (NSW). Mr Mannah was refused bail by Police and granted bail by the court on the following day.

The NSW DPP has carriage of the firearm offence, with the NSW Police Force as the

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informant and no involvement from the Commission. The Commonwealth DPP has carriage of the Commonwealth offence(s), with the Commission as the informant. It should be noted that the following updates pertain to the Commonwealth offence(s) only.

On 27 July 2021, the matter was heard before Magistrate Atkinson at the Downing Centre Local Court. The Commonwealth DPP completed the charge certification and laid an additional charge of use carriage service to possess/control child exploitation material pursuant to s 474.22A of the Criminal Code 1995.

On 28 September 2021, Mr Mannah entered a plea of not guilty in relation to the two Commonwealth offences.

On 29 October 2021, Mr Mannah was arraigned at the Sydney District Court. Mr Mannah confirmed his plea of not guilty to both charges on the Indictment.

The trial commenced on 22 September 2022 before Judge Bourke and ran for 7 days. On 30 September 2022 the jury returned a verdict of

guilty in relation to the first count (access child abuse material) and not guilty to the second count (possess child exploitation material). The matter has been adjourned to 11 November 2022 for sentence. Bail to continue.

### **Name**

Robert INGLIS

### **Updates and outcomes**

A request for advice was sent to the DPP concerning 14 counts of larceny pursuant to s 117 of the Crimes Act 1900 and 14 counts of fraud – dishonestly obtain advantage by deception pursuant to s 192E(1)(b) of the Crimes Act 1900.

On 23 February 2021, advice was received from the DPP that there was sufficient evidence commence criminal proceedings against Mr Inglis in relation to 14 counts of dishonestly obtain financial advantage etc by deception pursuant to s 192E(1)(a) of the Crimes Act 1900 and in the alternative, 14 counts of larceny pursuant to s 117 of the Crimes Act 1900.

On 10 June 2021, Mr Inglis was served with a Court Attendance Notice.

On 19 August 2021, Mr Inglis pleaded guilty to 14 counts of dishonestly obtain financial advantage etc by deception.

On 16 September 2021, Mr Inglis was sentenced in the Sutherland Local Court to an aggregate term of imprisonment of 18 months to commence on 16 September 2021 and expire on 15 March 2023. The term of imprisonment is to be served by way of intensive correction in the community in accordance with the Crimes (Administration of Sentence) Act 1999.



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**Name**

Madison TAYLOR

**Updates and outcomes**

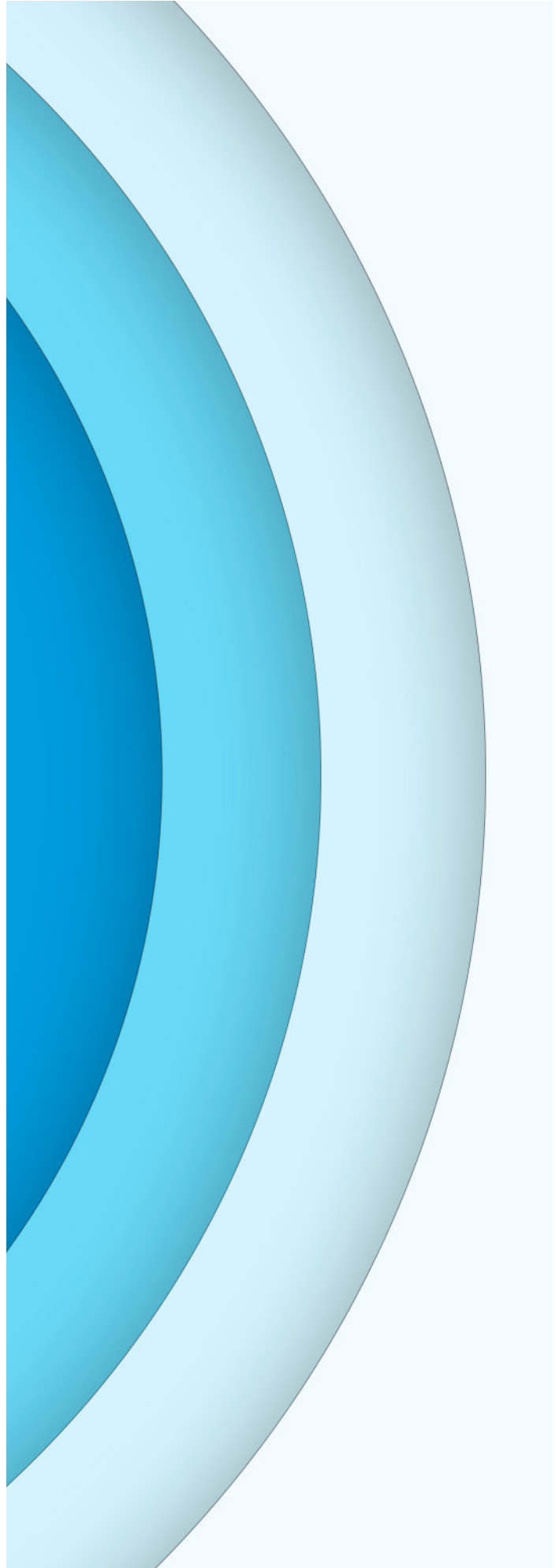
A request for advice was sent to the DPP concerning 14 counts of fraud – dishonestly obtain advantage by deception pursuant to s 192E(1)(b) of the Crimes Act 1900.

On 23 February 2021, advice was received from the DPP that there was sufficient evidence commence criminal proceedings against Ms Taylor in relation to 14 counts of dishonestly obtain financial advantage etc by deception pursuant to s 192E(1)(a) of the Crimes Act 1900, and in the alternative, 14 counts of larceny pursuant to s 117 of the Crimes Act 1900.

On 10 June 2021, Ms Taylor was served with a Court Attendance Notice.

On 22 July 2021, Ms Taylor plead guilty to 14 counts of dishonestly obtain financial advantage etc by deception.

On 29 July 2021, Ms Taylor was convicted and sentenced to a Community Corrections Order for a period of 18 months to commence on 29 July 2021 and expire on 28 January 2023.



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# Appendix 5 GIPA Act and Public Interest Disclosures

## The Government Information (Public Access) Act 2009 NSW

Under the Government Information (Public Access) Act 2009 (NSW) (GIPA Act) there are four ways that the Commission can make information available to the public:

- the mandatory release of ‘Open Access Information’
- the proactive release of information for which there is no overriding public interest against disclosure
- the informal release of information in response to an informal request where there is no overriding public interest against the disclosure of that information; and
- the formal release of information in response to an access application where there is no overriding public interest against disclosure.
- Schedule 2 of the GIPA Act provides that information which relates to the Commission’s “corruption prevention, handling of misconduct matters, investigative and reporting functions” is “excluded information” of the Commission and cannot be made the subject of an access application.

It is also conclusively presumed by Schedule 1 of the GIPA Act that there is an overriding public interest against disclosing information, the disclosure of which would be prohibited by the LECC Act. Section 180(2), LECC Act provides that a person who is or was an officer of the Commission must not, except in connection with the person’s functions under the Act, make a record of or divulge any information acquired in the exercise of the person’s functions under the Act. Section 180(5)(d) provides that such information may be divulged if the Commissioner or Inspector certifies that it is necessary to do so in the public interest.

Information which falls within the above two categories was not publicly disclosed by the Commission except under limited circumstances.

The impact on the Commission of fulfilling its requirements under the GIPA Act during 2021-22 was negligible. No major issues arose during 2021-22 in connection with the Commission’s compliance with GIPA requirements.

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## Proactive release program

Under s 7 of the GIPA Act, the Commission was authorised to proactively release any Government information that it holds, so long as there is no overriding public interest against disclosure of that information. Under s 7(3) of the GIPA Act the Commission must review its program for the release of Government information to identify the kinds of information that can be made publicly available under section 7. This review must be undertaken at least once every 12 months.

The Commission's proactive release program involves the identification for release of information for which:

- there exists a public interest in being made publicly available (noting the general public interest in favour of the disclosure of Government information established by s 12 of the GIPA Act); and
- there is no overriding public interest against disclosure (by virtue of the operation of Schedules 1 and/or 2 of the GIPA Act or otherwise).
- The following are some of the ways in which, under its proactive release program, the Commission has identified information which could be proactively released:
  - the Right to Information officer consulted with managers of business units of the Commission to ascertain whether those units' held information which could be proactively released,
  - consultation with managers of business units of the Commission to ascertain whether those units' held information which could be proactively released,
  - the Right to Information officer liaised with staff employed in areas of the Commission which dealt with information of a kind which may be proactively released to ensure they are aware of the Commission's proactive release program; and
  - the Right to Information officer monitored both informal and formal requests for information received by the Commission under the GIPA Act to identify any trends in the types of information sought and considered whether the Commission held information relevant to those trends which could be proactively released.

## Access applications received by the Commission in the reporting period

During the reporting period, the Commission received 10 access applications.

All access applications were refused wholly or in part because the information requested was information referred to in Schedule 1 or Schedule 2 of the GIPA Act.

There were no internal reviews and no reviews by the Information Commissioner.

## Obtaining access to and seeking amendment of the Commissions records

In the first instance the contact person for obtaining access to documents is as follows:

Right to Information Officer, Law Enforcement Conduct Commission GPO Box 3880,  
SYDNEY NSW 2001

Telephone inquiries may be made between 8.30am and 4:30pm on (02) 9321 6700.

Further information is also able to be obtained from the Commission website [www.lecc.nsw.gov.au](http://www.lecc.nsw.gov.au) under the 'Access to Information' link.

Table A Number of applications by type of applicant and outcome\*

|   | Access granted in full | Access granted in part | Access refused in full | Information not held | Information already available | Refuse to deal with application | Refuse to confirm/deny whether information is held | Application withdrawn |
|---|------------------------|------------------------|------------------------|----------------------|-------------------------------|---------------------------------|--|-----------------------|
| Media   | -                      | -                      | 1                      | -                    | -                             | -                               | -  | -                     |
| Members of Parliament                                       | -                      | -                      | -                      | -                    | -                             | -                               | -  | -                     |
| Private sector business                                     | -                      | -                      | -                      | -                    | -                             | -                               | -  | -                     |
| Not for profit organisations or community groups            | -                      | -                      | -                      | -                    | -                             | -                               | -  | -                     |
| Members of the public (application by legal representative) | -                      | 1                      | 3                      | -                    | -                             | -                               | -  | -                     |
| Members of the public (other)                               | -                      | 2                      | 5                      | -                    | -                             | -                               | -  | -                     |

\* More than one decision can be made in respect of a particular access application. If so, a recording must be made in relation to each such decision. This also applies to Table B.

**Table B Number of applications by type of application and outcome**

|  | Access granted in full | Access granted in part | Access refused in full | Information not held | Information already available | Refuse to deal with application | Refuse to confirm/deny whether information is held | Application withdrawn |
|--|------------------------|------------------------|------------------------|----------------------|-------------------------------|---------------------------------|--|-----------------------|
| Personal information applications*   | -                      | 2                      | 3                      | -                    | -                             | -                               | -  | -                     |
| Access applications (other than personal information applications)                     | -                      | -                      | -                      | -                    | -                             | -                               | -  | -                     |
| Access applications that are partly personal information applications and partly other | -                      | -                      | 5                      | -                    | -                             | -                               | -  | -                     |

\* A personal information application is an access application for personal information (as defined in clause 4 of Schedule 4 to the Act) about the applicant (the applicant being an individual).

**Table C Invalid applications**

| Reason for invalidity   | No of applications |
|---|--------------------|
| Application does not comply with formal requirements (section 41 of the Act)  | -                  |
| Application is for excluded information of the agency (section 43 of the Act) | 9                  |
| Application contravenes restraint order (section 110 of the Act)              | -                  |
| Total number of invalid applications received                                 | 9                  |
| Invalid applications that subsequently became valid applications              | -                  |

**Table D Conclusive presumption of overriding public interest against disclosure: matters listed in Schedule 1 to Act**

|   | Number of times consideration used* |
|---|-------------------------------------|
| Overriding secrecy laws                               | 9                                   |
| Cabinet information                                   | -                                   |
| Executive Council information                         | -                                   |
| Contempt  | -                                   |
| Legal professional privilege                          | -                                   |
| Excluded information                                  | 9                                   |
| Documents affecting law enforcement and public safety | -                                   |
| Transport safety                                      | -                                   |
| Adoption  | -                                   |
| Care and protection of children                       | -                                   |
| Ministerial code of conduct                           | -                                   |
| Aboriginal and environmental heritage                 | -                                   |

\* More than one public interest consideration may apply in relation to a particular access application and, if so, each such consideration is to be recorded (but only once per application). This also applies in relation to Table E.

**Table E Other public interest considerations against disclosure: matters listed in table to section 14 of Act**

|  | Number of occasions when application not successful |
|--|---|
| Responsible and effective government                                 | -   |
| Law enforcement and security   | -   |
| Individual rights, judicial processes and natural justice            | -   |
| Business interests of agencies and other persons                     | -   |
| Environment, culture, economy and general matters                    | -   |
| Secrecy provisions   | -   |
| Exempt documents under interstate Freedom of Information legislation | -   |

Table F **Timeliness**

|   | Number of applications |
|---|------------------------|
| Decided within the statutory time frame (20 days plus any extensions) | 10                     |
| Decided after 35 days (by agreement with applicant)                   | 1                      |
| Not decided within time (deemed refusal)                              | -                      |
| Total   | 11                     |

Table G **Number of applications reviewed under Part 5 of the Act (by type of review and outcome)**

|  | Decision varied | Decision upheld | Total |
|--|-----------------|-----------------|-------|
| Internal review  | -               | 2               | 2     |
| Review by Information Commissioner*                              | -               | 1               | 1     |
| Internal review following recommendation under section 93 of Act | -               | -               | -     |
| Review by NCAT   | -               | 1               | 1     |
| Total  | -               | 3               | 3     |

\* The Information Commissioner does not have the authority to vary decisions, but can make recommendations to the original decision-maker. The data in this case indicates that a recommendation to vary or uphold the original decision has been made by the Information Commissioner.

Table H **Applications for review under Part 5 of the Act (by type of applicant)**

|   | Number of applications for review |
|---|-----------------------------------|
| Applications by access applicants   | -                                 |
| Applications by persons to whom information the subject of access application relates (see section 54 of the Act) | -                                 |

Table I **Applications transferred to other agencies under Division 2 of Part 4 of the Act (by type of transfer)**

|                               | Number of applications transferred |
|-------------------------------|------------------------------------|
| Agency-initiated transfers    | -                                  |
| Applicant-initiated transfers | -                                  |

## Public interest disclosures

A Public Interest Disclosure (PID) is a report, complaint, or other information from a person working in or for the NSW public service. The disclosure must be about other public officials engaging in certain types of conduct.

The requirements for a Public Interest Disclosure are set out in the Public Interest Disclosures Act 1994 (NSW) (PID Act). The PID Act provides legal protection to public

officials who make a disclosure that meets these requirements.

Public sector employees can report certain types of PIDs to the Commission, as we are one of the investigating authorities under the PID Act.

Under the PID Act, the Commission is required to collect and report on information about Public Interest Disclosures (PIDs). The following table outlines the information the Commission is required to report on under the Act.

### Public interest disclosures received

|   | Made by public officials performing day to day functions | Under a statutory or other legal obligation | All other PIDs |
|---|--|---|----------------|
| Number of public officials who made PIDS directly | 0  | 45  | 2              |
| Number of PIDS received                           | 0  | 2   | 0              |

### Number of PIDS received, primarily about

|                                      | Made by public officials performing day to day functions | Under a statutory or other legal obligation | All other PIDs |
|--------------------------------------|--|---|----------------|
| Corrupt conduct                      | 0  | 29  | 1              |
| Maladministration                    | 0  | 18  | 1              |
| Serious and substantial waste        | 0  | 0   | 0              |
| Government information contravention | 0  | 0   | 0              |
| Local government pecuniary interest  | 0  | 0   | 0              |
| Total                                | 0  | 47  | 2              |



# Appendix 6

Financial statement



## INDEPENDENT AUDITOR'S REPORT

### Law Enforcement Conduct Commission

To Members of the New South Wales Parliament

#### Opinion

I have audited the accompanying financial statements of the Law Enforcement Conduct Commission (the Commission), which comprise the Statement by the Chief Commissioner, the Statement of Comprehensive Income for the year ended 30 June 2022, the Statement of Financial Position as at 30 June 2022, the Statement of Changes in Equity and the Statement of Cash Flows for the year then ended, notes comprising a Statement of Significant Accounting Policies and other explanatory information of the Commission and the consolidated entity. The consolidated entity comprises the Commission and the entities it controlled at the year's end or from time to time during the financial year.

In my opinion, the financial statements:

- have been prepared in accordance with Australian Accounting Standards and the applicable financial reporting requirements of the *Government Sector Finance Act 2018* (GSF Act), the *Government Sector Finance Regulation 2018* (GSF Regulation) and the Treasurer's Directions
- present fairly the financial position, financial performance and cash flows of the Commission and the consolidated entity.

My opinion should be read in conjunction with the rest of this report.

#### Basis for Opinion

I conducted my audit in accordance with Australian Auditing Standards. My responsibilities under the standards are described in the 'Auditor's Responsibilities for the Audit of the Financial Statements' section of my report.

I am independent of the Commission and the consolidated entity in accordance with the requirements of the:

- Australian Auditing Standards
- Accounting Professional and Ethical Standards Board's APES 110 'Code of Ethics for Professional Accountants (including Independence Standards)' (APES 110).

I have fulfilled my other ethical responsibilities in accordance with APES 110.

Parliament promotes independence by ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their roles by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General
- mandating the Auditor-General as auditor of public sector agencies
- precluding the Auditor-General from providing non-audit services.

I believe the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

## Chief Executive Officer's Responsibilities for the Financial Statements

The Chief Executive Officer is responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards and the GSF Act, GSF Regulation and Treasurer's Directions. The Chief Executive Officer's responsibility also includes such internal control as the Chief Executive Officer determines is necessary to enable the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Chief Executive Officer is responsible for assessing the ability of the Commission and the consolidated entity to continue as a going concern, disclosing as applicable, matters related to going concern and using the going concern basis of accounting.

## Auditor's Responsibilities for the Audit of the Financial Statements

My objectives are to:

- obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error
- issue an Independent Auditor's Report including my opinion.

Reasonable assurance is a high level of assurance, but does not guarantee an audit conducted in accordance with Australian Auditing Standards will always detect material misstatements. Misstatements can arise from fraud or error. Misstatements are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions users take based on the financial statements.

A description of my responsibilities for the audit of the financial statements is located at the Auditing and Assurance Standards Board website at: [www.auasb.gov.au/auditors\\_responsibilities/ar3.pdf](http://www.auasb.gov.au/auditors_responsibilities/ar3.pdf). The description forms part of my auditor's report.

The scope of my audit does not include, nor provide assurance:

- that the Commission or the consolidated entity carried out their activities effectively, efficiently and economically
- about the assumptions used in formulating the budget figures disclosed in the financial statements
- about the security and controls over the electronic publication of the audited financial statements on any website where they may be presented
- about any other information which may have been hyperlinked to/from the financial statements.



Somaiya Ahmed  
Director, Financial Audit Services

Delegate of the Auditor-General for New South Wales

27 September 2022  
SYDNEY

# LAW ENFORCEMENT CONDUCT COMMISSION

## Financial Statements 2021-22

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# Law Enforcement Conduct Commission

## Statement by Chief Commissioner

Pursuant to Section 7.6(4) of the *Government Sector Finance Act 2018* ('the Act'), I state that these financial statements:

- have been prepared in accordance with the provisions of the *Government Sector Finance Act 2018*, the *Government Sector Finance Regulation 2018*, *Australian Accounting Standards*, which includes *Australian Accounting Interpretations* and the *Treasurer's Directions*
- present fairly the Commission's financial position, financial performance and cash flows as at 30 June 2022.



Peter Johnson SC  
**Chief Commissioner**



C Anderson  
**Chief Executive Officer**

# Law Enforcement Conduct Commission

## Statement of Comprehensive Income for the year ended

30 June 2022

|   | Notes | Parent Entity<br>(Law Enforcement<br>Conduct Commission) |                          | Economic Entity<br>(Consolidated) |                          |                          |
|---|-------|--|--------------------------|-----------------------------------|--------------------------|--------------------------|
|   |       | Actual<br>2022<br>\$'000                                 | Actual<br>2021<br>\$'000 | Budget<br>2022<br>\$'000          | Actual<br>2022<br>\$'000 | Actual<br>2021<br>\$'000 |
| <b>Continuing Operations</b>  |       |  |                          |                                   |                          |                          |
| <b>Expenses excluding losses</b>  |       |  |                          |                                   |                          |                          |
| Employee related expenses   | 2(a)  | 908  | 974                      | 17,998                            | 16,176                   | 16,362                   |
| Operating expenses  | 2(b)  | 2,609  | 2,425                    | 1,896                             | 2,609                    | 2,425                    |
| Personnel services  | 2(c)  | 15,266   | 15,386                   | --                                | --                       | --                       |
| Depreciation and amortisation   | 2(d)  | 3,073  | 3,061                    | 3,255                             | 3,073                    | 3,061                    |
| Finance costs   | 2(e)  | 82   | 118                      | 101                               | 82                       | 118                      |
| <b>Total expenses excluding losses</b>                                    |       | <b>21,938</b>  | <b>21,964</b>            | <b>23,249</b>                     | <b>21,940</b>            | <b>21,966</b>            |
| <b>Revenue</b>  |       |  |                          |                                   |                          |                          |
| Appropriation   | 3(a)  | 20,850   | 21,350                   | 22,936                            | 20,850                   | 21,350                   |
| Sale of goods and services from contracts with customers                  | 3(b)  | 21   | 39                       | 56                                | 21                       | 39                       |
| Grants and other contributions  | 3(c)  | 340  | 9                        | --                                | 340                      | 9                        |
| Acceptance by the Crown Entity of employee benefits and other liabilities | 3(d)  | 230  | 513                      | 661                               | 232                      | 515                      |
| <b>Total revenue</b>  |       | <b>21,441</b>  | <b>21,911</b>            | <b>23,653</b>                     | <b>21,443</b>            | <b>21,913</b>            |
| <b>Operating result</b>   |       | <b>(497)</b>   | <b>(53)</b>              | <b>404</b>                        | <b>(497)</b>             | <b>(53)</b>              |
| Gain/(loss) on disposal   | 4     | 59   | 33                       | 15                                | 59                       | 33                       |
| Other gains/(loss) - Impairment losses                                    | 5     | --   | (66)                     | --                                | --                       | (66)                     |
| Other gains/(loss) - Unwinding/change in discount rate                    | 5     | 32   | --                       | --                                | 32                       | --                       |
| <b>Net result from continuing operations</b>                              |       | <b>(406)</b>   | <b>(86)</b>              | <b>419</b>                        | <b>(406)</b>             | <b>(86)</b>              |
| <b>Other comprehensive income</b>   |       |  |                          |                                   |                          |                          |
| <b>Total other comprehensive income</b>                                   |       | <b>--</b>  | <b>--</b>                | <b>--</b>                         | <b>--</b>                | <b>--</b>                |
| <b>TOTAL COMPREHENSIVE INCOME</b>   |       | <b>(406)</b>   | <b>(86)</b>              | <b>419</b>                        | <b>(406)</b>             | <b>(86)</b>              |

The accompanying notes form part of these financial statements

# Law Enforcement Conduct Commission

## Statement of Financial Position as at 30 June 2022

|  | Notes | Parent Entity<br>(Law Enforcement<br>Conduct Commission) |                          | Economic Entity<br>(Consolidated) |                          |                          |
|--|-------|--|--------------------------|-----------------------------------|--------------------------|--------------------------|
|  |       | Actual<br>2022<br>\$'000                                 | Actual<br>2021<br>\$'000 | Budget<br>2022<br>\$'000          | Actual<br>2022<br>\$'000 | Actual<br>2021<br>\$'000 |
| <b>ASSETS</b>                              |       |  |                          |                                   |                          |                          |
| <b>Current Assets</b>                      |       |  |                          |                                   |                          |                          |
| Cash and cash equivalents                  | 7     | 667  | 587                      | 588                               | 689                      | 593                      |
| Receivables                                | 8     | 1,020  | 1,337                    | 1,261                             | 1,037                    | 1,352                    |
| <b>Total Current Assets</b>                |       | <b>1,687</b>   | <b>1,924</b>             | <b>1,849</b>                      | <b>1,726</b>             | <b>1,945</b>             |
| <b>Non-Current Assets</b>                  |       |  |                          |                                   |                          |                          |
| Receivables                                | 8     | 47   | 47                       | 47                                | 47                       | 47                       |
| Property, plant and equipment              | 9     |  |                          |                                   |                          |                          |
| - Land & buildings                         |       | 530  | 719                      | 724                               | 530                      | 719                      |
| - Plant & equipment                        |       | 2,035  | 2,394                    | 2,017                             | 2,035                    | 2,394                    |
| <b>Total property, plant and equipment</b> |       | <b>2,565</b>   | <b>3,113</b>             | <b>2,741</b>                      | <b>2,565</b>             | <b>3,113</b>             |
| Right-of-use assets                        | 10    | 3,871  | 5,766                    | 3,586                             | 3,871                    | 5,766                    |
| Intangible assets                          | 11    | 1,203  | 773                      | 1,123                             | 1,203                    | 773                      |
| <b>Total Non-Current Assets</b>            |       | <b>7,686</b>   | <b>9,699</b>             | <b>7,497</b>                      | <b>7,686</b>             | <b>9,699</b>             |
| <b>Total Assets</b>                        |       | <b>9,373</b>   | <b>11,623</b>            | <b>9,346</b>                      | <b>9,412</b>             | <b>11,644</b>            |
| <b>LIABILITIES</b>                         |       |  |                          |                                   |                          |                          |
| <b>Current Liabilities</b>                 |       |  |                          |                                   |                          |                          |
| Payables                                   | 12    | 443  | 320                      | 262                               | 452                      | 324                      |
| Borrowings                                 | 13    | 2,201  | 1,986                    | 2,094                             | 2,201                    | 1,986                    |
| Provisions                                 | 14    | 2,126  | 1,977                    | 1,935                             | 2,105                    | 1,944                    |
| <b>Total Current Liabilities</b>           |       | <b>4,770</b>   | <b>4,283</b>             | <b>4,291</b>                      | <b>4,758</b>             | <b>4,254</b>             |
| <b>Non-Current Liabilities</b>             |       |  |                          |                                   |                          |                          |
| Borrowings                                 | 13    | 2,397  | 4,696                    | 2,256                             | 2,397                    | 4,696                    |
| Provisions                                 | 14    | 584  | 616                      | 658                               | 635                      | 666                      |
| <b>Total Non-Current Liabilities</b>       |       | <b>2,981</b>   | <b>5,312</b>             | <b>2,914</b>                      | <b>3,032</b>             | <b>5,362</b>             |
| <b>Total Liabilities</b>                   |       | <b>7,751</b>   | <b>9,595</b>             | <b>7,205</b>                      | <b>7,790</b>             | <b>9,616</b>             |
| <b>Net Assets</b>                          |       | <b>1,622</b>   | <b>2,028</b>             | <b>2,141</b>                      | <b>1,622</b>             | <b>2,028</b>             |
| <b>EQUITY</b>                              |       |  |                          |                                   |                          |                          |
| Accumulated funds                          |       | 1,622  | 2,028                    | 2,141                             | 1,622                    | 2,028                    |
| <b>Total Equity</b>                        |       | <b>1,622</b>   | <b>2,028</b>             | <b>2,141</b>                      | <b>1,622</b>             | <b>2,028</b>             |

The accompanying notes form part of these financial statements

# Law Enforcement Conduct Commission

## Statement of Changes in Equity for the year ended 30 June 2022

|   | Parent Entity<br>(Law Enforcement Conduct<br>Commission) | Economic Entity<br>(Consolidated) |
|---|--|-----------------------------------|
| Notes   | Accumulated<br>Funds<br>\$'000                           | Accumulated<br>Funds<br>\$'000    |
| Balance at 1 July 2021                                  | 2,028  | 2,028                             |
| Net result for the year                                 | (406)  | (406)                             |
| Other comprehensive income:                             |  |                                   |
|   | --   | --                                |
| Total other comprehensive income                        | --   | --                                |
| Total comprehensive income for the year                 | (406)  | (406)                             |
| Transactions with owners in their capacity<br>as owners |  |                                   |
|   | --   | --                                |
| Balance at 30 June 2022                                 | 1,622  | 1,622                             |
| Balance at 1 July 2020                                  | 2,114  | 2,114                             |
| Net result for the year                                 | (86)   | (86)                              |
| Other comprehensive income:                             |  |                                   |
|   | --   | --                                |
| Total other comprehensive income                        | --   | --                                |
| Total comprehensive income for the year                 | (86)   | (86)                              |
| Transactions with owners in their capacity<br>as owners |  |                                   |
|   | --   | --                                |
| Balance at 30 June 2021                                 | 2,028  | 2,028                             |

The accompanying notes form part of these financial statements



# Law Enforcement Conduct Commission

## Statement of Cash Flows for the year ended 30 June 2022

|   | Notes | Parent Entity<br>(Law Enforcement<br>Conduct Commission) |                          | Economic Entity<br>(Consolidated) |                          |                          |
|---|-------|--|--------------------------|-----------------------------------|--------------------------|--------------------------|
|   |       | Actual<br>2022<br>\$'000                                 | Actual<br>2021<br>\$'000 | Budget<br>2022<br>\$'000          | Actual<br>2022<br>\$'000 | Actual<br>2021<br>\$'000 |
| <b>CASH FLOWS FROM OPERATING ACTIVITIES</b>                   |       |  |                          |                                   |                          |                          |
| <b>Payments</b>   |       |  |                          |                                   |                          |                          |
| Employee related  |       | (908)  | (973)                    | (17,336)                          | (15,661)                 | (15,787)                 |
| Suppliers for goods & services                                |       | (2,649)  | (2,938)                  | (1,846)                           | (2,766)                  | (2,999)                  |
| Personnel services  |       | (14,886)   | (14,825)                 | --                                | --                       | --                       |
| Finance costs   |       | (82)   | (111)                    | (101)                             | (82)                     | (111)                    |
| <b>Total Payments</b>   |       | <b>(18,525)</b>  | <b>(18,847)</b>          | <b>(19,283)</b>                   | <b>(18,509)</b>          | <b>(18,897)</b>          |
| <b>Receipts</b>   |       |  |                          |                                   |                          |                          |
| Appropriation   |       | 20,850   | 21,350                   | 22,936                            | 20,850                   | 21,350                   |
| Sale of goods and services                                    |       | 21   | 39                       | --                                | 21                       | 39                       |
| Grants and other contributions                                |       | 340  | --                       | --                                | 340                      | --                       |
| Other   |       | 479  | 620                      | 56                                | 479                      | 620                      |
| <b>Total Receipts</b>   |       | <b>21,690</b>  | <b>22,009</b>            | <b>22,992</b>                     | <b>21,690</b>            | <b>22,009</b>            |
| <b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>               | 19    | <b>3,165</b>   | <b>3,162</b>             | <b>3,709</b>                      | <b>3,181</b>             | <b>3,112</b>             |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES</b>                   |       |  |                          |                                   |                          |                          |
| Proceeds from sale of plant & equipment                       |       | 61   | 53                       | 15                                | 61                       | 53                       |
| Purchases of plant & equipment                                |       | (468)  | (1,043)                  | (1,100)                           | (468)                    | (1,043)                  |
| Purchases of intangible assets                                |       | (594)  | (95)                     | (100)                             | (594)                    | (95)                     |
| <b>NET CASH FLOWS FROM INVESTING ACTIVITIES</b>               |       | <b>(1,001)</b>   | <b>(1,085)</b>           | <b>(1,185)</b>                    | <b>(1,001)</b>           | <b>(1,085)</b>           |
| <b>CASH FLOWS FROM FINANCING ACTIVITIES</b>                   |       |  |                          |                                   |                          |                          |
| Payment of principal portion of lease liabilities             |       | (2,084)  | (1,988)                  | (2,189)                           | (2,084)                  | (1,988)                  |
| <b>NET CASH FLOWS FROM FINANCING ACTIVITIES</b>               |       | <b>(2,084)</b>   | <b>(1,988)</b>           | <b>(2,189)</b>                    | <b>(2,084)</b>           | <b>(1,988)</b>           |
| <b>NET INCREASE / (DECREASE) IN CASH AND CASH EQUIVALENTS</b> |       |  |                          |                                   |                          |                          |
|   |       | 80   | 89                       | 335                               | 96                       | 39                       |
| Opening cash and cash equivalents                             |       | 587  | 498                      | 423                               | 593                      | 554                      |
| <b>CLOSING CASH AND CASH EQUIVALENTS</b>                      | 7     | <b>667</b>   | <b>587</b>               | <b>758</b>                        | <b>689</b>               | <b>593</b>               |

The accompanying notes form part of these financial statements

# Law Enforcement Conduct Commission

## Notes to and forming part of the Financial Statements for the year ended 30 June 2022

### 1. STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

#### (a) Reporting entity

The Law Enforcement Conduct Commission (the Commission) is a statutory corporation established under the *Law Enforcement Conduct Commission Act 2016* (NSW).

The Commission is a NSW government entity and is controlled by the State of New South Wales, which is the ultimate parent. The Commission is a not-for-profit entity (as profit is not its principal objective) and it has no cash generating units.

The Commission, as a reporting entity, comprises all of the entities under its control, namely: Office of the Law Enforcement Conduct Commission (the Office). The Office provides the Commission with personnel services.

In the process of preparing the consolidated financial statements for the economic entity, consisting of the controlling and controlled entity, all inter-entity transactions and balances have been eliminated, and like transactions and other events are accounted for using uniform accounting policies.

These financial statements for the year ended 30 June 2022, have been authorised for issue by the Chief Commissioner and Chief Executive Officer for the Law Enforcement Conduct Commission on 23 September, 2022.

#### (b) Basis of preparation

The Commission's financial statements are general purpose financial statements which have been prepared on an accruals basis and in accordance with:

- applicable Australian Accounting Standards (AAS), which include Australian Accounting Interpretations;
- the requirements of the *Government Sector Finance Act 2018* (GSF Act); and
- the Treasurer's Directions issued under the GSF Act.

Other than property, plant and equipment which is measured at fair value, the financial statements have been prepared in accordance with the historical cost convention.

Judgements, key assumptions and estimations management has made are disclosed in the relevant notes to the financial statements.

All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency, which is the entity's presentation and functional currency.

The Commission has only one program being, Investigations, Research and Complaint Management. As such, a program group statement is not included as figures would be the same as those disclosed in the Statements of Comprehensive Income and Financial Position.

The financial statements have been prepared on a going concern basis as management believe this to be appropriate (Note 3a Appropriations outlines the Commissions funding source).

The Commission has determined that it is not probable a liability arises to pay superannuation on annual leave loading. This position has been formed based on current inquiries, other information currently available to management, and after considering the facts from a decision in the Federal Court of Australia: *Finance Sector Union of Australia v Commonwealth Bank of Australia* [2022] FedCFamC2G 409. That decision confirmed that, in relation to the industrial agreement considered in that case, annual leave loading did not form part of ordinary time earnings and therefore, did not require superannuation contributions to be made under superannuation guarantee legislation because the obligation to pay annual leave loading was not referable to ordinary hours of work or to ordinary rates of pay. Rather, it was paid by reference to the period of annual leave, and for the purpose of compensating employees for their loss of opportunity to work additional hours at higher rates during this period.

This position will be re-assessed in future reporting periods as new information comes to light on this matter.

# Law Enforcement Conduct Commission

## Notes to and forming part of the Financial Statements for the year ended 30 June 2022

(c) **Statement of Compliance**

The financial statements and notes comply with Australian Accounting Standards, which include Australian Accounting Interpretations.

(d) **Accounting for the Goods and Services Tax (GST)**

Income, expenses and assets are recognised net of the amount of GST, except where:

- the amount of GST incurred by the Commission as a purchaser, that is not recoverable from the Australian Taxation Office, is recognised as part of an asset's cost of acquisition or as part of an item of expense; and
- receivables and payables are stated with the amount of GST included.

Cash flows are included in the Statement of Cash Flows on a gross basis. However, the GST components of cash flows arising from investing and financing activities which are recoverable from, or payable to, the Australian Taxation Office are classified as operating cash flows.

(e) **Comparative information**

Except when an AAS permits or requires otherwise, comparative information is presented in respect of the previous period for all amounts reported in the financial statements.

(f) **Changes in accounting policy, including new or revised Australian Accounting Standards**

(i) *Effective for the first time in 2021-22*

The accounting policies applied in 2021-22 are consistent with those of the previous financial year, there are no amendments and interpretations applying for the first time in FY2021-22 that have an impact on the financial statements of the Commission.

(ii) *Issued but not yet effective*

NSW public sector entities are not permitted to early adopt new Australian Accounting Standards, unless Treasury determines otherwise. The Commission is of the opinion that the possible impact of these Standards in the period of initial application would be immaterial.

- AASB 2020-1 -- Regarding amendments to Australian Accounting Standards – Classification of liabilities as current or non-current
- AASB 2020-3-- Regarding amendments to Australian Accounting Standards – Annual improvements 2018-2020 and other amendments
- AASB 2020-6 -- Regarding amendments to Australian Accounting Standards – Classification of liabilities as current or non-current – deferral of effective date
- AASB 2021-2 -- Regarding amendments to Australian Accounting Standards – Disclosure of accounting policies and definition of accounting estimates
- AASB 2021-6 -- Regarding amendments to Australian Accounting Standards – Disclosure of accounting policies: Tier 2 and other Australian Accounting Standards
- AASB 2021-7a -- Regarding amendments to Australian Accounting Standards – Effective date of amendments to AASB 10 and AASB 128 and editorial corrections
- AASB 2021-7b -- Regarding amendments to Australian Accounting Standards – Effective date of amendments to AASB 10 and AASB 128 and editorial corrections
- AASB 2021-7c -- Regarding amendments to Australian Accounting Standards – Effective date of amendments to AASB 10 and AASB 128 and editorial corrections

(g) **Impact of COVID-19 on Financial Reporting for 2021-22**

The Commissions financial report for the 2021-22 financial year has not been impacted by COVID-19.

## Law Enforcement Conduct Commission

*Notes to and forming part of the Financial Statements for the year ended 30 June 2022*

### 2. EXPENSES EXCLUDING LOSSES

| (a) Employee related expenses                | Law Enforcement<br>Conduct Commission |            | Consolidated  |               |
|--|---------------------------------------|------------|---------------|---------------|
|  | 2022                                  | 2021       | 2022          | 2021          |
|  | \$'000                                | \$'000     | \$'000        | \$'000        |
| Salaries and wages (including annual leave)* | 825                                   | 901        | 13,610        | 13,128        |
| Redundancies                                 | --                                    | --         | 211           | 606           |
| Superannuation—defined benefit plans         | --                                    | --         | 61            | 35            |
| Superannuation—defined contribution plans    | 23                                    | 24         | 1,194         | 1,188         |
| Long service leave                           | --                                    | --         | 171           | 479           |
| Workers' compensation insurance              | --                                    | --         | 118           | 128           |
| Payroll tax and fringe benefits tax          | 60                                    | 49         | 810           | 797           |
| Other employee expenses                      | --                                    | --         | 1             | --            |
|  | <b>908</b>                            | <b>974</b> | <b>16,176</b> | <b>16,362</b> |

\* Salaries and wages shown under the Law Enforcement Conduct Commission relate to the statutory appointment of the Chief Commissioner and Commissioner.

### (b) Other operating expenses include the following:

|   |              |              |              |              |
|---|--------------|--------------|--------------|--------------|
| Administration charges                                    | 40           | 33           | 40           | 33           |
| Books and periodicals                                     | 72           | 70           | 72           | 70           |
| Auditor's remuneration—audit of the financial statements  | 54           | 58           | 54           | 58           |
| Consultancies   | --           | 10           | --           | 10           |
| Contractors   | 192          | 163          | 192          | 163          |
| External legal counsel                                    | --           | 25           | --           | 25           |
| Minor computer expenses                                   | 218          | 156          | 218          | 156          |
| Maintenance   | 1,003        | 870          | 1,003        | 870          |
| Insurance   | 55           | 44           | 55           | 44           |
| Accommodation outgoings (utilities, cleaning)             | 161          | 174          | 161          | 174          |
| Variable lease payment, not included in lease liabilities | 128          | 134          | 128          | 134          |
| Minor equipment   | 69           | 107          | 69           | 107          |
| Motor vehicle costs (including leasing charges)           | 89           | 88           | 89           | 88           |
| Advertising   | --           | 1            | --           | 1            |
| Printing and stationery                                   | 15           | 14           | 15           | 14           |
| Staff development   | 101          | 113          | 101          | 113          |
| Travelling expenses                                       | 58           | 67           | 58           | 67           |
| Telephones  | 28           | 36           | 28           | 36           |
| Fees and searches   | 40           | 100          | 40           | 100          |
| Other*  | 286          | 162          | 286          | 162          |
|   | <b>2,609</b> | <b>2,425</b> | <b>2,609</b> | <b>2,425</b> |

\* Other expenses include a number of line items that individually are not considered material, including translator costs, staff recruitment and medical expenses, secure shredding and minor operational expenses.

### RECOGNITION AND MEASUREMENT

#### **Maintenance expense**

Day-to-day servicing costs or maintenance are charged as expenses as incurred, except where they relate to the replacement or an enhancement of a part or component of an asset, in which case the costs are capitalised and depreciated.

#### **Insurance**

The Commission's insurance activities are conducted through the NSW Treasury Managed Fund Scheme of self-insurance for Government entities. The expense (premium) is determined by the Fund Manager based on past claims experience.

## Law Enforcement Conduct Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2022

#### Lease expense

The Commission recognises the lease payments associated with the following types of leases as an expense on a straight-line basis:

- Leases that meet the definition of short-term i.e. where the lease term at commencement of the lease is 12 months or less. This excludes leases with a purchase option.
- Leases of assets that are valued at \$10,000 or under when new.

Variable lease payments not included in the measurement of the lease liability (i.e. variable lease payments that do not depend on an index or a rate, initially measured using the index or rate as at the commencement date). These payments are recognised in the period in which the event or condition that triggers those payments occurs.

| (c) | Personnel Services expenses  | Law Enforcement<br>Conduct Commission |                | Consolidated   |                |
|-----|--|---------------------------------------|----------------|----------------|----------------|
|     |  | 2022<br>\$'000                        | 2021<br>\$'000 | 2022<br>\$'000 | 2021<br>\$'000 |
|     | Office of the Law Enforcement Conduct Commission   | <b>15,266</b>                         | 15,386         | --             | --             |
| (d) | <b>Depreciation and amortisation expense</b>   |                                       |                |                |                |
|     | Depreciation   |                                       |                |                |                |
|     | Computer Equipment   | 401                                   | 395            | 401            | 395            |
|     | Plant and Equipment  | 378                                   | 337            | 378            | 337            |
|     | Right-of-Use Assets - Equipment  | --                                    | 3              | --             | 3              |
|     | Amortisation   |                                       |                |                |                |
|     | Leasehold Improvements   | 235                                   | 228            | 235            | 228            |
|     | Right-of-Use Assets - Leasehold  | 1,895                                 | 1,923          | 1,895          | 1,923          |
|     | Intangibles  | 164                                   | 175            | 164            | 175            |
|     |  | <b>3,073</b>                          | 3,061          | <b>3,073</b>   | 3,061          |
|     | Refer Note 9, 10 and 11 for recognition and measurement policies on depreciation and amortisation. |                                       |                |                |                |
| (e) | <b>Finance costs</b>   |                                       |                |                |                |
|     | Interest expense from lease liabilities  | 82                                    | 111            | 82             | 111            |
|     | Total interest expense   | 82                                    | 111            | 82             | 111            |
|     | Unwinding of discount and effect of changes in discount rate on provisions                         | --                                    | 7              | --             | 7              |
|     |  | <b>82</b>                             | 118            | <b>82</b>      | 118            |

#### RECOGNITION AND MEASUREMENT

Finance costs consist of interest and other costs incurred in connection with the borrowing of funds. Borrowing costs are recognised as expenses in the period in which they are incurred, in accordance with Treasury's mandate to not-for-profit NSW GGS entities.

### 3. REVENUE

#### RECOGNITION AND MEASUREMENT

Income is recognised in accordance with the requirements of AASB 15 *Revenue from Contracts with Customers* or AASB 1058 *Income of Not-for-Profit Entities*, dependent on whether there is a contract with a customer as defined by AASB 15 *Revenue from Contracts with Customers*. Comments regarding the accounting policies for the recognition of income are discussed below.

## Law Enforcement Conduct Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2022

a) **Appropriations and Transfers to the Crown**

**Summary of Compliance**

|   | 2022<br>\$'000 | 2021<br>\$'000 |
|---|----------------|----------------|
| Original Budget per <i>Appropriation Act</i>  | 22,766         | 22,736         |
| Other Appropriations  |                |                |
| Variations made to the appropriations during the financial year                                     | 170            | --             |
| <b>Total spending authority from parliamentary appropriations, other than deemed appropriations</b> | <b>22,936</b>  | <b>22,736</b>  |
| <b>Add:</b>   |                |                |
| Own source revenue money received during the year   | 901            | 659            |
| Own source revenue balance brought forward from prior years   | 231            | 192            |
| <b>Total</b>  | <b>24,068</b>  | <b>23,587</b>  |
| <b>Less: total expenditure</b>  | <b>21,654</b>  | <b>21,970</b>  |
| <b>Variance</b>   | <b>2,414</b>   | <b>1,617</b>   |
| <b>Less:</b>  |                |                |
| The spending authority from appropriations lapsed at 30 June  | 2,086          | 1,386          |
| <b>Own source revenue balance carried forward to following years</b>                                | <b>328</b>     | <b>231</b>     |
|   | 2022<br>\$'000 | 2021<br>\$'000 |
| Appropriations (per Statement of Comprehensive Income)  | 20,850         | 21,350         |
| Total amount drawn down against Annual Appropriation  | <b>20,850</b>  | <b>21,350</b>  |

- The Summary of Compliance includes deemed appropriations, is presented for the consolidated accounts, and is based on the assumption that annual appropriations monies are spent first (except where otherwise identified or prescribed).
- 'Expenditure' refers to cash payments. The term 'expenditure' has been used for payments for consistency with AASB 1058 Income of Not-for-Profit Entities.
- Deemed appropriations is a legal concept under the GSF Act that does not have a corresponding financial statement line item. Instead, deemed appropriations may come from various sources, such as sale of goods and services, and the corresponding revenue is disclosed in the relevant sections of these items in the financial statements.

*The Appropriation Act 2021 (Appropriations Act)* (and the subsequent variations, if applicable) appropriates the sum of \$22.936m to the Premier out of the Consolidated Fund for the services of the Law Enforcement Conduct Commission for the year 2021–22.

The Premier and Attorney General as responsible Ministers for the Commission are taken to have been given an appropriation out of the Consolidated Fund under the authority s4.7 of the Government Sector Finance Act 2018, at the time the Commission receives or recovers any deemed appropriation money, for an amount equivalent to the money that is received or recovered by the Commission.

The spending authority of the Premier from the *Appropriations Act* and that of the Attorney General from deemed appropriation money has been delegated/sub-delegated to officers of the Commission.

## Law Enforcement Conduct Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2022

The summary of compliance has been prepared on the basis of aggregating the spending authorities of both the Premier and the Attorney General for the services of the Commission. It reflects the status at the point in time this disclosure statement is being made.

To provide information related to the Commission's spending, the summary of compliance table compares:

- Portion of the amounts authorised under the *Appropriations Act* for the services of the Commission and other relevant variations to appropriations authorities applicable to the Commission and the Commission's own source revenue, with
- The Commission's actual spending for the year.

#### RECOGNITION AND MEASUREMENT

##### Parliamentary Appropriations other than deemed appropriations

Income from appropriations, other than deemed appropriations (of which the accounting treatment is based on the underlying transaction), does not contain enforceable and sufficiently specific performance obligations as defined by AASB 15. Therefore, except as specified below, appropriations (other than deemed appropriations) are recognised as income when the entity obtains control over the assets comprising the appropriations. Control over appropriations is normally obtained upon the receipt of cash.

| (b) | Sale of goods and services from contracts with customers | Law Enforcement Conduct Commission |                | Consolidated   |                |
|-----|--|------------------------------------|----------------|----------------|----------------|
|     |  | 2022<br>\$'000                     | 2021<br>\$'000 | 2022<br>\$'000 | 2021<br>\$'000 |
|     | Rendering of service – other government entities         | 21                                 | 39             | 21             | 39             |
|     |  | <b>21</b>                          | <b>39</b>      | <b>21</b>      | <b>39</b>      |

#### RECOGNITION AND MEASUREMENT

##### Sale of goods

Revenue from sale of goods is recognised as revenue when the entity satisfies a performance obligation by transferring the promised goods. The Commission does not in the usual course of business supply goods for sale.

##### Rendering of services

Revenue from rendering of services is recognised when the Commission satisfies the performance obligation by transferring the promised service. Revenue is recognised based on reference to the stage of completion (based on labour hours incurred to date), the Commission's standard payment terms of 14 days apply.

The revenue is measured at the transaction price agreed under the contract. No element of financing is deemed present as payments are due when service is provided.

| (c) | Grants and other contributions                                | Law Enforcement Conduct Commission |                | Consolidated   |                |
|-----|---|------------------------------------|----------------|----------------|----------------|
|     |   | 2022<br>\$'000                     | 2021<br>\$'000 | 2022<br>\$'000 | 2021<br>\$'000 |
|     | Grants without sufficiently specific performance obligations. | 340                                | --             | 340            | --             |
|     | Donations   | --                                 | 9              | --             | 9              |
|     |   | <b>340</b>                         | <b>9</b>       | <b>340</b>     | <b>9</b>       |

#### RECOGNITION AND MEASUREMENT

Income from grants without sufficiently specific performance obligations is recognised when the Commission obtains control over the granted assets (e.g. cash).

## Law Enforcement Conduct Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2022

#### (d) Acceptance by the Crown Entity of employee benefits and other liabilities

The following liabilities and/or expenses have been assumed by the Crown:

|                                  | Law Enforcement<br>Conduct Commission |                | Consolidated   |                |
|----------------------------------|---------------------------------------|----------------|----------------|----------------|
|                                  | 2022<br>\$'000                        | 2021<br>\$'000 | 2022<br>\$'000 | 2021<br>\$'000 |
| Superannuation – defined benefit | 59                                    | 34             | 59             | 34             |
| Long service leave provision     | 171                                   | 479            | 171            | 479            |
| Payroll tax                      | --                                    | --             | 2              | 2              |
|                                  | <b>230</b>                            | <b>513</b>     | <b>232</b>     | <b>515</b>     |

#### 4. GAIN/(LOSS) ON DISPOSAL

|                                       |           |           |           |           |
|---------------------------------------|-----------|-----------|-----------|-----------|
| Proceeds from disposal                | 61        | 53        | 61        | 53        |
| Written down value of assets disposed | (2)       | (20)      | (2)       | (20)      |
| Gain / (loss) on disposal             | <b>59</b> | <b>33</b> | <b>59</b> | <b>33</b> |

#### 5. OTHER GAIN/(LOSS)

|  |           |             |           |             |
|--|-----------|-------------|-----------|-------------|
| Impairment loss – Right-of-use assets (note 10)                  | --        | (66)        | --        | (66)        |
| Unwinding/change in discount rate – Makegood provision (note 14) | 32        | --          | 32        | --          |
|  | <b>32</b> | <b>(66)</b> | <b>32</b> | <b>(66)</b> |

### RECOGNITION AND MEASUREMENT

#### Impairment losses on non-financial assets

Impairment losses may arise on non-financial assets held by the Commission from time-to-time. Accounting for impairment losses is dependent upon the individual asset (or group of assets) subject to impairment. Accounting Policies and events giving rise to impairment losses are disclosed in the following notes:

- Receivables – see Note 8
- Plant and equipment – see Note 9
- Leases – see Note 10
- Intangible assets – see Note 11

#### 6. STATE OUTCOME GROUP

The Commission comprises a single program group covering the detection, investigation and exposure of misconduct and maladministration in the NSW Police Force and NSW Crime Commission.

The Commission also oversees the independent monitoring and review of investigations by the NSW Police Force and NSW Crime Commission of complaints about the conduct of their Officers, and real time monitoring of NSW Police Force critical incidents.

#### 7. CURRENT ASSETS – CASH AND CASH EQUIVALENTS

|              | Law Enforcement<br>Conduct Commission |                | Consolidated   |                |
|--------------|---------------------------------------|----------------|----------------|----------------|
|              | 2022<br>\$'000                        | 2021<br>\$'000 | 2022<br>\$'000 | 2021<br>\$'000 |
| Cash at bank | 665                                   | 575            | 687            | 581            |
| Cash on hand | 2                                     | 12             | 2              | 12             |
|              | <b>667</b>                            | <b>587</b>     | <b>689</b>     | <b>593</b>     |

For the purposes of the Statement of Cash Flows, cash and cash equivalents include cash on hand and cash at bank.

|   |            |            |            |            |
|---|------------|------------|------------|------------|
| Cash and cash equivalents (per Statement of Financial Position) | <b>667</b> | <b>587</b> | <b>689</b> | <b>593</b> |
|---|------------|------------|------------|------------|



## Law Enforcement Conduct Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2022

Refer to Note 20 for details regarding credit risk, liquidity risk and market risk arising from financial instruments.

#### 8. CURRENT/NON-CURRENT ASSETS – RECEIVABLES

|                                      | Law Enforcement<br>Conduct Commission |                | Consolidated   |                |
|--------------------------------------|---------------------------------------|----------------|----------------|----------------|
|                                      | 2022<br>\$'000                        | 2021<br>\$'000 | 2022<br>\$'000 | 2021<br>\$'000 |
| Prepayments                          | 893                                   | 1,247          | 893            | 1,247          |
| Other receivables                    | 127                                   | 90             | 144            | 105            |
| <b>Total current receivables</b>     | <b>1,020</b>                          | <b>1,337</b>   | <b>1,037</b>   | <b>1,352</b>   |
| Other non-current receivables        | 47                                    | 47             | 47             | 47             |
| <b>Total non-current receivables</b> | <b>47</b>                             | <b>47</b>      | <b>47</b>      | <b>47</b>      |

Refer Note 20 for details regarding credit risk of trade receivables that are neither past due nor impaired.

#### RECOGNITION AND MEASUREMENT

All 'regular way' purchases or sales of financial assets are recognised and derecognised on a trade date basis. Regular way purchases or sales are purchases or sales of financial assets that require delivery of assets within the time frame established by regulation or convention in the marketplace.

Receivables are initially recognised at fair value plus any directly attributable transaction costs. Trade receivables that do not contain a significant financing component are measured at the transaction price.

#### **Subsequent measurement**

The Commission holds receivables with the objective to collect the contractual cash flows and, therefore, measures them as amortised cost using the effective interest method, less any impairment. Changes are recognised in the net result for the year when impaired, derecognised or through the amortisation process.

#### **Impairment**

An allowance for the expected credit losses (ECLs) is recognised for all debt financial assets not held at fair value through profit or loss. ECLs are based on the difference between the contractual cash flows and the cash flows that the entity expects to receive, discounted at the original effective interest rate.

The Commission does not recognise an allowance for ECLs as all trade receivables held by the Commission are payable by other government agencies (either State or Commonwealth), the dollar value is low, and as such, are considered to be recoverable in full.

## Law Enforcement Conduct Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2022

#### 9. NON-CURRENT ASSETS – PLANT AND EQUIPMENT

Law Enforcement Conduct Commission and consolidated figures are shown together as the Office of the Law Enforcement Conduct Commission does not hold assets.

|   | Leasehold<br>improvements<br>\$'000 | Plant &<br>Equipment<br>\$'000s | Computer<br>Equipment<br>\$'000 | Total<br>\$'000 |
|---|-------------------------------------|---------------------------------|---------------------------------|-----------------|
| <b>At 1 July 2020 – fair value</b>        |                                     |                                 |                                 |                 |
| Gross carrying amount                     | 2,365                               | 3,213                           | 4,141                           | 9,719           |
| Accumulated depreciation and impairment   | (1,450)                             | (2,016)                         | (3,220)                         | (6,686)         |
| <b>Net carrying amount</b>                | <b>915</b>                          | <b>1,197</b>                    | <b>921</b>                      | <b>3,033</b>    |
| <b>Year ended 30 June 2021</b>            |                                     |                                 |                                 |                 |
| Net carrying amount at beginning of year  | 915                                 | 1,197                           | 921                             | 3,033           |
| Purchases of assets                       | 32                                  | 465                             | 546                             | 1,043           |
| Assets acquired for no consideration      | --                                  | 9                               | --                              | 9               |
| Disposals                                 | --                                  | (12)                            | --                              | (12)            |
| Depreciation expense                      | (228)                               | (337)                           | (395)                           | (960)           |
| <b>Net carrying amount at end of year</b> | <b>719</b>                          | <b>1,322</b>                    | <b>1,072</b>                    | <b>3,113</b>    |
|   | Leasehold<br>improvements<br>\$'000 | Plant &<br>Equipment<br>\$'000s | Computer<br>Equipment<br>\$'000 | Total<br>\$'000 |
| <b>At 1 July 2021 – fair value</b>        |                                     |                                 |                                 |                 |
| Gross carrying amount                     | 2,397                               | 3,402                           | 4,614                           | 10,413          |
| Accumulated depreciation and impairment   | (1,678)                             | (2,080)                         | (3,542)                         | (7,300)         |
| <b>Net carrying amount</b>                | <b>719</b>                          | <b>1,322</b>                    | <b>1,072</b>                    | <b>3,113</b>    |
|   | Leasehold<br>improvements<br>\$'000 | Plant &<br>Equipment<br>\$'000s | Computer<br>Equipment<br>\$'000 | Total<br>\$'000 |
| <b>Year ended 30 June 2022</b>            |                                     |                                 |                                 |                 |
| Net carrying amount at beginning of year  | 719                                 | 1,322                           | 1,072                           | 3,113           |
| Purchases of assets                       | 46                                  | 238                             | 185                             | 469             |
| Assets acquired for no consideration      | --                                  | --                              | --                              | --              |
| Disposals                                 | --                                  | (1)                             | (2)                             | (3)             |
| Depreciation expense                      | (235)                               | (378)                           | (401)                           | (1,014)         |
| Other movements; transfer between class   | --                                  | 11                              | (11)                            | --              |
| <b>Net carrying amount at end of year</b> | <b>530</b>                          | <b>1,192</b>                    | <b>843</b>                      | <b>2,565</b>    |
|   | Leasehold<br>improvements<br>\$'000 | Plant &<br>Equipment<br>\$'000s | Computer<br>Equipment<br>\$'000 | Total<br>\$'000 |
| <b>At 30 June 2022 – fair value</b>       |                                     |                                 |                                 |                 |
| Gross carrying amount                     | 2,444                               | 3,190                           | 4,344                           | 9,978           |
| Accumulated depreciation and impairment   | (1,914)                             | (1,998)                         | (3,501)                         | (7,413)         |
| <b>Net carrying amount</b>                | <b>530</b>                          | <b>1,192</b>                    | <b>843</b>                      | <b>2,565</b>    |

#### RECOGNITION AND MEASUREMENT

##### Acquisition of plant and equipment

Plant and equipment are initially recognised at cost. Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or construction or, where applicable, the amount attributed to that asset when initially recognised in accordance with the requirements of other Australian Accounting Standards.

Fair value is the price that would be received to sell an asset in an orderly transaction between market participants at measurement date.

## Law Enforcement Conduct Commission

### **Notes to and forming part of the Financial Statements for the year ended 30 June 2022**

Where payment for an asset is deferred beyond normal credit terms, its cost is the cash price equivalent (i.e. deferred payment is effectively discounted over the period of credit).

Assets acquired at no cost, or for nominal consideration, are initially recognised at their fair value at the date of acquisition.

#### **Capitalisation thresholds**

Plant and equipment and intangible assets costing \$5,000 and above individually, or forming part of a network costing more than \$5,000, are capitalised.

#### **Restoration Costs**

The present value of the expected cost for the restoration or cost of dismantling of an asset after its use is included in the cost of the respective asset if the recognition criteria for a provision are met.

#### **Assets not able to be reliably measured**

The Commission does not hold any assets that have not been recognised in the Statement of Financial Position.

#### **Depreciation of plant and equipment**

Depreciation is provided for on a straight-line basis for all depreciable assets, so as to write off the depreciable amount of each asset, as it is consumed over its useful life to the Commission.

All materially identifiable components of assets are depreciated separately over their useful lives.

The Commission has adopted the following depreciation rates for the reporting period:

|                              |                                 |
|------------------------------|---------------------------------|
| Computer equipment           | 3 & 4 years                     |
| Intangible computer software | 3, 4 & 7 years                  |
| Plant and equipment          | 3, 4, 5, 7 & 10 years           |
| Leasehold improvements       | the initial period of the lease |

#### **Right-of-use Assets acquired by lessees**

The Commission has elected to present right-of-use assets separately in the Statement of Financial Position.

Further information on leases is contained at Note 10.

#### **Revaluation of plant and equipment**

Physical non-current assets are valued in accordance with the 'Valuation of Physical Non-Current Assets at Fair Value' Policy and Guidelines Paper (TPP 21-09) and Treasurer's Direction *Valuation of Physical non-Current Assets at Fair Value* (TD21-05). TD21-05 and TPP21-09 adopt fair value in accordance with AASB 13 *Fair Value Measurement* and AASB 116 *Property, Plant and Equipment*.

The majority of Commission assets are non-specialised assets with short useful lives and are therefore measured at depreciated historical cost, as an approximation of fair value. The Commission has assessed that any difference between fair value and depreciated historical cost is unlikely to be material.

The residual values, useful lives and methods of depreciation of property, plant and equipment are reviewed at each financial year end.

#### **Impairment of plant and equipment**

As a not-for-profit entity with no cash generating units, impairment under AASB 136 *Impairment of Assets* is unlikely to arise. As plant and equipment is carried at fair value or an amount that approximates fair value, impairment can only arise in rare circumstances, such as where the costs of disposal are material. Specifically, impairment is unlikely for not-for-profit entities given that AASB 136 modifies the recoverable amount test for non-cash generating assets of not for profit entities to the higher of fair value less costs of disposal and depreciated replacement cost, where depreciated replacement cost is also fair value.

The Commission assesses, at each reporting date, whether there is an indication that an asset may be impaired. If any indication exists, or when annual impairment testing for an asset is required, the Commission estimates the asset's recoverable amount. When the carrying amount of an asset

## Law Enforcement Conduct Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2022

exceeds its recoverable amount, the asset is considered impaired and is written down to its recoverable amount.

As a not-for-profit entity, an impairment loss is recognised in the net result to the extent the impairment loss exceeds the amount in the revaluation surplus for the class of asset.

All of the Commission's non-current assets are considered to be non-specialised assets with short useful lives measured using the depreciated historical cost as an approximation of fair value and as such do not require fair value hierarchy disclosures under AASB 13.

## 10. LEASES

### Entity as a lessee

The Commission leases property. Lease contracts are typically made for fixed periods of three to five years, but may have extension options. Lease terms are negotiated on an individual basis and contain a wide range of different terms and conditions. The lease agreements do not impose any covenants, but leased assets may not be used as security for borrowing purposes. The Commission does not provide residual value guarantees in relation to leases.

Extension and termination options are included in a number of property leases. These terms are used to maximise operational flexibility in terms of managing contracts. The majority of extension and termination options held are exercisable only by the Commission and not by the respective lessor. In determining the lease term, management considers all facts and circumstances that create an economic incentive to exercise an extension, or not exercise a termination option. Extension options (or periods after termination options) are only included in the lease term if the lease is reasonably certain to be extended (or not terminated). Potential future cash outflows of \$665,000 have not been included in the lease liability because it is not reasonably certain that the lease will be extended. The assessment is reviewed if a significant event or a significant change in circumstances occurs which affects this assessment and that is within the control of the lessee. For leases managed by Property NSW (PNSW), the Commission has relied on the best available information provided by PNSW as to future accommodation plans for the Commission, for other leases the Commission has made an assumption based on business needs and past practice. The Commission was not required to adjust lease terms during the financial year.

AASB 16 Leases (AASB 16) requires a lessee to recognise a right-of-use asset and a corresponding lease liability for most leases.

The Commission has elected to recognise payments for short-term leases and low value leases as expenses on a straight-line basis, instead of recognising a right-of-use asset and lease liability. Short-term leases are leases with a lease term of 12 months or less. Low value assets are assets with a fair value of \$10,000 or less when new and comprise mainly equipment.

### Right-of-use assets under leases

The following table presents right-of-use assets.

|                                   | Leasehold<br>Improvements<br>\$'000 | Plant &<br>Equipment<br>\$'000 | Total<br>\$'000 |
|-----------------------------------|-------------------------------------|--------------------------------|-----------------|
| Balance as at 1 July 2021         | 5,766                               | --                             | 5,766           |
| Additions                         | --                                  | --                             | --              |
| Disposals                         | --                                  | --                             | --              |
| Depreciation expense              | (1,895)                             | --                             | (1,895)         |
| Other movements – impairment loss | --                                  | --                             | --              |
| <b>Balance at 30 June 2022</b>    | <b>3,871</b>                        | <b>--</b>                      | <b>3,871</b>    |

|                                   | Leasehold<br>Improvements<br>\$'000 | Plant &<br>Equipment<br>\$'000 | Total<br>\$'000 |
|-----------------------------------|-------------------------------------|--------------------------------|-----------------|
| Balance as at 1 July 2020         | 7,755                               | 10                             | 7,765           |
| Additions                         | --                                  | --                             | --              |
| Disposals                         | --                                  | (7)                            | (7)             |
| Depreciation expense              | (1,923)                             | (3)                            | (1,926)         |
| Other movements – impairment loss | (66)                                | --                             | (66)            |
| <b>Balance at 30 June 2021</b>    | <b>5,766</b>                        | <b>--</b>                      | <b>5,766</b>    |

## Law Enforcement Conduct Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2022

#### Lease liabilities

The following table presents liabilities under leases.

|                           | 2022<br>\$'000 | 2021<br>\$'000 |
|---------------------------|----------------|----------------|
| Balance as at 1 July 2021 | 6,682          | 8,670          |
| Additions                 | --             | --             |
| Interest expense          | 82             | 111            |
| Payments                  | (2,166)        | (2,099)        |
| Balance at 30 June 2022   | <b>4,598</b>   | <b>6,682</b>   |

The following amounts were recognised in the Statement of Comprehensive Income during the period in respect of leases where the Commission is the lessee:

|   | 2022<br>\$'000 | 2021<br>\$'000 |
|---|----------------|----------------|
| Depreciation expense of right-of-use assets                                   | 1,895          | 1,926          |
| Interest expense on lease liabilities   | 82             | 111            |
| Variable lease payments, not included in the measurement of lease liabilities | 128            | 134            |
| Total amount recognised in the Statement of Comprehensive Income              | <b>2,105</b>   | <b>2,171</b>   |

The Commission had total cash outflows for leases of \$2,514,842 (GST inclusive) in FY2021-22 (FY2020-21 \$2,307,375).

#### RECOGNITION AND MEASUREMENT

The Commission assesses at contract inception whether a contract is, or contains, a lease. That is, if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration.

The Commission recognises lease liabilities to make lease payments and right-of-use assets representing the right to use the underlying assets, except for short-term leases and leases of low-value assets.

##### (i) RIGHT-OF-USE ASSETS

The Commission recognises right-of-use assets at the commencement date of the lease (i.e. the date the underlying asset is available for use). Right-of-use assets are initially measured at the amount of initial measurement of the lease liability (refer to (ii) Lease Liabilities below), adjusted by any lease payments made at or before the commencement date and lease incentives, any initial direct costs incurred, and estimated costs of dismantling and removing the asset or restoring the site.

The right-of-use assets are subsequently measured at cost. They are depreciated on a straight-line basis over the shorter of the lease term and the estimated useful lives of the assets, as below:

- Land and buildings 3 to 5 years

If ownership of the leased asset transfers to the Commission at the end of the lease term or the cost reflects the exercise of a purchase option, depreciation is calculated using the estimated useful life of the asset.

The right-of-use assets are also subject to impairment. The Commission assesses, at each reporting date, whether there is an indication that an asset may be impaired. If any indication exists, or when annual impairment testing for an asset is required, the Commission estimates the asset's recoverable amount. When the carrying amount of an asset exceeds its recoverable amount, the asset is considered impaired and is written down to its recoverable amount. After an impairment loss has been recognised, it is reversed only if there has been a change in the assumptions used to determine the asset's recoverable amount. The reversal is limited so that the carrying amount of the asset does not exceed its recoverable amount, nor exceed the carrying amount that would have been determined, net of depreciation, had no impairment loss been recognised for the asset in prior years. Such reversal is recognised in the net result.

## Law Enforcement Conduct Commission

### *Notes to and forming part of the Financial Statements for the year ended 30 June 2022*

#### (ii) LEASE LIABILITIES

At the commencement date of the lease, the Commission recognises lease liabilities measured at the present value of the lease payments to be made over the lease term.

Lease payments include:

- Fixed payments (including in substance fixed payments) less any lease incentives receivable;
- Variable lease payments that depend on an index or a rate;
- Amounts expected to be paid under residual value guarantees;
- Exercise price of a purchase options reasonably certain to be exercised by the Commission; and
- Payments of penalties for terminating the lease, if the lease term reflects the Commission exercising the option to terminate.

Variable lease payments that do not depend on an index or a rate are recognised as expenses (unless they are incurred to produce inventories) in the period in which the event or condition that triggers the payment occurs.

The lease payments are discounted using the interest rate implicit in the lease. If that rate cannot be readily determined, which is generally the case for the Commission's leases, the lessee's incremental borrowing rate is used, being the rate that the Commission would have to pay to borrow the funds necessary to obtain an asset of similar value to the right-of-use asset in a similar economic environment with similar terms, security and conditions.

After the commencement date, the amount of lease liabilities is increased to reflect the accretion of interest and reduced for the lease payments made. In addition, the carrying amount of lease liabilities is remeasured if there is a modification, a change in the lease term, a change in the lease payments (e.g. changes to future payments resulting from a change in an index or rate used to determine such lease payments) or a change in the assessment of an option to purchase the underlying asset.

The Commission's lease liabilities are included in borrowings.

#### (iii) SHORT-TERM LEASES AND LEASES OF LOW-VALUE ASSETS

The Commission applies the short-term lease recognition exemption to its short-term leases of equipment (i.e. those leases that have a lease term of 12 months or less from the commencement date and do not contain a purchase option). It also applies the lease of low-value assets recognition exemption to leases of office equipment that are considered to be low value. Lease payments on short-term leases and leases of low value are recognised as expense on a straight-line basis over the lease term.

#### (iv) LEASES THAT HAVE SIGNIFICANTLY BELOW-MARKET TERMS AND CONDITIONS PRINCIPALLY TO ENABLE THE ENTITY TO FURTHER ITS OBJECTIVES

Right-of-use assets under leases at significantly below-market terms and conditions that are entered into principally to enable the entity to further its objectives, are measured at cost.

These right-of-use assets are depreciated on a straight-line basis over the shorter of the lease term and the estimated useful lives of the assets, subject to impairment. The Commission does not currently have any leases that have terms significantly below market-value.

## Law Enforcement Conduct Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2022

#### 11. NON-CURRENT INTANGIBLE ASSETS – SOFTWARE

Law Enforcement Conduct Commission and consolidated figures are shown together as the Office of the Law Enforcement Conduct Commission does not hold assets.

|  | Consolidated |
|--|--------------|
|  | \$'000       |
| <b>At 1 July 2020</b>  |              |
| Cost (gross carrying amount)                                 | 4,087        |
| Accumulated amortisation and impairment                      | (3,234)      |
| <b>Net carrying amount</b>                                   | <b>853</b>   |
| <b>Year ended 30 June 2021</b>                               |              |
| Net carrying amount at beginning of year                     | 853          |
| Additions  | 95           |
| Amortisation (recognised in “depreciation and amortisation”) | (175)        |
| <b>Net carrying amount at end of year</b>                    | <b>773</b>   |
| <b>At 1 July 2021</b>  |              |
| Cost (gross carrying amount)                                 | 4,178        |
| Accumulated amortisation and impairment                      | (3,405)      |
| <b>Net carrying amount</b>                                   | <b>773</b>   |
| <b>Year ended 30 June 2022</b>                               |              |
| Net carrying amount at beginning of year                     | 773          |
| Additions  | 594          |
| Amortisation (recognised in “depreciation and amortisation”) | (164)        |
| <b>Net carrying amount at end of year</b>                    | <b>1,203</b> |
| <b>At 30 June 2022</b>                                       |              |
| Cost (gross carrying amount)                                 | 4,753        |
| Accumulated amortisation and impairment                      | (3,550)      |
| <b>Net carrying amount</b>                                   | <b>1,203</b> |

#### RECOGNITION AND MEASUREMENT

The Commission recognises intangible assets only if it is probable that future economic benefits will flow to the Commission and the cost of the asset can be measured reliably. Intangible assets are measured initially at cost. Where an asset is acquired at no or nominal cost, the cost is its fair value as at the date of acquisition. Intangible assets are subsequently measured at fair value only if there is an active market. As there is no active market for the Commission's intangible assets, the assets are carried at cost less any accumulated amortisation and impairment losses.

All research costs are expensed. Development costs are only capitalised when certain criteria are met.

The useful lives of intangible assets are assessed to be finite.

The Commission's intangible assets are amortised using the straight-line method over a period of three or four years.

The amortisation period and the amortisation method for an intangible asset with a finite useful life are reviewed at least at the end of each reporting period.

Intangible assets are tested for impairment where an indicator of impairment exists. If the recoverable amount is less than its carrying amount, the carrying amount is reduced to recoverable amount and the reduction is recognised as an impairment loss.

## Law Enforcement Conduct Commission

*Notes to and forming part of the Financial Statements for the year ended 30 June 2022*

### 12. CURRENT LIABILITIES – PAYABLES

|                                      | Law Enforcement<br>Conduct<br>Commission |                | Consolidated   |                |
|--------------------------------------|--|----------------|----------------|----------------|
|                                      | 2022<br>\$'000                           | 2021<br>\$'000 | 2022<br>\$'000 | 2021<br>\$'000 |
| Accrued salaries, wages and on-costs | --                                       | --             | 342            | 221            |
| Personnel services payable           | 342                                      | 221            | --             | --             |
| Creditors                            | 101                                      | 99             | 110            | 103            |
|                                      | <b>443</b>                               | <b>320</b>     | <b>452</b>     | <b>324</b>     |

Refer Note 20 for details regarding liquidity risk, including a maturity analysis of the above payables.

#### RECOGNITION AND MEASUREMENT

Payables represent liabilities for goods and services provided to the Commission and other amounts. Short-term payables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

Payables are financial liabilities at amortised cost, initially measured at fair value, net of directly attributable transaction costs. These are subsequently measured at amortised cost using the effective interest method. Gains and losses are recognised in the net result when the liabilities are derecognised as well as through the amortisation process.

### 13. CURRENT / NON-CURRENT LIABILITIES – BORROWINGS

**Law Enforcement Conduct Commission and consolidated figures are shown together as the Office of the Law Enforcement Conduct Commission does not have borrowings.**

| Lease liabilities (see note 10) | Consolidated   |                |
|---------------------------------|----------------|----------------|
|                                 | 2022<br>\$'000 | 2021<br>\$'000 |
| Current Lease liabilities       | 2,201          | 1,986          |
| Non-Current liabilities         | 2,397          | 4,696          |
|                                 | <b>4,598</b>   | <b>6,682</b>   |

Refer Note 20 for details regarding liquidity risk, including a maturity analysis of the above payables.

#### RECOGNITION AND MEASUREMENT

Borrowings represents lease liabilities.

##### *Financial liabilities at amortised cost*

Borrowings classified as financial liabilities at amortised cost are initially measured at fair value, net of directly attributable transaction costs. These are subsequently measured at amortised cost using the effective interest method. Gains and losses are recognised in net result when the liabilities are derecognised as well as through the amortisation process.



## Law Enforcement Conduct Commission

*Notes to and forming part of the Financial Statements for the year ended 30 June 2022*

### 14. CURRENT / NON-CURRENT LIABILITIES – PROVISIONS

|   | Law Enforcement<br>Conduct<br>Commission |                | Consolidated   |                |
|---|--|----------------|----------------|----------------|
|   | 2022<br>\$'000                           | 2021<br>\$'000 | 2022<br>\$'000 | 2021<br>\$'000 |
| <b>Employee benefits and related on-costs</b> |  |                |                |                |
| Annual leave including on-costs               | 113                                      | 128            | 1,514          | 1,366          |
| Long service leave on-costs                   | --                                       | --             | 642            | 628            |
| Provision for personnel services              | 2,013                                    | 1,849          | --             | --             |
|   | <b>2,126</b>                             | <b>1,977</b>   | <b>2,156</b>   | <b>1,994</b>   |

Current annual leave obligations expected to be settled after 12 months 136 123

Current long service leave obligations expected to be settled after 12 months 58 52

The liability is based on leave entitlements at 30 June 2022 using remuneration rates payable post 30 June 2022.

#### Other Provisions

|                               |            |            |            |            |
|-------------------------------|------------|------------|------------|------------|
| Restoration costs             | 584        | 616        | 584        | 616        |
| <b>Total other Provisions</b> | <b>584</b> | <b>616</b> | <b>584</b> | <b>616</b> |

|   | Consolidated   |                |
|---|----------------|----------------|
|   | 2022<br>\$'000 | 2021<br>\$'000 |
| <b>Aggregate employee benefits and related on-costs</b> |                |                |
| Provisions – current                                    | 2,098          | 1,944          |
| Provisions – non-current                                | 58             | 50             |
| Accrued salaries, wages and on-costs (Note 12)          | 342            | 221            |
|   | <b>2,498</b>   | <b>2,215</b>   |

Restoration costs - the Commission is required to reinstate the leased premises to the condition they were in as at the date the premises were first leased.

|   | Consolidated   |                |
|---|----------------|----------------|
|   | 2022<br>\$'000 | 2021<br>\$'000 |
| <b>Movements in provisions (other than employee benefits)</b> |                |                |
| <b>Restoration costs</b>                                      |                |                |
| Carrying amount at 1 July 2021                                | 616            | 609            |
| Additional provision – new lease                              | --             | --             |
| Unwinding/change in discount rate                             | (32)           | 7              |
| <b>Carrying amount at 30 June 2022</b>                        | <b>584</b>     | <b>616</b>     |

### RECOGNITION AND MEASUREMENT

#### Employee benefits and related on-costs

##### Salaries and wages, annual leave and sick leave

Salaries and wages (including non-monetary benefits) and paid sick leave that are expected to be settled wholly within 12 months after the end of the period in which the employees render the service are recognised and measured at the undiscounted amounts of the benefits.

Annual leave is not expected to be settled wholly before 12 months after the end of the annual reporting period in which the employees render the related service. As such, it is required to be measured at present value in accordance with AASB 119 *Employee Benefits*.

## Law Enforcement Conduct Commission

### *Notes to and forming part of the Financial Statements for the year ended 30 June 2022*

Actuarial advice obtained by Treasury has confirmed that the use of a nominal approach, plus the annual leave on annual leave liability (using 8.4% of the nominal value of annual leave), can be used to approximate the present value of the annual leave liability. The Commission has assessed the actuarial advice based on the Commission's circumstances and has determined that the effect of discounting is immaterial to annual leave. All annual leave is classified as a current liability, even where the Commission does not expect to settle the liability within 12 months, as the Commission does not have an unconditional right to defer settlement.

Unused non-vesting sick leave does not give rise to a liability as it is not considered probable that sick leave taken in the future will be greater than the benefits accrued in the future.

#### **Long Service Leave and Superannuation**

The Commission's liabilities for long service leave and defined benefit superannuation are assumed by the Crown. The Commission accounts for the liability as having been extinguished, resulting in the amount assumed being shown as part of the non-monetary revenue item described as 'Acceptance by the Crown of employee benefits and other liabilities'.

Long service leave is measured at present value of expected future payments to be made in respect of services provided up to the reporting date. Consideration is given to certain factors based on actuarial review, including expected future wage and salary levels, experience of employee departures, and periods of service. Expected future payments are discounted using Commonwealth government bond rate at the reporting date.

The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for certain superannuation schemes (i.e. Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For other superannuation schemes (i.e. State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.

#### **Consequential on-costs**

Consequential costs to employment are recognised as liabilities and expenses where the employee benefits to which they relate have been recognised. This includes outstanding amounts of payroll tax, workers' compensation insurance premiums and fringe benefits tax.

#### **Other Provisions**

Provisions are recognised when; the Commission has a present legal or constructive obligation as a result of a past event; it is probable that an outflow of resources will be required to settle the obligation; and a reliable estimate can be made of the amount of the obligation. When it is expected that some or all of a provision will be reimbursed, for example, under an insurance contract, the reimbursement is recognised as a separate asset, but only when the reimbursement is virtually certain. The expense relating to a provision is presented net of any reimbursement in the Statement of Comprehensive Income.

Any provisions for restructuring are recognised only when the Commission has a detailed formal plan and the Commission has raised a valid expectation in those affected by the restructuring that it will carry out the restructuring by starting to implement the plan or announcing its main features to those affected.

The Commission recognises a make good provision for the anticipated costs of future restoration of leased premises as required under the terms of agreement. The provision includes future cost estimates associated with dismantling and reinstatement of the leased premises to original condition. The calculation is based on a square metre rate of \$185.00 as per the lease agreement.

## **15. EQUITY**

### **RECOGNITION AND MEASUREMENT**

#### **Accumulated Funds**

The category 'Accumulated Funds' includes all current and prior period retained funds.

# Law Enforcement Conduct Commission

## Notes to and forming part of the Financial Statements for the year ended 30 June 2022

### Reserves

Separate reserve accounts are recognised in the financial statements only if such accounts are required by specific legislation or Australian Accounting Standards (e.g. asset revaluation surplus and foreign currency translation reserve).

## 16. COMMITMENTS

### Capital Commitments

Aggregate capital expenditure for the acquisition of computer software and hardware, office equipment and leasehold improvements, contracted for at balance date and not provided for:

|                       | Law Enforcement<br>Conduct Commission |                | Consolidated   |                |
|-----------------------|---------------------------------------|----------------|----------------|----------------|
|                       | 2022<br>\$'000                        | 2021<br>\$'000 | 2022<br>\$'000 | 2021<br>\$'000 |
| Within one year       | 45                                    | --             | 45             | --             |
| Total (including GST) | <b>45</b>                             | <b>--</b>      | <b>45</b>      | <b>--</b>      |

Capital commitments for 2022 include input tax credits of \$4,137 (2021: \$0) that are expected to be recoverable from the Australian Taxation Office.

## 17. CONTINGENT LIABILITIES AND CONTINGENT ASSETS

As at the reporting date, the Commission is not aware of any contingent liabilities or assets that will materially affect its financial position.

## 18. BUDGET REVIEW

Budgeted amounts are drawn from the original budgeted financial statements presented to Parliament in respect of the reporting period. Subsequent amendments to the original budget (e.g. adjustment for transfer of functions between entities as a result of Administrative Arrangements Orders) are not reflected in the budgeted amounts. Major variances between the original budgeted amounts and the actual amounts disclosed in the financial statements are explained below.

### Net result

The actual net result was lower than budget, primarily due to:

Recurrent appropriation revenue at year end is approximately 8.5% below budget due to the Commission not requiring its full approved appropriation.

Employee related expenditure is below budget due to vacant positions, staff working reduced hours in fully funded positions or seconded to other agencies. It has been increasingly difficult to recruit suitably qualified staff. Depreciation and finance costs associated with ROU leased assets are also below budget. Other operating expenses are above budget predominately due to an increase in costs for software as a service which is expensed.

Revenue from sales of goods and services is lower than budget as income received from other Government entities was largely recouping of expenses, Treasury acceptance of employee entitlements is lower than budget following a change in bond used to calculate present value. The Commission received grant funding through the digital restart fund.

### Assets and liabilities

Total assets are close to budget. Total liabilities are higher than budget due to an increase in payables, current provisions and borrowings relating to ROU lease assets being higher than estimated.

### Cash flows

Both payments and receipts are lower than budget reflecting lower expenses and funding levels required to meet expenses.

## Law Enforcement Conduct Commission

*Notes to and forming part of the Financial Statements for the year ended 30 June 2022*

### 19. RECONCILIATION OF CASH FLOWS FROM OPERATING ACTIVITIES TO NET RESULT

|   | Law Enforcement<br>Conduct Commission |                | Consolidated   |                |
|---|---------------------------------------|----------------|----------------|----------------|
|   | 2022<br>\$'000                        | 2021<br>\$'000 | 2022<br>\$'000 | 2021<br>\$'000 |
| Net cash used on operating activities               | 3,165                                 | 3,162          | 3,181          | 3,112          |
| Depreciation and amortisation                       | (3,073)                               | (3,061)        | (3,073)        | (3,061)        |
| Allowance for impairment ROUA                       | --                                    | (66)           | --             | (66)           |
| Decrease/(increase) in provisions                   | (117)                                 | (55)           | (130)          | (17)           |
| Increase/(decrease) in prepayments and other assets | (317)                                 | (49)           | (315)          | (34)           |
| Decrease/(increase) in payables                     | (123)                                 | (59)           | (128)          | (62)           |
| Assets acquired free of charge                      | --                                    | 9              | --             | 9              |
| Net gain/(loss) on assets disposed                  | 59                                    | 33             | 59             | 33             |
| <b>Operating result</b>                             | <b>(406)</b>                          | <b>(86)</b>    | <b>(406)</b>   | <b>(86)</b>    |

### 20. FINANCIAL INSTRUMENTS

The Commission's principal financial instruments are outlined below. These financial instruments arise directly from the Commission's operations or are required to finance the Commission's operations. The Commission does not enter into or trade financial instruments, including derivative financial instruments, for speculative purposes.

The Commission's main risks arising from financial instruments are outlined below, together with the Commission's objectives, policies and processes for measuring and managing risk. Further quantitative and qualitative disclosures are included throughout these financial statements.

The Chief Commissioner has overall responsibility for the establishment and oversight of risk management and reviews and agrees policies for managing each of these risks. Risk management policies are established to identify and analyse the risks faced by the Commission, to set risk limits and controls and to monitor risk. Compliance with policies is reviewed by the Commission on a continuous basis.

#### a) Financial instrument categories

##### Parent

| Financial Assets          | Note | Category       | Carrying Amount | Carrying Amount |
|---------------------------|------|----------------|-----------------|-----------------|
| Class:                    |      |                | 2022<br>\$'000  | 2021<br>\$'000  |
| Cash and cash equivalents | 7    | Amortised cost | 667             | 587             |
| Receivables <sup>1</sup>  | 8    | Amortised cost | 47              | 57              |

| Financial Liabilities | Note | Category   | Carrying Amount | Carrying Amount |
|-----------------------|------|--|-----------------|-----------------|
| Class:                |      |  | 2022<br>\$'000  | 2021<br>\$'000  |
| Payables <sup>2</sup> | 12   | Financial liabilities measured at amortised cost | 443             | 320             |
| Borrowings            | 13   | Financial liabilities measured at amortised cost | 4,598           | 6,682           |

##### Consolidated

| Financial Assets          | Note | Category       | Carrying Amount | Carrying Amount |
|---------------------------|------|----------------|-----------------|-----------------|
| Class:                    |      |                | 2022<br>\$'000  | 2021<br>\$'000  |
| Cash and cash equivalents | 7    | Amortised cost | 689             | 593             |

## Law Enforcement Conduct Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2022

|                              |             |  |                        |                        |
|------------------------------|-------------|--|------------------------|------------------------|
| Receivables <sup>1</sup>     | 8           | Amortised cost                                   | 63                     | 72                     |
| <hr/>                        |             |  |                        |                        |
| <b>Financial Liabilities</b> | <b>Note</b> | <b>Category</b>                                  | <b>Carrying Amount</b> | <b>Carrying Amount</b> |
| Class:                       |             |  | 2022                   | 2021                   |
|                              |             |  | \$'000                 | \$'000                 |
| Payables <sup>2</sup>        | 12          | Financial liabilities measured at amortised cost | 437                    | 314                    |
| Borrowings                   | 13          | Financial liabilities measured at amortised cost | 4,598                  | 6,682                  |

<sup>1</sup> Excludes statutory receivables and prepayments (i.e. not within scope of AASB 7)

<sup>2</sup> Excludes statutory payables and unearned revenue (i.e. not within scope of AASB 7)

The Commission determines the classification of its financial assets and liabilities after initial recognition and, when allowed and appropriate, re-evaluates these at each financial year end.

#### b) Derecognition of financial assets and financial liabilities

A financial asset is derecognised when the contractual rights to the cash flows from the financial assets expire; or if the Commission transfers its right to receive cash flows from the asset or has assumed an obligation to pay the received cash flows in full without material delay to a third party under a pass-through arrangement; and either:

- substantially all the risks and rewards have been transferred; or
- the Commission has neither transferred nor retained substantially all the risks and rewards of the asset, but has transferred control.

When the Commission has transferred its rights to receive cash flows from an asset or has entered into a pass-through arrangement, it evaluates if, and to what extent, it has retained the risks and rewards of ownership. Where the Commission has neither transferred nor retained substantially all the risks and rewards or transferred control, the asset is recognised to the extent of the Commission's continuing involvement in the asset. In that case, the Commission also recognises an associated liability. The transferred asset and the associated liability are measured on a basis that reflects the rights and obligations that the Commission has retained.

Continuing involvement that takes the form of a guarantee over the transferred asset is measured at the lower of the original carrying amount of the asset, and the maximum amount of consideration that the Commission could be required to repay.

A financial liability is derecognised when the obligation specified in the contract is discharged or cancelled or expires. When an existing financial liability is replaced by another from the same lender on substantially different terms, or the terms of an existing liability are substantially modified, such an exchange or modification is treated as the derecognition of the original liability and the recognition of a new liability. The difference in the respective carrying amounts is recognised in the net result.

#### c) Offsetting financial instruments

Financial assets and financial liabilities are offset and the net amount is reported in the Statement of Financial Position, if there is a currently enforceable legal right to offset the recognised amounts and there is an intention to settle on a net basis, or to realise the assets and settle the liabilities simultaneously.

#### d) Financial risks

##### (i) CREDIT RISK

Credit risk arises when there is a possibility of the Commission's debtors defaulting on their contractual obligations, resulting in a financial loss to the Commission. The maximum exposure to credit risk is generally represented by the carrying amount of the financial assets (net of any allowance for credit losses or allowance for impairment).

Credit risk arises from the financial assets of the Commission, including cash and receivables. No collateral is held by the Commission. The Commission has not granted any financial guarantees.

## Law Enforcement Conduct Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2022

Credit risk associated with the Commission's financial assets, other than receivables is managed through the selection of counterparties and establishment of minimum credit rating standards. Authority deposits held with NSW TCorp are guaranteed by the State.

#### **Cash and cash equivalents**

Cash comprises cash on hand and bank balances within the NSW Treasury Banking System.

#### **Accounting policy for impairment of trade receivables and other financial assets**

##### **Receivables – trade receivables**

Collectability of trade receivables is reviewed on an ongoing basis. Procedures as established in the Treasurer's Directions are followed to recover outstanding amounts, including letters of demand.

The Commission applies the AASB 9 simplified approach to measuring expected credit losses which uses a lifetime expected loss allowance for all trade receivables. To measure the expected credit losses, trade receivables have been grouped based on shared credit risk characteristics and the days past due.

Trade receivables are written off when there is no reasonable expectation of recovery. Indicators that there is no reasonable expectation of recovery include, amongst others, a failure to make contractual payments for a period of greater than 90 days past due date.

The Commission is not materially exposed to concentrations of credit risk to a single trade debtor or group of debtors. The Commission's debtors are all other government entities either Commonwealth or State. No allowance for credit loss has been made as all amounts are considered to be collectable.

#### (ii) LIQUIDITY RISK

Liquidity risk is the risk that the Commission will be unable to meet its payment obligations when they fall due. The Commission continuously manages risk through monitoring future cash flows and planning to ensure adequate holdings of liquid assets. The Commission does not have a bank overdraft facility.

During the current year, there were no defaults of loans payable. No assets have been pledged as collateral. The Commission's exposure to liquidity risk is deemed insignificant based on prior periods' data and current assessment of risk.

The liabilities are recognised for amounts due to be paid in the future for goods or services received, whether or not invoiced. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in NSW TC 11/12. For small business suppliers, where terms are not specified, payment is made no later than 30 days from date of receipt of a correctly rendered invoice. For other suppliers, if trade terms are not specified, payment is made no later than the end of the month following the month in which an invoice or statement is received. For small business suppliers, where payment is not made within the specified time period, simple interest must be paid automatically unless an existing contract specifies otherwise. For payments to other suppliers, the Commissioner (or person appointed by the Commissioner) may automatically pay the supplier simple interest. No interest was applied during the year.

The table below summarises the maturity profile of the Commission's financial liabilities, together with the interest rate exposure.

#### **Maturity analysis and interest rate exposure of financial liabilities**

|                            | Weighted<br>average<br>effective<br>int. rate | Nominal<br>amount | Interest Rate Exposure    |                              |                             | Maturity Dates |                |              |
|----------------------------|---|-------------------|---------------------------|------------------------------|-----------------------------|----------------|----------------|--------------|
|                            |   |                   | Fixed<br>interest<br>rate | Variable<br>interest<br>rate | Non-<br>interest<br>bearing | <1 year        | 1 - 5<br>years | > 5<br>years |
| <b>Parent - 2022</b>       |   |                   |                           |                              |                             |                |                |              |
| Personnel services payable |   | 342               |                           |                              | 342                         | 342            | --             |              |
| Creditors                  |   | 101               |                           |                              | 101                         | 101            | --             |              |
| Lease liabilities          |   | 4,598             |                           |                              | 4,598                       | 2,168          | 2,430          |              |
|                            |   | <b>5,041</b>      |                           |                              | <b>5,041</b>                | <b>2,611</b>   | <b>2,430</b>   |              |
| <b>Parent- 2021</b>        |   |                   |                           |                              |                             |                |                |              |
| Personnel services payable |   | 221               |                           |                              | 221                         | 221            | --             |              |
| Creditors                  |   | 99                |                           |                              | 99                          | 99             | --             |              |

## Law Enforcement Conduct Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2022

|                   |              |              |              |              |
|-------------------|--------------|--------------|--------------|--------------|
| Lease liabilities | 6,682        | 6,682        | 1,986        | 4,696        |
|                   | <u>7,002</u> | <u>7,002</u> | <u>2,306</u> | <u>4,696</u> |

|   | Weighted average effective int. rate | \$'000                 |                     |                        | Maturity Dates |             |              |
|---|--------------------------------------|------------------------|---------------------|------------------------|----------------|-------------|--------------|
|   |                                      | Interest Rate Exposure |                     |                        | <1 year        | 1 - 5 years | > 5 years    |
|   |                                      | Nominal amount         | Fixed interest rate | Variable interest rate |                |             |              |
| <b>Consolidated - 2022</b>              |                                      |                        |                     |                        |                |             |              |
| Accrued salaries and wages and on-costs |                                      | 342                    |                     | 342                    | 342            |             | --           |
| Creditors                               |                                      | 95                     |                     | 95                     | 95             |             | --           |
| Lease liabilities                       |                                      | 4,598                  |                     | 4,598                  | 2,168          |             | 2,430        |
|   |                                      | <u>5,035</u>           |                     | <u>5,035</u>           | <u>2,605</u>   |             | <u>2,430</u> |
| <b>Consolidated - 2021</b>              |                                      |                        |                     |                        |                |             |              |
| Accrued salaries and wages and on-costs |                                      | 221                    |                     | 221                    | 221            |             | --           |
| Creditors                               |                                      | 103                    |                     | 103                    | 103            |             | --           |
| Lease liabilities                       |                                      | 6,682                  |                     | 6,682                  | 1,986          |             | 4,696        |
|   |                                      | <u>7,006</u>           |                     | <u>7,006</u>           | <u>2,310</u>   |             | <u>4,696</u> |

The amounts disclosed are the contractual undiscounted cash flows of each class of financial liabilities, therefore the amounts disclosed above may not reconcile to the Statement of Financial Position.

(iii) MARKET RISK

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. The Commission's exposure to market risk is primarily through interest rate risk. The Commission has no exposure to foreign currency risk and does not enter into commodity contracts.

The effect on profit and equity due to a reasonably possible change in risk variable is outlined in the information below for interest rate risk. A reasonably possible change in risk variable has been determined after taking into account the economic environment in which the Commission operates and the time frame for the assessment (i.e. until the end of the next annual reporting period). The sensitivity analysis is based on risk exposures in existence at the Statement of Financial Position reporting date. The analysis is performed on the same basis as for 2021. The analysis assumes that all other variables remain constant.

*Interest rate risk*

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. Exposure to interest rate risk would primarily arise through interest bearing liabilities. The Commission does not account for any fixed rate financial instruments at fair value through profit or loss or as available-for-sale. Therefore, for these financial instruments, a change in interest rates would not affect profit or loss or equity.

The Commission does not have interest bearing liabilities and does not receive interest on cash assets held. As such there is no material exposure to interest rate risk.

**e) Fair value measurement**

(i) FAIR VALUE COMPARED TO CARRYING AMOUNT

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value measurement is based on the presumption that the transaction to sell the asset or transfer the liability takes place either in the principal market for the asset or liability or in the absence of a principal market, in the most advantageous market for the asset or liability.

(ii) FAIR VALUE RECOGNISED IN THE STATEMENT OF FINANCIAL POSITION

When measuring fair value, the valuation technique used maximises the use of relevant observable inputs and minimises the use of unobservable inputs. Under AASB 13, the

## Law Enforcement Conduct Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2022

Commission categorises, for disclosure purposes, the valuation techniques based on the inputs used in the valuation techniques as follows:

- Level 1 – quoted (unadjusted) prices in active markets for identical assets/liabilities that the Commission can access at the measurement date.
- Level 2 – inputs other than quoted prices included within level 1 that are observable, either directly or indirectly.
- Level 3 – inputs that are not based on observable market data (unobservable inputs).

The amortised cost of financial instruments recognised in the Statement of Financial Position approximates the fair value, because of the short-term nature of many of the financial instruments.

#### 21. RELATED PARTY DISCLOSURES

Compensation for the Commission's key management personnel are as follows:

|                               | Consolidated |              |
|-------------------------------|--------------|--------------|
|                               | 2022         | 2021         |
|                               | \$'000       | \$'000       |
| Short term employee benefits: |              |              |
| Salaries                      | 1,565        | 1,464        |
| Termination payments          | --           | 251          |
| Superannuation                | 69           | 65           |
| Non-monetary benefits         | --           | --           |
| <b>Total remuneration</b>     | <b>1,634</b> | <b>1,780</b> |

Based on Treasury Circular TC17-12 and AASB 124, the Commission has determined its key management personnel (KMP) to consist of; the Chief Commissioner, Commissioner, CEO and Executive Director Operations. These individuals are considered to have authority and responsibility for planning, directing and controlling the activities of the Commission, either individually or collectively. During the year, the Commission did not enter into transactions with key management personnel, their close family members and the members of its controlled entities.

The Commission entered into transactions with other entities that are controlled/jointly controlled/significantly influenced by the NSW Government. These transactions in aggregate are a significant portion of the Commission's rendering of services and receiving of services.

Major transactions with other entities that are controlled/jointly controlled/ significantly influenced by NSW Government during 2021-22 were:

|   | Consolidated |              |
|---|--------------|--------------|
|   | 2022         | 2021         |
|   | \$'000       | \$'000       |
| NSW Government Property (accommodation at 111 Elizabeth Street, Sydney) | 2,317        | 2,214        |
|   | <b>2,317</b> | <b>2,214</b> |

Other transactions include:

- Long Service Leave and Defined Benefit Superannuation assumed by the Crown;
- Appropriations (and subsequent adjustments in appropriations);
- Employer contributions paid to the Defined Benefit Superannuation funds; and
- Payments into the Treasury Managed Fund for workers compensation insurance and other insurances.

#### 22. EVENTS AFTER THE REPORTING DATE

No other events have occurred between the financial reporting date and the date of these financial statements that require adjustment to, or disclosure in these financial statements.



**Law Enforcement Conduct Commission**

*Notes to and forming part of the Financial Statements for the year ended 30 June 2022*

**End of audited financial statements**

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# Appendix 7

## Commission Publications

| Title  | Type                      | Date       |
|--|---------------------------|------------|
| Operation TUSKET: Supplementary Report   | Report to Parliament      | 22/06/2021 |
| Review of the effectiveness of NSW Police Force Conduct Management Plans   | Report to Parliament      | 27/10/2021 |
| Operation KROSNO   | S132 Report to Parliament | 28/10/2021 |
| Review of the operation of the amendments to the consorting law under Part 3A Division 7 of the <i>Crimes Act 1900</i> | Report to Parliament      | 29/10/2021 |
| Operation FARO   | S132 Report to Parliament | 13/12/2021 |
| Operation KAINITE  | S132 Report to Parliament | 16/03/2022 |
| Operation KURUMBA  | S132 Report to Parliament | 16/03/2022 |
| Operation HOSTA  | S132 Report to Parliament | 24/03/2022 |
| Operation MOKENO   | S132 Report to Parliament | 24/03/2022 |
| Operation TABOURIE   | S132 Report to Parliament | 24/03/2022 |
| Operation TORRENS  | S132 Report to Parliament | 24/03/2022 |
| Operation KIMBLA   | S132 Report to Parliament | 05/04/2022 |
| Operation TAMBRE   | S135 Report               | 07/04/2022 |
| Operation COWAL  | S135 Report               | 11/04/2022 |

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# Directory

Level 3, 111 Elizabeth Street  
Sydney NSW 2000

Office hours: 08:30am – 04:30pm  
(excluding weekends and public holidays)

GPO Box 3880  
Sydney NSW 2001

Telephone: (61 2) 9321 6700  
Free call: 1800 657 079  
Facsimile: (61 2) 9321 6799  
Website: [www.lecc.nsw.gov.au](http://www.lecc.nsw.gov.au)



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