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Chair's foreword

As part of the 2017 review of agencies' annual reports, the Committee held public hearings with the NSW Crime Commission, the Information and Privacy Commissioners, the NSW Ombudsman and Child Death Review Team, as well as the Inspector of Custodial Services.

The Committee focused on the Law Enforcement Conduct Commission (LECC) and changes to oversight of police; the conclusion of Operation Prospect; and staffing and resources. These issues are discussed in this report.

An important reform this year was the establishment of the Law Enforcement Conduct Commission. The LECC now has responsibility for overseeing the NSW Police Force and the NSW Crime Commission, taking on the work of the Police Integrity Commission and the police division of the Ombudsman. This implements recommendations made by Mr Andrew Tink AM to create a single oversight body.

Legislation to establish the LECC was passed late last year and the agency began operating in July 2017, after the Committee's hearings. The LECC can investigate serious misconduct and oversee internal complaint handling practices. Importantly, it can also oversee the investigation of police critical incidents involving serious injury or death. The Committee looks forward to beginning its work of overseeing the LECC's performance of its functions.

Mr Tink found that a single oversight body would have a number of benefits. During the coming years the Committee will take an interest in the practical changes resulting from the LECC's establishment. In addition, we will consider how the new model operates with reference to the aims of the Tink review.

This reporting period also saw the conclusion of the Ombudsman's high-profile and long running Prospect investigation. The Ombudsman tabled a comprehensive six volume report outlining his findings and recommendations in December 2016. The Committee heard that the NSW Police Force accepted the recommendation to apologise to officers affected by the Mascot joint taskforce's investigations. However, the NSW Crime Commission disputed the Ombudsman's reasoning and findings.

The Committee acknowledges the work of the Ombudsman and his staff in conducting such a difficult and controversial inquiry and hopes that its conclusion will provide closure to those affected.

I would like to thank Committee members for their participation in the Review and their contribution to the reporting process.

Lee Evans MP
Chair

Chapter One – Conclusion of Operation Prospect

- 1.1 The Committee held public hearings with the NSW Crime Commission, the Inspector of Custodial Services, the Information and Privacy Commissioners, the Ombudsman and the Child Death Review Team on 12 May and 1 June 2017.
- 1.2 In this report the Committee examines the following issues that were discussed at the hearings: the conclusion of Operation Prospect, the establishment of the Law Enforcement Conduct Commission (LECC) and agency staffing and resources.

The scope of Operation Prospect

- 1.3 The NSW Ombudsman’s high-profile, four year Prospect investigation concluded in December 2016 with the tabling of a six volume report. This chapter outlines developments in relation to Prospect during the 2016-17 financial year.
- 1.4 Operation Prospect was an investigation by the Ombudsman into alleged misconduct by officers of the NSW Police Force (NSWPF), the NSW Crime Commission (NSWCC) and the Police Integrity Commission (PIC) during joint investigations that were conducted between 1999 and 2002.
- 1.5 The NSWPF and NSWCC investigations (known as Mascot) had covertly targeted alleged police corruption and criminality, using informants, listening devices and telephone interceptions. The Mascot investigations led to the PIC’s Operation Florida, which drew on evidence gathered by the Mascot joint taskforce. Florida was an overt investigation, with the PIC conducting public and private hearings and reporting to Parliament. As a result, a number of police officers were prosecuted for corruption offences.
- 1.6 As part of Operation Prospect, the Ombudsman investigated allegations arising from the conduct of Mascot, including:
- the use of false and misleading information in warrant applications and supporting affidavits
 - improper targeting or investigation of individuals
 - mishandling of informants/undercover operatives
 - unlawful and/or improper dissemination of material from files and/or computer systems of the NSWPF, the NSWCC and/or the PIC
 - improper interference
 - the provision of misinformation and/or making false statements

- systemic issues and other relevant conduct.¹

- 1.7 The Prospect investigation began in late 2012 following an announcement by the then Premier and a referral from the PIC Inspector. The Government amended legislation to enable the Ombudsman to conduct the investigation.
- 1.8 The investigation was the largest single investigation by an Ombudsman in Australia. Over one million pages of documents were amassed, and 107 hearings were held. According to the Ombudsman's report, the direct cost of the investigation was \$9.64 million.²
- 1.9 The Ombudsman's 900 page report on the investigation was tabled in December 2016. A report on developments was tabled in May 2017.

The Ombudsman's findings and recommendations

- 1.10 The Prospect report contained 93 findings against the NSWPF and NSWCC and individual police and Crime Commission officers. The Ombudsman's findings related to conduct that had breached the standards of good administration, and in some cases breached legal requirements and offence provisions. The Ombudsman also found that some officers accessed and disseminated documents in breach of legal and policy constraints.
- 1.11 The findings about conduct that contravened a law or was an offence included matters such as:
- falsely swearing evidence
 - improperly influencing a witness
 - unauthorised use of a listening device
 - unlawfully communicating telephone intercept information
 - improperly handling government property
 - failing to produce information required by the Ombudsman.³
- 1.12 In evidence to the Committee, the Ombudsman, Professor John McMillan, indicated that his office was preparing some matters for referral to the DPP, and that he expected all referrals to be made by the end of May 2017.⁴
- 1.13 The report also contained 38 recommendations. Key recommendations included:

¹ NSW Ombudsman, *Operation Prospect, A special report to Parliament under s. 31 of the Ombudsman Act 1974 and s.161 of the Police Act 1990*, Volume 1: Introduction and background, December 2016.

² NSW Ombudsman, *Operation Prospect, A special report to Parliament under s. 31 of the Ombudsman Act 1974 and s.161 of the Police Act 1990*, Volume 1, December 2016, and NSW Ombudsman, *Operation Prospect: A report on developments. A Special Report to Parliament under s 31 of the Ombudsman Act 1974*, May 2017, pp3-4.

³ NSW Ombudsman, *Operation Prospect: A report on developments*, May 2017, p5

⁴ NSW Ombudsman, *Operation Prospect: A report on developments*, May 2017, p10 and Professor John McMillan, NSW Ombudsman, Transcript of evidence, 12 May 2017, p18

- That the NSWPF and NSWCC apologise to individuals who were unfairly targeted by the Mascot investigations or whose complaints were not dealt with properly.
- That the NSWPF and the NSWCC review their protocols for joint operations to ensure: clear lines of authority and for reporting complaints; clear and unambiguous responsibility for supervision of tasks requiring legislative compliance; and appropriate training for new and junior officers.
- That the Attorney General introduces legislation to establish a Public Interest Monitor in NSW, with functions and powers to test and assess the validity of applications for surveillance devices and telephone interception warrants.⁵

The Crime Commission's response to Operation Prospect

- 1.14 In March 2017 the NSWCC released its response to the Prospect report. The response was critical of the Prospect report and rejected its recommendations on the basis that the Commission had been denied procedural fairness during the investigation, the report's recommendations were based on legal and factual errors, and the Ombudsman's office did not have the skills to conduct the investigation.
- 1.15 The NSWCC cited the provisions for police taskforces assisting the Commission under the *New South Wales Crime Commission Act 1985* and argued that the Commission was not responsible for the conduct of police officers working as part of the Mascot taskforce, noting: 'the task force was under the direction and control of the Commissioner of Police'.⁶
- 1.16 Furthermore, the NSWCC claimed that the report was inherently biased against the NSWCC in that the majority of its adverse findings and recommendations were made against the NSWCC, thereby attributing 'responsibility for every deficiency or irregularity in the investigation to the NSWCC with no responsibility at all attributed to the NSWPF'.⁷
- 1.17 The NSWCC stated that the processes used during Prospect were lacking in procedural fairness, as the Commission 'did not have the opportunity to cross examine witnesses, peruse the totality of evidence given by witnesses, call witnesses or see the submissions of other parties'.⁸
- 1.18 The NSWCC also argued that the Ombudsman did not comply with the reporting requirements and notice of investigation provisions under the Ombudsman Act.⁹
- 1.19 The NSW Ombudsman published a special report on developments since the Prospect report's tabling in May 2017. The report addressed the NSWCC's arguments for rejecting Prospect. The Ombudsman observed that allegations of

⁵ NSW Ombudsman, *Operation Prospect*, Volume 1, December 2016 and NSW Ombudsman, *Operation Prospect: A report on developments*, May 2017, pp4-5.

⁶ NSW Crime Commission, Response to Operation Prospect, pp13-18

⁷ NSW Crime Commission, Response to Operation Prospect, pp13-18

⁸ NSW Crime Commission, Response to Operation Prospect, pp2, 4-7

⁹ NSW Crime Commission, Response to Operation Prospect, pp7-9

bias made against a statutory office holder must be firmly established and meet a two stage test in order to constitute disqualifying bias. The Ombudsman argued that the NSWCC's response did not contain particulars or case law in support of its claim, and 'does not logically explain why I deviated from the course of preparing a report that was based on the evidence before me.'¹⁰

- 1.20 The Ombudsman also argued that the NSWCC's claims of denial of procedural fairness were general and failed to cite any legal principles or case law. The Ombudsman disputed the NSWCC's argument that the investigation was adversarial in nature, stating that an investigation by the Ombudsman is inquisitorial in nature. This meant that adversarial practices such as cross-examination of witnesses were not permitted during the investigation.¹¹
- 1.21 The Ombudsman stated that the report's conclusions on the direction and control of Mascot were based on a range of documentary and oral evidence. The conclusions about the NSWCC's responsibility for the conduct of police working on the taskforce were based on a number of factors. This included the use of NSWCC resources and informants, and staff being inducted into the NSWCC and complying with NSWCC policies and processes. In addition, the Ombudsman considered the use of the NSWCC's coercive powers and the involvement of NSWCC staff in strategic and operational decisions.¹²
- 1.22 During the Committee's hearing, the Ombudsman told the Committee that in his view, 'the Commission's response to the Ombudsman's investigation has been unacceptable in so many ways.'¹³ In particular, the Ombudsman referred to the Commission's unwillingness to apologise to individuals targeted during the Mascot investigation, and personal attacks on him for 'bad faith, inherent bias, a lack of skills necessary for this inquiry task'. He noted that the Commission had described the Prospect report as 'bizarre, ridiculous, patently erroneous, inherently misconceived and completely without merit'.¹⁴
- 1.23 In evidence to the Committee, the Crime Commissioner, Mr Peter Hastings, stated that 'I probably did use robust terms in the response document. But within the norms of the criminal justice system in New South Wales, and it is quite usual vernacular to use in a semi-legal scenario such as this.'¹⁵

Implementation of the Ombudsman's recommendations

- 1.24 The Committee heard evidence on implementation of the Ombudsman's recommendations. The Ombudsman told the Committee that the NSWPF had apologised to two former officers. The Ombudsman's special report commended the Police Commissioner for his 'prompt and constructive response' to the Prospect report, in which he advised that the NSWPF was establishing an extraordinary complaint management team chaired by a Deputy Commissioner

¹⁰ NSW Ombudsman, *Operation Prospect: A report on developments*, May 2017, p24

¹¹ NSW Ombudsman, *Operation Prospect: A report on developments*, May 2017, pp24-27

¹² NSW Ombudsman, *Operation Prospect: A report on developments*, May 2017, pp30-31

¹³ Professor McMillian, Transcript of evidence, 12 May 2017, p16

¹⁴ Professor McMillian, Transcript of evidence, 12 May 2017, p17

¹⁵ Mr Peter Hastings, Commissioner, NSW Crime Commission, Transcript of evidence, 12 May 2017, p11

to consider the report's adverse findings against serving police officers. The process would be conducted in accordance with Part 9 of the Police Act.¹⁶

- 1.25 The Crime Commissioner also told the Committee that the NSWCC is taking part in reviews of processes for joint operations and is providing evidence to the Ombudsman for briefs of evidence to be submitted to the Director of Public Prosecutions:

... The processes that were criticised have long gone, and are no longer current. We are participating in recommended reviews that were contained in the original report, with other affected agencies in a working group. We have continued to assist the Ombudsman by providing whatever evidence is being sought for inclusion in briefs.¹⁷

- 1.26 In terms of the Ombudsman's recommendations that the NSWCC apologise to 17 individuals, Mr Hastings stated that the NSWCC had assessed the Prospect report and concluded that one apology was warranted:

... We identified one incident in particular in which we took the view that the conduct of a senior Crime Commission official was unacceptable and inexcusable, and we have issued an apology to the person who was subject to that conduct.

We had decided that there were no other incidents that we could identify in the material provided in the original report which warranted an apology by the Commission and we are not intending to make any further apologies.¹⁸

- 1.27 The Ombudsman told the Committee that agencies' responsibility 'to apologise when people are wronged has become a central principle of remedial justice'. He also stressed the importance of this principle in terms of organisational accountability:

The acceptance of that principle over the past 20 years across Australia by public and private sector organisations has been a hallmark of institutional civility and accountability.¹⁹

- 1.28 Professor McMillan observed that an agency could disagree with a recommendation of the Ombudsman and not issue an apology. However, he noted that 'if it wants to do that it has got to explain, in reference to the recommendations and evidence that supports it, why it is not accepted.'²⁰

- 1.29 While he told the Committee that 'the Ombudsman's office has no wish to keep this alive or to continue playing any active role', the Ombudsman also stated that he may publish a further report to Parliament under section 27 of the

¹⁶ Professor McMillan, Transcript of evidence, 12 May 2017, p20 and NSW Ombudsman, *Operation Prospect: A report on developments*, May 2017, p20

¹⁷ Mr Hastings, Transcript of evidence, 12 May 2017, p11

¹⁸ Mr Hastings, Transcript of evidence, 12 May 2017, p10

¹⁹ Professor McMillan, Transcript of evidence, 12 May 2017, p17

²⁰ Professor McMillan, Transcript of evidence, 12 May 2017, p21

Ombudsman Act. The responsible Minister would then be required to make a statement to the House in response to the report.²¹

Oversight of the Crime Commission

1.30 Both the Ombudsman and Crime Commissioner observed that the Ombudsman's jurisdiction over the NSWCC and NSWPF would cease once the LECC began operating. The LECC began operating on 1 July 2017, after the Committee's hearing with the Ombudsman and Crime Commissioner.

1.31 When questioned about the relationship between the NSWCC and the Ombudsman, Professor McMillan commented that the issues that arose during Prospect are unlikely to recur with the Ombudsman given the change in oversight arrangements. He also pointed out that any complaints from affected individuals who are dissatisfied with the NSWCC's response to Prospect would be within the LECC's jurisdiction: 'The other way it may play out of course is that any one of those 17 may complain to the Law Enforcement Conduct Commission when it has jurisdiction.'²²

1.32 In evidence to the Committee, the Ombudsman expressed the view that 'that the [Crime] Commission has actively resisted external investigation of its conduct.'²³ The Ombudsman's report on developments since the tabling of the Prospect report observed that it is common for public and private sector organisations to resist oversight and scrutiny when it first comes into effect. The Ombudsman's office encountered resistance from agencies when it began operating, and as its jurisdiction expanded. This resistance diminished over time and agencies have come to support the Ombudsman's scrutiny:

... In an article surveying the history of the NSW Ombudsman, Deputy Ombudsman Chris Wheeler observed that 'For a number of years after its establishment, the Ombudsman faced significant opposition from across the NSW public sector'. He gave as an example credible allegations made in 1983, shortly after the office gained jurisdiction to investigate police complaints, that NSW police undertook surveillance of senior Ombudsman staff and compiled dossiers on their activities. The Commissioner of Police also instituted (unsuccessful) judicial review proceedings in the early years to combat Ombudsman inquiries.

Public sector attitudes have changed markedly and the NSW Ombudsman now enjoys consistent public support across government agencies, including by the NSWPF.²⁴

1.33 The Ombudsman noted that until relatively recently the NSWCC had not been subject to external oversight. Following the arrest of a senior NSWCC officer on serious criminal charges in 2008, the PIC was given oversight responsibilities including the investigation of serious misconduct by officers of the NSWCC.

²¹ Professor McMillan, Transcript of evidence, 12 May 2017, p21. Section 27 provides that where the Ombudsman is not satisfied that sufficient steps have been taken in due time in consequence of a report under section 26, he or she may make a report to the Parliament and must also provide the responsible Minister with the report.

²² Professor McMillan, Transcript of evidence, 12 May 2017, pp20-21

²³ Professor McMillan, Transcript of evidence, 12 May 2017, p16

²⁴ NSW Ombudsman, *Operation Prospect: A report on developments*, May 2017, pp45-46

- 1.34 In 2011 the Patten Commission of inquiry was established to examine the NSWCC's compliance with the *New South Wales Crime Commission Act 1985* and the *Criminal Assets Recovery Act 1990*, and whether the legislation was meeting its objectives. The inquiry also considered the appropriateness of the NSWCC's powers and processes and whether existing accountability mechanisms were adequate.
- 1.35 The inquiry concluded that existing accountability mechanisms were 'inadequate for such a complex and powerful agency as the Commission' and recommended that the PIC and an Inspector of the NSWCC share responsibility for oversight of the Commission. In addition, the role of the then Committee on the Ombudsman and PIC was broadened to enable parliamentary oversight of the NSWCC.²⁵
- 1.36 With the establishment of the LECC this year, oversight of the NSWCC has been unified and the LECC is now performing functions that were previously undertaken by the PIC and the Inspector of the NSWCC.

Committee comment

- 1.37 The Ombudsman's Prospect investigation examined serious allegations of inappropriate practices by the Mascot taskforce and produced a detailed and extensive report after a long and at times contentious inquiry. The Ombudsman has commented on the difficulties associated with conducting such a complex and controversial investigation. The Committee agrees with the Ombudsman's observation that no organisation would have found it an easy task to undertake the inquiry, given the nature and scope of the issues being examined.
- 1.38 The Committee is concerned by the suggestion that the NSWCC is resistant to external oversight. The Committee notes that the Commission has undergone significant change since the Mascot taskforce, and is now subject to a great deal more scrutiny and oversight. The Commission performs a critical role in combating organised crime and has been granted significant coercive powers to undertake this work. It is important that these powers are used in a way that complies with statutory requirements.
- 1.39 Much of the Commission's work is undertaken in joint taskforces with federal and state law enforcement agencies. In its response to Prospect, the NSWCC disputed findings in relation to responsibility for the direction of the Mascot taskforce's work, arguing that the NSWPF had statutory responsibility for the taskforce. While acknowledging that much has changed since the Mascot taskforce was operating, the Committee is concerned that there may be a lack of clarity around responsibility for the supervision and direction of joint taskforces. The Committee was therefore pleased to hear evidence that the NSWPF and NSWCC have taken steps to review their protocols for joint operations, as recommended by the Ombudsman.
- 1.40 The Prospect investigation revealed a lack of compliance with statutory requirements for the authorisation of surveillance devices and telephone intercepts. The Ombudsman has recommended the introduction of a Public

²⁵ David Patten, *Report of the Special Commission of Inquiry into the New South Wales Crime Commission*, November 2011, pp117-23

Interest Monitor to address perceived weaknesses in the current warrant authorisation system. The Committee will follow the Government's response to these recommended changes with interest.

- 1.41 Since the Prospect report was tabled, the LECC has assumed responsibility for dealing with serious misconduct by police and NSWCC officers. The Committee hopes that single agency oversight will provide an effective and coordinated model for scrutiny of the NSWPF and NSWCC's conduct, as envisaged by the Tink review. It is hoped that consolidated oversight of our law enforcement bodies will assist in preventing a recurrence of the issues exposed by Prospect.
- 1.42 The Ombudsman told the Committee that after the Prospect report's tabling he had received messages of support from individuals who felt they were damaged by Mascot. The Committee hopes that those who were adversely affected by the taskforce's activities have found some comfort in the Ombudsman's findings and recommendations.

Chapter Two – The Law Enforcement Conduct Commission and police oversight

- 2.1 In this chapter the Committee outlines reforms to the oversight of police and Crime Commission officers through the establishment of the Law Enforcement Conduct Commission.

Establishment of the Law Enforcement Conduct Commission

- 2.2 On 9 November 2016, the Parliament of NSW passed the *Law Enforcement Conduct Commission Act 2016*. The Act constituted the LECC as an independent commission to provide oversight of the NSWPF and NSWCC.
- 2.3 The LECC replaced the PIC, the Police Division of the Ombudsman and the Inspector of the Crime Commission. As a consequence, the office of the Inspector of the PIC was also abolished.
- 2.4 The LECC was established following the Tink Review which was tasked with examining ways to streamline and strengthen oversight of the NSWPF and the NSWCC. Mr Tink's report, 'Review of Police Oversight' was released in August 2015 and made the case for a single agency oversight model. The government accepted the recommendations made in the Tink review which led to the creation of the LECC.

The LECC's functions, powers and structure

- 2.5 The LECC incorporates the oversight roles previously carried out by the PIC and the Police Division of the Ombudsman. Accordingly, the LECC has the following functions:
- detecting and investigating serious misconduct and serious maladministration within the NSWPF and NSWCC, and
 - overseeing complaints handling by the NSWPF and NSWCC.
- 2.6 In addition, the LECC will also have oversight of NSWPF critical incident investigations.
- 2.7 The Commission is headed by a Chief Commissioner, a Commissioner for Integrity and a Commissioner for Oversight. The Commissioner for Integrity and the Commissioner for Oversight can only be appointed with the concurrence of the Chief Commissioner. No Commissioner may hold office for more than 5 years but they are eligible for reappointment.
- 2.8 Certain decisions of the Commission may only be made with the agreement of the Chief Commissioner and at least one other Commissioner. These decisions

include whether to initiate an investigation and whether to hold an examination in public.²⁶

- 2.9 The integrity arm of the LECC will be responsible for the work formerly undertaken by the PIC.
- 2.10 This includes detecting and investigating serious misconduct and serious maladministration, including corruption. When investigating these matters, the LECC will have the powers of a standing Royal Commission and be able to use coercive powers. The LECC will also be able to apply for surveillance device and telecommunication interception warrants.
- 2.11 The oversight functions of the LECC are similar to those formerly undertaken by the Ombudsman's Police and Compliance Branch.
- 2.12 The LECC Act amended Part 8A of the *Police Act 1990* to confer on the LECC functions and powers previously held by the Ombudsman. This includes:
- receiving complaints
 - keeping the NSWPF complaints system under review
 - monitoring certain police investigations
 - undertaking direct investigations into complaints.
- 2.13 As a result of these investigations and oversight, the LECC may:
- publish investigation reports
 - refer matters to the NSWPF or the NSWCC for action
 - request further investigation or review of a management action decision by the NSWPF or NSWCC
 - publish reports and/or make recommendations aimed at preventing further potential misconduct or maladministration.

The LECC's role in monitoring critical incident investigations

- 2.14 The LECC also has the ability to monitor the NSWPF's investigation of critical incidents. A critical incident is an incident involving a police officer or other member of the NSWPF that results in death or serious injury to a person.
- 2.15 The NSWPF must notify the LECC when a critical incident is declared. If the LECC decides to monitor the investigation, LECC officers will be able to:
- attend the scene of a critical incident
 - attend witness interviews as an observer, with the consent of the senior critical incident investigator and witness

²⁶ *Law Enforcement Conduct Commission Act 2016*, s19(2)

- be given access to transcripts or recordings of witness interviews without unreasonable delay
 - require the senior critical incident investigator or nominated contact to provide access to documents prepared by police for the purpose of the critical incident investigation.
- 2.16 The purpose of the LECC's monitoring is to provide assurance to the public and the next of kin that police investigations into critical incidents are conducted in a competent, thorough and objective manner.
- 2.17 The LECC has also indicated that as part of its monitoring functions it will consider:
- the lawfulness and reasonableness of the actions of NSWPF officers involved in the critical incident
 - the extent to which the actions of NSWPF officers complied with relevant law and NSWFP policies and procedures
 - any complaint about the conduct of involved NSWPF officers and any evidence of misconduct
 - the need for changes to relevant NSWPF policies, practices and procedures
 - any systemic, safety or procedural issues arising from the actions of NSWPF officers.²⁷
- 2.18 If the LECC forms the view that the investigation is not being conducted in an appropriate manner, it can advise the NSWPF and/or the Coroner of those concerns and make recommendations. The NSWPF must consider and respond to concerns and recommendations raised by the LECC. The LECC may make the advice it has given public after the conclusion of the critical incident investigation.

Oversight of the LECC

- 2.19 The LECC Act provided for the appointment of an Inspector of the LECC and an Assistant Inspector. Given the extraordinary powers of the LECC to exercise some of its functions, including the ability to hold hearings and compel evidence, the Inspector has an important oversight role.
- 2.20 The Inspector will be responsible for holding the LECC to account in its use of its powers, as well as its general conduct, through:
- auditing the LECC's operations to ensure compliance with the law
 - investigating the conduct of the LECC and its officers
 - assessing the effectiveness and appropriateness of LECC policy and procedures relating to the legality and propriety of its operations.

²⁷ Law Enforcement Conduct Commission, What we do, Critical Incident Oversight, <https://www.lecc.nsw.gov.au/what-we-do>, viewed 14 August 2017

- 2.21 Public officials can make complaints to the Inspector about the conduct of the LECC, a LECC officer, or an officer of the Inspector. However, the Inspector does not require a complaint to have been made before they exercise their investigatory functions.
- 2.22 The Ombudsman's responsibility for inspecting the records of relevant agencies in accordance with the following covert power legislation has also been transferred to the Inspector of the LECC:
- *Telecommunications (Interception and Access) (New South Wales) Act 1987*
 - *Surveillance Devices Act 2007*
 - *Law Enforcement (Controlled Operations) Act 1997.*
- 2.23 This Committee will also have oversight of the LECC and the Inspector of the LECC and will monitor and review the exercise of their functions. This will primarily occur through the examination of their annual and other reports, and the Committee will report to Parliament on matters relating to their functions. However, the Committee does not have the power to investigate particular conduct, or to reconsider the agencies' decisions, findings or recommendations about particular complaints or investigations.

Transition to the LECC

- 2.24 The LECC commenced operations on 1 July 2017. At that time, the PIC, the Police and Compliance Branch within the Ombudsman's office, the Inspector of the PIC and the Inspector of the Crime Commission were abolished. On 3 February 2017, the appointment of Justice Michael Adams as Chief Commissioner of the LECC was announced. Subsequently, on 28 June 2017, the Committee received correspondence from the LECC advising that all sections of the *Law Enforcement Conduct Commission Act 2016* had been proclaimed.
- 2.25 Until the LECC commenced operations, the Ombudsman continued to perform its police oversight work. This included receiving and assessing complaints from the public and referring them to the police where necessary. The Ombudsman's office also continued to oversight police investigations of serious misconduct issues.
- 2.26 However, the Ombudsman's staff in this area was reduced from around 32 people to nine. During this time, the Ombudsman explained that there were certain tasks that they were unable to perform:

The sorts of things we used to do, for example, according to good Ombudsman practice, if somebody was disappointed with the way that we handled their complaint we would do an internal review. We do not do that. The police, as you would be aware, have the responsibility in the first instance of investigating all matters. If somebody complained to us about a police handling of what they would regard as a customer service matter or professional matter, we would investigate it.

We do not at the moment because we just do not have the capacity and are uncertain whether we could complete any investigation while we have jurisdiction.²⁸

- 2.27 Of the staff that worked in the police oversight area of the Ombudsman, three moved to work in the LECC. Others moved to new roles within the Ombudsman or elsewhere and some took voluntary redundancies.²⁹
- 2.28 The Ombudsman indicated that he had frequent talks with the government and the Commission to arrange the handover of work performed by his office and the transition of the three members of staff. The transition of the Ombudsman's policing role to the LECC was also the main focus of meetings between the Ombudsman and the Public Service Association.³⁰
- 2.29 Similarly, the PIC reported that it had held numerous meetings with the LECC transition team to support the transition process. The PIC also supported staff during the transition period and ensured that an appropriate consultation process was undertaken.³¹
- 2.30 Some concerns were raised that, despite the appointment of a Chief Commissioner and employing staff, there was a period when the LECC did not have any statutory functions to undertake. However, the Ombudsman indicated that establishing a new organisation can take considerable work:
- Having established two agencies before, I know that there is an enormous amount of productive work that can be done developing guidelines, procedure manuals and new computing systems for case handling and so on.³²
- 2.31 In the second reading speech, the then Minister for Justice and Police indicated that the LECC would receive the budget of the abolished PIC and the budget of the police and compliance branch of the Ombudsman's office.³³

Matters identified to improve police practices

- 2.32 In May 2017 the PIC published its report on Project Harlequin, which analysed misconduct risks associated with critical incidents and critical incident investigations, and how well these risks were managed by the NSWPF. The report was based on an audit of NSWPF investigations into 83 critical incidents occurring between 1 January 2009 and 30 June 2012.
- 2.33 The PIC audited investigation files to assess how well NSWPF guidelines managed risks associated with critical incident investigations. The NSWPF's Critical Incident Guidelines state that the NSWPF is committed to investigating critical incidents in an 'effective, accountable and transparent manner'.³⁴ The PIC examined the

²⁸ Professor McMillan, Transcript of evidence, 12 May 2017, pp17-18

²⁹ Professor McMillan, Transcript of evidence, 12 May 2017, p22

³⁰ NSW Ombudsman, *Annual Report 2015-16*, p34

³¹ Police Integrity Commission, *Annual Report 2015 – 2016*, p57

³² Professor McMillan, Transcript of evidence, 12 May 2017, p23

³³ The Hon Troy Grant MP, Minister for Police, and Minister for Emergency Services, NSW Legislative Assembly Hansard, 13 September 2016

³⁴ Police Integrity Commission, *Project Harlequin*, May 2017, pxi

investigation records to assess whether selected procedural requirements in the guidelines had been complied with.

2.34 The PIC found that while some requirements under the guidelines were well adhered to, others were not:

The records that were available revealed a high rate of compliance with some requirements within the guidelines, such as mandatory drug testing, but a worryingly low rate of compliance with other requirements, such as preservation of the incident scene.³⁵

2.35 The PIC had some difficulty in undertaking the audit due to a lack of documentation located on the NSWPF's investigation management system, e@gle.i. However, the PIC also noted that record keeping may have improved since the period for which investigations were audited. For example, the NSWPF now has a dedicated Critical Incident Database, although investigation records will still be attached to e@gle.i.³⁶

2.36 The PIC made 16 recommendations addressing the findings of the audit, and noted that there had been no resistance from the NSWPF to these recommendations. The recommendations broadly proposed that:

- all NSWPF records pertaining to critical incident investigations be attached to e@gle.i
- responsibility for attaching relevant documents to e@gle.i be clearly assigned to nominated officers in the investigation team
- decision-making processes relating to critical incidents be properly documented and attached to e@gle.i
- NSWPF develop and create templates for use by officers involved in the initial stages of a critical incident and the subsequent investigation and review of those incidents
- regular compliance audits of critical incident investigations take place
- identification, management and recording of conflicts of interest in critical incident investigations must be documented and located on e@gle.i.³⁷

2.37 The PIC recognised that the responsibility for monitoring critical incident investigations would be taken on by the LECC and prioritised the completion of Project Harlequin. The PIC also worked with the NSWPF to ensure that the recommendations it made would remain relevant. The report on Project Harlequin states that:

The New South Wales Police Force has undertaken to consider the recommendations contained in this report as part of the process of developing new

³⁵ Police Integrity Commission, Project *Harlequin*, May 2017, pxi

³⁶ Police Integrity Commission, Project *Harlequin*, May 2017, ppxxiii-xiv

³⁷ Police Integrity Commission, Project *Harlequin*, May 2017, pxiv

guidelines and agency agreements to reflect the new oversight role which will be exercised by the LECC.³⁸

- 2.38 In its annual report the PIC also highlighted its ongoing work evaluating how effectively the NSWPF managed misconduct risks associated with the use of human sources. To facilitate the completion of Project Harlequin, the PIC suspended its work in this area but noted that it would be for the LECC to consider whether the work is resumed.³⁹
- 2.39 Similarly, the Ombudsman identified certain areas where NSWPF practices are in need of reform, some of which have been brought to the attention of the NSWPF several times previously. The Ombudsman stated that they ‘would expect the LECC to pursue these matters in the future if they remain unresolved when it starts its operations’.⁴⁰
- 2.40 These matters include:
- investigating criminal allegations against police officers
 - civil proceedings alleging improper or unreasonable police conduct
 - providing adequate reasons for relevant decisions to complainants
 - responding to court findings where the court has been critical of the conduct or evidence of police officers.⁴¹

Committee comment

- 2.41 Oversight of the NSWPF and the NSWCC is a critical part of ensuring public confidence in law enforcement in NSW. In his review, Mr Tink concluded that a single oversight body would have a number of advantages, including better transparency and accountability; more effective use of intelligence; and an improved external investigation capacity. The Committee is pleased to see that the establishment of the LECC responds to the recommendations made by Mr Tink. The single oversight body should streamline and simplify this oversight and provide a clear avenue for complaints to be made. Mr Tink highlighted several specific gaps and overlaps in police oversight which would be addressed by the creation of a new body. The Committee supports the recommendations made in the Tink Review and hopes that the LECC will improve police oversight as envisioned by Mr Tink.
- 2.42 The creation of two separate divisions, each headed by a Deputy Commissioner, means that there will be distinct roles within the LECC. It will be important for these divisions to work together to ensure an efficient and effective allocation of work. When considering a single oversight body, some concerns were raised that complaint handling functions could overwhelm corruption investigations. The separate divisions should help to avoid this problem and the Committee is

³⁸ Police Integrity Commission, *Project Harlequin*, May 2017, pxiv

³⁹ Police Integrity Commission, *Annual Report 2015 – 2016*, p39

⁴⁰ NSW Ombudsman, *Annual Report 2015-16*, p48

⁴¹ NSW Ombudsman, *Annual Report 2015-16*, pp48-50

pleased to see that the LECC is required to provide thorough statistics on the matters it investigates in its annual report. The Committee will closely monitor the allocation of work as part of its oversight of the LECC.

- 2.43 An area where Mr Tink noted that a single oversight body could lead to better outcomes is in the number of direct investigations carried out. Mr Tink found that certain issues regarding complaints about police misconduct, or the handling of these complaints, may have fallen between the jurisdictions of the police division of the Ombudsman and the PIC. Given that these investigatory and oversight powers now reside in the LECC, decisions on which matters to investigate, and at what level, should be easier to make during discussions between the executives of the LECC. However, some concerns have been raised that the threshold for direct investigation is now too high. The Committee will monitor the effectiveness of the LECC and the LECC Act in this area and hopes that it will lead to stronger oversight of 'everyday' policing practices.
- 2.44 The Committee is pleased to see that the LECC has the power to make recommendations to the NSWPF or the NSWCC concerning officer misconduct, maladministration and education and prevention programs. Identifying trends in complaints and carrying out projects to prevent misconduct before it occurs is the key to long-term improvement of complaint management and culture. It is also important that the agencies to which the recommendations are directed respond to them and indicate whether they intend to accept them or not.
- 2.45 The Committee notes that the PIC and the Ombudsman have highlighted certain issues that they had raised with the NSWPF which remain outstanding. The Committee hopes that the LECC will build on the work of the Ombudsman and PIC. It will be important for the LECC to establish good working relationships with the NSWPF and the NSWCC. It is also important for the NSWPF and the NSWCC to be receptive to the new oversight model and work collaboratively within the new system.
- 2.46 Providing the LECC with statutory oversight of the NSWPF's critical incident investigations is an important step in ensuring public confidence in the standard of such investigations. Giving these powers to the LECC also provides clarity on who is responsible in this area, and should reduce the potential for duplication of inquiries.
- 2.47 The Committee is pleased to see that a definition of 'critical incident' is provided in the LECC Act as this should assist the LECC's oversight work. However, some concerns have been raised that the LECC's oversight powers are weaker in certain areas than those previously exercised by the Ombudsman. This could lead to less effective oversight and an inability to realise the benefits outlined by Mr Tink. This is an area the Committee will take an interest in as part of its oversight of the LECC.
- 2.48 The Committee acknowledges the work and focus of the PIC in completing its comprehensive report on Project Harlequin. Given the new responsibilities of the LECC in overseeing the investigation of critical incidents, the PIC's findings and recommendations on risks associated with critical incident investigations will be invaluable.

- 2.49 The Committee again recognises the work and achievements of the staff of the PIC and the Ombudsman's Police Division. The Committee commends the Ombudsman's office for its continued work on police complaints handling when the LECC was yet to be fully operational.
- 2.50 The Committee is eager to begin working with the LECC and the Inspector of the LECC. These are important new agencies and in order to function effectively they must be well resourced. The Committee notes the Government's indication that the full budget of the PIC and the Police Division of the Ombudsman would be made available to the LECC. The Committee will monitor the budgetary and staff situation of the organisation to ensure that it is adequate to fulfil the aims of the Tink review.

Chapter Three – Agency staffing and resources

- 3.1 The Committee discusses the adequacy of staffing and resources for the Inspector of Custodial Services, the NSWCC, the Ombudsman and the Privacy Commissioner in this chapter.

Staffing arrangements at the Inspector of Custodial Services

- 3.2 The permanent staff of the Inspector of Custodial Services comprises of the Inspector, two Senior Inspection/Research Officers, one Official Visitor Coordinator, one Executive Assistant and one Research Assistant.⁴² The Committee heard that the Inspector had four additional temporary staff.⁴³
- 3.3 Ms Fiona Rafter, Inspector of Custodial Services, informed the Committee that the two permanent Senior Inspection/Research Officers were to be absent for at least six months, which was presenting a challenge. This meant that all senior inspection and research positions were filled by temporary staff. Due to this and an expected increase in workload, Ms Rafter has requested additional permanent positions be established.⁴⁴
- 3.4 In order to meet the statutory requirement to inspect all juvenile facilities by October 2016, the Inspector engaged the Principal Inspector of Youth Detention from the Queensland Department of Justice. The Queensland Inspector took part in inspections and assisted with report writing. Ms Rafter stated that it was necessary to seek external assistance as the office did not have sufficient staff to inspect juvenile justice facilities, and undertake additional inspections on the management of radicalisation in prisons, and clothing and bedding in prisons.⁴⁵
- 3.5 The Committee heard that the use of external inspectors reflects a new approach to conducting inspections. Previously, inspections were conducted one at a time with all resources dedicated to that inspection. The new model implemented by Ms Rafter allows a number of inspections to be run concurrently using both internal and external resources:
- ... the model I have implemented is for the office to be able to run inspections simultaneously and draw on a number of resources, both internal and external—and yes, that has required additional internal resources as well as drawing on external resources.⁴⁶
- 3.6 The Inspector advised that the use of external staff is not uncommon in the inspection network. In the past senior inspection and research officers from New South Wales have assisted Western Australia, and the previous New South Wales Inspector received external assistance on an earlier Juvenile Justice report. Ms Rafter assured the Committee there was no additional cost associated with the

⁴² Inspector of Custodial Services, *Annual Report 2015-16*, p4

⁴³ Ms Fiona Rafter, Inspector of Custodial Services, Transcript of evidence, 12 May 2017, p1

⁴⁴ Ms Rafter, Transcript of evidence, 12 May 2017, p1

⁴⁵ Ms Rafter, Transcript of evidence, 12 May 2017, pp1, 2

⁴⁶ Ms Rafter, Transcript of evidence, 12 May 2017, p3

services of the Queensland Inspector. The practice of two people attending inspections meant that the Queensland Inspector was accompanied by a staff member who was exercising the Inspector's statutory powers.⁴⁷

Staffing arrangements at the Crime Commission

- 3.7 As part of ongoing reforms flowing from the implementation of the *Government Sector Employment Act 2013* (GSE Act), the NSWCC has transitioned executive level staff to the Public Service Senior Executive.⁴⁸
- 3.8 The Commissioner told the Committee that he had formulated a senior executive implementation plan, based on the premise that executive staff would not be financially disadvantaged when transitioned to the GSE Act. The Public Service Commission approved the plan and it was implemented by February 2017.⁴⁹
- 3.9 Mr Hastings informed the Committee that plans to transition non-executive staff to the GSE Act were ongoing. He observed that transitioning staff from the current ad hoc wage system to public sector graded pay scales would result in additional costs for the Commission. This comes at a time when the Commission's budget is being reduced through efficiency dividends. Mr Hastings told the Committee that the Commission cannot maintain current staff numbers due to these budget constraints.⁵⁰
- 3.10 As well as a need to reduce staff due to financial pressures, Mr Hastings informed the Committee that the Commission's work has become more resource intensive as organised crime groups become more sophisticated in their operations. He stated that the impact of budget constraints on staffing would make it difficult for the Commission to maintain its effectiveness.⁵¹
- 3.11 The Commissioner acknowledged the impact of the GSE Act and other factors on staff morale, which was reflected in lower People Matters survey results in 2016. Mr Hastings noted that in discussing the survey, the Public Service Commission had pointed to inadequate change management in the public sector generally. In order to address this, a staff committee was established to identify problems with the way change is handled within the NSWCC:

... We have subsequently set up a committee, under the chair of our Director of Legal Services, comprised of staff members from each division within the office. They have gone about identifying what the staff perceive to be the problems in the way that we handle change. In large part it is a matter of communication. What we have tried very hard to do is to improve our level of communication with staff to ensure that they are kept up to date and given a right to be consulted when we are in the process of introducing change. I would like to think that circumstances have improved.⁵²

⁴⁷ Ms Rafter, Transcript of evidence, 12 May 2017, pp3-4

⁴⁸ New South Wales Crime Commission, *Annual Report 2015-2016*, p40

⁴⁹ Mr Hastings, Commissioner, Transcript of evidence, 12 May 2017, p14

⁵⁰ Mr Hastings, Commissioner, Transcript of evidence, 12 May 2017, p14

⁵¹ Mr Hastings, Commissioner, Transcript of evidence, 12 May 2017, p14

⁵² Mr Hastings, Commissioner, Transcript of evidence, 12 May 2017, pp12-13

Impact of jurisdictional changes on the Ombudsman

- 3.12 The police oversight functions of the Ombudsman were transferred to the LECC on 1 July 2017, following the Committee's hearing with the Ombudsman.
- 3.13 During the hearing the Ombudsman told the Committee that many staff in the office's police division had taken redundancies or sought employment elsewhere. Staff numbers in the police oversight section had decreased from 32 to nine. However, due to delays with the LECC's establishment the Ombudsman's office had continued to undertake most of its police oversight functions with reduced staff.⁵³
- 3.14 From 1 July, the LECC began undertaking these functions and the Ombudsman's police division ceased operating.
- 3.15 The Ombudsman currently has functions under its disability reportable incidents jurisdiction which will be transferred to a federal agency under reforms arising from the National Disability Insurance Scheme. The Committee heard that draft legislation and a timetable have been circulated for the new national quality and safety framework. The transfer of functions under the new framework is expected to take place by June 2018 and will affect 30 full time equivalent staff of the Ombudsman.⁵⁴
- 3.16 Following the hearing, the Ombudsman clarified that it is unclear which of the office's disability related functions will be taken over by the new national Commissioner. For example, state Community Visitor schemes are being evaluated to determine whether the national framework should incorporate such functions.⁵⁵
- 3.17 Professor McMillan informed the Committee that, based on the experience of the police oversight transfer, affected staff could transfer to the new agency, be redeployed in the Ombudsman's office or be made redundant. He told the Committee that given the 'enormous experience and skill in that area in the office' it was his hope that many staff would go to the new agency.⁵⁶
- 3.18 Professor McMillan advised that it was difficult to estimate the potential loss of funding, as the office's future role in monitoring and reviewing issues affecting people with a disability is unclear. He noted that in 2016-17 the Disability Reportable Incidents scheme was funded by a \$1.6 million grant, and the office had allocated a further \$2.1 million from its budget to other disability related work.⁵⁷

⁵³ Professor McMillan, Transcript of evidence, 12 May 2017, p16

⁵⁴ Professor McMillan, Transcript of evidence, 12 May 2017, p22

⁵⁵ Answers to questions on notice, NSW Ombudsman, p2

⁵⁶ Professor McMillan, Transcript of evidence, 12 May 2017, p22

⁵⁷ Answers to questions on notice, NSW Ombudsman, p2

Organisational arrangements within the Information and Privacy Commission

- 3.19 A separate Privacy office was established on a trial basis within the Information and Privacy Commission (IPC) in early 2016, in response to the Privacy Commissioner's concerns about the structure and resourcing of the IPC. The Privacy Commissioner had previously informed the Committee that a lack of clear structural arrangements within the IPC was hindering statutory functions in the area of privacy. The Privacy Commissioner had also stated that insufficient resourcing was hindering research and reporting on privacy issues.⁵⁸
- 3.20 Then Acting Privacy Commissioner, Dr Elizabeth Coombs, told the Committee that despite her concerns about 'ongoing and significant asymmetry in the organisational arrangements' she was pleased that the Attorney General had retained the specific privacy team.⁵⁹
- 3.21 Dr Coombs observed that the allocation of additional resources to the Privacy Office had resulted in greater productivity when compared to the previous model. The Privacy Commissioner's annual report stated that since the establishment of a separate office the total number of privacy related statutory functions performed had increased by 34 per cent, with some specific functions increasing by over 80 per cent.⁶⁰

Appointment of full-time Privacy Commissioner

- 3.22 Ms Samantha Gavel commenced in the role of Privacy Commissioner in September 2017, and the Government has made the Privacy Commissioner a full-time position. The Attorney General stated that this change 'recognises the importance of privacy protection at a time when advancements in digital technology are continually raising new challenges to the security of personal information'.⁶¹

Committee comment

- 3.23 The Committee acknowledges that each oversight body was going through a time of transition during the current reporting period. It is commendable that all agencies continued to work at a high standard despite resource and budgetary constraints.
- 3.24 The Committee particularly thanks the Ombudsman and his staff for continuing to conduct its police oversight functions during the delayed commencement of the Law Enforcement Conduct Commission. The impact of the loss of disability complaints functions is uncertain; however it is clear that the Ombudsman will lose further staff and resources once federal oversight arrangements for the NDIS are implemented.

⁵⁸ Office of the Privacy Commissioner New South Wales, *Annual Report 2015-16*, p9

⁵⁹ Dr Elizabeth Coombs, Acting Privacy Commissioner, Transcript of evidence, 1 June 2017, p2

⁶⁰ Office of the Privacy Commissioner, *Annual Report 2015-16*, p11 and Dr Coombs, Transcript of evidence, 1 June 2017, p2

⁶¹ NSW Government, 'Proposed appointment of Privacy Commissioner', Media release, 21 June 2017, and IPC, Our Commissioners <http://www.ipc.nsw.gov.au/our-commissioners>, viewed 22 August 2017

- 3.25 The Committee recognises the potential detrimental impact on agencies' staff during periods of transition and uncertainty. The Committee acknowledges the dedication and professionalism of oversight agencies' staff in working under difficult circumstances.
- 3.26 A number of agencies raised concerns about the adequacy of their staffing and budgets. The Crime Commissioner and Privacy Commissioner have identified challenges with performing their functions due to limits on resources and staffing. The Inspector of Custodial Services has used external inspectors in an effort to perform her statutory functions with limited permanent staff.
- 3.27 The Committee considers it extremely important that statutory offices have sufficient staff and resources to perform their functions and will continue to monitor how the changes in operations and staffing levels impact each agency.
- 3.28 The Committee would like to thank Dr Elizabeth Coombs for her commitment and work during her term as NSW Privacy Commissioner. We welcome Ms Samantha Gavel to the role and look forward to working with her in the future. The Committee also thanks Professor John McMillan for his commendable service as Acting Ombudsman. Professor McMillan led the office during significant changes to the office's jurisdiction, and oversaw the tabling of the Prospect report.

Appendix One – Committee's functions

The Committee's functions relate to the NSW Ombudsman, Law Enforcement Conduct Commission, NSW Crime Commission (including the Commission's Management Committee), Information Commissioner, Privacy Commissioner, Child Death Review Team, Inspector of the Law Enforcement Conduct Commission, and Inspector of Custodial Services.

The Committee's main functions involve:

- monitoring and reviewing the exercise of each office's functions
- examining each office's annual and other reports
- reporting to NSW Parliament on matters relating to each office's functions and annual and other reports
- inquiring into matters referred to the Committee by NSW Parliament.

The specific functions are set out in section 31B of the Ombudsman Act, section 131 of the Law Enforcement Conduct Commission Act, section 44 of the Government Information (Information Commissioner) Act, section 44A of the Privacy and Personal Information Protection Act, section 71 of the Crime Commission Act and section 17 of the Inspector of Custodial Services Act. Section 34J(1) of the Community Services (Complaints, Reviews and Monitoring) Act is also relevant to the work of the Committee.

Appendix Two – Witnesses

Friday 12 May 2017

Macquarie Room, Parliament of NSW

Witness	Organisation
Ms Fiona Rafter Inspector	Office of the Inspector of Custodial Services
Ms Elizabeth Tydd Information Commissioner	
Ms Roxane Marcelle-Shaw Director Investigation & Reporting	Information and Privacy Commission
Ms Samara Dobbins Director Business Improvement	
Mr Peter Hastings QC Commissioner	NSW Crime Commission
Professor John McMillan AO Acting NSW Ombudsman	
Mr Chris Wheeler Deputy Ombudsman (Public Administration)	NSW Ombudsman
Mr Daniel Lester Deputy Ombudsman (Aboriginal)	
Mr Michael Gleeson Acting Deputy Ombudsman (Police)	
Professor John McMillan AO Convenor	Child Death Review Team

Thursday 1 June 2017

Jubilee Room, Parliament of NSW

Witness	Organisation
Dr Elizabeth Coombs Acting Privacy Commissioner	Office of the Privacy Commissioner
Mr Nick Yetzotis Acting Senior Advisor	

Appendix Three – Extracts from minutes

MINUTES OF MEETING No 24

10.00am, Friday 12 May 2017
Macquarie Room

Members present

Mr Evans (Chair), Mr Lynch, Mr Bromhead, Dr McDermott, Mr Khan, Mr Searle, Mr Amato

Officers in attendance

Jason Ardit, Dora Oravecz, Leon Last, Derya Sekmen, Chris Herbert

1. Deliberative meeting

1.1 Committee membership

The Chair advised the Committee of the change in membership, as recorded in the Votes and Proceedings of Thursday 6 April 2017, entry 21, where Mr Amato was appointed to the Committee in place of Mr Farlow, who was discharged.

1.2 ***

1.3 Confirmation of minutes

Resolved, on the motion of Mr Khan: That the minutes of the meeting of 6 April 2017 be confirmed.

1.4 ***

1.5 ***

1.6 Media orders

Resolved on the motion of Mr Khan: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 12 May 2017, in accordance with the Legislative Assembly's guidelines for the coverage of proceedings for committees administered by the Legislative Assembly.

1.7 Answers to questions taken on notice

Resolved on the motion of Mr Khan, seconded Mr Searle: That witnesses be requested to return answers to questions taken on notice and supplementary questions within 14 working days of the date on which the questions are forwarded to witnesses.

The deliberative meeting concluded at 10.07am.

2. Public hearing - 2017 Review of annual reports of oversight bodies

Witnesses and the public were admitted. The Chair opened the public hearing at 10.29am and after welcoming the witnesses made a short opening statement.

Ms Fiona Rafter, Inspector of Custodial Services, was affirmed and examined.

The Inspector made an opening statement.

The Committee commenced questioning the witness.

Evidence concluded and the witness withdrew.

The Committee took a short adjournment at 10.55am and resumed the public hearing at 11.19am.

Ms Elizabeth Tydd, Information Commissioner and CEO, Information and Privacy Commission, and Ms Samara Dobbins, Director, Business Improvement, Information and Privacy Commission, were sworn and examined.

Ms Roxanne Marcelle-Shaw, Director, Investigation and Reporting, Information and Privacy Commission, was affirmed and examined.

The Information Commissioner made an opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

Mr Peter Hastings QC, Commissioner, NSW Crime Commission, was affirmed and examined.

The Committee commenced questioning the witness. Evidence concluded and the witness withdrew.

The Committee adjourned at 12.05pm and resumed the public hearing at 1.30pm.

Professor John McMillan AO, Acting Ombudsman, Mr Chris Wheeler, Deputy Ombudsman (Public Administration), Mr Michael Gleeson, Acting Deputy Ombudsman (Police and Compliance), were affirmed and examined.

Mr Daniel Lester, Deputy Ombudsman (Aboriginal Programs), was sworn and examined.

The Acting Ombudsman made an opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

Professor John McMillan AO, Convenor, Child Death Review Team, was examined.

The Convenor made an opening statement.

The Committee commenced questioning the witness. Evidence concluded and the witness withdrew.

The public hearing concluded at 2.36pm.

3. Post-hearing deliberative meeting

The Committee commenced a deliberative meeting at 2.38pm.

3.1 Publication orders

Resolved, on the motion of Mr Bromhead: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

3.2 Public hearing

Resolved, on the motion of Mr Searle: That the Committee hold a public hearing with the Privacy Commissioner as part of the review of oversight bodies' annual reports.

4. Next meeting

The committee adjourned at 2.41pm until a date to be determined.

MINUTES OF MEETING No 25

1.32pm, Thursday 1 June 2017

Macquarie Room

Members present

Mr Evans (Chair), Mr Lynch, Mr Bromhead, Dr McDermott, Mr Khan, Mr Searle, Mr Amato

Officers in attendance

Jason Arditi, Dora Oravec, Leon Last, Derya Sekmen, Chris Herbert

1. Deliberative meeting

1.1 ***

1.2 Confirmation of minutes

Resolved, on the motion of Mr Bromhead, seconded Mr Lynch: That the minutes of the meeting of 12 May 2017 be confirmed.

1.3 Correspondence received

The Committee noted the receipt of the following correspondence:

- Inspector of Custodial Services, dated 17 May 2017, clarifying part of her evidence at the 12 May public hearing

Resolved on the motion of Mr Bromhead, seconded Mr Khan: That the Committee authorises publication of correspondence from the Inspector of Custodial Services clarifying evidence given at the public hearing held on 12 May 2017 and that the correspondence be uploaded on the Committee's website.

1.4 Media orders

Resolved on the motion of Mr Bromhead, seconded Mr Amato: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 1 June

2017, in accordance with the Legislative Assembly's guidelines for the coverage of proceedings for committees administered by the Legislative Assembly.

1.5 Answers to questions taken on notice

Resolved on the motion of Mr Bromhead, seconded Mr Khan: That witnesses be requested to return answers to questions taken on notice and supplementary questions within 14 working days of the date on which the questions are forwarded to witnesses.

The deliberative meeting concluded at 1.37pm.

2. Public hearing - 2017 Review of annual reports of oversighted bodies

Witnesses were admitted. The Chair opened the public hearing at 1.39pm and after welcoming the witnesses made a short opening statement.

Dr Elizabeth Coombs, Acting Privacy Commissioner, Officer of the Privacy Commissioner, was sworn and examined.

Mr Nick Yetzotis, Acting Senior Advisor, Officer of the Privacy Commissioner, was affirmed and examined.

The Privacy Commissioner made an opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.03pm.

3. Post-hearing deliberative meeting

The Committee commenced a deliberative meeting at 2.03pm.

3.1 Publication orders

Resolved, on the motion of Mr Bromhead, seconded Mr Khan: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

3.2 ***

4. Next meeting

The committee adjourned at 2.05pm until a date to be determined.

MINUTES OF MEETING No 26

12 noon, Thursday 22 June 2017
Room 814/815, Parliament House

Members present

Mr Evans (Chair), Mr Bromhead, Mr Lynch, Dr McDermott, Mr Khan, Mr Searle, Mr Amato

Officers in attendance

Jason Ardit, Leon Last, Derya Sekmen, Chris Herbert

1. Confirmation of minutes

Resolved, on the motion of Mr Bromhead, seconded by Dr McDermott: That the minutes of the meeting of 1 June 2017 be confirmed.

2. 2017 Review of the Annual Reports of oversight bodies

Publication of answers to questions taken on notice

Resolved, on the motion of Mr Bromhead, seconded by Mr Amato: That the Committee authorises the publication of the following answers to questions on notice received, and that the answers be placed on the Committee's website:

- Answers to questions on notice from the Inspector of Custodial Services, dated 1 June
- Answers to questions on notice from the NSW Ombudsman, dated 2 June
- Answers to questions on notice from the NSW Ombudsman in his capacity as Convenor of the Child Death Review Team, dated 2 June.

3. ***

4. ***

5. Next meeting

The committee adjourned at 12.15pm until a date to be determined.

MINUTES OF MEETING No 29

1.36pm, Thursday 19 October 2017

Room 1254

Members present

Mr Evans (Chair), Mr Bromhead, Mr Khan, Mr Martin

Apologies

Dr McDermott, Mr Searle, Mr Lynch

Officers in attendance

Jason Ardit, Dora Oravec, Leon Last, Stephanie Mulvey, Chris Herbert, Derya Sekmen.

1. Confirmation of minutes

Resolved, on the motion of Mr Bromhead, seconded Mr Martin: That the minutes of the meeting of 14 September 2017 be confirmed.

2. ***

3. 2017 Review of the Annual Reports of oversight bodies – consideration of Chair's draft report

Resolved, on the motion of Mr Khan, seconded Mr Martin:

1. That the draft report be the report of the Committee, and that it be signed by the Chair and presented to the House.
2. That the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.
3. That, once tabled, the report be posted on the Committee's website.
4. ***
5. **Next meeting**

The meeting adjourned at 1.39pm until a date to be determined.