

Committee on the Ombudsman, the Law  
Enforcement Conduct Commission and  
the Crime Commission



PARLIAMENT OF  
NEW SOUTH WALES

## 2023 review of annual and other reports of oversight agencies



Report 1/58 – August 2024

New South Wales Parliamentary Library cataloguing-in-publication data:



A catalogue record for this  
book is available from the  
National Library of Australia

ISBN: 978-1-925214-46-8

The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

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# Membership

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## Chair's foreword

I am pleased to present the Committee's 2023 review of the annual and other reports of oversight agencies. This is the first review conducted by this Committee in the current Parliament, and covers the 2021-22 and 2022-23 reporting periods.

This review represents one of the Committee's core functions – to monitor and review the performance of oversight agencies. These agencies do important work for the people of NSW, so it is essential that they work efficiently and effectively to carry out their statutory functions.

We currently oversee eight NSW agencies: the NSW Ombudsman, the Child Death Review Team, the Law Enforcement Conduct Commission, the Inspector of the Law Enforcement Conduct Commission, the NSW Crime Commission, the Inspector of Custodial Services, the Information and Privacy Commission, and the Public Service Commissioner. This is the first reporting period we have had oversight functions related to the Public Service Commissioner.

This report makes one recommendation and five findings related to issues we identified during this review.

Our recommendation is that the NSW Government appoints a National Preventative Mechanism(s) (NPM) for NSW as a matter of priority. This is the first step towards implementing the Optional Protocol to the Convention Against Torture (OPCAT). The Committee's previous report also made this recommendation, but the Committee did not receive a response to that report from either the former or current government.

Unfortunately, there has been no action taken in the meantime to implement OPCAT. It is now well past the implementation deadline of January 2023, and NSW is now the only Australian jurisdiction that has not taken any steps towards nominating an NPM.

The failure to appoint an NPM was highlighted internationally when the OPCAT treaty body, the United Nations Subcommittee on the Prevention of Torture, suspended and then terminated their visit to Australia in October 2023. The Subcommittee's report noted the lack of cooperation, understanding, and respect from relevant agencies in NSW as a major factor in their decision to terminate the visit. It is vital that NSW works to meet our obligations under OPCAT as soon as possible.

The agencies we oversight have functions covering a large range of areas. During the review, we heard evidence about how existing functions are working, and noted the commencement of new statutory functions. This includes the Mandatory Notification of Data Breach scheme, the Mandatory Disease Testing regime, and the new Public Interest Disclosures regime. We also heard that improved funding resulted in increased staffing across a number of agencies, which in turn has led to changes in the way agencies are working.

We were very concerned to hear that the Child Death Review Team (CDRT) identified that suicide continues to be the leading cause of death in young people (aged 10-17). It was also worrying to hear that these deaths occurred in a context of rising hospitalisations of 10-17 year olds for intentional self-harm. The CDRT has been working with NSW government agencies to

implement a number of recommendations around youth suicide rates, and we're hopeful that their work will result in better support for young people in our state.

In this review, we noticed agencies are increasingly coming into contact with artificial intelligence (AI), mainly because its use is growing across the public sector. AI usage is changing rapidly as technologies become more accessible and more powerful, and we expect that this area will continue to be relevant in future reporting periods. We heard that some agencies have completed work which aims to improve transparency around the public sector's use of AI. Some agencies also said they are considering the risks and benefits of AI systems themselves. We will be interested to follow developments in this area into the future.

Funding of oversight agencies has been an area of ongoing concern. We consider it essential that agencies have adequate funding so they can properly exercise their statutory functions. Some changes to funding arrangements were made during the period covered by the Committee's prior review. The Committee had heard positive feedback about these arrangements.

We were concerned that these improvements might be impacted by the change of government. However, we were relieved to see that the current government has made a commitment to better transparency for integrity agency funding, including new processes for integrity agency Budget bids and contingency funding where required. Agencies had generally positive feedback on funding arrangements during this review, which we were glad to hear. They also commented that the improved funding they had received over the reporting periods enabled them to carry out new functions, as well as better carry out existing ones.

I would like to note that the terms of the former Information Commissioner, Elizabeth Tydd, and the former Privacy Commissioner, Samantha Gavel, ended during the reporting period. We thank both Ms Gavel and Ms Tydd for their work and dedication over many years at the Information and Privacy Commission.

Finally, I would like to thank all of our oversight agencies for their work during the reporting periods. Agency staff undertake complex, challenging, and sometimes very difficult work, ultimately to the benefit of our state and the people who live in it. We look forward to working with them through the rest of this Parliament.

I would also like to thank my fellow Committee members for their contributions to this inquiry, as well as committee staff for their support throughout the review.

**Phil Donato MP**  
Chair

# Findings and recommendations

## **Recommendation 1**

That, in accordance with the Optional Protocol to the Convention Against Torture, the NSW Government nominate a National Preventative Mechanism for New South Wales as a matter of priority.

## **Finding 1**

The Law Enforcement Conduct Commission faces obstacles in effectively monitoring critical incidents, including in participating in critical incident interviews and obtaining documents from the NSW Police Force. These slow down investigations, suggesting a potential need for more efficient processes.

## **Finding 2**

There is limited visibility and transparency around the use of artificial intelligence in the NSW public sector.

## **Finding 3**

The Inspector of Custodial Services could provide more comprehensive information about steps being taken by Corrective Services NSW and Youth Justice NSW to implement the Inspector's recommendations.

## **Finding 4**

The Child Death Review Team's 2020-2021 biennial review found that suicide continues to be the leading cause of death for children aged 10-17. These deaths are occurring within a context of increasing hospitalisations due to intentional self-harm.

## **Finding 5**

There was a significant increase in the rate of suicide deaths for children aged 10-17 in the 15 year period from 2007 to 2021.



# Chapter One – Issues discussed in this review

## The Optional Protocol to the Convention Against Torture

### Recommendation 1

**That, in accordance with the Optional Protocol to the Convention Against Torture, the NSW Government nominate a National Preventative Mechanism for New South Wales as a matter of priority.**

- 1.1 We are concerned about ongoing inaction in implementing the Optional Protocol to the Convention Against Torture (OPCAT). Because of this, we are recommending that, in accordance with OPCAT compliance requirements, the NSW Government should nominate a National Preventative Mechanism for NSW as a priority.
- 1.2 We note that the previous report of this Committee also included this recommendation. Neither the former or current government have provided a response to that report.<sup>1</sup>
- 1.3 We are disappointed that the NSW Government has taken no action to progress the implementation of the Protocol. This is why we are restating the recommendation of the previous Committee that the NSW Government prioritises taking action to implement OPCAT. We will continue to monitor progress on this issue.
- 1.4 Australia ratified OPCAT in 2017. OPCAT is an international human rights treaty that aims to prevent mistreatment of people in detention by preventing cruel, inhuman, or degrading treatment and punishments. Australia's extended deadline for implementing the treaty was 20 January 2023.<sup>2</sup>
- 1.5 States that have ratified OPCAT must nominate National Preventative Mechanisms (NPMs). NPMs are responsible for conducting inspections of places of detention and examining relevant legislation to ensure compliance with the standards set out in the Protocol.<sup>3</sup>
- 1.6 Under the Australian Government's 'cooperative network' system, each Australian jurisdiction is required to nominate one or more NPM(s). These form

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<sup>1</sup> Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [2022 review of the annual and other reports of oversight agencies](#), report 3/57, December 2022, recommendation 1.

<sup>2</sup> Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [2022 review of the annual and other reports of oversight agencies](#), pp 20-21.

<sup>3</sup> Office of the High Commissioner for Human Rights, United Nations, [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), Part IV, entered into force 22 June 2006, viewed online 13 June 2024.

the Australian NPM Network, which is coordinated by the Office of the Commonwealth Ombudsman.<sup>4</sup>

- 1.7 The NSW Ombudsman has previously noted that NSW is the only Australian jurisdiction that has not made any progress towards nominating an NPM.<sup>5</sup> At this year's public hearing the Ombudsman told us that, despite the 'absolute cut-off' date in January 2023, his office has not received 'any further update[s]' from the NSW Government.<sup>6</sup>
- 1.8 It is important that the NSW Government takes immediate action to meet the Protocol's standards. We recognise that nominating an NPM is only a preliminary step in the work required to establish functioning NPM(s) in NSW.
- 1.9 New South Wales's failure to nominate an NPM was also highlighted publicly by the suspension and then termination of a United Nations Subcommittee on the Prevention of Torture (SPT) visit in October 2023. The SPT has only ever terminated one other visit - to Rwanda, in 2017.<sup>7</sup> The SPT is a treaty body that is tasked with overseeing implementation of OPCAT by signatory states, including by undertaking visits. It also provides advice about establishing NPM(s).<sup>8</sup>
- 1.10 One of the main reasons the visit was suspended, and ultimately terminated, was because the SPT were not permitted to access any facilities in NSW and faced 'obstruction' from NSW authorities.<sup>9</sup> The Subcommittee's report states that there was a 'blanket refusal by the New South Wales authorities to cooperate with the Subcommittee, and denial of access to any place of [detention]' in NSW.<sup>10</sup>

*The NSW Ombudsman has undertaken work to prepare for OPCAT*

- 1.11 We were encouraged to hear that the NSW Ombudsman has undertaken proactive work to prepare for the nomination of NPM(s) in NSW. The Ombudsman has previously noted that his office is 'an appropriate body' to be

<sup>4</sup> Senate Standing Committee on Legal and Constitutional Affairs, Supplementary Budget Estimates 2019-20, Attorney-General's Department, [LCC-SBE19-141 – OPCAT – National Preventative Mechanism](#), 4 February 2020, viewed 17 June 2024, p 1.

<sup>5</sup> NSW Ombudsman, [Annual Report 2021-2022](#), 25 October 2022, p 20.

<sup>6</sup> Paul Miller, NSW Ombudsman, [Transcript of evidence](#), 2 May 2024, p 22.

<sup>7</sup> Australian National Preventative Mechanism Network, [Joint statement – Subcommittee on Prevention of Torture decides to terminate visit to Australia](#), media release, February 2023, viewed online 17 June 2024; G Hitch, [UN torture prevention body cancels Australia trip after refused access to detention, mental health centres](#), ABC News, 21 February 2023, viewed online 18 June 2024.

<sup>8</sup> United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, [Introduction to the Committee: Subcommittee on the Prevention of Torture](#), viewed online 23 July 2024.

<sup>9</sup> United Nations Office of the High Commissioner for Human Rights, [UN torture prevention body suspends visit to Australia citing lack of co-operation](#), media release, 23 October 2022, viewed online 18 June 2024.

<sup>10</sup> United Nations Office of the High Commissioner for Human Rights, [UN torture prevention body terminates visit to Australia, confirms missions to South Africa, Kazakhstan, Madagascar, Croatia, Georgia, Guatemala, Palestine, and the Philippines](#), press release, 20 February 2023, viewed online 17 June 2024; United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, [Visit to Australia undertaken from 16 to 23 October 2022: recommendations and observations addressed to the State party](#), 20 December 2023, p 21.

designated as an NPM, particularly in the context of other members of the Australian NPM Network.<sup>11</sup>

- 1.12 In their 2022-23 annual report, the NSW Ombudsman said that they had engaged Deloitte to help prepare a potential NPM operating model. This work looked at best practice NPM operations, and considered staffing requirements, structures, and models. It produced an 'overall plan and approach to rapidly stand-up [an NPM] function'.<sup>12</sup>
- 1.13 We asked the Ombudsman to comment on why this preparatory work had been undertaken, given the NSW Government's ongoing inaction in this area. He told us that the work was undertaken because:
- We saw the looming deadline [20 January 2023]. [...] My biggest concern at that time was that, with the deadline, an announcement would be made, the function would be conferred on us, and we would fail from day one to be able to implement that function.<sup>13</sup>
- 1.14 The Ombudsman said that the operating model finalised by this work is necessarily flexible, as it's unclear how NPM(s) will be established in NSW.<sup>14</sup> The NSW Ombudsman's annual report notes that the model and associated materials could also be used by another NSW public sector agency if they were appointed in this role.<sup>15</sup>
- 1.15 We were pleased to hear that some work has been undertaken to prepare for OPCAT implementation in NSW, particularly as it may help any other nominated NPMs.

## LECC's oversight of the NSW Police Force

- 1.16 The Law Enforcement Conduct Commission (the LECC) is an independent agency that detects, overlooks, investigates, and exposes misconduct and maladministration in the NSW Police Force and the NSW Crime Commission. The LECC was established by the *Law Enforcement Conduct Commission Act 2016* (the LECC Act). The LECC Act confers a range of powers and functions on the LECC, including oversight of critical incident investigations and complaint handling.
- 1.17 In this review, we were interested to know whether the current frameworks around the LECC's investigation and oversight of the police are adequate.
- 1.18 We asked whether the NSW Police Force (NSWPF) cooperates fully with the LECC's investigations. The LECC responded that the relationship between the LECC and the NSWPF is cooperative, and they 'are both working towards the same goal'. The LECC wrote:

<sup>11</sup> NSW Ombudsman, [Annual Report, 2021-2022](#), p 20.

<sup>12</sup> NSW Ombudsman, [Annual Report 2022-23](#), 30 October 2023, p 58.

<sup>13</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 22.

<sup>14</sup> [Answers to supplementary questions](#), NSW Ombudsman, 31 May 2024, p 4.

<sup>15</sup> NSW Ombudsman, [Annual Report 2022-2023](#), p 58.

The NSW Police Force carefully scrutinises any exercise of the Commission's powers before providing information to the Commission, and challenge perceived overreach by the Commission.

Where the Commission is exercising its powers under Part 6 of the LECC Act, the NSW Police Force consider the validity of Notices issued by the Commission, but comply with Notices that they agree are valid.<sup>16</sup>

- 1.19 We were pleased to hear that the LECC considers that they and the NSWPF have a cooperative relationship. In the Committee's opinion, this is important to ensure the effective discharge of the Commission's functions under the LECC Act.

## Obstacles for LECC monitoring of critical incident investigations

### Finding 1

**The Law Enforcement Conduct Commission faces obstacles in effectively monitoring critical incidents, including in participating in critical incident interviews and obtaining documents from the NSW Police Force. These slow down investigations, suggesting a potential need for more efficient processes.**

- 1.20 Part 8 of the LECC Act confers powers to oversee NSWPF investigations of critical incidents. A critical incident is an incident involving a police officer that results in the death or serious injury of a person.
- 1.21 The previous Committee had an ongoing interest in this area, and noted issues related to NSWPF cooperation with LECC investigators in its 2022 review.<sup>17</sup>
- 1.22 We were disappointed to hear that the LECC continues to face obstacles in monitoring critical incident investigations. There are two significant obstacles which we comment on in this report:
- NSWPF declining consent for the LECC to attend the interviews of officers involved in critical incidents, and
  - NSWPF refusing to supply documents related to critical incident investigations on the grounds of public interest immunity.<sup>18</sup>
- 1.23 These are discussed in more detail below. We will continue to monitor the LECC's discharge of critical incident oversight functions, particularly issues around the LECC's access to NSWPF critical incident material, in future reporting periods.

<sup>16</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 19 July 2024, p 6.

<sup>17</sup> Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [2022 review of the annual and other reports of oversight agencies](#), p 12-13.

<sup>18</sup> Peter Johnson SC, Chief Commissioner, Law Enforcement Conduct Commission, [Transcript of evidence](#), 2 May 2024, p 30; [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 19 July 2024, p 6.

*LECC is denied permission to participate in critical Incident Interviews*

- 1.24 Under section 114 of the LECC Act, the Commission may be present at critical incident interviews with the consent of both the interviewee and the Senior Critical Incident Investigator.<sup>19</sup>
- 1.25 The Chief Commissioner of the LECC, Peter Johnson SC, told us that, to date, all NSWPF interviewees have declined consent for the LECC to be present at their interviews.<sup>20</sup> While interviewees do not need to provide a reason for their refusal, the LECC have been told that the refusal is based on legal advice from the Police Association of NSW.<sup>21</sup>
- 1.26 We heard that this delays the LECC's oversight of critical incident investigations, as they have to wait for the interview transcripts. This means they cannot raise concerns or clarify aspects of the evidence until after the critical incident interview is finalised.<sup>22</sup>
- 1.27 The LECC would like to attend interviews of NSWPF officers when appropriate, and suggested that changes to the legislation could help this happen. The Committee notes there are similar to provisions already in place for other types of interviews.<sup>23</sup>

*There are challenges in accessing documents related to critical incident investigations*

- 1.28 The NSWPF 'often voluntarily provide' documents and briefings to the LECC when the Commission has no statutory power to require them. We note that there are also times when a request for information is refused.<sup>24</sup>
- 1.29 Chief Commissioner Johnson told us that since September 2023 the NSWPF has refused to provide the LECC with certain materials, on the grounds of public interest immunity.<sup>25</sup> We were concerned to hear that this has included interview transcripts.<sup>26</sup>
- 1.30 The LECC issued an open decision on the NSWPF objection to produce documents on 28 February 2024.<sup>27</sup> On 6 March 2024, the NSWPF filed proceedings to challenge the LECC's decision in the Court of Appeal.<sup>28</sup>

<sup>19</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, p 1.

<sup>20</sup> Peter Johnson SC, [Transcript of evidence](#), 2 May 2024, p 30.

<sup>21</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, p 1; Peter Johnson SC, [Transcript of evidence](#), 2 May 2024, p 31.

<sup>22</sup> Peter Johnson SC, [Transcript of evidence](#), 2 May 2024, p 30; [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, p 1.

<sup>23</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, p 2. The LECC does not require consent to attend interviews under s 101 of the [Law Enforcement Conduct Commission Act 2016](#) and suggested that similar provisions could be adopted for part 8 of the LECC Act.

<sup>24</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 19 July 2024, p 6.

<sup>25</sup> Peter Johnson SC, [Transcript of evidence](#), 2 May 2024, p 30.

<sup>26</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, p 2.

<sup>27</sup> Law Enforcement Conduct Commission, [Open Decision on objection by NSW Police Force to production of documents required under s 114 LECC Act](#), 28 February 2024.

<sup>28</sup> Peter Johnson SC, [Transcript of evidence](#), 2 May 2024, p 30.

- 1.31 We note that shortly after our public hearing in May 2024, the Court of Appeal upheld the LECC's position on the issue of whether the NSWPF can claim public interest immunity when the Commission is monitoring a critical incident investigation.<sup>29</sup> We are aware that the NSWPF initially filed an application for special leave to the High Court to challenge this decision.<sup>30</sup> However, we subsequently learned that the parties signed an agreement on the provision disclosure and use of document and information in critical incident monitoring.<sup>31</sup>
- 1.32 During the hearing, the Inspector of the Law Enforcement Conduct Commission also raised this court case. He suggested that it may be 'prudent' to amend the LECC Act to clearly state the LECC's right to access police documents.<sup>32</sup>
- 1.33 The Committee will monitor this issue in the next reporting period, including any legislative amendments proposed to the LECC Act.

#### Delays obtaining body-worn video

- 1.34 We asked about the LECC's timely access to electronic evidence, including police body-worn video. This issue was discussed in the Committee's previous annual review.<sup>33</sup>
- 1.35 The LECC review police body-worn footage as part of assessing the NSWPF's handling of complaints. The LECC reported that it took an average of 26 days to receive videos from the police over the 2022-23 reporting period.<sup>34</sup> Chief Commissioner Johnson said these delays were due to a 'highly inefficient' process. He also acknowledged that the delay is not fair on complainants or police officers subject to a complaint.<sup>35</sup>
- 1.36 We were pleased to hear that the LECC and the NSWPF agreed on a new process for accessing body-worn video in September 2023. This was arrived at after a 'lengthy period of discussion with the police'. Chief Commissioner Johnson said that the 'intervention of some people in the Professional Standards Command' had helped come up with a solution.<sup>36</sup>
- 1.37 The new process has improved the LECC's timely access to body-worn footage. We will continue to monitor the progress of this issue over the next reporting period.

<sup>29</sup> [Commissioner of Police v Attorney General for NSW](#) [2024] NSWCA 150.

<sup>30</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 19 July 2024, p 6.

<sup>31</sup> Law Enforcement Conduct Commission, [Joint NSWPF and LECC Protocol on the provision disclosure and use of documents and information in critical incident monitoring](#), 12 August 2024, viewed online 13 August 2024.

<sup>32</sup> Bruce McClintock SC, Inspector of the Law Enforcement Conduct Commission, [Transcript of evidence](#), 2 May 2024, p 36.

<sup>33</sup> Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [2022 review of the annual and other reports of oversight agencies](#), pp 11-12.

<sup>34</sup> Law Enforcement Conduct Commission, [2022-2023 Annual Report](#), 23 October 2023, p 34.

<sup>35</sup> Peter Johnson SC, [Transcript of evidence](#), 2 May 2024, p 33.

<sup>36</sup> Peter Johnson SC, [Transcript of evidence](#), 2 May 2024, p 33; Law Enforcement Conduct Commission, [2022-2023 Annual Report](#), 23 October 2023, p 34.

## Funding

- 1.38 The Committee has an ongoing interest in the funding arrangements for oversight agencies. In our opinion, it is important that these agencies are appropriately and consistently funded, because this ensures they are able to fully and successfully administer their statutory functions.
- 1.39 We were interested to hear whether oversight agencies' funding was adequate to cover the cost of performing their statutory functions. We also wanted to know whether funding is adaptable, which ensures agencies have flexibility if there are changes in the volume of their work.

### New funding arrangements for integrity agencies

- 1.40 In its previous review, the Committee commended the then government's proposed changes to the funding arrangements and budget processes for integrity agencies.<sup>37</sup> The proposed changes followed concerns raised in reports of the Public Accountability Committee and the NSW Auditor General.<sup>38</sup>
- 1.41 We were concerned that the change in government following the 2023 State General Election would impact this commitment to improve funding arrangements.
- 1.42 We were glad to see, however, that the current government stated that it will make budget arrangements to 'safeguard the independence' of integrity agencies. These arrangements are aimed at increasing transparency in budget and funding decisions and ensuring the independence of integrity agencies.<sup>39</sup> Major changes introduced include:
- The NSW Ombudsman and the Law Enforcement Conduct Commission, along with three other integrity agencies not overseen by the Committee, were removed from the Department of Premier and Cabinet Office financial processes, and excluded from efficiency dividends.
  - A specialist integrity agency unit was created within NSW Treasury. This unit will manage 'representations of agency funding needs and provide agencies with information on their funding outcomes'.
  - Agencies can review the advice given by NSW Treasury to Cabinet on their funding bids, and 'provide their own advice directly to Cabinet' on funding bids.<sup>40</sup>

<sup>37</sup> Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [2022 review of the annual and other reports of oversight agencies](#), pp iii-iv, 1-2.

<sup>38</sup> Legislative Council of NSW, Public Accountability Committee, [Budget process for independent oversight bodies and the Parliament of New South Wales – First report](#), 24 March 2020; NSW Auditor General, [The effectiveness of the financial arrangements and management practices in four integrity agencies](#), 20 October 2020.

<sup>39</sup> Special Minister of State, [Putting integrity at the heart of the NSW Government](#), media release, 16 September 2023, viewed online 23 July 2024.

<sup>40</sup> Special Minister of State, [Putting integrity at the heart of the NSW Government](#), media release, 16 September 2023, viewed online 23 July 2024.

- 1.43 We were pleased to see that these commitments were upheld in the 2023-24 Budget. Additionally, we note that section 21 of the *Appropriation Act 2023* provides a specific appropriation that the Treasurer can draw from for 'contingencies in relation to the integrity agencies' as required.<sup>41</sup> We note this appropriation was again included in the 2024 Appropriation Act.<sup>42</sup>
- 1.44 We commend the government for taking steps to improve the processes and transparency of funding arrangements for the NSW Ombudsman and the Law Enforcement Conduct Commission. However, we note that, so far, these changes have not been applied to other agencies we oversight, although they may benefit from similar arrangements.

### Ensuring adequate funding for oversight agencies

- 1.45 Agencies emphasised the importance of adequate funding to enable them to fulfil their statutory functions.
- 1.46 In addition to funding received for new or enhanced statutory functions, the NSW Ombudsman has received a sustained increase to base funding from 2022-23 onwards. This has been used to administer existing statutory functions which had previously been 'critically under-resourced'. The Ombudsman reflected that this was 're-baseline' funding.<sup>43</sup>
- 1.47 We heard that this has enabled his office to improve staffing levels, and to coordinate 'transformational' projects, such as replacements of legacy systems. Additional funding allocations enabled the Ombudsman to carry out significant new statutory functions, such as the new Public Interest Disclosures and Mandatory Disease Testing regimes.<sup>44</sup>
- 1.48 Similarly, we heard that the NSW Crime Commission used a budget uplift to support recruitment for the Criminal Assets Confiscation team.<sup>45</sup> The Crime Commissioner commented that:

Every law enforcement agency could spend more money. [...] We will spend as much as government allows us, and apply it to combatting serious and organised crime.<sup>46</sup>

### *Inadequate funding can hamper agencies' delivery of statutory functions*

- 1.49 However, we were concerned to hear that other oversight agencies continue to experience funding issues.
- 1.50 The Information Commissioner told us that the Information and Privacy Commission (the IPC) works hard to manage its financial and resourcing constraints. We heard that the IPC received a reduced annual budget allocation in the 2024 Budget. Significantly, the Information Commissioner noted that the

<sup>41</sup> [Appropriation Act 2023](#) (NSW) s 21.

<sup>42</sup> [Appropriation Act 2024](#) (NSW) s 21.

<sup>43</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 17.

<sup>44</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 17; NSW Ombudsman, [Annual Report 2022-23](#), 30 October 2023, pp 17-18.

<sup>45</sup> Michael Barnes, Commissioner, New South Wales Crime Commission, [Transcript of evidence](#), 2 May 2024, p 5.

<sup>46</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 5.



IPC's key corporate services are provided on user-pays basis through another agency; these have 'increased markedly' and are continuing to do so.<sup>47</sup>

- 1.51 In particular, the Information Commissioner raised concerns about the IPC's ability to administer its statutory functions under the new Mandatory Notification of Data Breach (MNDB) scheme without additional ongoing funding.<sup>48</sup>
- 1.52 The IPC received 'short-term budget funding' to initially implement the MNDB scheme. We heard that ongoing funding is required for the Privacy Commissioner to administer the scheme in the long term.<sup>49</sup> We understand that the IPC has applied for ongoing funding of \$1.4 million from 2024-25 onwards to support the MNDB scheme.
- 1.53 The Information Commissioner emphasised that the IPC's budget must 'meet its non-discretionary expenditure' and must reflect the costs of performing statutory functions.<sup>50</sup> She also commented that the IPC was not included in the new funding arrangements for integrity agencies discussed above.<sup>51</sup>
- 1.54 We will continue to monitor agency funding in future reporting periods. In particular, we will seek to ensure that agencies' funding allocations are sufficient to allow them to perform their new or enhanced statutory functions. Specific information about funding is included in Chapter 2.

## Artificial intelligence and automated decision-making

### Finding 2

**There is limited visibility and transparency around the use of artificial intelligence in the NSW public sector.**

- 1.55 Artificial intelligence (AI) refers to machine-based systems that operate within human-defined objectives to make predictions, recommendations, or decisions. These can impact a real or virtual environment.<sup>52</sup> Automated decision-making (ADM) is a subset of AI used to automate administrative decision-making processes.<sup>53</sup> We note that ADM technologies have been used by the NSW public sector since the late 1990s.<sup>54</sup>

<sup>47</sup> Rachel McCallum, Information Commissioner and Chief Executive Officer, Information and Privacy Commission, [Transcript of evidence](#), 2 May 2024, p 46.

<sup>48</sup> [Answers to supplementary questions](#), Information and Privacy Commission, 31 May 2024, p 2.

<sup>49</sup> [Answers to supplementary questions](#), Information and Privacy Commission, 31 May 2024, p 2.

<sup>50</sup> Rachel McCallum, [Transcript of evidence](#), 2 May 2024, p 26.

<sup>51</sup> Rachel McCallum, [Transcript of evidence](#), 2 May 2024, p 26.

<sup>52</sup> International Standard ISO/IEC 22989:2022-07(E), [Information technology – Artificial intelligence – Artificial intelligence concepts and terminology](#), 2022, viewed online 18 June 2024, p 1; United Nations, Organisation for Economic Co-operation and Development, [Recommendation of the Council on Artificial Intelligence \(OECD/Legal/0449\)](#), adopted 22 May 2019, amended 3 May 2024, viewed online 18 June 2024.

<sup>53</sup> Commonwealth Ombudsman, [Automated Decision-making: Better Practice Guide](#), first published 2007, updated 1 January 2024, viewed online 18 June 2024, p 5.

<sup>54</sup> D Montoya and A Rummery, [The use of artificial intelligence by government: parliamentary and legal issues](#), NSW Parliamentary Research Service E-brief no. 02/2020, September 2020, viewed online 19 June 2024, pp 5-6.

- 1.56 AI and ADM use in the NSW public sector is governed by the NSW Artificial Intelligence Assurance Framework. It does not include a requirement for agencies to disclose if they have used AI in a particular process or decision.<sup>55</sup> There is also currently no other requirement (in legislation or policy) for NSW agencies to disclose if they used ADM in making an administrative decision.<sup>56</sup> There is also no public registry of ADM systems in use in the public sector.<sup>57</sup>
- 1.57 This lack of transparency makes it difficult to know what ADM systems are being used in the public sector, what data these systems are using, and what decisions they are contributing to. In this year's review, agencies told us that increasing transparency around the use of AI would be of broad benefit.
- 1.58 Chris Clayton, Chief Operating Officer at the NSW Ombudsman, said increasing transparency would benefit staff handling and investigating complaints about AI assisted decisions. It would also benefit members of the public who are impacted by these decisions.<sup>58</sup> We discuss the impact of AI systems on agencies who handle complaints in more detail below.
- 1.59 Similarly, we heard that the IPC has advocated for mandatory proactive disclosure of the use of AI technologies. The Information Commissioner told us that this is because ADM systems raise particular concerns about transparency. There is also the need to protect information access and privacy rights. The IPC is 'encouraging agencies to contemplate' these issues when they are considering 'deploying' AI technologies.<sup>59</sup>

### **Oversighted agencies are looking at the use of AI in the NSW public sector**

- 1.60 We recognise that the IPC and the NSW Ombudsman have undertaken proactive work to report on the use of AI in the NSW public sector.<sup>60</sup> These reports highlight areas of reduced transparency, and other gaps in AI regulatory frameworks. We commend these agencies for their work in this area.

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<sup>55</sup> NSW Government, [Artificial intelligence assurance framework](#), September 2022, viewed online 18 June 2024, p 6. We note that an updated version of the Framework was published in July 2024. It includes improved transparency considerations, but still does not require disclosure of the use of AI once the system is adopted and embedded in agency processes. NSW Government, [NSW Artificial Intelligence Assessment Framework](#), July 2024, viewed online 24 July 2024, pp 51-57.

<sup>56</sup> [Answers to supplementary questions](#), NSW Ombudsman, 31 May 2024, p 2; Paul Miller, [Transcript of evidence](#), 2 May 2024, p 20.

<sup>57</sup> D Montoya and A Rummery, [The use of artificial intelligence by government: parliamentary and legal issues](#), September 2020, viewed online 19 June 2024, p 20.

<sup>58</sup> Chris Clayton, Chief Operating Officer, NSW Ombudsman, [Transcript of evidence](#), 2 May 2024, p 20.

<sup>59</sup> Rachel McCallum, [Transcript of evidence](#), 2 May 2024, p 48.

<sup>60</sup> NSW Ombudsman, [The new machinery of government: using machine technology in administrative decision-making](#), 29 November 2021; NSW Ombudsman, [A map of automated decision-making in the NSW Public Sector: A special report to Parliament](#), 7 March 2024; Information and Privacy Commission, [Scan of Artificial Intelligence regulatory landscape](#), October 2022.

- 1.61 Although both the NSW Ombudsman and the IPC have raised certain concerns about AI, they emphasised that regulating these issues is the responsibility of the NSW Government.<sup>61</sup>
- 1.62 We understand that AI policy in NSW is developed and managed by Digital.NSW, a unit within the Department of Customer Service. This includes the current AI Strategy, the AI Ethics Policy, and the AI Assurance Framework.<sup>62</sup> We were pleased to hear that the Department of Customer Service has 'picked up' material from the Ombudsman's reports for incorporation into future development of these policies.<sup>63</sup>
- 1.63 The IPC noted that ADM usage in the public sector 'remains an area of ongoing importance' to both the IPC and the NSW Ombudsman. The IPC also told us that they intend to 'explore further opportunities' to continue collaboration with the NSW Ombudsman.<sup>64</sup>

#### *Work of the Information and Privacy Commission*

- 1.64 The Information Commissioner said that preserving information access and privacy rights in an age of 'digital government' is one of the IPC's 'most significant challenges'.<sup>65</sup>
- 1.65 In November 2022, the IPC published an Artificial Intelligence Regulatory Scan, offering a 'point-in-time overview of global approaches' to AI regulation.<sup>66</sup> The Scan suggests four legislative and regulatory changes to the *Government Information (Public Access) Act 2009* (the GIPA Act) to improve transparency and preserve information access and privacy rights.<sup>67</sup>
- 1.66 In its October 2023 submission to the Legislative Council Portfolio Committee No. 1's inquiry into artificial intelligence in NSW, the IPC reiterated these proposed changes.<sup>68</sup> They stated that these amendments 'could be made separately from any other legislation [or] framework that may be introduced to regulate or manage AI'.<sup>69</sup>
- 1.67 We note that the former Information Commissioner, Elizabeth Tydd, was a member of an expert advisory group convened by the NSW Ombudsman as part

<sup>61</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 20; [Answers to supplementary questions](#), NSW Ombudsman, 31 May 2024, p 3.

<sup>62</sup> Digital.NSW, [Artificial Intelligence](#), viewed 24 June 2024.

<sup>63</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 20.

<sup>64</sup> [Answers to supplementary questions](#), Information and Privacy Commission, 31 May 2024, p 3.

<sup>65</sup> Rachel McCallum, [Transcript of evidence](#), 2 May 2024, p 46.

<sup>66</sup> Rachel McCallum, [Transcript of evidence](#), 2 May 2024, p 46.

<sup>67</sup> Information and Privacy Commission, [Scan of the Artificial Intelligence regulatory landscape](#), October 2022, viewed online 28 June 2024, p 17; [Answers to questions taken on notice](#), Information and Privacy Commission, 17 May 2024, pp 3-4.

<sup>68</sup> [Submission 32](#), Information and Privacy Commission, Legislative Council Portfolio Committee No. 1 – Premier and Finance, *Inquiry into artificial intelligence (AI) in New South Wales*.

<sup>69</sup> [Answers to questions taken on notice](#), Information and Privacy Commission, 17 May 2024, p 3.

of a project to map the use of ADM in the public sector.<sup>70</sup> We were pleased to hear that agencies are collaborating to address emerging issues.

- 1.68 The Information Commissioner said information laws should be updated to 'keep pace with' and 'respond directly to' the use of AI in the public sector.<sup>71</sup> She indicated that the IPC is particularly concerned about the application of mandatory open access information (MOAI) provisions under section 6 of the GIPA Act. The current GIPA Act does not classify new information categories (such as those from ADM systems) as MOAI. As a result, the IPC would support 'legislative amendments' to clarify this.<sup>72</sup>
- 1.69 We heard that the Information Commissioner has advised agencies to include AI usage information in their agency information guides under section 20 of the GIPA Act and is considering formalising this advice through guidelines.<sup>73</sup> The Committee will monitor this issue as it develops in future reporting periods.

#### *Work of the NSW Ombudsman*

- 1.70 The Ombudsman told the Committee that his office had 'been particularly active recently' in relation to increasing use of AI by public sector agencies.
- 1.71 Between 2016 and 2019, the NSW Ombudsman received complaints about Revenue NSW's automated garnishee system. Investigating these complaints revealed concerns about the lawfulness of using AI systems.<sup>74</sup>
- 1.72 In November 2021, at the conclusion of this investigation, the NSW Ombudsman tabled a special report to Parliament, *The new machinery of government: using machine technology in administrative decision-making*. This report highlights the lack of transparency and focuses on the 'intersection' of AI technologies with administrative law.<sup>75</sup> It states that 'inadequate attention' appears to have been paid to 'fundamental' aspects of administrative law in the process of adopting AI technologies.<sup>76</sup>
- 1.73 The Ombudsman told us that risk frameworks have been developed around the deployment of AI. These are 'very comprehensive' in relation to data and privacy controls. However, they either do not recognise administrative law, or do so in 'a relatively superficial way'.<sup>77</sup>

<sup>70</sup> [Answers to supplementary questions](#), Information and Privacy Commission, 31 May 2024, p 3.

<sup>71</sup> Rachel McCallum, [Transcript of evidence](#), 2 May 2024, p 46; [Answers to questions taken on notice](#), Information and Privacy Commission, 17 May 2024, p 3.

<sup>72</sup> [Answers to supplementary questions](#), Information and Privacy Commission, 31 May 2024, p 3.

<sup>73</sup> [Answers to supplementary questions](#), Information and Privacy Commission, 31 May 2024, p 3.

<sup>74</sup> NSW Ombudsman, [The new machinery of government: using machine technology in administrative decision-making](#), 29 November 2021, pp 11-12.

<sup>75</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 20.

<sup>76</sup> NSW Ombudsman, [The new machinery of government: using machine technology in administrative decision-making](#), 29 November 2021, pp 3, 7.

<sup>77</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 20.

- 1.74 Informed by these findings, the NSW Ombudsman undertook a project to map the use of AI in the public sector.<sup>78</sup> Research for this project was conducted by the ARC Centre of Excellence for Automated Decision-Making and Society. The *Map of automated decision-making in the NSW Public Sector* was tabled in March 2024. It will be considered in detail in the Committee's next annual review.

*Agencies have previously investigated ADM systems in NSW*

- 1.75 Agencies have previously completed investigations into the use of specific AI systems, most notably the Law Enforcement Conduct Commission's investigation of the NSW Police Force's (NSWPF) Suspect Targeting Management Plan.<sup>79</sup>
- 1.76 However, we note that agencies' reports on AI systems is changing, as the use of AI technologies becomes more widespread in the public sector. In addition to investigating specific systems, agencies have begun to focus more broadly on public sector agencies' use of AI and ADM to make decisions. We will be interested to monitor work in this area in future reporting periods.

**Addressing AI-related complaints**

- 1.77 The work of agencies we oversight is increasingly intersecting with the NSW public sector's use of AI, particularly ADM systems. We heard that the current lack of transparency around the use of AI and ADM systems is impacting on the efficient exercise of agencies' complaint handling functions.

*There are challenges in identifying AI-related complaints in administrative decision-making*

- 1.78 We were interested to hear if oversight agencies had noticed any trends in complaints related to AI, particularly about decisions made using ADM. Agencies told us that it is difficult to identify trends, including the exact number of complaints made about decisions impacted by ADM.<sup>80</sup>
- 1.79 Mr Clayton noted that complaints are made about outcomes instead of systems. This is because people have limited 'visibility over the systems that are being used to make administrative decisions'. It is the decision itself that is the subject of complaints, not the use of systems to make it.<sup>81</sup>
- 1.80 The Ombudsman agreed with Mr Clayton, and explained that the 'real challenge' is that complaints are not 'framed in terms of AI'. This means it can take 'a while' for complaint-handling staff to realise that a particular complaint has an 'automated component'.<sup>82</sup>

<sup>78</sup> NSW Ombudsman, [A map of automated decision-making in the NSW Public Sector: A special report to Parliament](#), 7 March 2024.

<sup>79</sup> Law Enforcement Conduct Commission, [Operation Tepito Final Report: An investigation into the use of the NSW Police Force Suspect Targeting management Plan on children and young people](#), 30 October 2023.

<sup>80</sup> Paul Miller, [Transcript of evidence](#), p 21; Chris Clayton, [Transcript of evidence](#), p 20; Rachel McCallum, [Transcript of evidence](#), 2 May 2024, p 48.

<sup>81</sup> Chris Clayton, [Transcript of evidence](#), 2 May 2024, p 20.

<sup>82</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 21.

- 1.81 Similarly, the Information Commissioner noted that the IPC is 'interested' in whether 'stakeholders are aware of when artificial intelligence is being used to augment or assist in public sector decision-making'.<sup>83</sup>
- 1.82 The Ombudsman also told us that there is 'inherent complexity' in investigating decisions made by AI systems, because these systems cannot be 'interrogated' like a human decision-maker.<sup>84</sup>

*Agencies expect AI-related complaints to increase*

- 1.83 Although current data does not indicate trends related to the use of AI by the public sector, we heard that agencies expect this to change.
- 1.84 The Ombudsman told us that he expects oversight bodies will need to do 'a lot of work' to deal with AI-related complaints in the future. He also noted that, for his office, the challenge will not be the number of complaints, but the way these complaints are investigated.<sup>85</sup>
- 1.85 The Ombudsman also commented that complaint-handling staff in his office are 'alive' to the need to consider if a decision 'implicate[s] the use of AI'. This happens even if the complainant was not aware or did not raise it when making the complaint. We were pleased to hear that NSW Ombudsman has run internal 'information and education sessions' for complaint handling staff on the current use of AI in government decision-making.<sup>86</sup>

**Oversighted agencies are considering potential uses and risks of AI technologies**

- 1.86 We were interested to know whether oversight agencies have considered or adopted AI technologies in their work, including if they have internal policies or frameworks around generative AI. Generative AI (gen AI) refers to AI technologies that generate 'novel content', such as text and images.<sup>87</sup>
- 1.87 The Ombudsman told us that his office is 'one of the first agencies' in NSW to adopt a gen AI policy. He also said that the NSW Ombudsman 'kind of' promotes it 'to the [public] sector as an example'.<sup>88</sup>
- 1.88 The NSW Ombudsman's policy prohibits the use of open-access gen AI tools in substantive decision-making, legal opinions, communications and translations, or for corporate functions such as data analytics or recruitment. The policy also notes that NSW Ombudsman does not currently use any closed-access (bespoke or proprietary software) gen AI systems.<sup>89</sup>

<sup>83</sup> Rachel McCallum, [Transcript of evidence](#), 2 May 2024, p 47.

<sup>84</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 21.

<sup>85</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 21.

<sup>86</sup> [Answers to supplementary questions](#), NSW Ombudsman, 31 May 2024, p 3.

<sup>87</sup> Digital.NSW, [A common understanding: simplified AI definitions from leading standards](#), last accessed 26 June 2024; Digital.NSW, [Generative AI: basic guidance](#), last accessed 25 June 2024.

<sup>88</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 21.

<sup>89</sup> NSW Ombudsman, [Generative Artificial Intelligence – use by NSW Ombudsman officers](#), policy document, version 1 (August 2023), viewed online 25 June 2024, section 6 and 7, pp 6-7.

- 1.89 The LECC told us that they are not 'actively using [AI] as part of [their] investigative suite'.<sup>90</sup> The Chief Commissioner noted that AI 'is here to stay' – the 'question is how [AI] can be harnessed in a useful and secure way'.<sup>91</sup> We heard that the LECC recognises the potential benefits of using AI, such as efficient data management, understanding complainant concerns and supporting strategic intelligence functions.<sup>92</sup> We were glad to hear that the LECC is taking a 'considered approach' to AI, considering costs and implementation time.<sup>93</sup>
- 1.90 The LECC also commented that both the NSWPF and the NSW Crime Commission are 'moving to use AI in their work'. We were pleased to know that the LECC is aware of this. The LECC stated that they will aim to ensure that law enforcement agencies use AI in a 'lawful and appropriate' way.<sup>94</sup>

### People Matter Employee Survey results

- 1.91 The People Matter Employee Survey (PMES) is an annual survey of NSW public sector employees. It is conducted by the Public Service Commission (the PSC) to gather insights from public sector employees about their workplace experiences.
- 1.92 Five agencies we oversight complete the PMES - the Information and Privacy Commission, the Law Enforcement Conduct Commission, the NSW Crime Commission, the NSW Ombudsman, and the Public Service Commission. We discuss their results below.
- 1.93 The PSC collates results and provides reports of agency-specific data, which is provided to agencies and published on the PSC website.<sup>95</sup> Agencies are responsible for developing action plans based on survey data.<sup>96</sup> They are not required to formally share their action plans, but they may share informal feedback with the PSC.<sup>97</sup>

### 2023 survey results across the sector

- 1.94 The most recent PMES was conducted from 21 August to 15 September 2023.
- 1.95 The Public Service Commissioner told us that the results from 2023 and 2022 need to be considered within a broader context of events occurring since 'probably the bushfires over the summer of 2019-20'. She commented that the series of natural disasters and the Covid-19 pandemic has had a 'cumulative

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<sup>90</sup> Anina Johnson, Commissioner, Law Enforcement Conduct Commission, [Transcript of evidence](#), 2 May 2024, pp 33-34.

<sup>91</sup> Peter Johnson SC, [Transcript of evidence](#), 2 May 2024, p 34.

<sup>92</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, p 6.

<sup>93</sup> Christina Anderson, Chief Executive Officer, Law Enforcement Conduct Commission, [Transcript of evidence](#), 2 May 2024, p 34.

<sup>94</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, p 6.

<sup>95</sup> Public Service Commission, [People Matter Employee Survey](#), viewed online 24 July 2024.

<sup>96</sup> Kathrina Lo, Public Service Commissioner, Public Service Commission, [Transcript of evidence](#), 2 May 2024, p 10.

<sup>97</sup> [Answers to supplementary questions](#), Public Service Commission, 31 May 2024, p 1.

impact' on agencies and their staff. As a result, measures around wellbeing, burnout and engagement declined.<sup>98</sup>

### PMES results for oversight agencies over the reporting periods

- 1.96 We were interested in what trends the survey results showed for agencies over time. To identify these and to make comparisons, we looked at the PMES results for 2021, 2022 and 2023. In particular, we considered consistently low-scoring areas, year-over-year declines, and other concerning trends.
- 1.97 We found that all five oversight agencies shared some common areas of strength and weakness.

Strongest areas	Weakest areas
Ethics and values	Recruitment
Customer service	Grievance handling
Flexible working	Communication and change management
Job purpose and enrichment	Action on survey results

### Information and Privacy Commission

- 1.98 The Information and Privacy Commission had declining PMES results for most categories over the 2021-2023 period.

#### Information and Privacy Commission – 2023 PMES results

Top 3 topics – IPC	%	Bottom 3 topics – IPC	%
1 Ethics and values	79	1 Recruitment	46
2 Flexible working	72	2 Feedback and performance management	52
3 Health and safety	72	3 Decision making and accountability	54

Changes in key metrics – IPC	2021 (%)	2022 (%)	2023 (%)
Employee engagement	72	66	55
Action on survey results	81	59	56
Job satisfaction	84	65	57
Wellbeing	90	64	70
Percentage of staff who completed survey	57	80	83

- 1.99 We were concerned to find that results for the IPC showed substantial declines across most categories from 2021 to 2023. Additionally, this decline occurred in a context of greater staff participation in the survey. Only 57 per cent of staff completed the survey in 2021. 83 per cent of staff completed the survey in 2023.

<sup>98</sup> Kathrina Lo, [Transcript of evidence](#), 2 May 2024, p 11.



- 1.100 From 2021 to 2023, there was a decline of 17 percentage points in Employee Engagement, a decline of 27 percentage points in Job satisfaction, and a decline of 20 percentage points in Wellbeing.
- 1.101 There was a decline of 25 percentage points in Action on survey results between 2021 and 2023. We are concerned that this suggests there has been issues in the way employee feedback is addressed.
- 1.102 The Information Commissioner told us that the IPC has begun a review of its culture. They are undertaking strategic planning to address these issues and improve employee satisfaction.<sup>99</sup>
- 1.103 The Committee hopes to see the results of this work reflected in future PMES results. We acknowledge improving survey scores may take longer than one reporting period.

#### *Law Enforcement Conduct Commission*

- 1.104 The LECC consistently had lower-end scores in comparison with the other oversight agencies who participated in the PMES in 2021-2023. There were some improvements in scores.

#### **Law Enforcement Conduct Commission – 2023 PMES results**

Top 3 topics – LECC	%	Bottom 3 topics – LECC	%
1 Flexible working	86	1 Recruitment	50
2 Ethics and values	83	2 Action on survey results	54
3 Job satisfaction	80	3 Feedback and performance management	58

Changes in key metrics – LECC	2021 (%)	2022 (%)	2023 (%)
Employee engagement	58	66	66
Action on survey results	51	58	54
Job satisfaction	70	76	80
Wellbeing	72	72	72
Percentage of staff who completed survey	100	92	87

- 1.105 We observed that the LECC had lower scores in many PMES areas. These scores remained relatively stable, with minor improvements over the 2021-23 period.
- 1.106 However, some areas maintained higher scores, including Flexible working (89 per cent average), Job satisfaction (75 per cent average), and Teamwork and collaboration (69 per cent average).
- 1.107 There was also improvement in a few low scoring areas, such as Grievance handling, where scores improved by 18 percentage points between 2021 (40 per

<sup>99</sup> Ms Rachel McCallum, [Transcript of evidence](#), 2 May 2024, p 49.

cent positive) and 2023 (58 per cent positive). We would like to see results in these areas improve further.

- 1.108 We recognise that senior management has an impact on the overall stability and workplace culture of agencies, and note that the LECC underwent significant change to its senior leadership over the 2021-23 period.
- 1.109 In this context, we were pleased to see an improvement of 7 percentage points in the Senior Managers area from 2021 (54 per cent positive) to 2023 (61 per cent positive).
- 1.110 We are hopeful that results will continue to improve and will be interested to monitor the LECC's results in future reporting periods.

#### *NSW Crime Commission*

- 1.111 The NSW Crime Commission generally had the lowest scores of the five oversight agencies participating in the PMES from 2021-23. They also had the lowest staff participation rates each year.

#### **NSW Crime Commission – 2023 PMES results**

Top 3 topics – NSWCC		%	Bottom 3 topics – NSWCC		%
1	Flexible working	89	1	Action on survey results	38
2	Job purpose and enrichment	80	2	Senior managers	39
3	Ethics and values	80	3	Communication and change management	44

Changes in key metrics – NSWCC	2021 (%)	2022 (%)	2023 (%)
Action on survey results	73	59	38
Communication and change management	67	65	44
Senior managers	67	63	39
Wellbeing	80	73	53
Percentage of staff who completed survey	57	77	73

- 1.112 The Crime Commissioner, Michael Barnes, admitted that PMES scores for the NSW Crime Commission (NSWCC) were 'significantly down' in 2023. He explained that there had been a staff restructure which resulted in some senior staff leaving. These staff had been at the NSWCC 'for a long time and were highly regarded by their staff', and their departure caused staff 'dissatisfaction'.<sup>100</sup>
- 1.113 We wanted to know what is being done to address this. The NSWCC said that these results provide 'growth and collective development opportunities'.<sup>101</sup> Commissioner Barnes explained that the impacted 'functional areas' have been identified, and they are 'adopting strategies to respond'. These include creating a

<sup>100</sup> Michael Barnes, Crime Commissioner, NSW Crime Commission, [Transcript of evidence](#), 2 May 2024, p 4.

<sup>101</sup> [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, p 5.

People and Culture Strategy, a Staff Consultative Committee, and 'generally focusing more on teamwork and collaboration.'<sup>102</sup>

- 1.114 The lowest scores for the NSWCC in 2023 were for Action on survey results (38 per cent) and Senior management (39 per cent). This was particularly concerning to us as we recognise this might impact efforts to address low-scoring areas. We were encouraged to hear that the NSWCC recognises areas of concern and is taking action. We will monitor the results in future reporting periods, and hope to see improvements.

#### NSW Ombudsman

- 1.115 The NSW Ombudsman has generally maintained or improved their survey scores between 2021-23. They have the highest survey completion rate, with 100 per cent of staff completing the survey in 2021 and 2022.

#### NSW Ombudsman – 2023 PMES results

Top 3 topics – NSW Ombudsman		%	Bottom 3 topics – NSW Ombudsman		%
1	Flexible working	94	1	Recruitment	56
2	Ethics and values	90	2	Feedback and performance management	60
3	Risk and innovation	87	3	Communication and change management	65

Changes in key metrics – NSW Ombudsman	2021 (%)	2022 (%)	2023 (%)
Action on survey results	68	73	72
Communication and change management	68	60	65
Senior managers	69	63	66
Wellbeing	69	72	73
Percentage of staff who completed survey	100	100	98

- 1.116 We note that the NSW Ombudsman has particularly high scores in the Purpose and direction areas, with a 90 per cent positive score in the Ethics and values area.
- 1.117 We note that there have been some areas of improvement. The Learning and development area improved by 11 percentage points to a 65 per cent positive score in 2023. Grievance handling improved by 19 percentage points to a 74 per cent positive score in 2023.
- 1.118 The lowest scores over 2021-2023 were in Recruitment (average of 60 per cent positive) and Role clarity and support (average of 67 per cent positive). We also note that there was an 8 percentage point decline for the Feedback and

<sup>102</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p.4.

performance management area from 2021 (68 per cent positive) to 2023 (60 per cent positive).

- 1.119 We note that the NSW Ombudsman's staffing levels doubled over the 2022-23 reporting period, and recognise this is likely to impact survey results.<sup>103</sup> The Ombudsman told us that this recruitment was used as an opportunity to enhance diversity within the office, but that they are seeking to 'maintain the very positive ethical culture' within the agency.<sup>104</sup> The Committee commends the NSW Ombudsman for maintaining and improving its PMES results over recent years despite a significant increase in staff numbers.

#### *Public Service Commission*

- 1.120 The Public Service Commission had consistently high scores across most categories, and a consistently high completion rate.

#### **Public Service Commission – 2023 PMES results**

Top 3 topics – PSC		%	Bottom 3 topics – PSC		%
1	Flexible working	96	1	Learning and development	69
2	Ethics and values	92	2	Recruitment	70
3	Job purpose and enrichment	87	3	Wellbeing	72

Changes in key metrics – PSC	2021 (%)	2022 (%)	2023 (%)
Action on survey results	65	83	79
Communication and change management	71	79	78
Senior managers	75	83	80
Wellbeing	83	80	72
Percentage of staff who completed survey	100	98	100

- 1.121 Noting that the Public Service Commission (PSC) is the agency coordinating the PMES, we were pleased to find consistently strong survey results across 2021-2023.
- 1.122 There were some areas of improvement. Action on survey results improved by 14 percentage points from 2021 (65 per cent positive) to 2023 (79 per cent positive). Grievance handling improved by 22 percentage points from 2021 (56 per cent positive) to 2023 (78 per cent positive).
- 1.123 We noted that Wellbeing scores declined by 11 percentage points from 2021 (83 per cent positive) to 2023 (72 per cent positive). Pay scores declined by 8 percentage points from 2021 (84 per cent positive) to 2023 (76 per cent positive).

<sup>103</sup> NSW Ombudsman, [Annual Report 2022-23](#), 30 October 2023, p 31.

<sup>104</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 22.

- 1.124 We will be interested to see what impact the 2024 merger of the PSC with the Premier's Department has on future survey results. This merger is discussed in Chapter 2.

## Chapter Two – Agency overview

### Information and Privacy Commission

#### Commencement of the Mandatory Notification of Data Breach scheme

- 2.1 The Committee has an ongoing interest in the introduction of the Mandatory Notification of Data Breach (MNDB) scheme, which commenced on 28 November 2023.<sup>105</sup> The scheme was introduced in 2022 by amending the *Privacy and Personal Information Protection Act 1998* (the PPIP Act).
- 2.2 The MNDB scheme requires public sector agencies to notify the NSW Privacy Commissioner and affected individuals when there has been an eligible data breach.<sup>106</sup> As noted in the Committee's 2020 review, public sector agencies were not formerly required to report data breaches under the PPIP Act 1998.<sup>107</sup> Under the MNDB scheme, the Privacy Commissioner has oversight, investigation, monitoring and reporting duties for data breaches involving the NSW public sector.<sup>108</sup>
- 2.3 At the public hearing, the Acting Privacy Commissioner, Sonia Minutillo, described the scheme as 'timely and critical,' especially as public sector agencies increasingly use digital technology and data in delivering services.<sup>109</sup> The Acting Privacy Commissioner explained that the November 2022 amendments to the PPIP Act also address a regulatory gap by extending privacy legislation to cover state-owned corporations not subject to the Commonwealth *Privacy Act 1988*.<sup>110</sup>
- 2.4 In the lead-up to the scheme's commencement, the Information and Privacy Commission (IPC) prepared resources to support the public in their understanding and to train agencies to meet their obligations under the scheme.<sup>111</sup>
- 2.5 The Committee heard that the IPC has received 'short-term budget funding' to regulate the MNDB scheme. The Committee understands that the IPC has applied

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<sup>105</sup> This was referenced in the 2022 review of oversight agencies: Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [2022 review of the annual and other reports of oversight agencies](#), report 3/57, December 2022, p 18; Information and Privacy Commission NSW, [Fact Sheet - Mandatory Notification of Data Breach Scheme](#), accessed 2 July 2024.

<sup>106</sup> Information and Privacy Commission, [Fact Sheet – Mandatory Notification of Data Breach Scheme: Exemptions from notification requirements](#), accessed 16 July 2024.

<sup>107</sup> Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [2020 Review of the Annual Reports of oversight bodies](#), report 1/57, August 2020, p 15.

<sup>108</sup> [Answers to supplementary questions](#), Information and Privacy Commission, 31 May 2024, p 1.

<sup>109</sup> Sonia Minutillo, [Transcript of evidence](#), 2 May 2024, p 47.

<sup>110</sup> Sonia Minutillo, [Transcript of evidence](#), 2 May 2024, p 47; Information and Privacy Commission, [Guide - Mandatory Notification of Data Breach Scheme: Guide to managing data breaches in accordance with the PPIP Act](#), accessed 2 August 2024.

<sup>111</sup> Sonia Minutillo, [Transcript of evidence](#), 2 May 2024, p 47.

for ongoing funding of \$1.4 million from 2024-25 onwards, to ensure the MNDB can continue to be administered as intended.<sup>112</sup>

## Functions under the Government Information (Public Access) Act 2009

*The IPC monitors public use of information access rights under the GIPA Act*

- 2.6 We were concerned to note that the IPC has consistently identified a lack of public awareness about their right to access government information under the *Government Information (Public Access) Act 2009* (the GIPA Act). A survey conducted in 2022 found 55 per cent of participants were aware of their rights under the GIPA Act.<sup>113</sup> The IPC said that this has remained consistent (between 55 and 59 per cent) for the last three reporting periods.<sup>114</sup> We asked about the lack of awareness. The IPC commented that it is not clear from survey results if individual factors influence levels of awareness.<sup>115</sup>
- 2.7 The results of the IPC's 2022 survey also highlighted a decrease in the success rate of applications for information. In 2022, 71 per cent of respondents successfully accessed information from a government agency, down from 74 per cent in 2020 and 76 per cent in 2018.<sup>116</sup>
- 2.8 However, the IPC told us that the number of invalid GIPA applications reported by agencies has remained relatively stable since 2018.<sup>117</sup> The IPC noted that this is particularly significant, given that there has been a 50 per cent increase in GIPA applications received since 2018.
- 2.9 The IPC told the Committee that agencies also work with applicants to address issues with validity. Of the 13 per cent of applications reported as invalid, only 5 per cent were ultimately rejected as 'invalid.'<sup>118</sup>
- 2.10 We understand that the IPC is considering methods to gather more information from agencies about invalid GIPA applications. This information will help them with their compliance and education activities.<sup>119</sup> We will be interested to receive an update on the IPC's progress in this area.

## Public Interest Disclosures Act 2022

- 2.11 Over the two reporting periods, the IPC has been preparing for the commencement of the *Public Interest Disclosures Act 2022* (the 2022 PID Act), which replaced the *Public Interest Disclosures Act 1994* from 1 October 2023.<sup>120</sup> We have included a detailed discussion of the operation of the new Act and the Public Interest Disclosure (PID) scheme in our NSW Ombudsman section below.

<sup>112</sup> [Answers to supplementary questions](#), Information and Privacy Commission, 31 May 2024, pp 1-2.

<sup>113</sup> Information and Privacy Commission, [Annual Report 2022/23](#), 16 October 2023, p 32.

<sup>114</sup> [Answers to questions on notice](#), Information and Privacy Commission, 17 May 2024, p 3.

<sup>115</sup> [Answers to questions on notice](#), Information and Privacy Commission, 17 May 2024, p 3.

<sup>116</sup> Information and Privacy Commission, [IPC Community Attitudes Study 2022: Information Access](#), April 2022, p 9.

<sup>117</sup> [Answers to supplementary questions](#), Information and Privacy Commission, 31 May 2024, p 4.

<sup>118</sup> [Answers to supplementary questions](#), Information and Privacy Commission, 31 May 2024, p 4.

<sup>119</sup> [Answers to supplementary questions](#), Information and Privacy Commission, 31 May 2024, pp 4-5.

<sup>120</sup> [Public Interest Disclosures Act 2022](#) (NSW).

- 2.12 The 2022 PID Act expands on the existing regime to include privacy contraventions as one of the six definitions of 'serious wrongdoing' under the Act. Other definitions include corrupt conduct, a government information contravention or serious maladministration. The Act also includes the Privacy Commissioner as an integrity agency that is able to receive and investigate a PID, alongside the Information Commissioner and other key integrity agencies.
- 2.13 We note that the 2022 PID Act commenced after our current review period. The Committee will be interested to follow the implementation of the new Act in our next annual review.

## Inspector of Custodial Services

### Aboriginal people in custody

*The Inspector of Custodial Services' Inspection Standards for Aboriginal people in custody will be published soon*

- 2.14 The Committee has an ongoing interest in the development of Inspection Standards for Aboriginal people in custody.<sup>121</sup> In 2022, the Committee heard that the Inspector of Custodial Services (ICS) was waiting on final feedback from stakeholders and that the standards are yet to be published.<sup>122</sup>
- 2.15 At this year's public hearing, the Inspector of Custodial Services, Fiona Rafter, told us that she expects the standards to be published before our next annual review.<sup>123</sup>
- 2.16 We understand that the development of these standards has involved 'extensive consultation,' most recently with Aboriginal Official Visitors.<sup>124</sup> Inspector Rafter has incorporated feedback from stakeholders, including the Aboriginal Policy and Strategy Units of Corrective Services and Aboriginal people in custody.<sup>125</sup> We are also aware that the Inspector had trialed the standards at recent inspections.<sup>126</sup>
- 2.17 We eagerly anticipate the publication of the Inspection Standards and expect to discuss their implementation in detail during our next annual review.

<sup>121</sup> This was discussed in the Committee's 2022 review. Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [2022 review of the annual and other reports of oversight agencies](#), report 3/57, December 2022, p 20.

<sup>122</sup> Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [2022 review of the annual and other reports of oversight agencies](#), p 20.

<sup>123</sup> Fiona Rafter, Inspector of Custodial Services, [Transcript of evidence](#), 2 May 2024, p 41.

<sup>124</sup> Fiona Rafter, [Transcript of evidence](#), 2 May 2024, p 41.

<sup>125</sup> [Answers to supplementary questions](#), Inspector of Custodial Services, 31 May 2024, p 1.

<sup>126</sup> Fiona Rafter, [Transcript of evidence](#), 2 May 2024, p 41.



*The ICS is monitoring their recommendations to agencies about the treatment of Aboriginal people in custody*

### Finding 3

**The Inspector of Custodial Services could provide more comprehensive information about steps being taken by Corrective Services NSW and Youth Justice NSW to implement the Inspector's recommendations.**

- 2.18 It would be helpful for the ICS to provide more comprehensive information about the steps Corrective Services NSW (CSNSW) and Youth Justice NSW (YJNSW) are taking to implement recommendations from their reports.
- 2.19 A number of recommendations made to YJNSW, CSNSW, and Justice Health and Forensic Mental Health Network (JH&FMHN) have yet to be fully implemented.<sup>127</sup> It is unclear what actions these agencies are taking to progress these recommendations.
- 2.20 We asked how the ICS monitors the implementation of their recommendations. Inspector Rafter explained that she asks for a formal update from agencies on 30 June each year, and requires evidence to demonstrate the implementation of recommendations.<sup>128</sup>
- 2.21 The Inspector does not 'close off' recommendations as long as agencies can demonstrate continued improvement in the area. The Inspector explained that the recommendations aim to achieve system changes, which can take time.<sup>129</sup>
- 2.22 The ICS includes data about the implementation status of recommendations in their annual reports. Between 2013 and 2023, the Inspector made 45 recommendations across 14 reports, relating to the treatment of Aboriginal people in custody. The status of these recommendations in the 2022-23 reporting period are listed in the table below.

**Status of ICS recommendations about the treatment of Aboriginal people in custody during 2022-23<sup>130</sup>**

Recommendation status	Number of recommendations	% of total recommendations
Achieved	12	26.7
Partially achieved	25	55.6
Not achieved	4	8.9
Not supported	4	8.9

<sup>127</sup> Fiona Rafter, [Transcript of evidence](#), 2 May 2024, p 42; Inspector of Custodial Services, [Annual Report 2022-23](#), October 2023, pp 31-88.

<sup>128</sup> [Answers to supplementary questions](#), Inspector of Custodial Services, 31 May 2024, p 2; Fiona Rafter, [Transcript of evidence](#), 2 May 2024, p 42.

<sup>129</sup> Fiona Rafter, [Transcript of evidence](#), 2 May 2024, p 42.

<sup>130</sup> Inspector of Custodial Services, [Annual Report 2022-23](#), pp 31-88.

- 2.23 The Inspector told us that CSNSW had recently restructured its Aboriginal Policy Unit into a directorate and increased the number of regional Aboriginal Programs Officers.<sup>131</sup> She expects this restructure to increase the delivery of cultural programs for Aboriginal people in custody.<sup>132</sup>
- 2.24 However, the Inspector noted that significant work remains to reduce the over-representation of Aboriginal people in custody and improve their conditions and treatment.<sup>133</sup> We look forward to receiving an update on this area in the next reporting period.

### Official Visitor Program

#### *Complaints made to Official Visitors increased in 2022-23*

- 2.25 We noted that the number of in-person complaints made to Official Visitors by adults in custody increased from 4550 in 2021-22 to 8513 in 2022-23.<sup>134</sup> The number of complaints from Youth Justice centres remained steady, with Official Visitors receiving 348 in-person complaints in 2022-23 compared to 365 in 2021-22.<sup>135</sup>
- 2.26 In response, Inspector Rafter explained that the difference for adult complaints were likely related to the impacts of the Covid-19 pandemic over the 2021-22 reporting period.<sup>136</sup> During the pandemic, Official Visitor visits were reduced to once a month.<sup>137</sup> Visits were also cancelled when there were outbreaks of Covid-19 at a centre.<sup>138</sup>
- 2.27 We heard that most complaints received by Official Visitors are resolved at the centre level.<sup>139</sup> However, Inspector Rafter told us that she has referred 58 matters to other agencies.<sup>140</sup> These are listed in the table below.

#### **Complaints received by Official Visitors referred to other agencies**<sup>141</sup>

<b>Agency matter was referred to</b>	<b>Number of referrals</b>
Independent Commission Against Corruption	8
Law Enforcement Conduct Commission	2
NSW Ombudsman	7
Office of the NSW Children's Guardian	1

<sup>131</sup> Fiona Rafter, [Transcript of evidence](#), 2 May 2024, p 42; [Answers to supplementary questions](#), Inspector of Custodial Services, 31 May 2024, pp 1-2.

<sup>132</sup> [Answers to supplementary questions](#), Inspector of Custodial Services, 31 May 2024, pp 1-2.

<sup>133</sup> [Answers to supplementary questions](#), Inspector of Custodial Services, 31 May 2024, p 1.

<sup>134</sup> Inspector of Custodial Services, [Annual Report 2022-23](#), p 11; Inspector of Custodial Services, [Annual Report 2021-22](#), October 2022, p 18.

<sup>135</sup> Inspector of Custodial Services, [Annual Report 2022-23](#), p 14; Inspector of Custodial Services, [Annual Report 2021-22](#), p 22.

<sup>136</sup> Fiona Rafter, [Transcript of evidence](#), 2 May 2024, p 44.

<sup>137</sup> Inspector of Custodial Services, [Annual Report 2021-22](#), p 15.

<sup>138</sup> Fiona Rafter, [Transcript of evidence](#), 2 May 2024, p 44.

<sup>139</sup> Fiona Rafter, [Transcript of evidence](#), 2 May 2024, p 41.

<sup>140</sup> [Answers to questions on notice](#), Inspector of Custodial Services, 17 May 2024, p 1.

<sup>141</sup> [Answers to questions on notice](#), Inspector of Custodial Services, 17 May 2024, p 1.

*The ICS is working to increase the diversity of Official Visitors*

- 2.28 At the public hearing, Inspector Rafter also highlighted the agency's efforts to increase the diversity of Official Visitors.<sup>142</sup> In the 2022-23 reporting period, Aboriginal people held 30 of 90 Official Visitor appointments. Fifty per cent of Official Visitors in 2021-22 and 46 per cent of Official Visitors in 2022-23 were women.<sup>143</sup>
- 2.29 Inspector Rafter said that her office ultimately aims to have an Aboriginal person appointed as an Official Visitor at 'each custodial facility'.<sup>144</sup> In working towards this goal, the Inspector has used targeted recruitment campaigns to attract applications from Aboriginal people.<sup>145</sup> Since July 2023, the Inspector's office has appointed three more Aboriginal Official Visitors, bringing the total to 33.
- 2.30 We heard that there are challenges in appointing Official Visitors in regional areas. More remote areas like Broken Hill are particularly challenging. The Inspector told us they often require targeted recruitments.<sup>146</sup>

**Law Enforcement Conduct Commission****Review of domestic violence involving police officers**

- 2.31 We discussed the Law Enforcement Conduct Commission's (the LECC) review of police responses to domestic violence.<sup>147</sup> The report, tabled in June 2023, looked at 470 finalised complaints made between 2017 and 2021 relating to domestic and family violence incidents.<sup>148</sup> The LECC also examined NSW Police Force (the NSWPF) policies and procedures for investigating these cases.<sup>149</sup>
- 2.32 A notable finding was that the NSWPF lacks policies and procedures for cases where an officer is involved in domestic and family violence.<sup>150</sup> Out of 70 matters reviewed, only 16 (23 per cent) had a different police command investigate the accused officer.<sup>151</sup> The report recommended that a different command should handle investigations involving officers accused of domestic violence.<sup>152</sup>
- 2.33 The LECC's review also highlighted problems with the NSWPF's related recordkeeping practices. The NSWPF's Domestic and Family Violence Standard

<sup>142</sup> Fiona Rafter, [Transcript of evidence](#), 2 May 2024, p 41.

<sup>143</sup> Inspector of Custodial Services, [Annual Report 2022-23](#), p 8; Inspector of Custodial Services, [Annual Report 2021-22](#), p 16

<sup>144</sup> Fiona Rafter, [Transcript of evidence](#), 2 May 2024, p 41.

<sup>145</sup> [Answers to supplementary questions](#), Inspector of Custodial Services, 31 May 2024, p 3.

<sup>146</sup> Fiona Rafter, [Transcript of evidence](#), 2 May 2024, p. 43.

<sup>147</sup> Law Enforcement Conduct Commission, [Review of NSW Police Force responses to domestic and family violence incidents](#), 14 June 2023.

<sup>148</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, p 3.

<sup>149</sup> Law Enforcement Conduct Commission, [Review of NSW Police Force responses to domestic and family violence incidents](#), 14 June 2023, p 7.

<sup>150</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, p 3.

<sup>151</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, pp 4-5.

<sup>152</sup> Peter Johnson SC, Chief Commissioner, Law Enforcement Conduct Commission, [Transcript of evidence](#), 2 May 2024, p 32.

Operating Procedures 2018 require that record information about service firearms of an involved officer is recorded on any Apprehended Domestic Violence Order applications made, as well as the officer's firearm Risk Assessment.<sup>153</sup>

- 2.34 We heard that the police are taking a 'very serious and determined approach' to domestic violence.<sup>154</sup> Of the LECC's 13 recommendations, the NSWPF supported 10.<sup>155</sup> We understand that the NSWPF is considering the recommendations as part of their domestic and family violence reform project. The Professional Standards Command also issued a direction that Risk Assessments be maintained on a centralised database, addressing one of the recommendations.<sup>156</sup>
- 2.35 The Chief Commissioner of the LECC, Peter Johnson SC, told us that the LECC has received 713 new complaints related to domestic violence since July 2023.<sup>157</sup> Of these, 68 involved an officer as an alleged perpetrator. The Chief Commissioner noted that complaints made to the LECC raised issues regarding the proper investigation of domestic violence by the police.<sup>158</sup>

### Review of consorting laws

- 2.36 We also discussed the LECC's review of consorting laws and their use by police. In February 2023, the LECC tabled its legislative review of consorting powers used by the NSWPF, as required by the *Criminal Legislation Amendment (Consorting and Restricted Premises) Act 2018* (the 2018 Amendment Act).<sup>159</sup>
- 2.37 Part 3A, Division 7 of the *NSW Crimes Act (1900)* provide for consorting laws in NSW, and outlines prohibited interaction between individuals and convicted offenders.<sup>160</sup> The 2018 Amendment Act introduced exclusions to the use of consorting laws on children under 14 years of age, and set expiry dates for consorting warnings.<sup>161</sup> These changes followed a 2016 review of the legislation by the NSW Ombudsman.<sup>162</sup>

<sup>153</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, pp 3-4.

<sup>154</sup> Peter Johnson SC, [Transcript of evidence](#), 2 May 2024, p 32.

<sup>155</sup> Law Enforcement Conduct Commission, [Review of NSW Police Force responses to domestic and family violence incidents](#), 14 June 2023, pp 2-3; Law Enforcement Conduct Commission, [NSW Police Force response to Commission's review of consorting law amendments](#), 15 January 2024.

<sup>156</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, p 4.

<sup>157</sup> Peter Johnson SC, [Transcript of evidence](#), 2 May 2024, p 32.

<sup>158</sup> Peter Johnson SC, [Transcript of evidence](#), 2 May 2024, p 32.

<sup>159</sup> Law Enforcement Conduct Commission, [Discussion Paper: Review of the operation of the amendments to the consorting law under Part 3A Division 7 of the Crimes Act 1900](#), 26 October 2021, pp 2-3.

<sup>160</sup> [Crimes Act 1900](#), s 93X.

<sup>161</sup> Law Enforcement Conduct Commission, [Review of the operation of amendments to the consorting law under Part 3A Division 7 of the Crimes Act](#), 28 February 2023, p 6.

<sup>162</sup> Law Enforcement Conduct Commission, [Review of the operation of the amendments to the consorting law under Part 3A Division 7 of the Crimes Act 1900](#), p 5; NSW Ombudsman, [The consorting law: Report on the operation of Part 3A, Division 7 of the Crimes Act 1900](#), April 2016.

- 2.38 The LECC recommended further amending the laws to prevent their use on all children aged under 18.<sup>163</sup> This is in line with the NSW Ombudsman's recommendation, which was only partially supported by the government.<sup>164</sup>
- 2.39 Over the LECC's review period, 48 children aged between 14 and 18 received a consorting warning, and 11 were named in one.<sup>165</sup> The LECC's report noted that this was significantly less than the number of children aged between 14 and 18 subject to consorting laws over the Ombudsman's review period.<sup>166</sup> No consorting warnings were given to children under 14 years of age.<sup>167</sup>
- 2.40 Another issue noted by the LECC was the over-representation of Aboriginal and Torres Strait Islander people subject to these laws. Of the 4257 people given or named in a consorting warning, 42 per cent identified as Aboriginal or Torres Strait Islander.<sup>168</sup> The NSW Ombudsman raised similar concerns in 2016. The 2018 Amendment Act attempted to partially address this by expanding the 'family member' defence in section 93Y to include extended family and kin.<sup>169</sup>
- 2.41 We were pleased to hear of improvements in the way police have approached consorting laws.<sup>170</sup> The NSWPF has indicated consorting is to be used as a strategy to target 'serious and organised crime'.<sup>171</sup> The 2022 Consorting Standard Operating Procedures also includes a flow chart to guide officers when issuing consorting warnings to Aboriginal people.<sup>172</sup>
- 2.42 The LECC said they raised the issue of continued over-representation of Aboriginal people as subjects of consorting warnings with the NSWPF before their report was published.<sup>173</sup> The NSWPF reviewed and adapted their guidance in response to the LECC's concerns.

## Inspector of the Law Enforcement Conduct Commission

### Oversight of the Law Enforcement Conduct Commission

- 2.43 As noted in the Committee's previous report, Bruce McClintock SC commenced his term as Inspector of the Law Enforcement Conduct Commission (the Inspector

<sup>163</sup> Peter Johnson SC, [Transcript of evidence](#), 2 May 2024, p 31; Law Enforcement Conduct Commission, [Review of the operation of the amendments to the consorting law under Part 3A Division 7 of the Crimes Act 1900](#), p 1.

<sup>164</sup> NSW Ombudsman, [The consorting law: Report on the operation of Part 3A, Division 7 of the Crimes Act 1900](#), p 84; Law Enforcement Conduct Commission, [Discussion Paper: Review of the operation of the amendments to the consorting law under Part 3A Division 7 of the Crimes Act 1900](#), pp 55-57.

<sup>165</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, p 3.

<sup>166</sup> Law Enforcement Conduct Commission, [Review of the operation of the amendments to the consorting law under Part 3A Division 7 of the Crimes Act 1900](#), p 23.

<sup>167</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, p 3.

<sup>168</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 31 May 2024, p 2.

<sup>169</sup> New South Wales, Legislative Assembly, [Parliamentary Debates](#), 19 September 2018 (Mark Speakman, Attorney-General); NSW Ombudsman, [The consorting law: Report on the operation of Part 3A, Division 7 of the Crimes Act 1900](#), pp 61-66.

<sup>170</sup> Peter Johnson SC, [Transcript of evidence](#), 2 May 2024, p 31.

<sup>171</sup> Law Enforcement Conduct Commission, [NSW Police Force response to Commission's review of consorting law amendments](#), p 1.

<sup>172</sup> Law Enforcement Conduct Commission, [Review of the operation of the amendments to the consorting law under Part 3A Division 7 of the Crimes Act 1900](#), p 45.

<sup>173</sup> [Answers to supplementary questions](#), Law Enforcement Conduct Commission, 19 July 2024, p 2.

of the LECC) in July 2022.<sup>174</sup> A new Memorandum of Understanding between the Inspector of the LECC and the LECC was signed in September 2022.

- 2.44 During the May public hearing, we were pleased to hear that the Inspector of the LECC and the LECC Commissioners continue to have a 'close and productive working relationship'.<sup>175</sup>
- 2.45 While the Inspector of the LECC acknowledged some delays in the LECC actioning or responding to complaints, he described these as 'matters of minor concern'.<sup>176</sup> We heard that overall, the LECC Inspector is 'extremely happy' with the operation of the LECC.<sup>177</sup>
- 2.46 We heard that the LECC Inspector has also been working to improve the accessibility of his office's communications.<sup>178</sup> We note that the LECC are also reviewing correspondence templates to improve accessibility for complainants.<sup>179</sup>

*The Inspector of the LECC reviewed the LECC's handling and response to a complaint, resulting in a different outcome*

- 2.47 The Inspector of the LECC told us that he reviewed the LECC's handling of an investigation into a complaint. We heard that the original investigation took place before the current Chief Commissioner of the LECC began his term. Inspector McClintock was dissatisfied with how the matter had been handled, and that the result was not satisfactory.<sup>180</sup>
- 2.48 As a result, he made a report to the LECC, suggesting that the matter be handled differently.<sup>181</sup> We heard that, as a result of this report, the new LECC Commissioners re-examined the matter, and ultimately took different steps to handle it. We were pleased to hear that the LECC cooperated with Inspector McClintock's review and that this resulted in a satisfactory outcome for both agencies.<sup>182</sup>

### **Inspector's duties relating to the Secure Monitoring Unit**

- 2.49 The Committee heard that the Inspector's duties under the Secure Monitoring Unit (the SMU) have formed a 'substantial' part of the Inspector's work over the reporting periods. This includes checking the compliance of warrants related to

<sup>174</sup> Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [2022 review of the annual and other reports of oversight agencies](#), p 14.

<sup>175</sup> Bruce McClintock SC, Inspector of the Law Enforcement Conduct Commission, [Transcript of evidence](#), 2 May 2024, p 37.

<sup>176</sup> Bruce McClintock SC, [Transcript of evidence](#), 2 May 2024, p 36.

<sup>177</sup> Bruce McClintock SC, [Transcript of evidence](#), 2 May 2024, p 36.

<sup>178</sup> Bruce McClintock SC, [Transcript of evidence](#), 2 May 2024, p 37; [Answers to supplementary questions](#), Office of the Inspector of the Law Enforcement Conduct Commission, 31 May 2024, pp 2-3.

<sup>179</sup> [Answers to supplementary questions](#), Office of the Inspector of the Law Enforcement Conduct Commission, 31 May 2024, pp 2-3.

<sup>180</sup> Bruce McClintock SC, [Transcript of evidence](#), 2 May 2024, p 37.

<sup>181</sup> Bruce McClintock SC, [Transcript of evidence](#), 2 May 2024, p 37.

<sup>182</sup> Office of the Inspector of the Law Enforcement Conduct Commission, [Annual Report 2022-23](#), 30 October 2023, pp 19-20.

telephone interception, surveillance devices and control operations. We heard that three staff from the Inspector's office are responsible for these.<sup>183</sup>

- 2.50 Inspector McClintock told the Committee that the duties of the SMU could be amalgamated with the Commonwealth Surveillance Devices Commissioner (the SDC) for greater efficiency. The SDC is responsible for monitoring each warrant's compliance with the *Surveillance Devices Act 2007* (NSW) before being issued.<sup>184</sup>
- 2.51 The Inspector explained this would require legislative changes at state and Commonwealth levels.<sup>185</sup> We understand that the SDC and SMU teams are currently preparing a submission to the Attorney General.<sup>186</sup>
- 2.52 We heard that SMU staff are required to carry out duties under multiple Acts. The Inspector discussed the challenges faced by the SMU due to staff shortages and changes, together with the large volume of warrants used by the NSWPF. The Inspector told us that the SMU is engaging with other Australian regulators to explore more productive ways of working.<sup>187</sup>

## NSW Crime Commission

### Restructure and staffing

- 2.53 The NSW Crime Commission (the NSWCC) made a number of changes to its organisational structure during the reporting period. In particular, there was a 'significant restructure' of directorates that support confiscation functions conferred on it by the *Criminal Assets Recovery Act 1990*.<sup>188</sup>
- 2.54 The directorates were merged into the Financial Investigations Division. This was part of organisational change following on from the 'redesign of the Legal Services Division'.<sup>189</sup> The Crime Commissioner, Michael Barnes, told us that merging the directorates was expected to provide better oversight, and involve them more in pursuing the NSWCC's strategic objectives.<sup>190</sup>
- 2.55 We heard that this was done because financial investigations are becoming increasingly important in disrupting the flow of money that motivates organised crime.<sup>191</sup> We will be interested to monitor the impact of this restructure on the Commission's work in future reporting periods.

<sup>183</sup> Bruce McClintock SC, [Transcript of evidence](#), 2 May 2024, pp 35-36.

<sup>184</sup> [Answers to supplementary questions](#), Office of the Inspector of the Law Enforcement Conduct Commission, 31 May 2024, p 2.

<sup>185</sup> Bruce McClintock SC, [Transcript of Evidence](#), 2 May 2024, pp. 38-39.

<sup>186</sup> [Answers to supplementary questions](#), Office of the Inspector of the Law Enforcement Conduct Commission, 31 May 2024, p 2.

<sup>187</sup> [Answers to supplementary questions](#), Office of the Inspector of the Law Enforcement Conduct Commission, 31 May 2024, pp 3-4.

<sup>188</sup> Michael Barnes, Crime Commissioner, NSW Crime Commission, [Transcript of evidence](#), 2 May 2024, p 3; NSW Crime Commission, [Annual report 2022-23](#), 30 November 2023, p 16.

<sup>189</sup> [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, p 4.

<sup>190</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 3.

<sup>191</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, pp 3, 6.

- 2.56 Commissioner Barnes told us that the restructure resulted in some staff 'dissatisfaction', which was reflected in the Commission's People Matter Employee Survey (PMES) results.<sup>192</sup> Chapter 1 contains a detailed discussion of the NSWCC's PMES results.
- 2.57 We were also concerned by the lack of female representation in the NSWCC senior executive.<sup>193</sup> We asked whether recent restructures were used to address this imbalance. These concerns were shared by Commissioner Barnes. In response, he noted that the three most recent appointees to executive roles have been women.<sup>194</sup>

### **Establishment of the Strategic Intelligence Unit**

- 2.58 The NSWCC created a Strategic Intelligence Unit (SIU) in the 2021-22 financial year.<sup>195</sup> The SIU collects intelligence from 'a range of sources', including Commission and joint investigations. The SIU uses this information to produce annual and quarterly reports discussing current and emerging trends and themes in crime. The reports also identify intelligence gaps.<sup>196</sup>
- 2.59 Commissioner Barnes also said that the SIU reports consider how NSWCC resources could be prioritised in order to investigate the areas of highest risk. This in turn informs the NSWCC's prioritisation matrix, which is used to select what investigations to commence. It considers the threat posed by the alleged offending alongside what value the Commission's capabilities could provide to the investigation.<sup>197</sup>

### **Industry assistance powers and International Production Orders**

- 2.60 The NSWCC told us that challenges 'associated with encryption' of data have increased, and will continue to do so.<sup>198</sup> Commissioner Barnes said that, although law enforcement has 'cracked' lots of encrypted communications platforms used by criminal groups, it 'doesn't mean they've gone out of vogue'. The NSWCC is having to 'keep up with the new platforms' that are developed.<sup>199</sup>
- 2.61 In 2023, the NSWCC was conferred 'industry assistance' powers related to encryption technologies.<sup>200</sup>

### *Interception agencies have industry assistance powers under the TOLA Act framework*

- 2.62 Industry assistance powers allow agencies to request or require assistance and information from communications providers.<sup>201</sup> They are part of a framework

<sup>192</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 4.

<sup>193</sup> NSW Crime Commission, [Annual Report 2022-23](#), p 26.

<sup>194</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 5.

<sup>195</sup> NSW Crime Commission, [Annual report 2021-22](#), p 12.

<sup>196</sup> [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, p 1; NSW Crime Commission, [Annual report 2022-23](#), p 12.

<sup>197</sup> [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, p 1.

<sup>198</sup> [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, p 4.

<sup>199</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 3.

<sup>200</sup> [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, p 4.

<sup>201</sup> [Telecommunications Act 1997](#) (Cth) pt 15.



established by the Commonwealth *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (the TOLA Act).<sup>202</sup>

- 2.63 The Commonwealth Department of Home Affairs stated that industry assistance powers were introduced to help agencies execute warrants in a 'complex digital environment characterised by encryption'.<sup>203</sup> The then Minister for Home Affairs also noted encrypted communications accessed under existing warrants are often 'difficult, expensive, time-consuming and sometimes impossible to decrypt and effectively use for intelligence or investigation'.<sup>204</sup> Commissioner Barnes echoed this sentiment.<sup>205</sup>

*Industry assistance powers were not conferred to the NSWCC until 2023*

- 2.64 The original TOLA Act did not include state agencies in its definition of 'interception agency'. Commissioner Barnes told us that the NSWCC had 'been requesting access to those powers' for 'some years', and that the oversight committee (the Parliamentary Joint Committee on Intelligence and Security) had indicated that those powers would be conferred.<sup>206</sup>
- 2.65 We note that Part 3 of the Commonwealth *National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022* amended the definition of 'interception agency' in the *Telecommunications Act 1997*.<sup>207</sup> These amendments commenced on 1 July 2023 and formally conferred TOLA industry assistance powers on the NSWCC and other state agencies.<sup>208</sup> The NSWCC told us that they have 'worked with colleagues at the NSWPF and other agencies' to develop frameworks for using industry assistance powers.<sup>209</sup> We were pleased to hear of the progress on this issue.
- 2.66 The Committee also notes that the amendments also ensured that the definition of 'interception agencies' is consistent with the Commonwealth *Telecommunications (Interception and Access) Act 1979* (the TIA Act). The TIA Act confers communications interception powers on a range of state and federal interception agencies.<sup>210</sup> The NSWCC was declared as an interception agency under section 34 of the TIA Act on 30 January 1989.<sup>211</sup>

<sup>202</sup> [Telecommunications Act 1997](#) (Cth) pt 15.

<sup>203</sup> [Supplementary submission 18.6](#), Department of Home Affairs, Parliamentary Joint Committee on Intelligence and Security, Review of the Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018, p 6.

<sup>204</sup> The Hon. Peter Dutton MP, Minister for Home Affairs, correspondence titled Response to Report 11 of 2018, dated 1 November 2018, published in [Report 13 of 2018: Responses from legislation proponents](#), Parliamentary Joint Committee on Human Rights, 4 December 2018, p 18.

<sup>205</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 7.

<sup>206</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 7.

<sup>207</sup> [National Anti-Corruption Commission \(Consequential and Transitional Provisions\) Act 2022](#) (Cth) pt 3.

<sup>208</sup> [Revised explanatory memorandum](#), National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022 (Cth), para 14.279, p 358.

<sup>209</sup> [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, p 4.

<sup>210</sup> [Revised explanatory memorandum](#), National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022 (Cth), para 14.276 and 14.279, pp 357-358; [Telecommunications \(Interception and Access\) Act 1979](#) (Cth), s5, s39.

<sup>211</sup> Commonwealth, [Gazette: Special](#), No. S 36, 30 January 1989.

*International Production Orders were brought into force in January 2024*

- 2.67 The NSWCC told us they are 'working with' the Commonwealth Attorney General's Department to obtain agency accreditation for the use of International Production Orders (IPOs).<sup>212</sup> IPOs are established under the AUS-US Data Access Agreement.<sup>213</sup> They simplify the process for accessing communications data and systems information from service providers and carriers based in the United States.<sup>214</sup> The NSWCC is preparing frameworks for using IPOs. We will consider them in our next annual review.

**New ways of working***The NSWCC recently established the Criminal Assets Confiscation team*

- 2.68 In the 2022-23 reporting year, the NSWCC established its Criminal Assets Confiscation team, with a focus on 'disabling criminal networks by tying up their assets'.<sup>215</sup> Commissioner Barnes told us that this is 'a new strategy to use the confiscation powers as a disruption technique'. We heard that that there is 'no doubt' restraining bank accounts and assets prevents their ability to commit further criminal activity.<sup>216</sup> One of the NSWCC's strategic objectives is deterring profit-driven serious crime by de-incentivising it.<sup>217</sup>
- 2.69 Commissioner Barnes explained that high-level criminals operate in a sophisticated way. They 'employ people to do various steps, and they're very successful at compartmentalising those steps'.<sup>218</sup> These operating methods deliberately make it difficult for the NSWCC to prove to the criminal standard of proof that someone has commissioned a crime, even if they have intelligence identifying that person.<sup>219</sup>
- 2.70 Proceeds applications, however, are determined on the civil standard of proof, which uses reasonable suspicion to obtain a 'freeze order' from the court. Commissioner Barnes noted that this standard is 'much lower' than the criminal standard. Generally, the defendant must justify how they acquired the assets in order for them to be released. We heard that, because of this, confiscations are being 'configured' as a primary response to organised crime groups, where appropriate.<sup>220</sup>
- 2.71 Commissioner Barnes stated that the NSWCC does not intend to 'bring applications where there's not a reasonable prospect of success'. He suggested

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<sup>212</sup> [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, p 4.

<sup>213</sup> The Hon Mark Dreyfus KC MP, [Joint statement by US Attorney-General Merrick B. Garland and Australia Attorney-General Mark Dreyfus](#), media release, 31 January 2024, viewed online 10 July 2024.

<sup>214</sup> Attorney-General's Department, [International protection order framework](#), viewed online 10 July 2024.

<sup>215</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 4.

<sup>216</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 4.

<sup>217</sup> NSW Crime Commission, [Annual Report 2022-23](#), p 5.

<sup>218</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 4.

<sup>219</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 4.

<sup>220</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 4.

that the NSWCC 'need[s] to be a bit more adventurous in bringing those applications'.<sup>221</sup> We will monitor this new approach in future reporting periods.

- 2.72 We also heard that confiscation orders generate significant revenue. In 2022-23, 368 confiscation orders recovered approximately \$41.6 million.<sup>222</sup> In 2021-22, 308 confiscation orders recovered \$62.5 million.<sup>223</sup> Commissioner Barnes noted that this means the NSWCC is 'one of the few agencies that gives more money back to the state than we take out of the coffers'.<sup>224</sup>

#### *Increased use of coercive hearing powers*

- 2.73 Under Division 4 of the *Crime Commission Act 2012*, the NSWCC is permitted to hold hearings in order to gather evidence for an investigation. These hearings work to obtain information and evidence from 'people who are not prepared to co-operate with law enforcement'.<sup>225</sup> Witnesses may be summonsed to appear at these hearings, and can be compelled to answer questions.<sup>226</sup>
- 2.74 During the reporting period, the NSWCC convened 103 hearings. Commissioner Barnes told us that this was a 'significant uptake' on previous years, which were 'COVID-affected'.<sup>227</sup> 63 hearings were held in the 2021-22 reporting period.<sup>228</sup>
- 2.75 Commissioner Barnes noted that the NSWCC's coercive hearing power is 'quite an intrusive power', but it is 'counterbalanced' by section 39(2) of *Crime Commission Act 2012*. This provides that evidence given by witnesses cannot be used against that witness in civil, criminal, or disciplinary proceedings.<sup>229</sup>
- 2.76 We asked for additional information about the limitations and safeguards in place for coercive hearing power. In response, the NSWCC explained that, firstly, coercive hearings can only be held for investigations that have been granted a reference by the NSWCC Management Committee (CCMC). The CCMC must be satisfied that certain thresholds are met before they can refer an investigation to the NSWCC.<sup>230</sup>
- 2.77 Secondly, the NSWCC stated that a 'critical safeguard' for the use of coercive hearing powers is judicial oversight. Judicial review of 'critical powers' by the Supreme Court is set out in the *Crime Commission Act 2012*.<sup>231</sup>

<sup>221</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 4.

<sup>222</sup> NSW Crime Commission, [Annual Report 2022-23](#), pp 2, 18.

<sup>223</sup> NSW Crime Commission, [Annual Report 2021-22](#), pp 8, 23.

<sup>224</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 4.

<sup>225</sup> NSW Crime Commission, [Criminal Investigations](#), viewed online 11 July 2024.

<sup>226</sup> [Crime Commission Act 2012](#) (NSW) s 24.

<sup>227</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 3.

<sup>228</sup> NSW Crime Commission, [Annual Report 2022-23](#), p 15.

<sup>229</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 3; [Crime Commission Act 2012](#) (NSW) s 39(2).

<sup>230</sup> [Crime Commission Act 2012](#) (NSW) s 51. Membership of the Management Committee includes an independent Chair, the Commissioner of Police, the Chair of the Board of the Australian Crime Commission, and a Secretary or nominated senior executive of the Department of Justice.

<sup>231</sup> [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, pp 2-3.

- 2.78 We will continue to monitor and examine the use of coercive hearing powers in future reporting periods.

### Intelligence gathering

- 2.79 The NSWCC's 2021-2025 strategic framework identifies collecting, collating, analysing, and disseminating 'high quality intelligence' as a key strategic objective.<sup>232</sup>

#### *The encrypted communication landscape is changing rapidly*

- 2.80 The NSWCC noted that the Australian encrypted communications market changed 'at an unprecedented pace' over the 2022-23 reporting period. Before this, encrypted communication was predominantly done through the use of dedicated encrypted criminal communications devices (DECCDs), which operate 'outside of the standard telecommunications network'.<sup>233</sup>
- 2.81 DECCDs were prohibited in NSW with the passing of the *Dedicated Encrypted Criminal Communication Device Prohibition Orders Act 2022* (the DECCDPO Act).<sup>234</sup> However, the NSWCC commented that the decline in DECCD usage began before the passing of the DECCDPO Act, and that it is probably 'not causally linked' to the ban.<sup>235</sup>
- 2.82 In this context, Commissioner Barnes commented that the NSWCC has to work to keep up with new platforms and methods of encrypting communication. He agreed that they are generally being developed as fast as existing ones are shut down.<sup>236</sup>
- 2.83 Commissioner Barnes also commented that the NSWCC has had some issues accessing information about the technical architecture of devices, which is used to decrypt devices and communications. As discussed, we were pleased to hear that these issues have been resolved by the conferral of industry assistance powers. We will continue to track the Commission's work in this area during future reporting periods.

#### *The NSWCC has a highly developed human sources capability*

- 2.84 Commissioner Barnes noted that a 'large proportion' of intelligence reports distributed by the NSWCC contain information from human sources. We heard that, because many encrypted communication platforms and devices have been 'cracked' by law enforcement:

<sup>232</sup> NSW Crime Commission, [Strategic Plan 2021-2025](#), 2021, p 5.

<sup>233</sup> NSW Crime Commission, [Annual Report 2022-23](#), p 10; New South Wales, Legislative Assembly, [Parliamentary Debates](#), 21 September 2022 (Paul Toole, Deputy Premier, Minister for Regional New South Wales, and Minister for Police).

<sup>234</sup> [Dedicated Encrypted Criminal Communication Device Prohibition Orders Act 2022](#) (NSW).

<sup>235</sup> NSW Crime Commission, [Annual Report 2022-23](#), p 10.

<sup>236</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, pp 3, 7.

[A lot of] information is now only passed person to person by criminals who don't trust using any electronic devices, because of the fact that they can't be sure whether [the devices have] been penetrated.<sup>237</sup>

- 2.85 We asked whether there were any legislative or resourcing restrictions impacting this aspect of the Commission's work. Commissioner Barnes acknowledged that it is 'an ongoing challenge' for the NSWCC to recruit and manage human sources and handlers. This is also a challenge faced by all law enforcement agencies. He stated that the current human sources team 'do a great job'.<sup>238</sup>

*The use of digital forensics and technical deployments is critical to investigations*

- 2.86 We asked the NSWCC about the importance of digital forensics and technical deployments. In response, the NSWCC noted that the amount of information held on electronic devices has 'increased exponentially' and is continuing to do so. This information includes someone's associations, their activities, and the location of their assets.<sup>239</sup> Commissioner Barnes told us that accessing encrypted information in a timely manner is 'critical' to investigations.<sup>240</sup>
- 2.87 Encryption has made intercepting telecommunications 'less effective than it used to be'. However, we heard that digital forensic extraction and the use of technical deployments can overcome these issues, particularly for individuals who are in the 'upper echelons' of networks. These individuals are 'aware of and take steps to circumvent traditional law enforcement surveillance methods'.<sup>241</sup>

**Use of cryptocurrency for money laundering**

- 2.88 We noted that the NSWCC observed that the use of cryptocurrency grew 'significantly' over the 2021-22 and 2022-23 reporting periods.<sup>242</sup> We asked the NSWCC about the use of cryptocurrency for money laundering in NSW. This issue was also raised in the Committee's previous hearing.<sup>243</sup>
- 2.89 Commissioner Barnes commented that although cash is significant, 'crypto is becoming increasingly so'. However, because of the nature of cryptocurrency, it is difficult to calculate exactly how much money is being laundered. There are 'two separate calculations, both of which can't be done precisely'.<sup>244</sup>
- 2.90 We were interested in whether the NSWCC collaborates with other agencies and stakeholders to investigate the use of cryptocurrency for money laundering. The NSWCC responded that most of their investigations are 'conducted in collaboration' with operational partners, and money laundering through cryptocurrency is 'no exception'.<sup>245</sup>

<sup>237</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 3

<sup>238</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 5.

<sup>239</sup> [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, p 1.

<sup>240</sup> [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, p 1.

<sup>241</sup> [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, pp 1-2.

<sup>242</sup> NSW Crime Commission, [Annual Report 2022-23](#), p 11; NSW Crime Commission, [Annual Report 2021-22](#), p 18.

<sup>243</sup> Michael Barnes, [Transcript of evidence](#), 17 October 2022, p 14.

<sup>244</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, pp 4-5.

<sup>245</sup> [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, p 3.

- 2.91 Commissioner Barnes commented that the Commission is a member of Taskforce Kubera, along with other Australian state and federal law enforcement, AUSTRAC, the Australian Taxation Office, and 'some international law agencies'. The Taskforce is focused on prosecuting or 'otherwise interfer[ing] with' money laundering, and has identified the use of cryptocurrency to launder money as a 'high priority'.<sup>246</sup>
- 2.92 Additionally, the NSWCC stated they regularly engage with other agencies to restrain and seize cryptocurrency, particularly the NSWPF. The NSWCC is also a member of the Fintel Alliance, which focuses on investigating financial crime, particularly money laundering. Membership is comprised of government agencies and stakeholders from the financial sector.<sup>247</sup>

## NSW Ombudsman

### New statutory functions

- 2.93 Several major changes to the Ombudsman's statutory functions occurred over the reporting periods. These included new functions, and significant changes to existing functions.
- 2.94 In the 2021-2022 reporting period, the Ombudsman established a new Systems Oversight branch in response to the conferral of these new functions. It is led by an Assistant Ombudsman, and contains the Public Interest Disclosures and Mandatory Disease Testing units.<sup>248</sup>
- 2.95 Additionally, the Ombudsman, Mr Miller, told us that a Health Administration Branch was established in the 2023-24 reporting period, led by a dedicated Deputy Ombudsman.<sup>249</sup> It was created in response to a Legislative Council Portfolio 2 committee inquiry into health outcomes and access to health and hospital services in rural, regional and remote NSW.<sup>250</sup> As the Branch was established in the 2023-24 reporting period, we will consider it in detail in our next annual review.

### Mandatory Disease Testing Act 2021

- 2.96 The *Mandatory Disease Testing Act 2021* (the MDT Act) sets out a regime (the MDT regime) for mandatory blood testing. The testing can only be conducted if a health, emergency or public sector worker comes into contact with the person's bodily fluid that puts them at risk of contracting a blood-borne disease. It must be 'as a result of the person's deliberate action'.<sup>251</sup> If specific criteria are met, an application can be made for a mandatory testing order, which is reviewed and

<sup>246</sup> Michael Barnes, [Transcript of evidence](#), 2 May 2024, p 4; [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, p 3.

<sup>247</sup> [Answers to supplementary questions](#), NSW Crime Commission, 31 May 2024, p 3.

<sup>248</sup> NSW Ombudsman, [Annual Report, 2021-2022](#), p 64; NSW Ombudsman, [Oversight of the Public Interest Disclosures Act 1994 Annual Report 2021-22](#), 9 December 2022, p 23.

<sup>249</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 17.

<sup>250</sup> Legislative Council Portfolio Committee No. 2 – Health, [Health outcomes and access to health and hospital services in rural, regional and remote New South Wales](#), Report no. 57, December 2022, p 180, also cf recommendation 41, pp xxii.

<sup>251</sup> [Mandatory Disease Testing Act 2021](#) (NSW) s 3.

determined by a senior officer.<sup>252</sup> The Ombudsman must be notified of the determination. The MDT regime begun operating in July 2022.<sup>253</sup>

- 2.97 Section 36 of the MDT Act requires the Ombudsman to report on the operation and administration of the MDT regime as soon as practicable after 12 months of its operation.<sup>254</sup> Mr Miller told us that his office is preparing a report on the first 18 months of the regime. He explained that this is because there was a 'slow take-up' of the MDT regime, with 'very few' applications made in the first six months.<sup>255</sup> The Committee previously heard that the Ombudsman had only received notification of 14 MDT orders by October 2022.<sup>256</sup>
- 2.98 We asked for an update on the operation of the Act. Mr Miller commented that a total of around 100 applications had been made during the 18-month review period. They were mainly made by police officers. We heard 'most of the remainder' were made by officers in corrections facilities.<sup>257</sup> The Ombudsman is expecting to table its report on the operation of the MDT Act in September 2024.<sup>258</sup> We also heard that, in addition to the new Mandatory Disease Testing unit, the NSW Ombudsman has 'developed and implemented' an MDT operating model.<sup>259</sup>

*The Ombudsman received additional funding and resourcing for the MDT regime*

- 2.99 In its 2022 review, the Committee heard that the Ombudsman's office had received 'modest, [but] appropriate' funding to implement the MDT regime, but that it was 'difficult' to predict what resourcing would be required in the future. The Ombudsman noted that this was partially because they were not sure (based on the evidence at October 2022) how many orders would be made.<sup>260</sup>
- 2.100 We wanted to confirm that the NSW Ombudsman was adequately resourced to exercise MDT Act functions during the reporting periods, and we were pleased to hear that additional funding was received for this purpose.<sup>261</sup> The Ombudsman did not raise any further concerns about resourcing for this function.

**Public Interest Disclosures Act 2022**

- 2.101 The *Public Interest Disclosures Act 2022* (the PID Act) commenced on 1 October 2023. It made significant changes to the existing public interest disclosures (PID) regime in NSW, which was established by the *Public Interest Disclosures Act*

<sup>252</sup> [Mandatory Disease Testing Act 2021](#) (NSW) ss 8, 9, 11.

<sup>253</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 18.

<sup>254</sup> [Mandatory Disease Testing Act 2021](#) (NSW) s 36.

<sup>255</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 18.

<sup>256</sup> Paul Miller, NSW Ombudsman, [Transcript of evidence](#), 17 October 2022, p 21.

<sup>257</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 18.

<sup>258</sup> [Answers to supplementary questions](#), NSW Ombudsman, 31 May 2024, p 2.

<sup>259</sup> NSW Ombudsman, [Annual Report 2022-23](#), p 28 (TP8).

<sup>260</sup> Paul Miller, [Transcript of evidence](#), 17 October 2022, p 21.

<sup>261</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 17; NSW Ombudsman, [Annual Report 2022-23](#), pp 7, 15; NSW Ombudsman, [Annual Report, 2021-2022](#), pp 14, 64.

1994.<sup>262</sup> In particular, the 2022 PID Act changed the way PIDs are made and who they can be made to, and provides better protections for whistleblowers.<sup>263</sup>

2.102 The Ombudsman has previously commented that:

Although the Bill retains the broad substance of the current *Public Interest Disclosures Act 1994*, the Bill has been prepared by way of a complete re-write of that Act. In doing so the Bill also implements numerous substantive amendments and clarifications, as well adopting a clearer and more logical structure. The new Bill addresses many of the weaknesses in the existing PID Act.<sup>264</sup>

2.103 This Committee completed a review of the 1994 PID Act in 2017.<sup>265</sup> The Committee has since been following the development of the new PID Act with interest. We are pleased to see that the 2022 PID Act has commenced. This review focuses on the Ombudsman's work to prepare for commencement during the reporting periods. The functioning of the new regime will be considered in our next annual review.

*The NSW Ombudsman completed a significant amount of work to prepare for the commencement of the new PID Act*

2.104 We recognise that the Ombudsman has done a significant amount of work to prepare for the commencement of the 2022 PID Act. This has included a 'refresh' of the Ombudsman's PID operating model, developing resources and training materials, and providing guidance for agencies and officials.<sup>266</sup>

2.105 The Ombudsman noted that their 'primary focus' has been ensuring they 'provide practical and accurate advice to NSW Government agencies and public officials on the PID Act'. They have also continued to 'provide advice' on the 1994 PID Act while it was in force.<sup>267</sup>

2.106 A PID unit was created within the new Systems Oversight branch during the 2021-22 reporting year. This unit has three teams: engagement and training, audit and monitoring, and advice and notifications. Each team has a specific function in order to 'support both the pre and post PID Act 2022 implementation'.<sup>268</sup>

2.107 We note that during the reporting period, the Ombudsman has stated they have:

<sup>262</sup> [Public Interest Disclosures Act 1994](#) (NSW).

<sup>263</sup> NSW Ombudsman, [Overview of the new Public Interest Disclosures Act 2022 information sheet](#), July 2023, p 1.

<sup>264</sup> NSW Ombudsman, [Special Report to Parliament on the Public Interest Disclosures Bill 2021](#), 19 October 2021, pp 3, 7.

<sup>265</sup> Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [Review of the Public Interest Disclosures Act 1994](#), report 3/56, October 2017.

<sup>266</sup> NSW Ombudsman, [Strategic Plan 2020-25 – Mid-Point Refresh](#), 7 February 2023, p 17; NSW Ombudsman, [Annual Report 2022-23](#), p 24.

<sup>267</sup> NSW Ombudsman, [Oversight of the Public Interest Disclosures Act 1994 Annual Report 2022-23](#), 27 November 2023, p 19.

<sup>268</sup> NSW Ombudsman, [Oversight of the Public Interest Disclosures Act 1994 Annual Report 2021-22](#), 9 December 2022, p 23.



- Recruited staff to provide specialist advice about the new PID Act to NSW Government agencies.<sup>269</sup>
- Developed resources about the new PID Act, including guidelines and a model PID policy, factsheets, training modules, and videos.<sup>270</sup>
- Conducted information sessions about the new PID Act, and held 25 PID management training sessions, which were attended by 995 people.<sup>271</sup>
- Engaged with the Aboriginal Land Council network, and began developing a communications and engagement strategy for Aboriginal Land Councils about the new PID Act, including 'culturally contextualised' materials.<sup>272</sup>

2.108 Additionally, Mr Miller told us that the Ombudsman has established a Whistleblower Support unit during the 2022-23 reporting year. We heard the unit aims to contribute to a 'speak-up culture' by providing resources, information and referrals to other support for public officials who are planning to or have made a PID.<sup>273</sup>

2.109 We commend the Ombudsman for this work, and will monitor the implementation of the new PID Act in future reporting periods.

*The Ombudsman's concerns about PID data reporting have been addressed by the 2022 PID Act*

2.110 The Ombudsman noted ongoing concerns about public authorities' data reporting under the 1994 PID Act.<sup>274</sup> Not all agencies have complied with reporting obligations, despite proactive measures by the NSW Ombudsman, including direct engagement with agencies to 'mitigate non-compliance'.<sup>275</sup>

2.111 However, data reporting provisions set out in the 2022 PID Act are clearer and more comprehensive.<sup>276</sup> The Ombudsman stated that this means more meaningful data will be collected for reporting, and will enhance the role of the Ombudsman in overseeing the PID Act.<sup>277</sup>

2.112 We will be interested to see whether this issue is addressed following the commencement of the 2022 PID Act.

<sup>269</sup> NSW Ombudsman, [Annual Report 2022-23](#), p 49; NSW Ombudsman, [Oversight of the Public Interest Disclosures Act 1994 Annual Report 2022-23](#), 27 November 2023, p 19.

<sup>270</sup> NSW Ombudsman, [Annual Report 2022-23](#), p 49.

<sup>271</sup> NSW Ombudsman, [Annual Report 2022-23](#), pp 31, 49.

<sup>272</sup> NSW Ombudsman, [Annual Report 2022-23](#), p 49.

<sup>273</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 17.

<sup>274</sup> NSW Ombudsman, [Oversight of the Public Interest Disclosures Act 1994 Annual Report 2021-22](#), 9 December 2022, p 16.

<sup>275</sup> NSW Ombudsman, [Oversight of the Public Interest Disclosures Act 1994 Annual Report 2022-23](#), p 10; NSW Ombudsman, [Oversight of the Public Interest Disclosures Act 1994 Annual Report 2021-22](#), p 16.

<sup>276</sup> NSW Ombudsman, [Oversight of the Public Interest Disclosures Act 1994 Annual Report 2021-22](#), p 16.

<sup>277</sup> NSW Ombudsman, [Special Report to Parliament on the Public Interest Disclosures Bill 2021](#), 19 October 2021, p 11.

## Oversight of Aboriginal programs

### *Clarification of the Ombudsman's scope to oversee Aboriginal programs is needed*

- 2.113 An important aspect of the Ombudsman's work is the oversight of the NSW Government's Aboriginal programs. This function is set out in part 3B of the *Ombudsman Act 1974*.<sup>278</sup> The Aboriginal programs (such as Aboriginal Language and Culture Nests, and the Aboriginal Economic Prosperity Framework) that the part applies to are prescribed by clause 8 of the Ombudsman Regulation 2016.<sup>279</sup>
- 2.114 We heard that the Ombudsman has requested amending laws to clarify the Ombudsman's role in overseeing Aboriginal programs. Mr Miller told us that:
- What we're seeking is a legislative amendment or a regulation that will clarify that our jurisdiction to monitor and assess covers all Aboriginal programs, irrespective of how the government of the day might decide to describe them.<sup>280</sup>
- 2.115 We recognise that this position has also been clearly stated in both the Ombudsman's 2021-22 and 2022-23 annual reports.<sup>281</sup>
- 2.116 We note that the regulation has only ever prescribed one Aboriginal program for the purpose of part 3B – the Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE) program. Mr Miller explained that the Ombudsman's 'express' monitoring and assessing functions under part 3B are currently 'legislatively tied to, and therefore limited to, OCHRE'.<sup>282</sup>
- 2.117 However, since the conferral of the oversight function in 2014 there have been 'significant changes, not only within the state, but nationally, in relation to Aboriginal Affairs'. This includes the Australian Government's increased commitment to Closing the Gap, and the work led by Aboriginal Affairs NSW under the NSW Implementation Plan.<sup>283</sup> Mr Miller noted that as a result of this, initiatives that may have previously have come under the OCHRE umbrella in NSW have since been delivered as part of Closing the Gap.<sup>284</sup>
- 2.118 We were concerned this means the Ombudsman cannot adequately monitor Aboriginal programs operating in NSW. In response, Mr Miller clarified that what may be lacking is 'specific proactive oversight' under a dedicated Aboriginal Deputy Ombudsman.<sup>285</sup> He said it would be 'overstating it to say that there's no oversight'. The Ombudsman's functions under the *Ombudsman Act 1974* and the *Community Services (Complaints, Reviews and Monitoring) Act 1993* 'continue to apply'.

<sup>278</sup> [Ombudsman Act 1974](#) (NSW).

<sup>279</sup> [Ombudsman Regulation 2016](#) reg 8, which replaced reg 7A of the [Ombudsman Regulation 2011](#).

<sup>280</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 19.

<sup>281</sup> NSW Ombudsman, [Annual Report 2022-23](#), p 19; NSW Ombudsman, [Annual Report, 2021-2022](#), p 19.

<sup>282</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 19.

<sup>283</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 18; Closing the Gap, [National Agreement on Closing the Gap](#), July 2020, viewed 17 July 2024.

<sup>284</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, pp 18-19.

<sup>285</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 19.

- 2.119 We echo the Ombudsman's concerns and agree that clarification would be beneficial. We would like to acknowledge the ongoing work of the Ombudsman.
- 2.120 We will continue to monitor developments in this area during future reporting periods, noting that the Ombudsman Regulation 2016 will be automatically repealed on 1 September 2024.

*The Ombudsman has a framework for monitoring Aboriginal programs*

- 2.121 The Ombudsman told us that the framework for overseeing Aboriginal programs was refreshed during the reporting period. He said this resulted in a 'quite explicit' monitoring framework that aims to assess both the execution and outcomes of programs.<sup>286</sup>
- 2.122 Monica Wolf, Chief Deputy Ombudsman, commented that Aboriginal programs are overseen in many ways, which she summarised as 'oversight, monitoring, and assessment'. Ms Wolf also noted that the Aboriginal Programs branch does engagement work with community and the providers of Aboriginal programs to get their perspective.<sup>287</sup>

*The Ombudsman reports on OCHRE programs*

- 2.123 We wanted to know what outcomes are produced by the monitoring framework. Ms Wolf indicated that biennial reporting to Parliament is part of the new monitoring and assessment framework.<sup>288</sup> The last OCHRE report was produced in 2019. We heard that since then, the Ombudsman has been working with agencies to provide feedback.<sup>289</sup> Ms Wolf said there has been ongoing work with agencies around the Ombudsman's recommendations, which has resulted in outcomes.
- 2.124 As an example, Ms Wolf cited the development of the NSW Treasury's Aboriginal Procurement strategy, which was a direct outcome of the review of the Aboriginal Prosperity Economic Framework.<sup>290</sup> We also note that the Ombudsman proposed an Aboriginal procurement strategy in its 2016 OCHRE report; the first iteration of an Aboriginal Procurement Policy in NSW was introduced in 2018.<sup>291</sup>
- 2.125 Additionally, Ms Wolf noted that, aside from specific OCHRE reports, outcomes and engagement related to OCHRE oversight are reported on regularly in the Ombudsman's annual reports.<sup>292</sup>

<sup>286</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 19.

<sup>287</sup> Monica Wolf, Chief Deputy Ombudsman, NSW Ombudsman, [Transcript of evidence](#), 2 May 2024, p 19.

<sup>288</sup> Monica Wolf, [Transcript of evidence](#), 2 May 2024, p 19.

<sup>289</sup> Monica Wolf, [Transcript of evidence](#), 2 May 2024, p 19.

<sup>290</sup> Monica Wolf, [Transcript of evidence](#), 2 May 2024, p 20; NSW Treasury, [Aboriginal Procurement Policy](#), page last updated 23 September 2022, viewed online 17 July 2024; NSW Ombudsman, [OCHRE Review Report](#), 28 October 2019, pp 120-121, also recommendations 25, 27.

<sup>291</sup> NSW Ombudsman, [Fostering economic development for Aboriginal people in NSW](#), 31 May 2016, p 31; NSW Ombudsman, [OCHRE Review Report](#), 28 October 2019, p 120; Department of Finance, Services and Innovation, [annual report 2018/2019](#), p 29.

<sup>292</sup> Monica Wolf, [Transcript of evidence](#), 2 May 2024, p 20.

### Staffing increases

- 2.126 There was a significant increase in staffing levels at the NSW Ombudsman over the most recent reporting period. The number of full-time equivalent staff almost doubled, from 121.2 (in 2021-22) to 201.7 (in 2022-23).<sup>293</sup> We noted that 101 new staff were onboarded in the 2022-23 reporting period.<sup>294</sup> We note that this meant during the 2022-23 reporting period, staffing levels returned to 'levels closer to those prior to 2018'.<sup>295</sup>
- 2.127 The Ombudsman said this recruitment action was an opportunity to enhance the office's diversity.<sup>296</sup> This resulted in an increased number of Aboriginal staff, and staff with disability.<sup>297</sup> We asked the Ombudsman if, noting the increase in new hires, they had done any specific work around embedding positive workplace culture.
- 2.128 Mr Miller told us that the 'most important cultural strategy' that had been adopted was to stage recruitments, using a top down approach.<sup>298</sup> He explained this using the example of new teams that have been stood up. There may be funding for several positions within a new team, but a manager is recruited first. Existing staff then work with the new manager one on one to clarify what the team will do, and how it will work with the rest of the NSW Ombudsman.<sup>299</sup> The Ombudsman said this strategy is 'particularly important' because 'the way our functions are conferred' means that it's easy for teams in to become siloed.<sup>300</sup>
- 2.129 Mr Miller acknowledged the work of NSW Ombudsman staff. He said that the 'biggest challenge' related to staffing increases was the work and time required from existing staff.<sup>301</sup> The impact of the COVID pandemic compounded issues caused by long term underfunding, which we heard layered additional stress on staff. The Ombudsman said that he thought, however, they had ultimately been 'successful'.<sup>302</sup>
- 2.130 The Ombudsman commented that, despite a 'context of change', improvements had been seen in his agency's People Matter Employee Survey results. We discuss these results in Chapter 1. We will be interested to see what impact these changes have on the NSW Ombudsman in future reporting periods.

<sup>293</sup> NSW Ombudsman, [Annual Report 2021-2022](#), p 111; NSW Ombudsman, [Annual Report 2022-23](#), p 55.

<sup>294</sup> NSW Ombudsman, [Annual Report 2022-23](#), p 31; Paul Miller, [Transcript of evidence](#), 2 May 2024, p 21.

<sup>295</sup> NSW Ombudsman, [Annual Report 2022-23](#), p 7.

<sup>296</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 18; NSW Ombudsman, [Annual Report 2022-23](#), p 27.

<sup>297</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 21.

<sup>298</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 22.

<sup>299</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 22.

<sup>300</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 22.

<sup>301</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, pp 21-22.

<sup>302</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 22.

## Trend in complaints

### *Increase in actionable complaints have led to investigatory action*

- 2.131 The Ombudsman recorded a 69 per cent increase in the number of actionable complaints leading to investigatory action during the 2022-23 reporting period.<sup>303</sup> The Ombudsman explained that this increase is 'largely [a] result of the flow-through of changes' to agency funding, which has led to increased resourcing and improved staffing capabilities.<sup>304</sup> This upwards trend is expected to continue in the 2023-24 reporting period.<sup>305</sup>
- 2.132 Mr Miller said the number of actionable complaints that lead to investigatory action is an important metric for considering trends and workloads. He noted that it is more useful than considering the overall number of actionable complaints.<sup>306</sup>
- 2.133 We also note that this represents 21 per cent of all actionable complaints finalised in 2022-23. The other 79 per cent were finalised following assessment, without further action needed.<sup>307</sup>

### *Increased funding is having a positive impact on complaint handling*

- 2.134 The NSW Ombudsman indicated that they are already 'beginning to see improvements in performance' in the 2022-23 reporting period. We heard these are a result of increased staffing levels and associated work on strategic outcomes. Both of these factors were enabled by additional funding.<sup>308</sup>
- 2.135 We heard additional investigations staff has already impacted the Ombudsman's capacity to open formal investigations into complaints that raise concerns about serious maladministration. Ten formal investigations were commenced in 2022-23, compared to one in 2021-22, and two in 2020-21.<sup>309</sup> This trend is continuing, with nine formal investigations commenced by 31 May 2024.<sup>310</sup>
- 2.136 The Ombudsman told us that with additional staffing in the complaints and resolution area, they are considering reorganising these staff into five teams. Each team would be focused on a specific sector. We heard that this is expected to improve the consistency of complaint responses, liaison with agencies, staff capabilities, and efficiencies in handling complaints.<sup>311</sup> It will also provide system

<sup>303</sup> NSW Ombudsman, [Annual Report 2022-23](#), p 30; [Answers to supplementary questions](#), NSW Ombudsman, 31 May 2024, p 4.

<sup>304</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 16.

<sup>305</sup> [Answers to supplementary questions](#), NSW Ombudsman, 31 May 2024, p 4.

<sup>306</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 21.

<sup>307</sup> NSW Ombudsman, [Annual Report 2022-23](#), p 36.

<sup>308</sup> NSW Ombudsman, [Annual Report 2022-23](#), p 7.

<sup>309</sup> [Answers to supplementary questions](#), NSW Ombudsman, 31 May 2024, p 4; NSW Ombudsman, [Annual Report 2021-22](#), p 33; NSW Ombudsman, [Annual Report 2020-21](#), p 22.

<sup>310</sup> [Answers to supplementary questions](#), NSW Ombudsman, 31 May 2024, p 4.

<sup>311</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 17; [Answers to supplementary questions](#), NSW Ombudsman,, 31 May 2024, p 4.

insights and help identify underserved sectors that have previously been impacted by constrained resourcing.<sup>312</sup>

*The Ombudsman will apply additional funding to provide more conciliation services*

- 2.137 The Ombudsman told us that some of the additional funding will 'also be applied' in order to offer more complaint conciliation services.<sup>313</sup> This function is provided for by section 13A of the *Ombudsman Act 1974*.<sup>314</sup>
- 2.138 The Ombudsman has previously noted that conciliation can be an extremely effective form of complaint resolution. They have been 'rarely' conducted because the NSW Ombudsman has not had adequate resourcing to do so. Only one conciliation was held in each reporting period for 2020-21, 2021-22, and 2022-23.<sup>315</sup>
- 2.139 We were glad to hear that the NSW Ombudsman is seeking to build capacity in this area, and are expecting to increase the number of conciliations held in the 2023-24 reporting period and beyond.<sup>316</sup>

*Complaints about custodial services have increased*

- 2.140 We were concerned to see significant increases in complaints about custodial services during both reporting periods. In particular, we note the NSW Ombudsman reported receiving five times as many Covid-19-related actionable complaints about custodial services in 2021-22 than in the 2020-21 reporting period.<sup>317</sup>
- 2.141 We asked what reasons were behind this increase. In response, Mr Miller explained that:
- [The] spike in complaints correlated very clearly with COVID, and with the actions being taken by Corrective Services during that period to, essentially, try to thwart and then contain any possible outbreak.<sup>318</sup>
- 2.142 Covid-19 began to spread in custodial centres in mid-2021. As a result, there was a state-wide lockdown of custodial centres, followed by ongoing periods of lock-ins and staff shortages. The Ombudsman has commented that this had negative effects on the quality of life in custodial centres, and resulted in increased complaints.<sup>319</sup>

<sup>312</sup> [Answers to supplementary questions](#), NSW Ombudsman, 31 May 2024, p 4.

<sup>313</sup> [Answers to supplementary questions](#), NSW Ombudsman, 31 May 2024, p 4.

<sup>314</sup> [Ombudsman Act 1974](#) (NSW) s 13A.

<sup>315</sup> NSW Ombudsman, [Annual Report 2022-23](#), p 37; NSW Ombudsman, [Annual Report 2021-22](#), p 32; NSW Ombudsman, [Annual Report 2020-21](#), p 22.

<sup>316</sup> NSW Ombudsman, [Annual Report 2022-23](#), p 37.

<sup>317</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 17.

<sup>318</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 18.

<sup>319</sup> NSW Ombudsman, [The COVID-19 pandemic: second report](#), 7 September 2022, pp 7, 38; NSW Ombudsman, [Annual Report 2021-22](#), p 106.

- 2.143 Mr Miller also explained that following increased funding, the Ombudsman had increased capacity to visit custodial centres in the 2022-23 reporting period.<sup>320</sup> This resulted in a 148 per cent increase in preliminary inquiries, and a 27 per cent increase in actionable complaints, about custodial services.<sup>321</sup>
- 2.144 We were pleased to hear that the Ombudsman has since made 'a concerted effort' to increase visitations to adult and youth correctional facilities.<sup>322</sup> We will be interested to monitor the outcomes of this work in future reporting periods.

### Child Death Review Team

- 2.145 The Child Death Review Team (CDRT) maintains a register of the deaths of children aged 0-17 in NSW (the Register). The CDRT classifies and analyses data from the Register to identify causes, demographic information, and trends. The CDRT also undertakes research projects aimed at preventing or reducing the deaths of children.<sup>323</sup>
- 2.146 The CDRT has at least 17 members. It is convened by the Ombudsman, with two other statutory members, the Community Services Commissioner and the NSW Advocate for Children and Young People. The rest of the Team is comprised of 14-20 other multidisciplinary independent experts and senior agency representatives, including two Aboriginal members.<sup>324</sup>

### 2020-2021 Biennial report

- 2.147 In addition to maintaining the Register, the CDRT also completes a report on the recorded deaths of children in NSW every two years (the biennial report).<sup>325</sup> The CDRT tabled their biennial report for the 2020 and 2021 calendar years in November 2023.
- 2.148 The 2020-2021 biennial report examined the 950 deaths of children aged 0-17.<sup>326</sup> We heard that, as in previous years, most deaths of children in NSW were due to natural causes.<sup>327</sup> Paul Miller, the Convenor of the CDRT, noted that deaths due to natural causes may still be preventable. He said that 'much focus of the CDRT' has been on reducing the likelihood of natural causes for deaths, 'even while recognising that it will never be possible to eliminate' them entirely.<sup>328</sup>
- 2.149 In addition to examining deaths that occurred during the 2020 and 2021 calendar years, the biennial report considered trends in infant (age >1) and child (age 1-17) mortality over the previous 15 years. We were pleased to hear that between 2007 and 2021, infant mortality declined by 28 per cent, and child mortality

<sup>320</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 18; NSW Ombudsman, [Annual Report 2022-23](#), p 107.

<sup>321</sup> NSW Ombudsman, [Annual Report 2022-23](#), p 30.

<sup>322</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 18.

<sup>323</sup> [Community Services \(Complaints, Reviews and Monitoring\) Act 1993](#) (NSW) s 34D.

<sup>324</sup> Child Death Review Team, [Annual Report 2022-23](#), 30 October 2023, p 2.

<sup>325</sup> [Community Services \(Complaints, Reviews and Monitoring\) Act 1993](#) (NSW) s 34G.

<sup>326</sup> Paul Miller, Convenor and Ombudsman, Child Death Review Team, [Transcript of evidence](#), 2 May 2024, p 24.

<sup>327</sup> Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2020 and 2021](#), 27 November 2023, p 8.

<sup>328</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 24.

declined by 24 per cent.<sup>329</sup> However, we were concerned to hear that there are still inequalities in mortality rates for particular groups of children:

- Aboriginal and Torres Strait Islander children
- Children living in regional and remote areas
- Children living in disadvantaged areas
- Male children (0-17 years), and
- Young people (aged 15-17).<sup>330</sup>

2.150 Additionally, the CDRT identified that children from families with a child protection history are consistently over-represented in deaths. One in four children that died of any cause were from families with a child protection history.<sup>331</sup>

2.151 The Committee has previously noted its concerns about disparities in infant and child mortality.<sup>332</sup> However, we are aware that the CDRT is undertaking research projects in several of these areas, which we discuss below. We hope that this work will result in improvements to these trends in future reporting periods.

## Youth suicide rates

### Finding 4

**The Child Death Review Team's 2020-2021 biennial review found that suicide continues to be the leading cause of death for children aged 10-17. These deaths are occurring within a context of increasing hospitalisations due to intentional self-harm.**

### Finding 5

**There was a significant increase in the rate of suicide deaths for children aged 10-17 in the 15 year period from 2007 to 2021.**

2.152 We heard the CDRT continues to be 'particularly' concerned about the rates of suicide deaths. Suicide rates among children and young people aged 10-17 years have increased by 68 per cent between 2007 and 2021. Suicide was the leading cause of death for children aged 10-17 in 2020-2021.<sup>333</sup> The previous committee

<sup>329</sup> Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2020 and 2021](#), p 29; Paul Miller, [Transcript of evidence](#), 2 May 2024, p 24.

<sup>330</sup> Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2020 and 2021](#), p 29; Paul Miller, [Transcript of evidence](#), 2 May 2024, p 24.

<sup>331</sup> [Answers to supplementary questions](#), Child Death Review Team, 31 May 2024, p 1.

<sup>332</sup> Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [2022 review of the annual and other reports of oversight agencies](#), p 7.

<sup>333</sup> Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2020 and 2021](#), pp 8-9.



commented on this trend, which was also identified in the CDRT's 2019-2020 biennial review report.<sup>334</sup>

- 2.153 Mr Miller explained that 'much of this increase' over the 15-year period occurred over 2007-2017, and the rate 'appears to have remained relatively stable' over the last five years.<sup>335</sup>
- 2.154 However, we were particularly concerned to hear that in 2020-2021, these deaths sit 'within a wider context of increasing hospitalisations due to intentional self-harm'.<sup>336</sup> We were encouraged to hear, however, that the CDRT is 'actively working to try to understand the predominant factors driving this trend'.<sup>337</sup>
- 2.155 Mr Miller also noted that 'even though the number of suicides is alarming, it's also statistically a very small number.' The 2020-2021 biennial report indicates that 180 children aged 0-17 died of external (injury-related) causes – 58 of these deaths were suicides.<sup>338</sup>
- 2.156 We asked the CDRT if social media, particularly online harassment and cyberbullying, has contributed to increasing rates of youth suicide. Mr Miller said that the 2020-2021 biennial report had not identified social media as an issue affecting youth suicide rates.<sup>339</sup> We heard that the CDRT looks at proximal causes, including bullying, when reviewing suicide deaths. Helen Wodak, Deputy Ombudsman, Monitoring and Review, explained that if a review observes that bullying occurred, the CDRT looks for 'the mediums that were used'.<sup>340</sup>
- 2.157 Mr Miller commented that in the 2020-2021 biennial report, the CDRT identified a 'significantly greater' increase in suicide rates for young female people (as compared to young male people) in 2020-2021. They also identified the presence of eating disorders in 'a number' of these young people prior to their deaths.<sup>341</sup> We will continue to monitor this issue in future reporting periods.

### **Overrepresentation of Aboriginal children in death rates in NSW**

- 2.158 The 2020-2021 biennial report shows that Aboriginal children continue to be over-represented in death statistics for natural and external causes.<sup>342</sup> This is in

<sup>334</sup> Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2018 and 2019 incorporating reviewable deaths of children](#), 24 August 2021, pp 11, 73; Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [2022 review of the annual and other reports of oversight agencies](#), p 7.

<sup>335</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 24.

<sup>336</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, pp 24-25; Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2020 and 2021](#), pp 108-109.

<sup>337</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, pp 25, 27.

<sup>338</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 26; Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2020 and 2021](#), p 52.

<sup>339</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 26.

<sup>340</sup> Helen Wodak, Deputy Ombudsman, Monitoring and Review, Child Death Review Team, [Transcript of evidence](#), 2 May 2024, p 26.

<sup>341</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 26.

<sup>342</sup> Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2020 and 2021](#), p 19.

line with the findings of previous biennial reports.<sup>343</sup> We note that the previous Committee was also concerned about the risk of suicide deaths of Aboriginal children and young people.

*The gap between Aboriginal and non-Indigenous infants has improved*

- 2.159 We were encouraged to hear that there was improvement in the gap between death rates between Aboriginal and non-Indigenous infants in the 2020-2021 period.<sup>344</sup> This was also a finding in the December 2022 report of the CDRT's research project examining the effects of perinatal conditions and local area socioeconomic status on early childhood mortality in NSW.<sup>345</sup>
- 2.160 This report also found that Aboriginal status is not a risk factor itself. Instead, it is a proxy for other differences impacting mortality that are higher among Aboriginal mothers (such as smoking during pregnancy).<sup>346</sup>

*The gap between Aboriginal and non-Indigenous children has not improved*

- 2.161 However, we were saddened to hear that the gap between Aboriginal and non-Indigenous child (1-17) mortality did not improve.<sup>347</sup>
- 2.162 We were also concerned to hear that the rate of injury-related death is 3.9 times higher for Aboriginal children aged 1-17 than for non-Indigenous children. Mr Miller noted this statistic had not improved over the 15-year period from 2007 to 2021.<sup>348</sup>

*CDRT is completing a project to review suicide deaths of Aboriginal children and young people*

- 2.163 Aboriginal children and young people continue to be over-represented in suicide deaths.<sup>349</sup> The Register records 238 deaths due to suicide in the decade from 2011 to 2020. Forty-three were identified as First Nations young people.<sup>350</sup> The CDRT's 2020-2021 biennial report found that the rate of suicide for Indigenous young people aged 10-17 is 3.9 times higher (around 12 deaths per 100,000) than for non-Indigenous young people (around 3 deaths per 100,000).<sup>351</sup>
- 2.164 In recognition of this, the CDRT commenced the Aboriginal and Torres Strait Islander suicide project. This major project aims to identify opportunities to

<sup>343</sup> Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2018 and 2019 incorporating reviewable deaths of children](#), p 11; Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2016 and 2017 incorporating reviewable deaths of children](#), 25 June 2019, p 20.

<sup>344</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 25.

<sup>345</sup> Child Death Review Team, prepared by Australian Institute of Health and Welfare for the CDRT, Effects of perinatal conditions and local area socioeconomic status on early childhood mortality in New South Wales: linked data analysis, [Main report](#), 8 December 2022, p 15.

<sup>346</sup> Child Death Review Team, [Main report](#), 8 December 2022, p 38; Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2020 and 2021](#), p 30.

<sup>347</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 25; Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2020 and 2021](#), p 19.

<sup>348</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 25.

<sup>349</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 25.

<sup>350</sup> Child Death Review Team, [Annual Report 2022-23](#), p 11.

<sup>351</sup> Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2020 and 2021](#), pp 90, 91 (Figure 59).

prevent and reduce suicide deaths of Aboriginal and Torres Strait Islander young people.<sup>352</sup>

- 2.165 The project is led by Aboriginal members of the CDRT, with a First Nations Advisory Committee. The research is being conducted by the Ngarruwan Ngadju First Peoples Health and Wellbeing Centre at the University of Wollongong. It is led by centre director Professor Kathleen Clapham, who is also a CDRT member.<sup>353</sup>
- 2.166 We heard that as part of the project, the Ngarruwan Ngadju researchers established an Aboriginal Suicide Prevention First Nations Advisory Group, which provides expert advice and guidance to the project team. They also designed and conducted consultation forums across NSW with stakeholders. These included Aboriginal community-controlled organisations and community Elders, including people with lived family and kinship experience of suicide.<sup>354</sup>
- 2.167 We note that the CDRT expects to receive a report on this research by 30 June 2024. The CDRT will then prepare a public report, including recommendations.<sup>355</sup> We commend the project team for their important work, and look forward to considering the project report as part of our next review.

#### Monitoring recommendations to agencies

- 2.168 A key way the CDRT works to improve child and infant mortality rates in NSW is by making recommendations to agencies. It then monitors the progress of their implementation. As these recommendations are non-binding, we were interested in hearing how the CDRT works with agencies to encourage their implementation.
- 2.169 Mr Miller told us that agencies are generally 'very responsive and respectful of' the CDRT's expertise, which means they take the CDRT's recommendations seriously.<sup>356</sup> He commented that:
- [The] key is the persuasiveness of the recommendation, and the argument for why it should be implemented. What we want is for agencies to implement our recommendations because they understand our analysis, they see the reason for it, and they want to do it.<sup>357</sup>
- 2.170 We heard that the speed that agencies implement recommendations can be an area of frustration for the CDRT. Mr Miller acknowledged that agencies normally have other things 'going on', which may impact their ability to implement recommendations quickly.<sup>358</sup>

<sup>352</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 25.

<sup>353</sup> Helen Wodak, [Transcript of evidence](#), 2 May 2024, p 26.

<sup>354</sup> [Answers to supplementary questions](#), Child Death Review Team, 31 May 2024, p 3.

<sup>355</sup> Helen Wodak, [Transcript of evidence](#), 2 May 2024, p 26; [Answers to supplementary questions](#), Child Death Review Team, 31 May 2024, p 3.

<sup>356</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 26.

<sup>357</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 26.

<sup>358</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, p 28.

- 2.171 The CDRT has implemented a process to engage with agencies more directly before recommendations are finalised. We heard that they hold face-to-face meetings to explain how recommendations were developed, and what they seek to achieve. This gives agencies an opportunity to provide feedback on recommendations, particularly if a 'slightly different or clearer approach' would be more effective.<sup>359</sup>
- 2.172 Ms Wodak commented that after recommendations are made, the CDRT also works with agencies to support them to implement the recommendations.<sup>360</sup>
- 2.173 The CDRT commented that most of their recommendations are directed to individual agencies. Where a recommendation requires agency 'coordination and collaboration' to be implemented, the 'need for the relevant agencies to work together' will be stated in the recommendation itself.<sup>361</sup>

*The CDRT is monitoring recommendations about suicide prevention measures*

- 2.174 We asked the CDRT to provide an update on recommendations related to targeted prevention measures for youth suicide, which were first made in the CDRT's 2016-2017 biennial report.<sup>362</sup>
- 2.175 The CDRT's 2022-23 annual report acknowledges some progress made by NSW Health in implementing the recommendation for targeted, sustained and intensive therapeutic support for children and young people at risk of suicide.
- 2.176 Ms Wodak said that the recommendation is still open because the CDRT has not been satisfied that it is fully implemented. They have concerns about funding and access to comprehensive mental health care, and the ability of NSW Health's strategies to reach 'hard to engage' young people.<sup>363</sup> They will continue to monitor this recommendation, including ongoing liaison with NSW Health for further updates in future reporting periods.<sup>364</sup>
- 2.177 We note that the CDRT reported that several other recommendations about targeted prevention measures had been met during the 2022-23 reporting period. We were pleased to hear that the CDRT's work has resulted in progress from NSW Health in this area, and we will continue to monitor progress and outcomes in the future.

**Case study – monitoring recommendation on swimming pool compliance data**

- 2.178 We were interested to see that the CDRT stopped monitoring a recommendation during the 2022-23 reporting period. The recommendation was made in the

<sup>359</sup> Paul Miller, [Transcript of evidence](#), 2 May 2024, pp 26-27.

<sup>360</sup> Helen Wodak, [Transcript of evidence](#), 2 May 2024, p 27.

<sup>361</sup> [Answers to supplementary questions](#), Child Death Review Team, 31 May 2024, p 3.

<sup>362</sup> Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2016 and 2017 incorporating reviewable deaths of children](#), pp 121-127.

<sup>363</sup> Child Death Review Team, [Annual Report 2022-23](#), 30 October 2023, p 27.

<sup>364</sup> Helen Wodak, [Transcript of evidence](#), 2 May 2024, p 27; [Answers to supplementary questions](#), Child Death Review Team, 31 May 2024, pp 5-6.

	2018-2019 biennial report (August 2021). It related to public amalgamated reporting of compliance data from the NSW Swimming Pool Register. <sup>365</sup>
2.179	The CDRT made the recommendation because they recognised that there was no way to obtain a 'comprehensive picture of compliance with swimming pool barrier requirements' in NSW. <sup>366</sup> Three of the four drowning deaths that occurred in private pools in 2020-2021 were in pools that had non-compliant barriers. <sup>367</sup>
2.180	Although the recommendation was supported by the Department of Customer Service, it was listed as being closed because 'complete implementation' was not feasible 'in the context of the current regulatory framework'. <sup>368</sup>
2.181	We heard that there are 'a number of complexities' around obtaining data to meet the recommendation, which is why monitoring was closed. Ms Wodak told us that the CDRT had monitored the 'register's various incarnations' but that it ultimately did not collect the data needed for the CDRT to report 'comprehensively' on compliance issues. This meant it was not possible for the CDRT to determine whether barrier issues had been addressed. <sup>369</sup>
2.182	The CDRT is 'considering other opportunities' to investigate the issue raised in this recommendation. <sup>370</sup> They also noted that, regardless of the recommendation's status, they will 'continue to monitor drowning deaths and any issues relating to the regulation of private pool barrier fencing'. <sup>371</sup> We will follow up on progress in the next reporting period.

## Public Service Commission

### Committee's oversight of the NSW Public Service Commissioner

2.183	In November 2022, the <i>Government Sector Employment Act 2013</i> (GSE Act) was amended to add section 88A, which provides the oversight of the NSW Public Service Commissioner's functions by the Committee. <sup>372</sup>
2.184	The public hearing in May 2024 was the first appearance of the Public Service Commission (PSC) before the Committee since it assumed its new oversight functions under the GSE Act.
2.185	We note that from 1 July 2024, the PSC was merged with the Premier's Department following the recent Machinery of Government changes. <sup>373</sup> The GSE

<sup>365</sup> Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2018 and 2019 incorporating reviewable deaths of children](#), p 70, also cf. p 105, recommendation 10.

<sup>366</sup> Child Death Review Team, [Annual Report 2022-23](#), 30 October 2023, p 30.

<sup>367</sup> Child Death Review Team, [Biennial report of the deaths of children in New South Wales: 2020 and 2021](#), p 82.

<sup>368</sup> Child Death Review Team, [Annual Report 2022-23](#), p 18.

<sup>369</sup> Helen Wodak, [Transcript of evidence](#), 2 May 2024, p 27.

<sup>370</sup> Helen Wodak, [Transcript of evidence](#), 2 May 2024, p 27.

<sup>371</sup> Child Death Review Team, [Annual Report 2022-23](#), p 32.

<sup>372</sup> [Government Sector Employment Amendment Act 2022](#) (NSW) sch 1 cl 8.

<sup>373</sup> [Administrative Arrangements \(Administrative Changes—Miscellaneous\) Order \(No 2\) 2024](#) (NSW) sch 1.

Act was also amended further to provide that certain functions are no longer exercised by the Public Service Commissioner.<sup>374</sup>

### Building a resilient and adaptive workforce

2.186 Over the two reporting periods, the PSC focused on building sustainable working practices to ensure that the public sector workforce is prepared and resilient in dealing with recurrent emergencies. We heard that the PSC is also developing a Strategic Workforce Plan for the NSW government sector.<sup>375</sup>

2.187 The NSW Public Service Commissioner, Kathrina Lo, explained that:

Some of the things we have dealt with in recent years, such as a once-in-a-century pandemic, and what might have previously been considered once-in-a-generation floods or bushfires, are now happening more frequently. These are becoming things that we need to deal with almost as part of our BAU.<sup>376</sup>

2.188 We also heard that the Covid-19 pandemic highlighted the need for flexible working arrangements, with an emphasis on work from home (WFH) practices.<sup>377</sup> The Commissioner added that despite the prevalence of WFH practices, there is a need for other forms of flexibility as 'the vast majority of the workforce in the public service is front line'.<sup>378</sup>

2.189 Commissioner Lo said she is aware that public sector agencies are re-assessing floor space needs and having more collaborative workspaces, in line with hybrid work models. Chris Lamb, Deputy Commissioner, added that property portfolios and occupancy are managed at the agency level. The PSC works closely with Property and Development NSW on its strategy for workplaces and offices.

### Review of the Code of Conduct and Ethics

2.190 The PSC recently conducted a review of the Code of Conduct and Ethics, which has resulted in a new Code that is set to commence in November 2024. The Commission is currently developing supporting resources, including e-learning modules, to aid the implementation of the new Code.<sup>379</sup>

2.191 Commissioner Lo explained that this review was initiated due to internal assessments, stakeholder feedback, and evolving expectations of workplace behaviour. We were pleased to hear that during the review, extensive consultation was undertaken across the sector, including with integrity agencies.<sup>380</sup>

2.192 While the review received 'overwhelmingly positive feedback', some more significant issues were raised by agencies, which have not yet been addressed.

<sup>374</sup> [Government Sector Employment and Other Legislation Amendment Act 2024](#) (NSW) sch 1.

<sup>375</sup> Kathrina Lo, Public Service Commissioner, [Transcript of evidence](#), 2 May 2024, pp 10-11.

<sup>376</sup> Kathrina Lo, [Transcript of evidence](#), 2 May 2024, p 11.

<sup>377</sup> Kathrina Lo, [Transcript of evidence](#), 2 May 2024, p 13.

<sup>378</sup> Kathrina Lo, [Transcript of evidence](#), 2 May 2024, p 14.

<sup>379</sup> Kathrina Lo, [Transcript of evidence](#), 2 May 2024, p 9.

<sup>380</sup> Kathrina Lo, [Transcript of evidence](#), 2 May 2024, p 11.

These issues include extending the Code to cover statutory office holders and volunteers, and streamlining policies around gifts, benefits and hospitality.<sup>381</sup>

- 2.193 We commend the PSC for their work in reviewing the Code of Conduct and Ethics and will monitor the implementation of the new Code in the next review.

### **Managing the NSW Government Graduate Program**

- 2.194 The PSC is the lead agency responsible for managing and coordinating the NSW Government Graduate Program (the Program). The PSC has employed more than 1450 graduates since its commencement in 2016.<sup>382</sup>

- 2.195 Commissioner Lo said that the number of graduates hired each year is decided by seeking annual commitments from agencies, which are demand-based and reflective of the skills gap.<sup>383</sup> The PSC explained that the Program aims to expose graduates to different areas of government, while matching their qualifications and skills to agencies' business needs.<sup>384</sup>

- 2.196 We were pleased to hear that the Program has high retention rates, with around 75 to 80 per cent of graduates remaining in the sector two years after the completion of the Program.<sup>385</sup>

- 2.197 Commissioner Lo also indicated that the Program gets great feedback from graduates and employers, also winning multiple awards each year.<sup>386</sup> The Program receives more than 4000 applications every year.<sup>387</sup>

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<sup>381</sup> [Answers to supplementary questions](#), Public Service Commission, 31 May 2024, p 2.

<sup>382</sup> Kathrina Lo, [Transcript of evidence](#), 2 May 2024, p 9.

<sup>383</sup> Kathrina Lo, [Transcript of evidence](#), 2 May 2024, p 12.

<sup>384</sup> [Answers to supplementary questions](#), Public Service Commission, 31 May 2024, p 2.

<sup>385</sup> Chris Lamb, Deputy Commissioner, Public Service Commission, [Transcript of evidence](#), 2 May 2024, p 13.

<sup>386</sup> Kathrina Lo, [Transcript of evidence](#), 2 May 2024, p 12.

<sup>387</sup> Chris Lamb, [Transcript of evidence](#), 2 May 2024, p 13.

## Appendix One – Committee functions

The Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission is a joint statutory committee established by part 4A of the *Ombudsman Act 1974*.

The Committee also has functions conferred by the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, the *Law Enforcement Conduct Act 2016*, the *Crime Commission Act 2012*, the *Government Information (Information Commissioner) Act 2009*, the *Privacy and Personal Information Act 1998*, the *Inspector of Custodial Services Act 2012*, and the *Government Sector Employment Act 2013*.

The Committee has oversight of eight agencies:

- The NSW Ombudsman,
- The Child Death Review Team,
- The Law Enforcement Conduct Commission, and the Inspector of the Law Enforcement Conduct Commission,
- The NSW Crime Commission,
- The Information and Privacy Commission NSW,
- The Inspector of Custodial Services, and
- The NSW Public Service Commissioner.

The Committee's functions, as set out in the relevant Acts, are:

- To monitor and to review the exercise of agencies' statutory functions;
- To examine each annual and other report tabled by oversight agencies, and to report to Parliament on any matters raised in these reports;
- To report to Parliament on any matter related to agencies' exercise of their statutory functions that the Committee thinks should be drawn to the attention of Parliament;
- To report to Parliament on any changes that the Committee thinks would be helpful for the functions, structures and procedures of oversight agencies; and
- To inquire into and report on any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament.

The Committee does not investigate or reconsider agencies' decisions or recommendations related to specific complaints or investigations.



## Appendix Two – Witnesses

**02 May 2024**

**Parliament House, Jubilee Room, Sydney, NSW**

<b>Witness</b>	<b>Position and Organisation</b>
Michael Barnes	Commissioner, NSW Crime Commission
Michael Wilde	Chief Operating Officer, NSW Crime Commission
Kathrina Lo	Public Service Commissioner
Chris Lamb	Deputy Commissioner, Public Service Commission
Paul Miller PSM	NSW Ombudsman
Monica Wolf	Chief Deputy Ombudsman, NSW Ombudsman
Chris Clayton	Chief Operating Officer, NSW Ombudsman
Paul Miller PSM	Convenor, Child Death Review Team
Helen Wodak	Deputy Ombudsman, Monitoring and Review, Child Death Review Team
The Hon Peter Johnson SC	Chief Commissioner, Law Enforcement Conduct Commission
Anina Johnson	Commissioner, Law Enforcement Conduct Commission
Christina Anderson	Chief Executive Officer, Law Enforcement Conduct Commission
Bruce McClintock SC	Inspector of the Law Enforcement Conduct Commission
Fiona Rafter	Inspector of Custodial Services
Rachel McCallum	Information Commissioner and Chief Executive Officer, Information and Privacy Commission NSW
Sonia Minutillo	Acting Privacy Commissioner, Information and Privacy Commission NSW

## Appendix Three – Extracts from minutes

### MINUTES OF MEETING No. 2

10.30 am, 7 September 2023

Room 1254 and WebEx

#### Members present

Mr Phil Donato MP (Webex), Ms Sue Higginson MLC, the Hon. Rachel Merton MLC, the Hon. Cameron Murphy MLC, Mr Mark Tylor MP (Webex), and Mr Tri Vo MP (Webex).

#### Officers present

Sam Griffith, Kate McCorquodale, Ilana Chaffey, Mohini Mehta.

#### Apologies

Ms Karen McKeown MP.

#### 1. Confirmation of minutes

Resolved, on the motion of Mr Murphy, seconded Mr Taylor: That the minutes of the meeting of 3 August 2023 be confirmed.

2. \*\*\*

3. \*\*\*

4. \*\*\*

#### 5. 2023 review of annual and other reports of oversight agencies

Resolved on the motion of Mr Vo, seconded by Mr Murphy: That the Committee commence its 2023 review of the annual and other reports of oversight agencies, and invite representatives from oversight agencies to give evidence at a public hearing in February/March/April 2023 on a date to be determined.

6. \*\*\*

7. \*\*\*

8. \*\*\*

#### 9. Next meeting

The meeting adjourned at 10.43am until a time and date to be determined.

### MINUTES OF MEETING No. 3

9.03am, 24 November 2023

Room 814 and videoconference

**Members present**

Mr Phil Donato MP (Chair), the Hon. Cameron Murphy MLC (Deputy Chair), Ms Sue Higginson = MLC, Ms Karen McKeown MP, the Hon. Rachel Merton MLC, Mr Mark Taylor MP, Mr Tri Vo MP.

**Officers present**

Kieran Lewis, Kate McCorquodale, Ilana Chaffey, Mohini Mehta.

**1. Confirmation of minutes**

Resolved, on the motion of Mr Murphy, seconded by Mrs McKeown: That the minutes of the meeting of 7 September 2023 be confirmed.

**2. \*\*\***

**3. \*\*\***

**4. General business**

The Committee discussed potential dates for a public hearing to be held in February and March of 2024.

**5. \*\*\***

**6. Next meeting**

The Chair adjourned proceedings at 1.58pm until a date and time to be determined.

**MINUTES OF MEETING No. 4**

1.23pm, 8 February 2024

Room 814

**Members present:**

Mr Phil Donato MP (Chair), the Hon. Cameron Murphy MLC (Deputy Chair), Ms Sue Higginson MLC, Ms Karen McKeown MP, the Hon. Rachel Merton MLC, Mr Mark Taylor MP, and Mr Tri Vo MP.

**Officers present**

Rohan Tyler, Ashley Kim, Ilana Chaffey, Kate McCorquodale, and Mohini Mehta.

**1. Confirmation of minutes**

Resolved on the motion of Mr Taylor, seconded by Ms McKeown: That the minutes of the meeting of 24 November 2023 be confirmed.

2. \*\*\*

3. \*\*\*

4. \*\*\*

**5. 2023 review of the annual and other reports of oversight agencies**

The Committee discussed arrangements for the public hearing on Friday 22 March 2024.

6. \*\*\*

**7. Next meeting**

The meeting adjourned at 2.21pm until 22 March 2024.

**MINUTES OF MEETING No. 5**

9.15am, 2 May 2024

Jubilee Room and videoconference

**Members present**

The Hon Cameron Murphy MLC (Acting Chair), Ms Karen McKeown MP, the Hon. Rachel Merton MLC, Mr Mark Taylor MP (videoconference), and Mr Tri Vo MP.

**Officers present**

Kieran Lewis, Ashley Kim, Kate McCorquodale, Ilana Chaffey and Mohini Mehta.

**1. Confirmation of minutes**

Resolved, on the motion of Ms McKeown, seconded by Mr Taylor: That the minutes of the meeting of 8 February 2024 be confirmed.

2. \*\*\*

**3. 2023 review of the annual and other reports of oversight agencies**

**3.1. Media orders for public hearing**

Resolved, on the motion of Mr Taylor, seconded by Ms McKeown: That the Committee authorise the audio-visual recording photography and broadcasting of the public hearing on 2 May 2024, in accordance with the NSW Legislative Assembly's guidelines for the coverage of proceedings for committees administered by the NSW Legislative Assembly.

**3.2. Questions taken on notice and supplementary questions**

Resolved, on the motion of Ms McKeown: That the Committee adopt the following process in relation to supplementary questions:

- Members to email any proposed supplementary questions for witnesses to the secretariat by 4pm, Friday 3 May 2024;
- Secretariat to then circulate all proposed supplementary questions to Committee, with Members to lodge any objections to questions by 4pm, Monday 6 May 2024.
- That witnesses be requested to return answers to questions taken on notice and any supplementary questions within 7 business days of the date on which the questions are forwarded to witnesses.

The Acting Chair adjourned the meeting at 9.22am.

Mr Vo joined the meeting at 9.23am.

#### **4. Public hearing**

Witnesses were admitted. The Acting Chair opened the public hearing at 9.30am and made a short opening statement.

The following witnesses were admitted:

Michael Barnes, Commissioner, New South Wales Crime Commission, affirmed and examined.

Michael Wilde, Chief Operating Officer, New South Wales Crime Commission, affirmed and examined.

Evidence concluded and the witnesses withdrew.

The following witnesses were admitted:

Kathrina Lo, Commissioner, Public Service Commission, affirmed and examined.

Chris Lamb, Deputy Commissioner, Public Service Commission, affirmed and examined.

Evidence concluded and the witnesses withdrew.

The following witnesses were admitted:

Paul Miller PSM, Ombudsman, NSW Ombudsman, affirmed and examined.

Monica Wolf, Chief Deputy Ombudsman, NSW Ombudsman, affirmed and examined.

Chris Clayton, Chief Operating Officer, NSW Ombudsman, affirmed and examined.

Evidence concluded and the witnesses withdrew.

The following witnesses were admitted:

Paul Miller PSM, Convenor, Child Death Review Team, affirmed and examined.

Helen Wodak, Deputy Ombudsman, Monitoring and Review, Child Death Review Team, affirmed and examined.

Evidence concluded and the witnesses withdrew.

The following witnesses were admitted:

The Hon. Peter Johnson SC, Chief Commissioner, Law Enforcement Conduct Commission, sworn and examined.

Anina Johnson, Commissioner, Law Enforcement Conduct Commission, affirmed and examined.

Christina Anderson, Chief Executive Officer, Law Enforcement Conduct Commission, affirmed and examined.

Evidence concluded and the witnesses withdrew.

The following witness was admitted:

Bruce McClintock SC, Inspector, Inspector of the Law Enforcement Conduct Commission, affirmed and examined.

Evidence concluded and the witness withdrew.

The following witness was admitted:

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

Evidence concluded and the witness withdrew.

The following witnesses were admitted:

Rachel McCallum, Information Commissioner and Chief Executive Officer, Information and Privacy Commission NSW, affirmed and examined.

Sonia Minutillo, Acting Privacy Commissioner, Information and Privacy Commission NSW, sworn and examined.

Evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.26pm.

## 5. Deliberative meeting

The Acting Chair resumed the meeting at 4.31pm.

### 5.1. Publication of transcript

Resolved on the motion of Mr Taylor, seconded by Ms McKeown: That the

corrected transcripts of public evidence given today be authorised for publication and uploaded on the Committee's website.

6. \*\*\*

**7. Next meeting**

The meeting adjourned at 4.33pm until a date and time to be confirmed.

**MINUTES OF MEETING No. 6**

9.00am, 21 June 2024

Room 1043 and videoconference

**Members present**

Mr Donato (Chair), Mr Murphy (Deputy Chair), Ms Merton, Ms Higginson, Mr Vo, Ms McKeown.

**Officers present**

Kieran Lewis, Ashley Kim, Ilana Chaffey, Naomi Parkinson, Mohini Mehta.

**1. Confirmation of minutes**

The Chair thanked the Deputy Chair, Mr Murphy, for chairing the Committee hearing on 2 May 2024.

Resolved, on the motion of Mr Murphy, seconded by Ms Merton, that the minutes of the meeting of 2 May 2024 be confirmed.

2. \*\*\*

**3. 2023 review of the annual and other reports of oversight agencies**

**3.1. Publication of answers to questions taken on notice and supplementary questions**

The committee has received the following answers to questions taken on notice at the public hearing on 2 May 2024, and answers to supplementary questions, previously circulated to members.

Answers to questions on notice:

- NSW Ombudsman, dated 14 May 2024
- Inspector of Custodial Services, dated 17 May 2024
- Information and Privacy Commission NSW, dated 17 May 2024
- NSW Crime Commission, dated 21 May 2024

Answers to supplementary questions:

- Inspector of the Law Enforcement Conduct Commission, dated 31 May 2024
- Public Service Commission, dated 31 May 2024
- NSW Crime Commission, dated 31 May 2024
- Law Enforcement Conduct Commission, dated 31 May 2024
- NSW Ombudsman, dated 31 May 2024
- Child Death Review Team, dated 31 May 2024
- Inspector of Custodial Services, dated 31 May 2024
- Information and Privacy Commission, dated 31 May 2024

Resolved, on the motion of Ms Higginson, seconded by Mr Murphy: that the Committee accept the responses to the questions taken on notice at the public hearing on 2 May 2024 and supplementary questions, and publish them on its website with contact details redacted.

4. \*\*\*

5. \*\*\*

**6. Next meeting**

The meeting adjourned at 9.55am until 12 August 2024, at 2.00pm.

**UNCONFIRMED MINUTES OF MEETING No. 7**

2.00pm, 12 August 2024

Room 1136 and videoconference

**Members present**

Mr Donato (Chair), Mr Murphy (Deputy Chair), Ms Higginson, Ms Merton (in person), Ms McKeown, Mr Taylor, Mr Vo (by videoconference).

**Officers present**

Kieran Lewis, Ashley Kim, Ilana Chaffey, Naomi Parkinson, Mohini Mehta.

**1. Resolution permitting recording of video meeting**



Resolved, on the motion of Mr Vo, seconded by Mr Taylor: That the Committee agree to record the meeting for the purposes of committee staff preparing the minutes and report amendments, and that the recording be deleted when the report is tabled.

**2. Confirmation of minutes**

Resolved, on the motion of Mr Murphy, seconded by Ms Merton: That the minutes of the meeting of 21 June 2024 be confirmed.

**3. \*\*\***

**4. 2023 review of the annual and other reports of oversight agencies**

**4.1. Publication of answers to questions taken on notice**

The Committee considered the response to questions taken on notice the Law Enforcement Conduct Commission at the public hearing on 2 May 2024, dated 16 May 2024.

Resolved, on the motion of Mr Vo, seconded by Mr Taylor: That the Committee accept the response to questions taken on notice from the Law Enforcement Conduct Commission, dated 16 May 2024, and publish this on its website.

**4.2. Publication of answers to additional supplementary questions**

The Committee noted the email sent to the Law Enforcement Conduct Commission, dated 4 July 2024, with additional supplementary questions following the Commission's private briefing to the Committee on 21 June 2024.

The Committee considered the answers to additional supplementary questions received from the Chief Commissioner of the Law Enforcement Conduct Commission, dated 19 July 2024.

Resolved, on the motion of Mr Murphy, seconded by Ms Higginson: That the Committee accept the response to additional supplementary questions from the Law Enforcement Conduct Commission, dated 19 July 2024, and publish this on its website.

**4.3. Consideration of Chair's draft report**

Resolved, on the motion of Mr Taylor, seconded by Ms McKeown: That the Committee consider the Chair's draft report chapter by chapter.

Resolved, on the motion of Ms McKeown, seconded by Mr Taylor:

- That the draft report, including the cover page, be the report of the Committee and that it be signed by the Chair and presented to the House.
- That the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.

- That, once tabled, the report be posted on the Committee's webpage.

5. \*\*\*

6. \*\*\*

**7. Next Meeting**

The meeting adjourned at 2:18pm until a time and date to be determined.