

31 May 2024

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

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

#### Response from the Law Enforcement Conduct Commission to supplementary questions for witnesses

- 1. Can you provide more information on the specific challenges faced by the Commission in obtaining consent from police officers for the presence of a Commission officer during critical incident interviews? (Transcript, p30)**

Under s 114(3)(c) of the *Law Enforcement Conduct Commission Act 2016* (NSW) (LECC Act), the Commission can only live monitor the interview of a person if the interviewee and the Senior Critical Incident Investigator (SCII) consent to the Commission being present. To date, all police interviewees have refused their consent to the Commission live monitoring interviews.

The interviewee does not need to give a reason why they have refused to consent to the LECC's monitoring of interviews. However, the Commission has been told that consent is declined on legal advice provided to the interviewee from the Police Association of NSW representative.

Interviewees almost always also decline consent for the NSWPF Professional Standards Command (PSC) Review Officer to be present. The PSC Review Officer is a police officer who internally reviews the critical incident investigation.

This deprives the Commission and the PSC of the ability to raise concerns or clarify aspects of the evidence before the interview is finalised. If the interviewee and the SCII are required to consent to the monitoring of interviews, it is unlikely that the Commission will ever monitor an involved officer interview.

Under s 114(3)(b) of the LECC Act, the Commission can request access to Records of Interview (ROI) and transcripts of those interviews. The ROIs are audio only interviews because it is practice for the police to cover the video camera with a piece of cardboard, so the officer's image and body language are not shown.

In recent days, and for the first time, the Commission was refused access to transcripts of ROIs in a critical incident investigation upon public interest immunity grounds. This issue is related to Court of Appeal proceedings in which judgment is reserved.

- a. What is the average time delay between the occurrence of a critical incident and the Commission's receipt of an interview transcript?**

The audio recording of the ROIs are generally provided to the Commission within

days of the interview. It usually takes about 8 weeks for the police transcripts of the interviews to become available.

**b. If any, what specific steps would the Commission recommend the government take to improve this situation?**

The Commission would like the option of observing involved officer interviews where the Commission considers that appropriate. The Commission can attend interviews without consent under Part 7 of the LECC Act pursuant to s 101. A similar scheme could be adopted for Part 8 of the Act.

**2. Can you provide a breakdown of the types of circumstances in which consorting laws are being used, and any trends or patterns identified? (Transcript, p31)**

The Commission's review of the consorting laws covered the period of February 2019 to February 2022 ('the review period'). The Commission's access to NSW Police Force data regarding the use of consorting laws only extends to data in the review period. More recent information about the use of consorting laws would be held and can be requested from the NSW Police Force.

Use of the Consorting laws 2019-2022

The NSW Police Force's use of the consorting laws fell into 2 categories:

- **targeted use:** NSW Police Officers specifically use consorting laws to target/disrupt a particular group of people e.g. Outlaw Motorcycle Gang or serious organised criminal activity.
- **incidental use:** For example, NSW Police Officers observe 2 or more people acting suspiciously and use stop and search powers to search them and move them on from the area. A consorting warning issued in this instance is seen as incidental as the reason for stopping the people was for a search.

The Commission has included examples and case studies of the NSW Police Force's use of consorting laws in our report, *Review of the operation of amendments to the consorting law under Part 3A Division 7 of the Crimes Act 1900*.

Trends Observed

During the review period, the NSW Police Force issued 16,480 consorting warnings. Most of these warnings (67%) were issued by officers attached to specialist Commands. In total, 4,257 people were subject to the consorting law over the 3 year-period. Aboriginal and Torres Strait Islander people accounted for 42% of the 4,257 people either given or named in a consorting warning.<sup>1</sup>

When looking at the use of the consorting law by general duty officers, the proportion of people subject to the consorting law who identified as Aboriginal and/or Torres Strait Islander was 46%.<sup>2</sup> Of uses by specialist commands, 28% were on Aboriginal and Torres Strait Islander people.<sup>3</sup>

---

<sup>1</sup> The Law Enforcement Conduct Commission, *Review of the operation of amendments to the consorting law under Part 3A Division 7 of the Crimes Act 1900*, February 2023, p 39.

<sup>2</sup> As above.

<sup>3</sup> As above 40.

Aboriginal and Torres Strait Islander people accounted for over 50% of those subject to the consorting law in the Northern and Western Regions.<sup>4</sup> Over half of the people targeted by the Public Transport and Public Safety Command under the consorting law also identified as Aboriginal and/or Torres Strait Islander.<sup>5</sup>

During the Commission's review period, 48 young people aged between 14 and 18 were given a consorting warning and 11 were named in a consorting warning. Of the 48 young people given a consorting warning, 12 identified as being an Aboriginal and/or Torres Strait Islander person.<sup>6</sup> No young people under the age of 14 were warned for consorting.

### **3. What are the specific challenges and improvement opportunities identified by the Commission in the investigation and handling of domestic violence incidents involving police officers as alleged perpetrators?**

In June 2023, the Commission tabled a report called *Review of NSW Police Force responses to domestic and family violence incidents (Review into domestic and family violence)*. This report reviewed 470 finalised complaints linked or related to domestic and family violence incidents between July 2017 and July 2021.

That Review pointed out specific challenges that the NSW Police Force faces when investigating officers involved in domestic and family violence:<sup>7</sup>

- NSW Police Force current policies and procedures do not set out arrangements for the close supervision of officers who remain in the NSW Police Force after having been convicted of domestic violence offences or who are the subject of an ADVO. The Commission suggests that NSW Police Force policies should consider this issue.
- The NSW Police Force does not have a specific policy for dealing with officers who are involved in domestic and family violence.
- Perception by victims and others that officers investigating officers who are known to them or work in close proximity to them will not conduct impartial investigations. This perception can lead to a loss of community trust, especially in cases where complaints were declined at triage, or investigations resulted in 'not sustained' findings. This lack of trust may stop some victims from coming forward and reporting domestic and family violence incidents to the NSW Police Force.

#### **Improvement opportunities:**

The NSW Police Force *Domestic and Family Violence Standard Operating Procedures 2018* that were in force during the Commission's review stated that the NSW Police Force must record information relating to the service firearms of involved officers on the ADVO application and the Risk Assessment. The Risk Assessment should be a comprehensive record of how a local Command manages the risks associated with involved officers' access to their service firearms and

---

<sup>4</sup> As above 40.

<sup>5</sup> As above 40.

<sup>6</sup> As above 23.

<sup>7</sup> The Law Enforcement Conduct Commission *Review of NSW Police Force responses to family and domestic violence incidents*, June 2023.

appointments. However, our review showed that Risk Assessments were either not completed at all, or the NSW Police Force completed them many months after it had served an ADVO on the involved officers.

Our report notes that failure to seize firearms at a domestic and family violence incident poses a significant risk to victims, the community and to the NSW Police Force. It is vital that the NSW Police Force has systems in place that allow for quick and easy access to records that provide detailed information regarding the location of involved officers firearms (both personal and service issued).

The Commission recommended (Recommendation 3) that 'the NSW Police Force require all Risk Assessments to be maintained on a centralised database.' Our report stated that risk assessments are an important step in showing that police have evaluated the risks associated.

In line with recommendations previously made by the Auditor General, the Commission also recommended that where practicable, the NSW Police Force should manage domestic violence allegations against a serving police officer outside of the Command of the involved officer.

**a. Have you seen any measures or strategies implemented by the NSW Police Force to address and improve these investigations, based on your recommendations?**

Yes. With respect to Recommendation 3, the Professional Standards Command of the NSW Police Force provided a direction on 24 January 2024 that all Risks Assessments 'are to be maintained on the relevant IAPro record'.

For the majority of our recommendations (4, 5, 7, 8, 9, 10, 12, 13) the NSW Police Force advised us that they will consider these recommendations as part of its Domestic and Family Violence Reform project.

For recommendations that included amendments to the current Domestic and Family Violence Standard Operating Procedures, the NSWPF advised us that the Domestic and Family Violence Reform Project team will consider the Commission's recommendations regarding the Domestic and Family Violence Standard Operating Procedures.

**4. How many investigations into allegations of domestic and family violence where the alleged perpetrator was a police officer were investigated by a command other than the alleged perpetrator's command?**

Of the matters considered as part of our *Review into domestic and family violence*, 70 out of 222 (32%) of complaint investigations involved police officers. Of those 70 complaint investigations, there were 60 involved officers. That is because 10 involved officers were the subject of 2 complaint investigations.

In 16 out of 70 matters (23%), officers from a different command investigated officers accused of domestic and family violence.

**a. Of these, how many were:**

**i. referred to the Commission for investigation?**

Of the 16 matters investigated by a different Command, one was referred to the Commission for investigation.

The Commission's investigation into that matter has now concluded and preparation of a report is underway.

**ii. overseen by the Commission?**

Of the remaining 15 matters that were investigated by a different Command, 13 investigations were overseen by the Commission.

**iii. resulted in a criminal conviction?**

Of the matters reviewed in the Commission's *Review of NSW Police Force responses to family and domestic violence incidents*, there were 17 involved officers charged with one or more offences:

9 officers were convicted or found guilty of the following offences (noting some officers were convicted or found guilty of more than one offence):

- assault occasioning actual bodily harm (3 involved officers)
- stalk/intimidate (3 involved officers)
- contravene prohibited/restriction in AVO (domestic) (2 involved officers)
- common assault (4 involved officers)
- intentionally choke another person without consent (1 involved officer)
- use carriage service to menace/harass/offend (2 involved officers).

**Updated statistics on the investigation of domestic and family violence incidents involving police**

The Commission's *Review of family and domestic violence* covered the timeframe from July 2017 to July 2021.

From May 2022, the Commission created a new category on its database for complaints relating to domestic and family violence. This gives the Commission better data on these complaints, although the data is still imperfect as it is based on information obtained from complainants and in readily accessible police databases.

From May 2022 to 31 December 2023, there were 118 complaints where it was alleged that a NSW police officer was the perpetrator of domestic or family violence.

- 95 (80%) of the 118 were investigated by the NSWPF
- 23 (20%) of the 118 were declined for investigation by the NSWPF.

Almost all complaints relating to alleged domestic violence by a NSW police officer are overseen by the Commission as they meet the definition of '[notifiable misconduct](#)'.<sup>8</sup>

The Commission oversees the handling of complaints at two points in time.

First, the Commission makes an initial assessment of police handling of complaints made directly to the police. If a complaint is made directly to the Commission and we decide to refer that complaint to the NSW Police, the Commission will also assess the police response. In assessing a complaint, the Commission can require the NSW Police to investigate a complaint if the Police have declined to do so. The Commission can also require the Police to consider additional issues as part of their investigation.

Secondly, if the Police have conducted a misconduct investigation into a domestic or family violence complaint, the finalised misconduct investigation will be overseen by the Commission. If the Commission is dissatisfied, it can request further information or further investigation.

The Commission does not have readily available information about criminal convictions of officers between May 2022 and 31 December 2023. To obtain this information would require the Commission to cross reference databases held by the Commission, the Police and the Department of Communities and Justice. This information would be better obtained from the NSW Police Force.

## **5. Can the Commission elaborate on the potential opportunities and risks associated with the use of artificial intelligence in its investigations?**

The opportunities and risks of AI in an anti-corruption context, have been covered by the [ICAC in their submission](#) to the NSW Legislative Council Inquiry into Artificial Intelligence in NSW.<sup>9</sup> As outlined by the ICAC, the Commission's use of AI could include the efficient assessment of high volumes of data collected through our investigative functions; improve our understanding of complainant's concerns and expedite our response; and be a tool for our new strategic intelligence function.

### **a. What specific measures is the Commission considering to ensure the confidentiality and security of data when using artificial intelligence?**

The Commission will be following the [Digital NSW Assurance Framework](#) when it uses AI-enabled products.<sup>10</sup>

As the [NSW Police Force](#)<sup>11</sup> and NSW Crime Commission also move to use AI in their work, the Commission will have a role in scrutinising whether AI is being used by these agencies in a way that is lawful and appropriate.

---

<sup>8</sup> The kinds of misconduct matters required to be notified to the Commission by the NSW Police Force are set out in an agreement between the Commission and Commissioner of Police entered into under s 14 LECC Act <https://www.lecc.nsw.gov.au/pdf-files/section-14-guidelines-between-the-lecc-and-nswpf.pdf>.

<sup>9</sup> <https://www.parliament.nsw.gov.au/lcdocs/submissions/82616/0036%20NSW%20Independent%20Commission%20Against%20Corruption.pdf>

<sup>10</sup> <https://www.digital.nsw.gov.au/policy/artificial-intelligence/nsw-artificial-intelligence-assurance-framework>

<sup>11</sup> [https://www.police.nsw.gov.au/about\\_us/research\\_with\\_nsw\\_police\\_force/research\\_themes/artificial\\_intelligence](https://www.police.nsw.gov.au/about_us/research_with_nsw_police_force/research_themes/artificial_intelligence).

**6. When will the report into Operation Harrisdale be tabled.**

The Commission is unable to give a firm date for the tabling of its report in Operation Harrisdale, however preparation of the report is well advanced.