

Committee on the Ombudsman, Law Enforcement Conduct Commission and the Crime Commission – 2023 review of annual and other reports of oversight bodies

Response to questions taken on notice on 2 May 2024

Background

1. Most requests received by the Commission for integrity checks come from the NSW Police Force. Integrity check requests also come from a variety of other sources including State and Territory Police, the Australian Federal Police, ICAC, and other law enforcement and investigative agencies (as defined under s 161(5) of the *Law Enforcement Conduct Commission Act 2016* (the LECC Act)).
2. Requests for integrity checks are usually received when an officer is being considered for promotion, transfer, or appointment to a position within the NSW Police Force or, in the case of interstate police services, where a current or former NSW Police Force officer is seeking to join the Police Service of that other state or territory.
3. The NSW Police Force is required by legislation to request integrity checks on all appointments/promotions to the rank of Sergeant or above.¹ Normally, requests are made to the Commission at the end of the NSW Police Force selection process, for example, when a particular officer has been recommended for promotion to a particular position.
4. Integrity checks may also be requested by the NSW Police Force for other reasons, such as when a police officer has been nominated for a medal, or where the NSW Police Force is proposing to appoint a non-executive administrative employee.² Whilst the Commission will usually respond to such requests, there is no legislative requirement upon it to do so.
5. The underlying rationale of the Commission's integrity check response is, of course, to advise the NSW Police Force (or other requesting body) of any relevant information in the possession of the Commission which might impact upon an assessment of the integrity of an officer nominated for promotion or appointment, and hence upon that officer's potential suitability for that promotion or appointment.
6. Having said that, however, it is not the Commission's role to make an assessment or express an opinion in relation to whether a given officer should, or should not,

¹ The LECC is required to furnish an integrity report in respect of an individual proposed for appointment to the role of: The Commissioner of Police (s 24(6) of the *Police Act 1990*); NSW Police Force senior executive (s 34(2) of the *Police Act 1990*); Non-executive Police Officers being put forward for promotion to the rank of Sergeant or above (s 71(3) and s 80(4) of the *Police Act 1990*).

² Section 81B(3) of the *Police Act 1990*.

be appointed or promoted. The decision whether to appoint or promote an officer is solely that of (nominally) the Commissioner of Police or relevant authority. Accordingly, the Commission's integrity check responses are not intended to express opinions, but merely to convey information which may be relevant to the decision-making process of the requesting body.

7. In completing an integrity check the Commission is not required to undertake a special investigation or inquiry³, and not all information held by the Commission in relation to a given officer is included in an integrity report. In this respect, the following caveat is attached to all integrity reports provided by the Commission to the NSW Police Force:
 - The Commission has not undertaken any special investigation or inquiry.
 - This report does not include information that the NSW Police Force already has access to.
8. Therefore, an integrity check response furnished by the Commission, includes material that contains an adverse reference to the officer concerned which is not already known to the NSW Police Force. This could include, but is not limited to:
 - An as yet un-referred⁴ complaint made to the Commission about the officer concerned.
 - An adverse mention of an officer in a record of interview.
 - An adverse mention of an officer in a Commission investigation.

Increase in number of integrity checks performed on NSW Police Force Officers

The Acting Chair asked: ... *The annual report says that there was a 17 per cent increase to 576. Is there a particular reason for that or is that just a post-COVID spike?*

As noted in our Annual Report, during the 2022-23 reporting period we conducted 576 integrity checks on NSW Police Force officers. This represented a 17% increase from the previous reporting period.

As noted above, normally requests are made to the Commission at the end of the NSW Police Force selection process, for example, when a particular officer has been recommended for promotion to a particular position. Therefore, the number of integrity checks performed by the Commission on NSW Police Officers for any reporting period is highly dependent on the volume of recruitment, promotions, and transfers being undertaken by the NSW Police Force.

³ *Police Act 1990*, ss 24(7), 34(2), 71(3).

⁴ That is, a complaint made directly to the Commission which has not yet been assessed and/or has not yet been referred on to the NSW Police Force.

Although speculative, the increase may be explained by:

- The introduction of the NSW Police Force's new police promotions process.⁵
- The number of Officers retiring or leaving the NSW Police Force and the creation of new roles, which may result in an increased number of vacancies and thus promotional appointments.

It may also be impacted by changes to the way in which the Commission is receiving requests from the NSW Police Force. In recent times, the Commission has started receiving requests for integrity checks for senior constable promotions to the rank of sergeant in large batches (at times 50-60 officers at one time). Therefore, the timing of receipt of those large batches can impact the figures of a given reporting period.

How many raised concerns?

The Acting chair asked: *Are you able to give us information on things such as how many of those 576 raised concerns and some other deeper data in relation to those checks?*

The Acting Chair said: *If you could let me know how many raised concerns and how many relate to current police as opposed to former police, that would be useful data.*

Of the 576 integrity checks conducted on NSW Police Force officers in the 2022-23 reporting period, the Commission provided 'nil adverse' responses on all but 18 occasions.

Of those 18 responses:

- Five noted that a complaint involving the officer was recently referred to the NSW Police Force.
- Five noted that the officer was an involved officer in a previous Commission Investigation.
- Three noted that the officer was involved in an active complaint being managed by the police.
- Two noted that the officer was an involved officer in an ongoing critical incident.
- One noted that the Commission was in the process of assessing complaints received about the officer.
- One advised that the officer was the subject of a current Commission Investigation.
- One was to another agency in which we suggested that if they had not already made enquiries with the NSW Police Force, they do so.

⁵ NSW Police Force Annual Report 2022-23, page 4.

How many related to current and former NSW Police Force Officers?

Of the 576 integrity checks conducted on NSW Police Force officers in the 2022-23 reporting period, 567 were conducted at the request for the NSW Police Force and thus related to current members of the NSW Police Force.

Nine integrity checks were undertaken at the request of other law enforcement and integrity agencies, of those six related to current NSW Police Force Officers and three related to former NSW Police Force Officers.

Is there any follow up?

The Acting Chair asked: *Is there any follow-up? If you flag a concern, does your involvement end at that point so you really don't know whether they've gone ahead and hired the officer or not?*

The Commission does not currently follow up with the law enforcement agency following the furnishing of an integrity report. This is because the decision of whether to appoint or promote an officer is solely that of the relevant law enforcement or integrity agency. Our role is to furnish information we hold, that they would otherwise not be aware of, which may be relevant to the decision-making process of the requesting body.