

**Office of the Chief Commissioner**

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24 April 2025

Mr Phillip Donato, MP  
Chair, Committee on the Ombudsman,  
the Law Enforcement Conduct Commission and the  
Crime Commission

By email: [ombolecc@parliament.nsw.gov.au](mailto:ombolecc@parliament.nsw.gov.au)

Dear Mr Donato

**Response to supplementary questions received on 11 April 2025**

Please find enclosed the Commission's responses to the supplementary questions received from the Committee on 11 April 2025.

The Commission is comfortable with the responses being published on the Committee's website if the Committee resolved to do so.

Yours sincerely



The Hon Peter Johnson SC  
Chief Commissioner

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

**2024 review of annual and other reports of oversight bodies**

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

**1. What changes are required to the Law Enforcement Conduct Commission Act 2016 (the Act) to ensure that the Commission has access to the NSW Police Force (NSWPF) documents it requires to fulfil its legislative functions? (Transcript, p 18)**

**a. Is inadequate access to NSWPF documents mainly causing issues for oversight of police critical incident investigations?**

The Commission's ability to fulfil its legislative functions is hampered because there is not a clear requirement on the NSWPF to provide the Commission with any documents requested by the Commission which relate to the Commission's functions.

Inadequate access to documents is not limited to the Commission's critical incident investigation monitoring function.

The Commission's difficulties accessing information held by the NSWPF fall into 3 different categories:

1. The Commission has several statutory mechanisms for accessing NSWPF information. All have limitations or prerequisites. The NSWPF narrowly construe the Commission's existing statutory powers to obtain information. For example:
  - a. When overseeing the police investigation of complaints, the Commission may become aware that police have declined to take action on the basis of legal advice. To understand whether this decision is a reasonable one, the Commission needs to see the legal advice. The NSWPF will not provide the Commission with a copy of legal advice under Part 7 of the Act on the basis that there is no specific obligation to provide legal professional privileged material to the Commission under that Part. Another example of the NSWPF declining to provide the Commission with legal advice has been raised in the Commission's report *Bail compliance checks in NSW – Final Report* (April 2025) at page 6 (footnote 8), page 27.
  - b. The NSWPF have refused to provide the Commission with material which has been requested as part of the Commission's monitoring of a critical incident investigation. The NSWPF have argued on several occasions that the information requested is not a document 'obtained or prepared by police officers for the purposes of the investigation' and so does not need to be provided under s 114(3)(d) of the Act.

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For example, the Commission has been refused access to the Ballistics Review which was prompted by the death of Krista Kach at Stockton on 14 September 2023, on the basis that it is not a document prepared for the purposes of the critical incident investigation. This is despite the fact that the review was clearly linked to the death of Ms Kach (see announcement of Acting Commissioner Hudson on or about 19 September 2023 that the use of bean bag rounds by the NSW Police Force would be suspended whilst a review was undertaken). The Ballistics Review is understood to be the report of the review announced in September 2023.

- c. The NSWPF require that Notices to Produce issued as part of a Commission investigation specify the nature of the investigation to satisfy themselves that the investigation is valid. This causes delays in the provision of information, leads to arguments about the validity of the Commission's request and can result in the disclosure of the Commission's investigation to the NSWPF where secrecy is essential.
2. The Commission has broad powers to obtain information if it is investigating a matter under Part 6 of the LECC Act. However, before the Commission starts a Part 6 investigation, it must be satisfied that an officer or the NSWPF may be engaged in serious misconduct or serious maladministration. The Commission cannot proactively scrutinise the exercise of new powers (such as the knife wandng powers), until the Commission has information to suggest that the NSWPF might be engaged in serious maladministration. This restriction impacts on the Commission's capacity to provide timely suggestions to the NSWPF and reassure the public about the way in which new powers are being exercised.
  3. The Commission has a general function of considering and making recommendations about policies or procedures which might lead to agency maladministration by the NSWPF under s 27 of the Act. However, there are 2 substantial restrictions on the effective exercise of this function.
    - a. First, the NSWPF do not have to provide the Commission with information under s 27. The NSWPF can and do refuse to give the Commission access to documents and information. Even when information is usually available, there are delays while the Commission repeatedly asks the NSWPF to provide the information requested. Many of the requests for information relate to topics reported on in the media. The Commission expects that the public would be surprised to learn that the police oversight body has no right to obtain information that is being publicly discussed in this way. For example:
      - i. The Commission requested information about the Review into the storage and movement of firearms conducted after the deaths of Jesse Baird and Luke Davies. It took many months for the Commission to be provided with that review. The Commission continues to seek access to further information from the NSWPF about practical storage arrangements, so that it can properly scrutinise the new arrangements.

- ii. More recently, the Commission has been seeking access to the terms of reference for the review into NSWPF culture being undertaken by Kristen Hilton. The information was first requested by the Commission in October 2024 and has not yet been received.
- b. Secondly, information provided under s 27 must be de-identified, so as not to breach the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*, because s 27(7) specifically provides that the functions in s 27 are 'administrative and educative functions'. The ICAC has prevention and education functions (s 13(1)(d), (f), (h) and (i) *Independent Commission Against Corruption Act 1988* (NSW) (ICAC Act) but there is no equivalent to s 27(7) in the ICAC Act. The Police Integrity Commission also had a corruption prevention function (s 14) but there was no equivalent to s 27(7) in the PIC Act.

The 'administrative and educative' exception to the law enforcement carve-out have been described as relating to the internal administrative activities of an agency, or its corporate functions: *AEC v Commissioner of Police, NSW Police Force* [2013] NSWADTAP 30.

The Commission's prevention functions in s 27 are a core part of its function as an integrity and oversight agency: s 3(d) of the Act. They are carried out under a specific statutory mandate. They are one of the three pillars of the Commission's work – along with complaints oversight and independent investigations. In our view, but for the inclusion of s 27(7), the Commission's prevention functions would not be considered to be an 'administrative and educative function' of the Commission.

De-identification is time consuming for the NSWPF and limits the research work of the Commission. To properly understand how NSWPF/NSW Crime Commission training, programs and procedures might lead to officer misconduct or agency maladministration, the Commission needs to do more than analyse de-identified data. Our most effective work is a combination of qualitative and quantitative research. It is the richness of an identified data set, used in combination with a range of police information, that allows the LECC to generate tailored and impactful recommendations.

In contrast, under s 124(2) of the LECC Act, the Inspector of the LECC 'is entitled to full access to the records of the Commission and to take or have copies made of any of them.' This clear statutory right avoids any argument about the Inspector's right to access Commission documents. Neither the Commission nor the Inspector spend time analysing the scope of the Inspector's powers. The Commission simply provides the Inspector with whatever documents or information he requests.

The limits on the Commission's right of access to documents are noticeably different from other integrity agencies, such as the NSW Auditor-General.

Finally, it is worth noting that the Commission's right to access NSW Crime Commission documents are in effectively the same terms as those which apply to the NSWPF. The

Commission does not have any current concerns about its access to documents held by the NSW Crime Commission.

The Commission's request for legislative changes to improve its capacity to fulfil its functions has been raised with Government.

**2. What changes would be required to the Act to enable the Commission to take a more proactive approach to overseeing use of police powers, such as the new warranting legislation? (Transcript, p 19)**

The Commission should be provided with a broad power of access to any police documents, equivalent to s 124(2) of the Act.

In addition, the restriction on the use of information by the Commission imposed by s 27(7) of the Act should also be removed.

The elimination of technical arguments about the Commission's right to access information will improve the efficiency and timeliness of Commission decision making. This in turn improves outcomes for law enforcement agencies and enhances opportunities for collaboration with the Commission.

Further, the Commission could be given specific power to oversight any significant new police powers which are granted.

**3. What has been your experience with the Charter of Independence for NSW integrity agencies? Do you think its provisions are adequate?**

**a. Has the Charter had any impact on the way your office engages with Cabinet Office, Premier's Department, and Treasury staff?**

To date, the Commission does not have concerns about the Charter of Independence for NSW integrity agencies.

The Charter has not impacted the way in which the Commission engages with The Cabinet Office or the Premier's Department. The Commission has a positive relationship with Treasury. Funding bids continue to be robustly scrutinised by Treasury, but so far, have been ultimately endorsed.

**4. Why is it taking the Commission significantly longer to assess complaints compared to previous reporting periods? How are you addressing this? (Annual Report 2023-24, p 22).**

During the 2023-2024 reporting period the Commission took an average of 54 days to assess a complaint from time of receipt to assessment decision. In the 2022-2023 reporting period, that same process took 38 days.

Generally speaking, the volume of assessments completed by the Commission has been increasing since the Commission commenced operations (5,095 in 21/22, 4,703 in 22/23, 5,755 in 23/24). As the Commission's community engagement strategy takes effect, the Commission expects that the volume of complaints will continue to grow.

The volume of material to be assessed has also increased. For example, with the increasing use and availability of body worn video, the Commission has more video material to watch as part of its assessment process (104% increase from 22/23 to 23/24).<sup>1</sup>

The Commission has continued to seek and obtain budget increases for increased staffing in the Assessments Team during this period. However, the Commission also recognised that a process review was needed. This review began in January 2024 and led to the creation of an Intake Team to provide improved telephone support to complainants, a high level triage of incoming complaints and a streamlined decision making process.

The new Assessments process began in September 2024. Opportunities to review and amend that process will occur, or have occurred, at 3 months, 6 months and 12 months from commencement.

The current timeframe from receipt to closure of the complaint has been reduced to 40 days.

**5. In its annual report, the Commission notes that, in addition to other benefits, it is drawing on community engagement to help 'prioritise limited resources'. (Annual Report 2023-24, p 65).**

**a. Can you elaborate on how community engagement can help the Commission prioritise its work?**

The Commission is conscious of the fact that we are responsible for building public trust in law enforcement agencies across New South Wales and amongst the diverse communities of New South Wales.

Some members of the community know the work of the Commission and bring their concerns to us through the complaints process or through existing stakeholder engagement. However, there are other sectors of the community who we believe are unaware of the Commission's role. Our regional engagement has demonstrated that some community sectors were unaware of the Commission's work. This serves to emphasise the value of community engagement. In addition, we believe that some community sectors may be uncomfortable with a formal complaints process or be concerned about the consequences of complaining about law enforcement.

If we relied only on complaints and existing stakeholder engagement to determine our Commission priorities, we may miss important issues of concern and misdirect our resources.

By lifting the profile of the Commission and making a deliberate effort to engage across all sectors of the community, the Commission will improve its understanding of the

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<sup>1</sup> The Commission endorses the use of body worn video: see report tabled March 2025 *Review of NSW Police Force body-worn video policy and practice*. Review of body-worn video may increase the time needed to assess a complaint but may also answer the complainant's allegations and so avoid the need for investigation of a complaint. Alternatively, review of body-worn video footage is likely to significantly reduce the timeframe of an investigation.

community's experiences with law enforcement agencies. We can then ensure that our work priorities align with concerns raised by the whole community of NSW.

**6. What steps is the Commission taking to address some of its lowest scoring areas in the PMES?**

**a. Have any of the steps taken in 2023 led to better results in the 2024 survey?**

In 2023, the Commission's lowest favourable scores were in the areas of:

- communication and change management
- customer service
- decision making and accountability
- recruitment
- feedback and performance management

In 2024, the scores in these areas were:

- communication and change management -9
- customer service +9
- decision making and accountability -3
- recruitment - unchanged
- feedback and performance management -5

The Commission recognises that communication, change management, accountable decision making and effective feedback are key to improving its PMES scores and staff satisfaction. The Commission is also conscious that in 2024, staff raised concerns about wellbeing, teamwork and collaboration in the PMES survey.

The Commission is taking steps to improve the capacity of our leadership group to provide effective feedback on performance and to clearly convey the purpose and value of the work that we do.

All managers have undertaken training in having courageous conversations. Several of our managers are undertaking leadership training provided through the Institute of Public Administration Australia to improve their people management skills.

We have engaged an external consultant group Bendelta to work with the whole Commission to build a stronger, more collaborative culture, where staff have the courage to speak up, bring new ideas to the table, engage in knowledge and skills sharing, and there is a shared feeling that we are one organisation.

**7. Can you elaborate on the work of the strategic intelligence team? How do you plan to assess the risks or effectiveness of their use of AI tools? (Annual Report 2023-24, p 18)**

The Strategic Intelligence Team is a whole of agency resource and reports on current and emerging issues to inform strategic decision making and provide support to all areas of the Commission by identifying, collecting and analysing relevant data to produce



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intelligence products to enhance the understanding of systemic, emerging and enduring corruption and police misconduct issues and risks.

The team is a new function for the Commission, which started in August 2024 and has produced several strategic intelligence products on emerging issues. The products have assisted the Commission in:

- planning for upcoming community engagement events
- refining a First Nations community engagement strategy
- assessing whether issues identified for investigation are part of broader systemic issues.

The LECC Strategic Intelligence Team have also begun an ongoing collection and detection methodology on coercive control. Coercive control being a new criminal offence will be subject of legislative reviews and reforms. Therefore, the project's purpose is to:

- review the investigation of Police perpetrators
- identify the rates of Police perpetration of coercive control
- develop opportunities to work with public and private sector partners to detect and disrupt coercive control
- identify issues related to at risk victims and vulnerable populations
- identify themes evident in Police coercive control investigations that may require recommendations for reform.

It is proposed that the project will run over a period of 2 years, drawing on information and resources from all parts of the Commission.

There are opportunities to use AI across the Commission, not just in the area of strategic intelligence. The Commission has conducted working groups with key staff which has informed a modest Treasury bid to fund the implementation of AI technologies over the next 2 financial years. If approved, implementation will be conducted with high attention to potential security risks associated with AI access to Commission information.

The Commission is in the process of finalising its AI policy, which expressly includes a requirement to complete a risk matrix, incorporating an analysis of the risks and benefits of any AI tool being used by the Commission.