Budget Estimates 2025-2026

Portfolio Committee No 1 – Premier and Finance

Hearing – Wednesday 20 August 2025

Law Enforcement Conduct Commission – Answers to Questions on Notice

Question 1: Transcript – pages 51-52:

The Hon Mark Latham: … To the Commissioner of the LECC, if I could, thanks, what's the LECC policy on non-publication orders?
…
PETER JOHNSON: — public servants who wrote documents, other persons who were mentioned in passing and members of staff who were not the subject of questioning but who were mentioned in passing. The persons who were mentioned in the end, and certainly in our press release of 7 August, which was the day after the report was provided to the Minister and the Commissioner of Police, were Commissioner Webb — she was named in our press release, as was the substance of the matters which were considered in the report. But other persons were not named in our press release, and it noted that there was a non-publication order that was made. The commission takes the view — and you are wrong in asserting that non-publication orders would only arise if there was some operational information: police practice or matters of that sort. Non-publication orders can be made for a range of reasons. In this, because of the restricted nature of the investigation — effectively a paper investigation — the view was taken that the names of incidental persons should not be published. That's what was —

The Hon. MARK LATHAM: Can we get a copy of your policy on notice? Because it's very hard — I rang up LECC and no-one came back to me — to get a copy of your policy.

PETER JOHNSON: Certainly the guidelines which exist —

The Hon. MARK LATHAM: Where are they?

PETER JOHNSON: — we will provide.

Answer:

A copy of the Commission's *Guidelines on the use of pseudonyms and non-publication orders in Commission reports* published in November 2023 (Pseudonym Guidelines) is attached. The Pseudonym Guidelines are also available on the Commission's website.

As the Pseudonyms Guidelines make clear, they apply to reports provided to Parliament under s 132 *Law Enforcement Conduct Commission Act 2016* (NSW) (LECC Act), as reports under s 135 of the LECC Act are not publicly available and so an individual's identity is not generally anonymised.

The Commission may report on an investigation under either:

- s 132 LECC Act (and provide the report to the Presiding Officer of each House of Parliament, which is usually accompanied by a recommendation that the report be made publicly available)

- s 135 LECC Act (and provide the report to the Minister for Police and Counter-terrorism, the Commissioner of Police and the complainant).

The Commission is only required to prepare a report if it has conducted a public examination: s 132(2) LECC Act. The Commission's decision about whether to prepare a report, and whether that report should be prepared under s 132 or s 135 LECC Act is made on a case-by-case basis. The factors set out in paragraph 9 of the Pseudonym Guidelines, may be relevant to that that decision.

Question 2: Transcript – page 53:

Ms ABIGAIL BOYD: … One of the disability royal commission recommendations identified that police did not necessarily have the skills required, sometimes, in dealing with people with disability and that was leading to obstacles to getting justice. One of the recommendations the police haven't taken on board is that they have specialist disability liaison officers. Given that this was identified as an area of concern, though, has the LECC been doing any work in relation to those issues? Are you seeing an increase in complaints from people with disability around treatment from police?

PETER JOHNSON: I'd have to take that on notice as a specific question, and I'll seek some more specific information to respond to it. Generally, we are very anxious to extend the capacity of the commission to receive complaints from people who do not have English as a first language or who have other disadvantages which affect them. I cannot at this stage indicate to you a particular aspect that affects persons with disability, but we are conscious of matters of this sort. I will seek to answer that in a fuller way on notice, if I can.

Answer:

The Commission's online complaint form allows a complainant to disclose if they have a disability. The NSW Police Force collect the same information in their online complaint form. Any information about a person's disability informs the Commission's assessment process.

Although information about a person's disability is collected by the Commission, it is not currently available in a form that allows the Commission to track the number of complaints made by people with disability. The Commission has a project on foot to explore improvements to its data analytical capabilities and this is one item under consideration.

Most of the Commission's work on people with a disability interacting with the NSW Police Force revolves around people with a mental health impairment or mental illness. In addition, some people interacting with police in this context will not self-identify as having a disability.

The Commission has a current project which involves an analysis of mental health-related policing interactions, using information stored in police systems. While the project is not co-designed, it is informed by consultation with consumers and peak organisations. The Commission will prepare a public report sharing its analysis and outcomes.

The Commission also regularly investigates allegations of police misconduct in the context of police dealings with people with disability, most frequently people who identify as having a mental health impairment or a cognitive impairment. A recent example is Operation Eacham (June 2025), where the Commission considered the way in which an Aboriginal man with mental health and other impairments was treated in custody. The Commission drew on the work of Professor Eileen Baldry and others in concluding that because of the man's race, the custody manager treated him as if he was deliberately engaging in poor behaviour, rather than seeing his self-harm as being caused by his mental health impairment.

Question 3: Transcript page 58:

The Hon. MARK LATHAM: What then did you do about the situation whereby clearly Ray Hadley has got information off Karen Webb before Julie Singleton or the fiancé, Ash, know about confirmation of the death of Dawn Singleton and Hadley has conveyed that to John Singleton? What finding did you make against Karen Webb for her breach of police guidelines?

PETER JOHNSON: What I'll indicate in relation to this topic is that I'll take it on notice and consider giving you something further in writing dealing with this topic, which was not the subject of an investigation leading to a report.

Answer:

As the Commission said in its media statement made on 27 May 2025, upon receipt of a complaint the Commission conducted a preliminary investigation pursuant to s 52 of the LECC Act into an allegation that on 13 April 2024 NSW Police Commissioner, Karen Webb, breached the NSW Police Force Media Policy by releasing the confidential details of a deceased person to Ray Hadley of 2GB Radio, prior to the deceased's next of kin being notified.

The Commission undertook a range of investigative strategies as part of the investigation.

The investigation concluded in March 2025 and the Commission was satisfied that there was no misconduct by Commissioner Webb.

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Guidelines on the use of pseudonyms and non-publication orders in Commission reports

Purpose of the Guidelines

1. Since the establishment of the Commission in 2017, a significant number of reports, both public and private, have been issued by the Commission.

2. For reports prepared under s 132 of the *Law Enforcement Conduct Commission Act 2016* (NSW) (LECC Act), it has been the Commission's practice to make pseudonym orders in respect of police officers, civilian witnesses, and sometimes locations, in order to protect the identity of individuals. Reports under s 135 of the LECC Act are not publicly available and an individual's identity is not generally anonymised, unless a pseudonym is needed for the protection of a witness.

3. These Guidelines provide a framework the Commission can use to consider whether police officers and civilians should be named or anonymised in public reports prepared under ss 132 and 138 of the LECC Act.

4. In preparing these Guidelines, the Commission sought submissions from a range of stakeholders. The submissions that were received and an analysis of them are set in Annexure 1.

5. The Commission has also examined the issue of the appropriate use of pseudonyms in its report in Operation Venti.[1]

The Commission's approach to identifying information

6. The decision to name a police officer, police administrative staff or NSW Crime Commission officers (collectively known as officers) or a civilian will depend on the circumstances of the case.

[1] Operation Venti Report pursuant to s 132 *Law Enforcement Conduct Commission Act 2016 (July 2023)*.

7. Generally speaking, the Commission will:

- use pseudonyms for officers and civilians in its reports, including where the officer is subject of an adverse finding
- identify a police officer's rank and Area Command (but not a specific police station)
- consider identifying administrative police staff or NSW Crime Commission staff by position, if naming the position would not disclose the identity of the person
- not identify anyone who is not an officer. Care will be taken when describing a civilian's personal details, including any relevant location, to ensure that their identity is not disclosed. This approach will be taken even where the person is the subject of an adverse finding, unless there are compelling reasons to identify the person
- where the complainant is an officer, they should not be identified.

8. If the Commission considers that naming an officer may be appropriate in a public report of the Commission, the Commission will seek submissions from that officer before making a decision.

9. The factors that the Commission may take into account in considering whether to name officers in a public report include:

   a. Whether naming the officer might reasonably be expected to enable other persons who might have been mistreated by the officer to come forward and report mistreatment.

   b. Whether naming of the officer might reasonably be expected to enable other persons to make a contribution that would assist the Commission in the performance of its functions.

   c. The nature and seriousness of the conduct in question.

d. The level of seniority of the officer – the greater their prominence and leadership role, the more compelling the need for the name to be disclosed in order to maintain public confidence.

e. Whether there is evidence that makes it likely that disclosing the name of the officer will result in a real risk of disproportionate distress or harm either to the person or their family.

f. Whether information accessible from any other open access sources enables identification of the officer.

g. Whether there is a need to dispel speculation or rumour in the public domain as to the name of the officer who has been associated with an investigation.

h. Whether the officer is or is likely to become the subject of criminal proceedings or an inquest.

i. Whether the officer has given evidence in respect of the subject investigation in another public forum.

j. Whether the officer has been granted anonymity by a court in relation to a matter the subject of the investigation.

k. Whether disclosure of the name of the officer may lead to members of the public being able to identify the victim of a sexual offence, or a young person, or a protected disclosure.

l. Parity of treatment between the officers involved in the matters being investigated.

m. The number of persons involved and whether the conduct is systemic.

n. Whether disclosure may have the potential to identify a covert operative, police informant or inmate.

o. Any written representations of the officer.

Annexure 1 – Submissions on the Commission's power to make pseudonym orders and the content of those orders

Background

1. The fundamental rule of the common law is that the administration of justice must take place in open court.[2] However, in NSW specific powers are conferred by a variety of Acts which enable prohibition of the publication of particular aspects of proceedings.[3]

2. The principle of open justice, which applies to court proceedings, does not apply to Commission examinations.[4] The Commission is an investigative body, not a court exercising judicial functions.

3. In deciding whether to conduct an examination of a witness in public as distinct from in private, s 63(5) of the LECC Act sets out several factors the Commission may take into consideration. However, the Act is silent regarding the Commission's use of pseudonyms. Nevertheless, those statutory factors are of assistance to the Commission in determining the applicability of pseudonym orders.

4. A pseudonym order has been defined as a type of suppression order that achieves its objectives in an indirect way by requiring a person to be identified in a proceeding only by reference to a pseudonym.[5]

5. Part 14 of the LECC Act, Secrecy and Confidentiality, provides the Commission with powers concerning the disclosure and use of examination material. In particular, section 176(1) provides:

   (1) **Direction regarding use and disclosure** – An examining Commissioner may direct that examination material –

[2] *John Fairfax & Sons Pty Ltd v Police Tribunal of NSW (1986)* 5 NSWLR 465 at 476.
[3] S 7 *Court Suppression and Non-Publication Orders Act 2010* NSW; s 17 *Witness Protection Act 1995.*
[4] *Fairfax Publications v Ryde Local Court (2005)* 62 NSWLR 512; [2005] NSWCA 101 at [60]; *Hogan v Hinch* (2001) 243 CLR 506; [2011] HCA 4 at [20] – [27]; *AB v Judicial Commission of NSW (Conduct Division)* [2018] NSWCA 264 at [46]; Operation Mantus – Public Decision Concerning Public and Private Examinations in Aid of the Investigation (3 March 2023, paragraph 10).
[5] *PQR v Secretary, Department of Justice and Regulation* (2017) 53 VR 45; [2017] VSC 13 at [67].

(a) Must not be used or disclosed, or
(b) May only be used by or disclosed to specified persons in specified ways or on specified conditions.

Subsection (4) defines 'examination material' to include:

(c) Any information that might enable a person who has given or is about to give evidence before an examining Commissioner to be identified or located.

6. Section 176 of the LECC Act provides the Commission with the power to make non – publication orders in respect of a person appearing before the Commission for the purpose of giving evidence, and this clearly extends to the identity of that person.

7. The making of a pseudonym order is to be construed as a logical extension of this power. It is simply a mechanism to identify different persons in the report without using names. The making of a pseudonym order is incidental to the power to conduct private examinations and to make orders under s 176 and 177 and to issue a public report under s 132 LECC Act.

8. In its report in Operation Venti[6], the Commission determined to use pseudonyms in a s 132 report and explained the reasons that decision explained in Appendix 2 to that Report. Those reasons assist in a complete understanding of the Commission's approach.

Submissions sought and received

9. On 28 April 2023, the Commission wrote to the NSW Commissioner of Police, Police Association of NSW, and legal offices which participate in the LECC Legal Stakeholders Group (Redfern Legal Centre, Legal Aid NSW, Aboriginal Legal Service (NSW/ACT) and the Public Interest Advocacy Centre), informing them that the Commission proposed developing guidelines concerning the naming of persons and the use of pseudonyms and non – publication orders in public reports under s 132 of the LECC Act.[7] The Commission invited submissions on a number of topics:

[6] Operation Venti Report pursuant to s 132 *Law Enforcement Conduct Commission Act 2016 (July 2023)*.
[7] Annexure 2 is the letter dated 28 April 2023 to the Commissioner of Police which is provided as an example of this correspondence.

1. Are there available powers under the LECC Act concerning the making of non-publication orders and pseudonym orders?

2. Does the practice of other Commissions and Courts assist an understanding of the Commission's powers and the circumstances in which they may be exercised?

3. Are there any factors or classes of factors which may be of particular relevance to the exercise of discretion to make a non-publication order and a pseudonym order?

As can be seen in Annexure 2, the letter seeking submissions expanded on each of these questions.

10. In response, the Commission received submissions on behalf of the Commissioner of Police, the Police Association of NSW, Legal Aid NSW and the Redfern Legal Centre. The Aboriginal Legal Service (NSW/ACT) and the Public Interest Advocacy Centre each advised that they were unable to provide submissions due to time and resourcing constraints. This position was understandable given the demands of those offices.

11. In response to **Question 1**, each submission stated that the Commission had power to make non-publication orders and pseudonym orders. The submission for the Police Association of NSW stated:

> 30. The powers in Part 14 of the LECC Act (and in particular s 176) is/are sufficiently broad as to empower what may generally be characterised as non-publication orders of examination material or information otherwise received during an investigation, including as to the name of a person who has provided information to the investigation: on any view a "publication" (in physical or electronic form) of examination material, including the name of a person who has provided information to the investigation, is a "use" and/or "disclosure" of that information.
>
> 31. It is a necessary incident of that power that the Commission be able to require persons who provide information to the LECC as part of an investigation, including an investigation by way of examination, to be referred to by way of pseudonyms or codenames during the investigation (including any examination), and in any final report.

12. The submission for Legal Aid NSW stated:

> We note the provisions of Part 14 of the LECC Act ("secrecy and confidentiality"). Section 176, in particular, provides a range of powers to enable the Commission to fairly and appropriately balance the rights of involved parties with the achievement of the Commission's statutory purposes. We consider those provisions to provide ample basis for the making of non-publication orders and pseudonym orders with regard to Commission investigations.
>
> We also note the Commission's obligations under sections 132 and 133 of the Act, and suggest that non-publication and pseudonym orders apply equally well to these reports by the Commission.

13. The submissions on behalf of the Redfern Legal Centre supported the submissions of Legal Aid NSW.

14. The submission for the Commissioner of Police on Question 1 did not depart from the approach in these submissions.

15. In response to **Question 2**, the submissions referred to pertinent differences between the Commission and other Commissions and Courts.

16. In response to **Question 3**, the submission on behalf of Legal Aid NSW stated:

> Our primary submission is that police officers who are the subject of adverse findings should be afforded the use of a pseudonym, but have their rank and command correctly identified. We consider that this would strike an appropriate balance between an individual's right to procedural fairness and the importance of public scrutiny of law enforcement agencies. We specifically suggest that the police command be identified, so as to avoid the procedural fairness implications of naming the specific station (especially in smaller locations), while better fulfilling the statutory purpose of exposing serious misconduct.
>
> In accordance with the Act, and as a matter of completeness, we agree that complainant officers should not be identified. To do so would be to

prejudice the free flow of potential misconduct information to the New South Wales Police Force and the LECC.

We also recognise the possibility that once related proceedings and processes are finalised, there may be merit in republishing final reports without pseudonyms or by varying non-publication orders.

17. The submission on behalf of the Police Association of NSW stated:

> 37. Whilst not intrinsically necessary when reporting on investigations involving public examination/s, there should be a general procedure and preference in favour of using pseudonyms in published reports of the LECC. Again, the Objects of the LECC Act can generally be readily achieved by appropriate findings and recommendations being recorded in an anonymised investigation summary. A non-exhaustive list of factors that may be relevant in deciding whether to use pseudonym orders in a report under s 132 of the LECC Act may include:
>
> a. Whether the disclosure of an officer's name and personal details (such as description or relevant locations) could potentially result in undue prejudice to their reputation, or a disproportionate level of distress or harm to the officer or a third party (such as the officer's family).
>
> b. Whether the officer's name has already become public in association with the subject matter of investigation via other open access sources (for example, a published judgment or general media reporting unconnected with the LECC investigation). In this connection it would be important to consider whether the information is realistically and readily accessible to a member of the public (for example, by way of a simple internet search), rather than by persistence or via specialised means.
>
> c. Whether there is a need to dispel speculation or rumour in the public domain as to the name of officers who have been associated with an investigation.
>
> d. Whether the subject of the investigation is, or is likely to become, the subject of proceedings before a Court or coroner (and the potential for the public disclosure of examination material,

including the name of any person, to prejudice or interfere with the administration of justice in that case).

e. Whether the officer has given evidence in respect of the subject of the investigation in another public forum (for example, a coronial inquest or criminal trial). In this connection it would be important to consider whether the information is realistically and readily accessible to a member of the public (for example, by way of a simple internet search), rather than by persistence or via specialised means.

f. Whether the officer has been granted (or will be applying for) anonymity by a Court, in relation to a matter the subject of investigation.

g. Whether disclosure may have the potential to identify a covert operative, police informant, or inmate.

h. Whether the identification would potentially lead to members of the public identifying the victim of a sexual offence, or a child or young person, or a protected disclosure.

i. Whether naming the officer might reasonably be expected to enable other persons who might be able to make a contribution to any ongoing investigation of the relevant officer or event, to come forward.

18. The submissions on behalf of the Commissioner of Police addressed a range of issues extending beyond the use of pseudonyms but stated with respect to the naming of police officers in public reports of the Commission:

- A public report that names officers should include the Commission's justification, including reasons for its decision that any potential reputational damage was warranted

- The guidelines should include guidance on how the Commission will assess undue prejudice to a person's reputation and the public interest in preserving the privacy of the persons concerned.

Considerations could include welfare issues such as:

- the conduct does not warrant termination, so there is limited public benefit in unnecessarily damaging the reputation of officers who will remain within the organisation

- damage to reputation generally causes collateral damage to an officer's family, including children. Media coverage often focuses on the officer and their family, rather than the investigation findings and lessons learnt. The privacy of other family members is often invaded as part of the background story. This is not in the public interest

- The impact of the *Work Health and Safety Act 2011* on the Commission's decision making.

19. Accordingly, there was broad agreement in the submissions that:

- The Commission has the power to make non-publication orders and pseudonym orders.

- In the case of public reports, the identity of police officers should usually be protected by the use of pseudonyms, including circumstances where the officer is the subject of an adverse finding by the Commission.

Annexure 2 – Letter to Commissioner of Police inviting submissions on the use of pseudonyms and non-publication orders in Commission reports

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Office of the Chief Commissioner

52145/1012

28 April 2023

Ms Karen Webb APM
Commissioner of Police
NSW Police Force

By email: [redacted]

Dear Commissioner

Use of Pseudonyms and Non-Publication Orders Concerning Persons in Reports of the Law Enforcement Conduct Commission

The Commission is developing guidelines concerning the naming of persons and the use of pseudonyms and non-publication orders in public investigation reports under s 132 *Law Enforcement Conduct Commission Act 2016* (LECC Act).

Background

The Commission has been undertaking investigations in a number of matters where private examinations or a combination of private and public examinations have been held.

Before reports in those matters are published, the persons affected directly by a report will be given an opportunity to make submissions concerning the naming of that person in the report. It is expected that submissions in those matters will touch upon the particular circumstances of the case and the affected persons, as well as general submissions concerning the power to make non-publication and pseudonym orders and the circumstances in which such orders should be made.

However, the Commission is aware that there are broader issues involving statutory construction, and the legal basis for such powers and their exercise, as well as identification of general factors relevant to the exercise of any available discretion.

These issues are likely to be of interest to the Commissioner of Police, the Police Association of NSW and legal offices which participate in the Commission's Lawyers' Users Group (Redfern Legal Centre, Legal Aid NSW, Aboriginal Legal Service (NSW/ACT) and the Public Interest Advocacy Centre).

A request for submissions

The Commission invites your organisation to make submissions on the topic of the Commission's use of pseudonyms in public reports.

It is understood that submissions would be general in nature and not relate to a specific factual scenario. However, there are a number of issues upon which submissions could be made which will assist the Commission in the development of guidelines.

Submissions on the following topics would assist the Commission in considering appropriate guidelines.

1. Are there available powers under the LECC Act concerning the making of non-publication orders and pseudonym orders?

Sections 62 and 63 LECC Act concern the use of public and private examinations. The Commission examined these provisions recently in the Public and Confidential Decisions Concerning Public and Private Examinations in Aid of an Investigation in Operation Mantus (3 March 2023). The Confidential Decision has now been made public in redacted form and both the Public and Confidential Decisions are posted on the Commission's website. Paragraph 9 of the Confidential Decision refers to the use of pseudonym orders.

Part 14 of the LECC Act (ss175-178) is headed "*Secrecy and Confidentiality*". Section 176 makes express provision for a direction that examination material not be used or disclosed.

What express or implied powers are available to the Commission to make non-publication and pseudonym orders?

2. Does the practice of other Commissions and Courts assist an understanding of the Commission's powers and the circumstances in which they may be exercised?

It is the common practice of the NSW Independent Commission Against Corruption to name persons in its investigation reports including witnesses and affected persons against whom adverse findings have been made.

It is the usual practice of the Coroner's Court to name witnesses in coronial findings (including police officers) in inquests arising from a death as a result of police operations under s 23 *Coroners Act 2009*.

Is there any assistance provided by the practice of investigatory bodies in other jurisdictions where public reports are made after investigation of complaints against police officers (such as the Victorian Independent Broad-based Anti-Corruption Commission, the Queensland Crime and Corruption Commission and the Independent Police Conduct Authority of New Zealand)?

Are there any general features of Commission investigations (which involve police officers) which call for a different approach to be taken concerning the naming of police officers in public investigation reports of the Commission?

3. Are there any factors or classes of factors which may be of particular relevance to the exercise of discretion to make a non-publication order and a pseudonym order?

Although this question is posed without any factual context, there may be factors (or classes of factors) which arise from the context of Commission investigations concerning police officers.

For example,

- people under the age of 18 would not ordinarily be named in legal proceedings.
- victims or alleged victims of sexual assaults, would not ordinarily be named in legal proceedings.

These topics are not intended to create exhaustive categories for submissions. The Commission would be assisted by submissions on other relevant aspects of the topics under consideration.

Timeframe for submissions

The Commission would be grateful if submissions could be furnished by email to [redacted] by Friday, 19 May 2023.

Yours sincerely

The Hon Peter Johnson SC
Chief Commissioner

Cc: [redacted]