

Submission
No 44

**INQUIRY INTO HIGH LEVEL OF FIRST NATIONS
PEOPLE IN CUSTODY AND OVERSIGHT AND REVIEW OF
DEATHS IN CUSTODY**

Organisation: Law Enforcement Conduct Commission

Date Received: 20 August 2020

The Law Enforcement Conduct Commission (LECC) submission.

In response to the Select Committee's Terms of Reference:

"Inquiry into the high level of First Nations people in custody and oversight and review of deaths in custody"

(a) The unacceptably high level of First Nations people in custody in New South Wales.

The high proportion of First Nations people in custody is an acknowledged societal problem.

Resolution of that issue is not within the jurisdiction or expertise of the LECC and the LECC makes no submission on this issue.

(b) The suitability of the oversight bodies tasked with inquiries into deaths in custody in New South Wales, with reference to the Inspector of Custodial Services, the NSW Ombudsman, the Independent Commission Against Corruption, Corrective Services professional standards, the NSW Coroner and any other oversight body that could undertake such oversight.

Deaths in custody can occur when a First Nations person is in the custody of the New South Wales Police Force (NSWPF) or the Department of Corrective Services (Corrective Services).

Internal investigations by the NSWPF into critical incidents are already subject to oversight by the LECC. The death of a First Nations person in the custody of the NSWPF is therefore already within the jurisdiction of the LECC.

The LECC submits that it is a suitable oversight body to be tasked with inquiries into the deaths of First Nations persons in custody in NSW involving investigation of both the NSWPF and Corrective Services.

A critical incident involving a death in custody or which results in a serious injury in custody is best dealt with by a single organisation which has the capacity to deal with an investigation in a timely fashion, independently and consistently.

The Parliamentary Joint Committee with reference to the LECC is aware of the investigative resources of the LECC. It is not appropriate to outline those resources in this submission.

Oversight of critical incidents by the LECC provides visible independence. It could also provide prompt resolution except for the effect of the provision in the LECC Act 2016 that requires investigations by the LECC to be delayed until the issue of the final police report. The police report is invariably delayed until the outcome of a Coronial Inquest and unfortunately, outcomes from the Coroners Court are much delayed.

(c) The oversight functions performed by various State bodies in relation to reviewing all deaths in custody, any overlaps in the functions and the funding of those bodies.

The current overlap in the function and funding of bodies dealing with these tragic events erodes confidence in the efficiency and independence of any inquiry and the reliability of outcomes for those family members awaiting results and the general public.

Any internal investigation without independent oversight will necessarily give rise to an inference of bias and delay exacerbates all of the available negatives arising from these tragedies.

(d) How those functions should be undertaken and what structures are appropriate.

The Professional Standards Command (PSC) of the NSWPF investigates any misconduct identified in a critical incident and will make sustained findings if any such misconduct is established. The LECC oversees that investigation.

However, if the LECC should disagree with a not sustained finding made by the PSC arising out of a critical incident, it is prevented from investigating that incident until after the final police report is published, which inevitably occurs after the coroner's findings, with consequent delay.

These functions can be undertaken by the LECC by the addition of jurisdiction to oversee the internal investigations by Corrective Services and by the removal of the impediment to LECC investigating critical incidents until after the NSWPF and Corrective Services have completed their investigation.

LECC has the capacity to perform such work and it is compatible with its existing jurisdiction.

Whilst no detail has been provided concerning investigative resources, this information is available to the relevant Parliamentary Joint Committee.

A Commissioner of the LECC would be available in person to provide the answer to any questions the Select Committee might have.

Date: