Submission No 1

INQUIRY INTO THE UNAUTHORISED DISCLOSURE OF PRIVILEGED INFORMATION BY THE HONOURABLE MARK LATHAM MLC

Organisation: Law Enforcement Conduct Commission

Date Received: 19 September 2025

LECC
Law Enforcement
Conduct Commission

Phone: 02 9321 6700 Fax: 02 9321 6799
Level 3, 111 Elizabeth Street, Sydney NSW 2000
Postal address: GPO Box 3880, Sydney NSW 2001
www.lecc.nsw.gov.au

Office of the Chief Commissioner

49789/65

19 September 2025

The Hon Stephen Lawrence MLC
Chair
NSW Legislative Council Privileges Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: *privilege@parliament.nsw.gov.au*

Dear Chair

Inquiry into the unauthorised disclosure of privileged information by the Honourable Mark Latham MLC

Thank you for your invitation to provide a submission to the Privileges Committee (the Committee), in particular seeking information about the reasons why the Commission made a non-publication order over its Operation Askern report.

I have included some information to assist the Committee to understand the statutory context in which the Commission makes its reports.

Types of Commission Reports

The statutory scheme in Part 11 of the *Law Enforcement Conduct Commission Act 2016* (NSW) (LECC Act) provides for:

(a) reports under section 132 into matters which are subject to Part 6 investigations – s 132 reports are public reports to Parliament which are tabled usually with a recommendation under s142(2) to the Presiding Officers that the report be made public immediately;

(b) special reports to Parliament under s 138 on any matter arising in connection with the exercise of the Commission's functions – they are tabled with a recommendation under s 142(2) to the Presiding Officer that the report be made public immediately;

(c) reports under s 135 following Part 6 investigations – these are reports to the Minister for Police and Counter-terrorism (the Minister), the Commissioner of Police (the Commissioner), the complainant and the affected police officer (s 135(3) and (4)) – s 135 reports are not tabled in Parliament and are in the nature of private reports which, given their restricted circulation, are frequently accompanied by a Commission non-publication order concerning their contents;

(d) reports under s 134 relating to the Commission's Part 7 oversight function – s 134 reports are seldom used private reports and are to be provided to the Minister, the Commissioner, the complainant and the affected police officer (s 134(3) and (4)) – s 134 reports are not tabled in Parliament and are in the nature of private reports which, given their restricted circulation, are frequently accompanied by a Commission non-publication order.

Reports under s 132 or s 138 of the LECC Act are the most common reports issued by the Commission and these reports are public.

Reports under s 135 are less common and are not made public. Pseudonyms are not usually used in s 135 reports.

From time to time the Commission will provide a private report under s 135 Act to the Minister and Commissioner, and later table a public report under s 132 LECC Act. For example, this was done in Operation Tambre, when a private report (April 2022) was provided before referring the brief to the Director of Public Prosecutions and a public report tabled (August 2024) after criminal proceedings had concluded.

Reasons why the Commission might choose to report publicly or privately

The Commission has published *Guidelines on the use of pseudonyms and non-publication orders in Commission reports* (published in November 2023) (Pseudonyms Guidelines) which deal with the question of whether or not to name the involved officers in a s 132 report. A copy is attached.

The Guidelines are also a useful summary of the public interest factors for and against making a report under s 132 or s 135 LECC Act. They are:

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.

The Operation Askern s 135 Report

On 27 September 2023 the Commission received an anonymous complaint in relation to the purchase of 'Commissioner's Gin' and the failure by Commissioner Webb to declare a conflict of interest in respect to this purchase. The Commission provided its report in Operation Askern to the Minister and Commissioner under s 135(3) LECC Act on 6 August 2024.

In order to analyse whether a conflict of interest existed, the Commission's report documented Commissioner Webb's relationships with the supplier of 'Commissioner's Gin'. This was important to understand the nature of that relationship, but meant canvassing matters that were personal to the Commissioner, her family and the supplier.

At the time that the report was provided to the Commissioner, Hope Estate had not been publicly named as the supplier of the 'Commissioner's Gin' and the Commission had not had contact with Mr Hope. The report also identified public servants, of all grades, who had provided advice and administrative support during the purchase process. These public servants were not necessarily aware that their conduct had been examined by the Commission.

The day after the report had been provided, on 7 August 2024, there was a Legislative Council call for papers in relation to the purchase of the 'Commissioner's Gin' and media reporting of the allegations which were the subject of the Commission's investigation. At that point, the Commission decided to issue a media release outlining the critical findings of its report. A copy of the Commission's media release of 7 August 2024 is attached.

The identity of the supplier of the Commissioner's Gin became public later in August and, as you are aware, documents were also produced to the Legislative Council by the NSW Police Force, with certain claims of privilege made.

The reasons why the Commission considered that a private report was appropriate on 6 August 2024 were:

- The allegations were not in the public domain, so that there was no need to dispel rumour or innuendo.

- A private report allowed for the full exposure of the nature of the Commissioner's personal relationships and to articulate the Commission's reasoning on the issue of conflict of interest.

- Apart from Commissioner Webb (who made submissions in response to an invitation to do so for procedural fairness reasons) the Commission did not need to alert those named in the report (who were not already aware of the Commission's investigation) of the content of the report, which expedited provision of the report.

- The Commission did not make any findings of serious misconduct on the part of Commissioner Webb or any other police officer, and concluded that the purchase was in accordance with the NSW Police Force policies and procedures.

Respecting the confidentiality of Commission reports made under s 135 LECC Act

It is important that the Commission can, from time to time, report on its investigations formally but confidentially to the Minister and the Commissioner. Parliament has made express provision for private reports in s 135 LECC Act. This is the statutory avenue for the Commission to communicate with the Minister on matters which may (amongst other things) concern the conduct of the Commissioner where the Minister has an interest in the ongoing fitness of the Commissioner to serve. Providing a report under s 135 of the LECC Act allows the Commission to include more information about its investigation, and to do so more quickly.

There are a range of reasons why the Commission may decide that it is appropriate to report under s 135 only. Not all of these reasons involve human sources or high-level confidentiality. In any event, the reasons why the report should be kept confidential may not be spelt out explicitly, given the expectation that the report will not be made public as provided for by Parliament in enacting s 135 LECC Act.

Having said that, the issues with preserving the confidentiality of the Operation Askern report have prompted the Commission to revisit the information included in some s 135 reports, because it can no longer be confident that those reports will remain confidential. This has an impact on the Commission's capacity to raise issues of concern in a full and frank manner with the Minister and Commissioner.

Apart from any other action that the Committee sees fit to take, the Commission requests that the Committee emphasise to all Members of Parliament the great importance of strict compliance with the terms on which Members of Parliament have access to classes of documents (such as s 135 LECC Act reports) which are not otherwise intended to be made public. The important capacity of Members of Parliament to view such material, in the public interest, carries with it the corresponding responsibility, also in the public interest, of dealing with the material strictly in accordance with the applicable rules of Parliament.

I trust this information assists the Committee. Please let me know if further information is required.

In response to the inquiry in your letter, the Commission does not request that this submission be kept confidential and has no issue with publication of the submission by the Committee.

Yours sincerely

The Hon Peter Johnson SC
Chief Commissioner