

Guidelines issued pursuant to the s 14 Agreement between the Law Enforcement Conduct Commission and the Commissioner of Police

1. For the purposes of Part 7 of the *Law Enforcement Conduct Commission Act 2016*, all misconduct matters may be subject to oversight by the Commission. The Commission will, however, primarily focus its oversight on misconduct determined to be 'notifiable misconduct'.
2. Notifiable misconduct matters
 - (1) Misconduct matters required to be notified to the Commission (LECC) (notifiable misconduct matters) are:
 - a) criminal conduct except those matters as outlined in paragraph 6,
 - b) corrupt conduct,
 - c) failure by a police officer or administrative employee to report police officer misconduct in accordance with s 211F of the *Police Act 1990*,
 - d) conduct which might warrant the following action under the *Police Act 1990*:
 - (i) s 181D removal from the NSWPF, or
 - (ii) s 173 reviewable action,
 - e) conduct of an administrative employee which might warrant the following action under the *Government Sector Employment Act 2013*:
 - (i) termination of employment without giving the employee an opportunity to resign,
 - (ii) termination of employment after giving the employee an opportunity to resign,
 - (iii) imposition of a fine on the employee (which may be deducted from the remuneration payable to the employee)
 - (iv) reduction in the remuneration payable to the employee, or
 - (v) reduction in the classification or grade of the employee,
 - f) allegations against the Commissioner of Police or a Deputy Commissioner that are (or could be) officer misconduct,
 - g) allegations of improper association,

- h) whether in a judgment or otherwise in court, comments by a judicial officer critical of the conduct of the prosecution, the adequacy of the investigation, or the integrity of a police officer,
- i) the failure to report comments by a judicial officer critical of the conduct of the prosecution, the adequacy of the investigation, or the integrity of a police officer.
- j) detrimental action or reprisal (including any possible payback complaint) against a police officer or other person making a protected disclosure or allegation about an officer,
- k) any unauthorised use, misuse or failure to comply with safe keeping of police firearms; or any unauthorised use of any other police appointments, namely Tasers, OC Spray, batons or handcuffs,
- l) any failure to comply with policies and procedures in regards to the Declarable Associations Policy, Conflicts of Interest Policy and Procedure and Secondary Employment Policy,
- m) any falsifying of official records including but not limiting to COPS, motor vehicle diary and notebook/duty book entries,
- n) allegations of failure to investigate, or inadequate investigation of:
 - (i) domestic violence;
 - (ii) sexual offences; or,
 - (iii) serious indictable crimes
- o) allegations of misconduct arising from the exercise of police powers under the *Law Enforcement (Powers and Responsibilities) Act 2002*, including search, arrest and detention powers,
- p) unauthorised release of confidential police information or unauthorised or improper disclosure of information,
- q) conduct which is or might be serious maladministration by an officer or the NSWPF,
- r) Letters of Demand, Statements of Claim, originating process or other pleadings or particulars where the State of New South Wales, Commissioner of Police, or a police officer or administrative employee is named as a defendant or proposed defendant within the body of the

document, and that alleges, expressly or impliedly, an act or omission capable of constituting serious misconduct on the part of any police officer, or administrative or temporary employee of the NSWPF.

- s) misconduct matters identified or that arise as a result of a critical incident investigation

3. **Dealing with serious misconduct and serious maladministration matters**

(1) The factors that the LECC may take into account in deciding whether to investigate serious misconduct or serious maladministration include:

- a) the apparent level of criminality or systemic nature of the conduct and the LECC's responsibility to direct the LECC's attention to serious matters affecting the integrity of the NSWPF,
- b) the primary responsibility of the NSWPF to investigate and prevent officer misconduct, officer maladministration and agency maladministration within the NSWPF,
- c) the availability of the LECC or any other public authority or official with the responsibility, jurisdiction or power to investigate conduct of the kind concerned,
- d) if the conduct is related to conduct that the LECC is already investigating, the relationship to any other on-going investigation of the LECC,
- e) the complexity of the matter,
- f) the number and seniority of police officers or administrative employees involved.

4. **Dealing with misconduct matters generally**

(1) A decision by the LECC to investigate a misconduct matter will only be made if, in the opinion of the LECC, the conduct concerned:

- a) is (or could be) serious misconduct,
- b) is (or could be) serious officer maladministration,
- c) is (or could be) agency maladministration.
- d) involves the Commissioner or a Deputy Commissioner, or

- (2) Where it is considered by the LECC that, if the misconduct is established, the likely outcome will be disciplinary action other than dismissal or reduction in rank or pay, the LECC will refer the matter to the Commissioner of Police for investigation unless the circumstances are exceptional or it is in the public interest that it should conduct the investigation.
- (3) The LECC will investigate conduct that is referred to it by both Houses of Parliament.
- (4) At such times as may be specified by the LECC, the Commissioner of Police is to inform the LECC of the outcome of all such management action taken by the Commissioner of Police and providing the name, rank and station of the officer.

5. Notice of misconduct matters to be given by the LECC

- (1) This clause concerns misconduct matters other than misconduct matters already recorded on the misconduct matters information system.
- (2) As soon as practicable after receiving or becoming aware of a misconduct matter concerning a police officer or administrative employee, the LECC is to give the Commissioner of Police notice of the misconduct matter with such information as to indicate the nature of the alleged misconduct.
- (3) The LECC may withhold notice if it is of the opinion that it is in the public interest to do so.

6. Misconduct matters that need not be investigated by the LECC or the NSWPF

- (1) Misconduct matters that need not be investigated by the LECC or NSWPF are matters that involve conduct or behaviour by police officers or administrative employees that is inconsistent with the standards and expectations set out in the *Police Act 1990*, Police Regulations 2015, or the NSW Police Force Code of Conduct and Ethics or constitutes a disciplinary infringement, but does not involve serious performance, conduct, integrity or competence issues and can be dealt with under the provisions of Part 9 of the *Police Act 1990*. These include but are not limited to:
 - (a) allegations that an officer was not ill while claiming sick leave,
 - (b) allegations of minor misuse of police assets,
 - (c) complaints about the issuing of traffic and parking infringement notices

that do not raise any allegations involving or implying a lack of integrity,

- (d) traffic offences, unless the offence raises other notifiable issues concerning a lack of integrity,
 - (e) allegations of minor misuse of email, such as forwarding emails with non-work related content and documents that take advantage of an officer's membership of the NSWPF but does not otherwise amount to misconduct,
 - (f) allegations of embellishments in police promotion applications,
 - (g) Misconduct matters about police officer incompetence that are otherwise not notifiable,
 - (h) performance management matters that have not resulted in a notifiable misconduct matter, for example, lack of punctuality, unsatisfactory completion of a performance agreement or poor work output, or
 - (i) any allegations of a trivial nature.
- (2) These misconduct matters must be recorded by the NSWPF in the appropriate misconduct matters information system and made available to the LECC on request.

7. The Misconduct Matters Information System

- (1) All documentation considered or used in the triage, investigation and resolution of a misconduct matter should be uploaded, or otherwise clearly referenced, in the misconduct matters information system.
- (2) The LECC is to be provided unrestricted access to the Misconduct Matters Information System.

8. Request for information

- (1) When the LECC requests information concerning a misconduct matter the NSWPF shall provide documents available in electronic form within 14 days of receipt of such request. All explanations of policies, procedures and practices, comment or other information shall be provided as soon as practicable or at least within 28 days, unless another timeframe is agreed to by the relevant Director.

9. **Exceptional circumstances and public interest**

- (1) The existence of exceptional circumstances and what is in the public interest is for the LECC to decide.

10. **Review date**

- (1) These guidelines should be reviewed on 1 October 2023

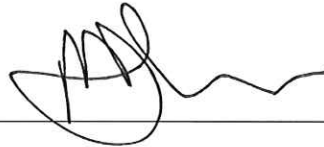
Signed by the Commissioner of the New South Wales Police Force or their delegate:



11/11/2022

Date

Signed by the Chief Commissioner of the Law Enforcement Conduct Commission or their delegate:



14 / 11 / 2022

Date