

# Agreed Guidelines pursuant to section 14 of the Law Enforcement Conduct Commission Act 2016

between

The Law Enforcement Conduct Commission

and

The Commissioner of Police

Regarding the monitoring of Part 8A, Police Act 1990,  
Misconduct Matter Investigations by the Law  
Enforcement Conduct Commission.

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## Background

1. Part 7 of the Law Enforcement Conduct Commission Act 2016 (LECC Act) provides for the Law Enforcement Conduct Commission (LECC) to oversee the NSW Police Force (NSWPF) investigation of misconduct matters.
2. Section 101 of the LECC Act provides that LECC may monitor a police misconduct matter investigation if it is of the opinion that it is in the public interest to do so.
3. LECC has decided to enter into a 12-month agreement with the NSWPF as to the arrangements and procedures by which the monitoring of Part 8A investigations by it will be conducted.
4. Section 101(2) of the LECC Act specifies that, for the purpose of monitoring a police investigation, a Commissioner or authorised officer of the Commission may:
  - (i.) be present as an observer during interviews conducted by police officers for the purposes of the police investigation, and
  - (ii.) confer with those police officers about the conduct of the investigation and,
  - (iii.) request the nominated contact for the purposes of the

investigation to provide reports on the progress of the investigation.

5. Any police officer and LECC Oversight Investigator involved in the conduct or monitoring of a misconduct matter investigation is to comply with the arrangements in these guidelines, or any other guidelines issued pursuant to s 14 of the LECC Act, as to the monitoring of an investigation or the conduct of a misconduct matter investigation generally.
6. The NSWPF and LECC acknowledge the spirit and intention of S107 of the LECC Act 2016.

#### Definitions

7. A monitored investigation is one that is overseen by LECC while it is being conducted. In a monitored investigation LECC may observe relevant interviews, confer with interviewing and investigating police officers regarding the conduct of the investigation and request status reports on the progress of the investigation.
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8. An investigating officer means any police officer responsible for the investigation of the misconduct matter being monitored by LECC.
  9. An interviewing officer is the police officer conducting interviews for the purpose of the investigation and may include someone other than the investigating officer.
  10. An authorised officer includes any LECC employee authorised from time to time.
  11. The LECC monitoring officer is the LECC investigator who has primary responsibility for monitoring the police investigation pursuant to s 101 of the LECC Act.
  12. The nominated contact is the police officer nominated by the delegate who is responsible for the misconduct investigation to be LECC's contact.

#### Decision to monitor

13. The decision to monitor a police investigation of a misconduct matter is at the discretion of LECC.

#### Notification of decision to monitor

14. LECC will notify the Commander responsible for the misconduct matter investigation and the Professional Standards Command of its decision to

monitor a misconduct matter investigation pursuant to s 101 of the LECC Act as soon as practicable.

15. The notification of the decision to monitor may be given verbally or in writing. Notification will include the name and contact details of the LECC monitoring officer. Verbal notification will be followed by a written notification from LECC as soon as practicable. That written notification is to be uploaded to IAPro by the NSWPF.
16. The Commander responsible for the misconduct matter investigation is to inform the investigating officer of the Commission's monitoring notification and instruct the investigating officer to contact the LECC monitoring officer as soon as practicable and prior to any interviews being conducted.

#### **General rights and obligations**

17. The LECC may elect to be present as an observer during interviews.
18. If a LECC observer is not present at an interview the investigator will provide an electronic copy of the interview transcript to the LECC monitor as soon as practicable.
19. The LECC monitoring officer may confer with investigating police officers about the investigation throughout the investigation and with interviewing officers at an appropriate time before or after an interview.
20. The investigating officer will consider and may take into account any matters specified by the LECC monitoring officer as needing examination or to be taken into consideration.
21. Investigating officers will record their decisions and outcomes in their investigation report or chronology which will be placed onto IAPro or e@gle.i (as relevant).
22. The Commander or Delegate will inform LECC of the proposed decisions and outcomes as soon as practicable

#### **Initial contact - investigating police and the monitoring officer**

23. The investigating officer must make contact with the LECC monitoring officer as soon as practicable to determine:
  - (i.) Any particular matters that LECC believes may require examination or consideration in the course of the investigation;

- (ii.) Any interviews that LECC has an interest in observing;
  - (iii.) Suitable dates and times for all interviews (unless LECC has already indicated that it does not wish to be present).
24. The investigating officer will make all reasonable attempts to accommodate LECC's exercise of its lawful functions under s101 of the Act.

#### Interview - Notification

25. The investigating officer is to notify the LECC monitoring officer of any intended interviews to be conducted as part of the misconduct matters investigation.
26. If the investigating officer is unable to contact the LECC's monitoring officer or is otherwise unable to make arrangements that the investigator considers suitable, the investigator is to contact the Manager Investigations Oversight or the Director of Oversight, who may arrange for an alternate LECC officer to attend.
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27. Sufficient notice must be provided to allow the LECC monitoring officer to observe an interview if observation is required, where reasonably practicable.

#### The interview

28. Prior to the commencement of a monitored interview, police investigators are to explain the presence of the LECC monitoring officer(s) in the following terms:

*The Law Enforcement Conduct Commission is independently monitoring the misconduct investigation the subject of this interview. Commission Investigator/s [insert name of Commission officer/s] are therefore observing this interview in accordance with the provisions of section 101(2) of the Law Enforcement Conduct Commission Act.*

#### Progress Reports

29. When agreed with the Commander/Delegate, the investigating officer must provide status reports on the progress of the investigation upon request by the LECC monitoring officer.

## Investigation documentation

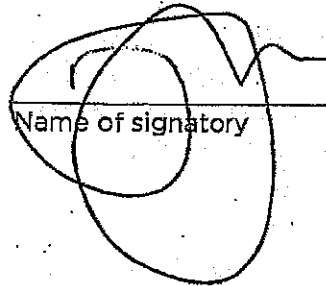
30. The LECC is to be provided with copies of all materials, subject to legal professional privilege, available to the investigating officer for the purposes of their investigation within a reasonably practicable period of that material being obtained by the investigating officer. If there is any significant delay anticipated the LECC must be informed and an explanation provided.
31. Clause 30 will be met if the material referred to in the preceding paragraph is uploaded to IAPro, or to e@gle.i in strike forces to which LECC has been provided e@gle.i access.
32. If a monitored misconduct investigation is conducted utilising e@gle.i the LECC monitoring officer/s, the Manager Investigations Oversight and the Director of Oversight are to be provided with read-only access to the relevant e@gle.i case.

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## Escalation.

33. Any issues with the conduct of the monitored misconduct investigation are to be escalated to the Manager Investigations Oversight or the Director of Oversight and the NSWPF Commander with responsibility for the investigation.
34. Any issues with these Guidelines are to be raised with a relevant Commissioner of LECC and the Assistant Commissioner for the NSWPF Professional Standards Command.
35. These guidelines will be reviewed after 12 months has expired from the date of execution.

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

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Name of signatory

1/7/20  
Date

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

A handwritten signature in black ink, appearing to be 'J. M. ...' with a long horizontal stroke extending to the right.

Name of signatory

1.7.20  
Date