
ANNUAL REPORT
2018-19

LECC

Law Enforcement
Conduct Commission

LETTER FROM THE CHIEF COMMISSIONER AND CEO



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31 October 2019

The Hon John Ajaka MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Jonathan O'Dea MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker,

In accordance with section 12 of the *Annual Reports (Departments) Act 1985* and section 139 of the *Law Enforcement Conduct Commission Act 2016*, the Commission hereby furnishes to you the Law Enforcement Conduct Commission Annual Report for the year ended 30 June 2019.

The Annual Report has been prepared in accordance with the requirements of the *Annual Reports (Departments) Act 1985* and the *Law Enforcement Conduct Commission Act 2016*.

I draw your attention to section 142(2) of the *Law Enforcement Conduct Commission Act 2016*, pursuant to which I recommend that this Annual Report be made public forthwith.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M Adams'.

The Hon M F Adams QC
Chief Commissioner

A handwritten signature in black ink, appearing to read 'Michelle O'Brien'.

Michelle O'Brien
CEO and General Counsel

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1.

CHIEF
COMMISSIONER'S
FOREWORD

It is my pleasure to present the Law Enforcement Conduct Commission 2018-19 Annual Report. This has been an extremely busy year for the Commission, building on the work commenced during our first year of operations in 2017-18.

The Commission is the independent oversight body of the NSW Police Force (NSWPF) and the NSW Crime Commission (NSWCC). We operate completely independently of the agencies we oversee and are not subject to the control or direction of the Minister or Premier in the exercise of our functions.

As a relatively new organisation, we continue to fine tune our work and focus our resources on areas that have the most impact. Our priorities to date have been identifying and addressing systemic issues within the NSWPF, and the prevention of officer misconduct. We continue to work collaboratively with the NSWPF and NSWCC to build trust between our organisations, and I believe that significant progress has been made in this area.

Our budget position is challenging. Like most other public service organisations, we are consistently required to do more with less. The Commission assessed 2547 complaints last year, of which we were only able to fully investigate approximately 2%. There are currently three extensive systemic research projects being undertaken. The list of matters that would benefit from the Commission's research powers is extensive and growing.

I wrote in last year's annual report of the so-called "efficiency dividend" savings of 3% which we are required to meet for the next four years. Sadly we have been advised that these savings are now expected to be closer to 5% from 2019-20. The following table illustrates the savings we are expected to make from our existing recurrent budget of \$22,300,000 over the next four years:

	2019-20	2020-21	2021-22	2022-23
Total efficiency dividend	\$402,000	\$1,249,000	\$1,914,000	\$2,175,000

This will continue to impact the number of serious misconduct complaints we are able to investigate, research projects that we undertake and NSWPF misconduct investigations that we oversee. Nevertheless, Commission staff continue to diligently undertake their role in ensuring a high degree of public confidence in the integrity of NSW law enforcement agencies. The Commission will also continue to collaborate with the NSWPF and NSWCC to detect, investigate and expose misconduct.

I am proud of the work undertaken by the Commission this past financial year. Of particular note, in 2018-19 the Commission:

- furnished 11 reports to the NSW Parliament;
- assessed 2547 complaints;
- conducted 207 investigations, comprising 85 preliminary enquiries, 73 preliminary investigations and 49 full investigations. The number of full investigations almost doubled for the financial year, up from 28 in 2017-18;
- conducted 78 private examinations;
- monitored 32 new NSWPF critical incident investigations, of which 27 critical incidents were attended by Commission staff. Commission staff also continued to monitor 31 existing critical incident investigations from the previous financial year;
- reviewed 1221 and monitored 16 misconduct matter investigations as part of the Commission's oversight function;
- visited Dubbo, Nowra, Forster, Taree, Kempsey, Maitland, Port Macquarie, Casino, Broken Hill, Wilcannia, Newcastle, Wagga and the greater Sydney region as part of the Commission's community engagement program; and

- presented to solicitors and community organisations at a range of forums including the Law Society of New South Wales, Gosford Court open day, the Aboriginal Legal Service, Community Legal Centres quarterly conference, multiple domestic violence services, Red Cross Young Parents program, Koori interagency meeting and Legal Aid Cooperative Legal Service Delivery groups around the state, amongst others.

The Commission's Prevention and Education team continues to develop a number of research projects that are systems-focussed and analyse potential systemic issues in the NSWPF, including:

- Operation Tepito: The Suspect Target Management Plan (STMP) and its application for children and young people;
- Operation Tusket: An investigation into systemic issues with the NSW Child Protection Register; and
- Operation Shorewood: How the NSW Police Force deals with workplace equity matters.

In 2018-19, the team completed an analysis of 29 high risk critical incident investigations. The primary purpose of the review was to measure compliance by the NSWPF with its critical incident guidelines and to establish if there were unreasonable delays in finalising investigations. The report, available on the Commission's website, made three recommendations, all of which have been accepted by the NSWPF. Further information about the Commission's critical incident monitoring function can be found in chapters 5 and 7 of this report.

Finally, I want to acknowledge the hard work and outstanding professionalism of Commission staff in 2018-19. Our workload continues to expand, well-illustrated by the number of complaints we are now receiving: 2547 complaints assessed by the LECC in 2018-19 compared to 1464 complaints received by the Police Integrity Commission in 2015-16. We are, so to speak, drinking from a firehose. However, we continue to refine our processes and concentrate on addressing systemic issues.



The Hon M F Adams QC
Chief Commissioner

2.

WHAT WE DO

2.1 OUR HISTORY

By Letters Patent dated 20 May 2015, former NSW Shadow Attorney General Mr Andrew Tink AM was commissioned to examine ways in which oversight of the NSW Police Force (NSWPF) and the NSW Crime Commission (NSWCC) could be streamlined and strengthened.

Mr Tink submitted a report entitled Review of Police Oversight (the Tink Review) to Government on 31 August 2015. The Tink Review recommended the establishment of a single civilian oversight body for the NSWPF and the NSWCC.

On 26 November 2015, Minister for Police the Hon Troy Grant MP announced the establishment of a Law Enforcement Conduct Commission to exercise the functions carried out by the Police Integrity Commission (PIC), the Inspector of the Crime Commission and the Police and Compliance Branch of the NSW Ombudsman's office (PCB). The new Commission would also have additional oversight powers concerning police investigations into critical incidents.

The PIC, the Inspector of the Crime Commission and the PCB were abolished when the Commission commenced operations on 1 July 2017.

2.2 OUR WORK

The Commission is the independent oversight body for the NSWPF and NSWCC and takes complaints about NSW Police officers, NSW Police civilian staff and Crime Commission staff.

2.2.1 DETECTING SERIOUS MISCONDUCT AND MALADMINISTRATION

One of the Commission's primary functions is to detect, investigate and expose serious misconduct and serious maladministration in the NSWPF and NSWCC. The Commission may investigate police or Crime Commission officers who are suspected of involvement in:

- soliciting or accepting bribes;
- perverting the course of justice (for example by planting evidence at a crime scene, interfering with a brief of evidence or lying in court);
- serious assaults;
- releasing confidential police information to criminals;
- improperly interfering in police investigations;
- improper relationships with criminals;
- manufacturing, cultivating or supplying prohibited drugs;
- crimes attracting a minimum of five years imprisonment (for example, serious fraud).

2.2.1.1 WHAT IS SERIOUS MISCONDUCT AND SERIOUS MALADMINISTRATION?

Serious misconduct is conduct that could:

- result in a prosecution for a serious offence;
- result in serious disciplinary action;
- demonstrate a pattern of misconduct or maladministration;
- be deemed corrupt conduct.

Serious maladministration is conduct of a serious nature that is:

- completely unreasonable;
- unjust;
- oppressive or improperly discriminatory; or
- arises wholly or in part from improper motives.

2.2.2 ASSESSING COMPLAINTS

Complaints come to the Commission in a number of ways, including:

- members of the public;
- the NSWPF complaints management database; and
- Public Interest Disclosures, amongst other things.

All complaints are assessed by the Assessments team and recommendations on those complaints made. All complaints are then referred to the internal Complaint Action Panel, which consists of the three LECC Commissioners and other senior staff. Complaints which may indicate employees of the NSWPF or NSWCC have engaged in serious misconduct or serious maladministration may be investigated by the LECC, independently of police.

The balance of complaints not directly investigated by the Commission are referred to police for action, and may be the subject of either oversight monitoring (where Commission investigators monitor the police's investigation of a complaint in real time) or oversight review (where Commission investigators review the police's investigation of a complaint).

In 2018-19, 2547 complaints were assessed by Commission staff, 58% of which came directly to the Commission, with 42% assessed from NSWPF databases. Further information about the assessment process can be found in chapter 3 of this report.

2.2.3 MONITORING CRITICAL INCIDENT INVESTIGATIONS

The Commission has the power to independently oversight and monitor the investigation of critical incidents by the NSWPF if it decides that it is in the public interest to do so.

A critical incident is an incident involving a police operation that results in death or serious injury to a person. The Commission monitors the investigation of critical incidents from the time of the incident until the completion of the investigation by police, to provide assurance to the public and the next of kin that police investigations into critical incidents are conducted in a competent, thorough and objective manner. In doing so, the Commission considers whether the NSWPF has adequately considered the following:

- the lawfulness and reasonableness of the actions of NSWPF officers involved in the critical incident;
- the extent to which the actions of the NSWPF officers complied with relevant law and policies and procedures of the NSWPF;
- any complaint about the conduct of involved NSWPF officers and any evidence of misconduct;
- the need for changes to relevant policies, practices and procedures of the NSWPF; and
- any systemic, safety or procedural issues arising from the actions of NSWPF officers.

If the Commission forms the view that the investigation is not being conducted in an appropriate manner, it can advise the NSWPF and/or the Coroner of its concerns and make recommendations in relation to the concerns identified. The NSWPF is required to consider and respond to concerns and recommendations raised by the Commission. The Commission may make the advice that it has given to the NSWPF or the Coroner public after the conclusion of the critical incident investigation.

In 2018-19, the Commission commenced monitoring 32 new critical incident investigations, with Commission investigators attending 27 (82%) of these new critical incidents. Further information about critical incident investigation monitoring can be found in chapter 5 of this report.

2.2.4 OVERSIGHT OF COMPLAINT HANDLING

The Commission oversees NSWPF and NSWCC investigations of alleged misconduct by officers of those agencies. The Commission may monitor, in real time, the progress of serious or significant misconduct matters but usually considers the adequacy of the investigation once investigation reports are completed by the relevant law enforcement agency.

If the Commission is not satisfied with the way the complaint has been investigated by the relevant agency or with the management action taken, the Commission advises the NSWPF or NSWCC of the concerns and the reason for these concerns, and may:

- request further information or advice about the reasons for a decision;
- request further investigation in relation to the misconduct matter; and
- request reconsideration of the findings made or the remedial action to be taken.

In response, the NSWPF and/or the NSWCC must provide the information or advice requested, and must notify the Commission of their decision in relation to a request for further inquiries or reconsideration of the findings or remedial action to be taken. In the event that the NSWPF and/or the NSWCC do not decide to conduct further inquiries, reconsider findings and/or reconsider management action to be taken, they must provide reasons for their decision. If the Commission is not satisfied with the decision, it may provide a report to the Minister or a special report to Parliament.

If the complaint concerns serious misconduct or maladministration, the Commission may decide to conduct its own investigation.

In 2018-19, 1254¹ NSWPF misconduct investigations, NSWCC misconduct investigations and critical incident investigations were subject to oversight by the LECC. Further information about Commission's oversight functions can be found in chapter 5 of this report.

2.2.5 INVESTIGATING SERIOUS POLICE MISCONDUCT

A principal function of the Commission is to detect and investigate allegations of serious misconduct by NSWPF and/or NSWCC officers. The Investigations team in the Integrity Division of the Commission consists of two multi-disciplinary capabilities including Investigations, operating under the supervision of a manager and consisting of senior investigators, a senior financial investigator, investigators and investigations officers. The Division also includes the Intelligence capability under the supervision of a team leader and consisting of intelligence analysts and intelligence support officers. The manager and team leader report to the Director Investigations.

Investigations and Intelligence functions within the Integrity Division operate with and are supported by other teams within the Division and from other Divisions of the Commission. These include Legal Services, Assessments, Prevention and Education, Electronic Collection and Covert Services.

Upon receipt by the Commission of new allegations of misconduct, usually, but not always, in the form of a complaint, the Commission may choose to initiate an investigation or a preliminary investigation or to make some further enquiries before any decision is made. This may include contacting the complainant (if one is identified), another person or another agency in order to seek further information and clarification.

¹ This includes misconduct matter investigations and critical incident investigations that were received by the Commission and which oversight was not finalised as of 30 June 2018.

In 2018-19, the Commission conducted 207 investigations, comprising 85 preliminary enquiries, 73 preliminary investigations and 49 full investigations. Further information about the Commission's Integrity Division can be found in chapter 4 of this report.

2.3 STRIP SEARCHING AS A SIGNIFICANT AREA OF INTEREST

On 20 October 2018, the Commission announced it was undertaking an inquiry into the practices of the NSWPF in relation to the conduct of strip searches. The inquiry was prompted by a number of complaints about the way police conducted particular strip searches, as well as information from a variety of community organisations.

Strip searches can be an important tool for police, assisting to identify hidden items that may be stolen, dangerous or may provide evidence of relevant offences. However, strip searches are also a particularly intrusive form of search, and impact on the privacy, dignity and bodily autonomy of the person searched. For that reason, the legislation that empowers police to conduct strip searches, the *Law Enforcement (Powers and Responsibilities) Act 2000*, establishes particular limits on when and how they should be conducted. It is imperative that police act lawfully and responsibly when conducting strip searches: to ensure the rights of citizens are upheld, to maintain the integrity of any subsequent prosecution of persons found to have been breaking the law, and for the preservation of the reputation of the NSWPF.

Over the past 12 months, issues relating to the way NSWPF officers conduct strip searches has attracted significant public attention. The concerns of the Commission centre on how well the police comply with legal requirements when conducting strip searches. The Commission has also focused on the level of instruction and supervision given to individual officers regarding their powers and responsibilities when strip searching people, and the adequacy of records kept by police.

Over 2018-19, the Commission has used a variety of ways to consider police practices regarding strip searches, including conducting private hearings, actively monitoring complaint investigations that are being carried out by police, reviewing complaint investigation reports completed by police, and conducting research and analysis into police policy and training. In October 2019, the Commission commenced public hearings that will shed further light into the way strip searches are conducted by police in NSW.

In 2018, the Commission commenced six investigations examining the way police conducted particular strip searches, including: Operation Sandbridge, Operation Brugge, Operation Mainz, Operation Karuka, Operation Grasmoor and Operation Antrim. Details about these investigations are set out in chapter 4, Investigating Serious Police Misconduct. The issues canvassed whether police formed suspicion on reasonable grounds to conduct the strip search, strip searching young people without a support person present as required by law, use of force during a strip search, the conduct of the strip search, and whether proper privacy was provided to the person being searched.

The Commission continues to actively monitor a number of significant police investigations into allegations of unlawful strip searches. One of these investigations is a NSWPF strike force investigating allegations of unlawful strip searches at four different music festivals, another involves allegations of the unlawful strip searching of protestors in police custody. In these matters, Commission investigators have met with police investigators about the conduct of the investigation, observed interviews with subject and witness police officers, and received progress reports throughout the investigation. Final investigation reports will be reviewed upon completion.

In 2019, the Commission conducted a detailed analysis of the standard operating procedures (SOPs) for conducting strip searches in police stations. The Commission's report to the NSWPF about this work identified deficiencies in the accuracy and the level of detail contained in the SOPs, including references to outdated policies and incorrect or incomplete references to

legislation. It also identified a need to clarify the roles of various police officers involved in bringing a person into custody and managing them while in custody. Additionally, a number of common practices, some that are not explicitly addressed in the legislation governing strip searches by police, were not explained in the policy. The Commission made recommendations for improving the guidance provided to police about conducting strip searches in police stations. This report will be published in late 2019. It is discussed in more detail in chapter 7, Prevention and Education.

2.4 LECC STRATEGIC PLAN 2017-20

The inaugural LECC Strategic Plan 2017-2020 sets out the objectives and priorities of the Commission, and identifies key measures of success for the first three years of operations.

Highlighted in the Strategic Plan is the LECC's endeavour to work closely with the NSWPF and NSWCC to identify instances of serious misconduct and maladministration. At the same time, the LECC must maintain, and be seen to maintain, its independence.

The plan places an emphasis on prevention and education initiatives aimed at identifying and reducing the potential for corruption, misconduct and maladministration. It is anticipated that much of this work will be performed in collaboration with the agencies with whose activities it is concerned.

The plan also highlights the LECC's work with a range of community organisations to be informed of the impact of law enforcement at the everyday level of the people with whom it deals, ensure its community engagement work identifies opportunities to build trust in the work of the Commission and confidence in its ability to investigate law enforcement misconduct and maladministration.

The Strategic Plan 2017-2020 focuses on the following five strategic themes that extend across all areas of the LECC's work:

Delivering results

Consistent delivery of what the Commission was established to do.

Service and engagement

Build relationships with the community and the agencies being overseen.

Organisational capability

Having the skills, capabilities, technology and governance that enable the Commission to achieve its operational goals.

Lawful and fair

Powers of compulsion and reporting are used fairly and in the public interest.

People

A diverse and capable workforce that is committed to continuous learning and open to new ideas and current best practices.

2.5 OUR PEOPLE

The Commission employs a variety of experienced people with specialised skills.

The Commission has a policy of not employing serving or former NSWPF or NSWCC officers. Any police investigators employed at the Commission are drawn from police services from other jurisdictions, both in Australia and overseas.

2.5.1 OUR SENIOR EXECUTIVE TEAM

CHIEF COMMISSIONER THE HON M F ADAMS QC

The Chief Commissioner, the Hon M F Adams QC, graduated with a Bachelor of Laws from the University of Sydney in 1969. He practised as a barrister in NSW and occasionally in other states and territories. Appointed Queen's Counsel in 1988, Mr Adams was a part-time Chairperson of the NSW Law Reform Commission from 1996 to 2006. Before taking up the position of Chief Commissioner of the Law Enforcement Conduct Commission in February 2017, he had served as a judge of the Supreme Court of NSW since 1998.

COMMISSIONER FOR INTEGRITY THE HON LEA DRAKE

The Commissioner for Integrity, the Hon Lea Drake, joined the Commission in April 2017. Prior to joining the Commission, Commissioner Drake was a Senior Deputy President with the Fair Work Commission from 1994 to 2017 (who, by virtue of s 63 (2) of the *Workplace Relations Act 1996* (Cth) held the same rank, status and precedence of a Justice of the Federal Court).

Commissioner Drake was previously a partner at MacMahon and Drake Solicitors, a Councillor and Chairperson of the Professional Misconduct Committee of the Law Society of New South Wales and a Commissioner of the Law Reform Commission of NSW. Commissioner Drake's qualifications include a Bachelor of Laws and a Diploma of Industrial Relations and Labour Law from the University of Sydney. Commissioner Drake was admitted as a solicitor in 1976.

COMMISSIONER FOR OVERSIGHT MR PATRICK SAIDI

The Commissioner for Oversight, Mr Patrick Saidi joined the Commission in June 2017. Prior to his appointment, Mr Saidi was at the private bar where he appeared in many important and high profile inquests and Commissions of Inquiry. Mr Saidi is a graduate of the University of Sydney with a B.Ec and also a graduate of the University of New South Wales with a LL.B.

CEO AND GENERAL COUNSEL MS MICHELLE O'BRIEN

Ms O'Brien graduated with a BA, LLB from the University of New South Wales in 1986. She was admitted as a solicitor the same year and practiced in private legal firms in Sydney for the next eight years.

In 1994, Ms O'Brien joined the Wood Royal Commission into the New South Wales Police Service as a lawyer and thereafter the Police Integrity Commission, which was established at the end of the Wood Royal Commission.

In 2014, Ms O'Brien became an Accredited Specialist in Government and Administrative Law. She was appointed as Solicitor to the Commission on 1 July 2017, and CEO and General Counsel on 1 July 2019.

Ms O'Brien is responsible for the delivery of all corporate and legal services to the Commission, including the employment of staff with the necessary skills and experience to perform the functions of the Commission within its statutory and budgetary framework.

A copy of the Commission's organisation chart can be found in Appendix 8 of this report.

3. ASSESSING COMPLAINTS

3.1 OVERVIEW

Section 26 of the *Law Enforcement Conduct Commission Act 2016* (LECC Act) states that a principal function of the Commission is to detect officer misconduct. The Commission exercises this function through a number of processes including the assessment of information and complaints regarding alleged officer misconduct. The Commission's assessment process is a key step in detecting officer misconduct.

At capacity, the Assessments team structure comprises a Team Leader and six (FTE) staff members with responsibility for undertaking the assessment of all complaints received directly by the Commission, as well as complaints recorded on the NSW Police Force (NSWPF) complaints database.

In many instances, the Commission will be required to conduct two assessments of the same complaint. Firstly, the Commission undertakes an assessment of all complaints made directly to the Commission to identify whether they are matters for which the Commission may exercise its investigative functions. Secondly, if a direct complaint is referred to the NSWPF by the Commission, the Commission will conduct a subsequent assessment of that same complaint to ensure that the NSWPF has dealt with it appropriately, and consider whether the Commission will monitor that NSWPF investigation.

This second assessment is generally not captured by the Commission as a statistic, and therefore the work involved in this second assessment is not accurately reflected in the statistics documented below on the number of complaints assessed.

Of the complaints made directly to the NSWPF, the Commission assesses all complaints which are notifiable and determines whether:

- the Commission will take over the investigation of the complaint;
- the Commission will monitor the NSWPF investigation;
- all relevant issues have been identified by the NSWPF; and
- the Commission agrees with the NSWPF decision to investigate or otherwise deal with the misconduct matter.

If the Commission does not agree with the police decision to decline to investigate a misconduct matter, it will require the NSWPF to investigate the matter, as well as notify the complainant of that fact.

After assessment, all misconduct matters are referred to the Commission's Complaint Action Panel. The Complaint Action Panel reviews the assessment of all complaints and either confirms the recommendation of the Assessments team, or makes an alternate decision, which may include the Commission investigating or monitoring the investigation of the misconduct matter.

The Complaint Action Panel consists of all three Commissioners, Director Investigations (Integrity), Director Investigations (Oversight) and other senior staff that help inform the Commission in its decision making process.

3.2 NOTIFIABLE COMPLAINTS

The Commission and the NSWPF entered into an agreement pursuant to s 14 of the LECC Act (referred to as the s 14 Guidelines) in November 2017. This agreement constitutes guidelines outlining the categories of complaints that are required to be notified to the Commission, and upon which the Commission primarily focusses its oversight functions. Prior to November 2017, the Commission and the NSWPF were operating in accordance with the previous Class and Kind Agreement between the NSWPF, the NSW Ombudsman's office and the Police Integrity Commission.

The s 14 Guidelines have broadened the classes of matters that are now notifiable to the Commission. One relevant addition to the types of matters that are notifiable to the Commission, and which has never been sufficiently captured, is:

“Letters of demand, Statements of Claim, originating process or other pleadings or particulars...that alleges, expressly or impliedly, an act or omission capable of constituting serious misconduct...”

3.3 COMPLAINTS ASSESSED

Total number of matters dealt with (assessed) by the Commission during the year

	2018-19
TOTAL COMPLAINTS ASSESSED	2547

Total % of complaints that were direct to the Commission vs complaints assessed from NSWPF databases

	2018-19
Total direct complaints assessed	1478 (58%)
Total complaints assessed from NSWPF databases	1069 (42%)

Complaints made directly to the Commission have increased by approximately 17% from the previous reporting year.

Notifiable complaints made directly to the NSWPF have also increased, however, the Commission was unable to assess all of those complaints prior to the end of the reporting year. The Commission continues to work on methodologies to address statutory requirements around the assessment of notifiable complaints, and the NSWPF handling of them, in order to ensure that all required complaints are assessed by the Commission.

3.4 MANDATORY REPORTING

Reports of misconduct matters by other agencies made pursuant to s 33 of the LECC Act

	2018-19
NSW Crime Commission	4
Independent Commission Against Corruption	63

Breakdown of complaints directly to the LECC: police vs public

	2018-19
Officers who identified themselves as police ²	94 (6.3%)
Members of the public	1384 (93.7%)

² Complainants who identified themselves as, or are reasonably suspected of being employees of the NSWPF. It is also strongly suspected, based on the contents of the complaints, that a number of other anonymous complaints to the Commission have been received by NSWPF employees; however, this cannot be confirmed.

3.5 DESCRIPTION OF THE TYPES OF MATTERS THAT WERE REFERRED TO THE COMMISSION

Misconduct matters referred to the Commission from the NSWPF are all matters that are identified as notifiable misconduct matters in accordance with the s 14 Guidelines agreed to between the Commission and the NSWPF.

The types of misconduct frequently referred to the Commission includes allegations of:

- failing to comply with the *Law Enforcement (Powers and Responsibilities) Act 2002*;
- protection of person(s) involved in drugs or other criminality;
- unreasonable use of force;
- failure to investigate; and
- Statements of Claim raising questions of serious misconduct.

3.6 ALLEGATIONS ASSESSED

ALLEGATION ³	2018-19
Improper use of force	6.75%
Failure to investigate	6.50%
Inadequate investigation/lack of impartiality	5.25%
Inconsiderate/insensitive/uncooperative behaviour	4.25%
Incivility/rudeness/verbal abuse (oral complaints of rudeness are a local management issue)	4.00%
Intimidating, aggressive or unwelcome behaviour and unfair treatment, either in the workplace or during service delivery	3.75%
Harassment	3.50%
Improper use of discretion	2.75%
Improper/unauthorised search	2.75%
Neglect of duty/duty of care	2.75%
Misuse authority for personal benefit or the benefit of an associate (including obtaining sexual favours)	2.50%
Discrimination	2.25%
Breach of Code of Conduct (not specified elsewhere)	2.25%
Fail to comply with operational procedures, standing orders or Commissioner's directives (not specified elsewhere)	2.00%
Unlawful (insufficient evidence of offence)	2.00%

³ Complaints assessed often include multiple allegations within the one complaint

ALLEGATION ³	2018-19
Inappropriate prosecution/misuse of prosecution power	1.75%
Victimisation/bullying	1.50%
Unauthorised/improper disclosure of information	1.50%
Threats/intimidation (not assault, excessive force)	1.50%

3.7 TIMELINESS

The time interval between the receipt of each misconduct matter by the Commission and the Commission deciding to investigate the misconduct matter

TIME INTERVAL	TOTAL
0-5 days	35
6-10 days	8
11-15 days	7
16-20 days	1
21-30 days	15
31-60 days	22
61+ days	9

The average time to deal with a misconduct matter that was investigated by the Commission is 24.25 days (when weekend and public holidays are excluded) or 33.75 days with the inclusion of weekends etc.

3.8 COMPLAINTS FROM THE JUDICIARY AND LEGAL PRACTITIONERS

As a result of identifying a perceived gap between the identification of possible misconduct by a magistrate or judge and the recording of that misconduct onto the NSWPF misconduct matters database, the Commission has actively engaged with the judiciary and lawyers in NSW in order to encourage the direct reporting of misconduct information to the Commission. The Commission developed a Court Referral form and a Legal Representatives form to simplify this process, with complaints received directly by the Chief Commissioner's Associate and expedited for assessment.

CASE STUDY 1:

In late 2017, a complaint was received by the Commission from a magistrate about a senior serving NSW Police officer. The complaint concerned allegations of pressure being applied to the magistrate regarding the granting, and enforcement, of bail to young offenders.

The magistrate was sent an email by the senior police officer, with 11 other NSWPF officers cc'd, raising concerns about young offenders breaching their bail and subsequently being released by the court without charge. The email followed a complaint made by the magistrate to the police Professional Standards Command (PSC) regarding a facts sheet she had received from a police prosecutor which allegedly contained inappropriate comments about the granting of bail. An investigation by the PSC resulted in a 'not sustained' finding, which the magistrate was "completely dissatisfied" with.

The magistrate referred her complaint directly to the LECC Chief Commissioner who reviewed the facts sheet and subsequent email to the magistrate. The Chief Commissioner formed the view that the original NSWPF investigation was inadequate and commenced his own inquiries. A conciliation process between the magistrate and the NSW Police officer commenced which was initially unsuccessful, however the police officer later sought to revive the conciliation process and acknowledge his wrongdoing. Whilst the Commission is not in a position to direct the officer to apologise to the magistrate, the Chief Commissioner is of the view that the seriousness of the matter was eventually understood by those involved.

3.9 NSW CRIME COMMISSION

In November 2017, the Commission entered into an agreement and guidelines with the NSWCC in accordance with s 14 of the LECC Act. These guidelines outline the categories of misconduct matters that are required to be notified to the Commission, and upon which the Commission primarily focusses its oversight functions.

In June 2019, these Guidelines were amended to clarify that the reporting of notifiable misconduct matters pursuant to the s 14 Guidelines related only to complaints involving employees of the NSWCC. Alleged misconduct relating to employees of the NSWPF was still required to be reported to the Commission in accordance with s 33 of the Act.

In addition, the Commission issued s 33 Guidelines, indicating the types of complaints about the NSWPF that are required to be reported to the Commission by the NSWCC.

During the reporting period, the Commission assessed twelve misconduct matters involving members of the NSWCC.

3.10 STATEMENTS OF CLAIM/LETTERS OF DEMAND ALLEGING POLICE MISCONDUCT

The Guidelines pursuant to s 14 of the LECC Act between the Commission and the NSWPF, which indicate which classes of matters are notifiable to the Commission, includes letters of demand and statements of claim where the NSWPF, or an employee of the NSWPF, is alleged to have committed serious misconduct. This class of matters was not previously notifiable during the NSW Ombudsman's oversight of the NSWPF.

Section 132 of the *Police Act 1990* provides a number of factors that the NSWPF can take into account in deciding how to deal with a complaint, including:

- (a) action has been, is being or will be taken to remedy the subject-matter of the misconduct matter without the need for an investigation, or
- (e) there is or was available an alternative and satisfactory means of redress in relation to the relevant conduct, or
- (g) civil, criminal or disciplinary proceedings, or a coroner's inquest, relating to the subject-matter of the misconduct matter are pending or reasonably in contemplation.

The Commission has noted that numerous complaints originating from letters of demand and statements of claim have been declined for investigation by the NSWPF due to alternate and satisfactory means of redress or because there is civil litigation on foot.

The Commission does not generally consider civil litigation to be an alternate and satisfactory means of redress, and in identified instances the Commission has required the NSWPF to investigate that misconduct⁴. Civil litigation does not address any alleged misconduct, nor does it provide for any managerial action if the misconduct is found to have occurred.

As well as the Commission notifying the NSWPF in numerous instances, the Professional Standards Command of the NSWPF has also more recently provided instructions to commands that s 132(g) of the *Police Act 1990* is not to be used to decline to investigate a misconduct matter, solely on the basis that there is a concurrent civil claim. The Commission considers that this same principle is applicable to subsections (a) and (e) of s 132 if they are used solely on the basis that there is a civil claim.

The Commission continues to seek to ensure that any inculpatory or exculpatory evidence uncovered during the civil litigation process is provided to NSWPF complaint investigators for the purposes of consideration in the related misconduct investigation.

3.11 TRANSITION FROM C@TS.I TO IAPRO BY THE NSWPF

In April 2018, the NSWPF transitioned to a new misconduct matters information system, IAPro, and decommissioned the old system c@ts.i. The transition presented a number of challenges to the Commission, including the review of new notifiable misconduct matters registered with the NSWPF, receipt of finalised investigation reports pursuant to s 137 of the *Police Act 1990* and the copying of relevant documentation from the new system.

Many of these challenges persist, and the NSWPF has not yet facilitated a request from the Commission to enable functionality to download documents from IAPro.

3.12 DISAGREEMENT WITH THE NSWPF DECISION TO DECLINE INVESTIGATION

Section 99(3) of the LECC Act provides that if the Commission disagrees with the NSWPF decision not to investigate a misconduct matter, the Commission must notify the NSWPF of that disagreement, and the misconduct matter must be investigated.

In the reporting period, the Commission notified the NSWPF in 48 misconduct matters that it disagreed with its decision not to investigate the complaint. In a number of those matters, the NSWPF failed to commence an investigation in a timely manner after receiving the s 99(3) notification, which required the Commission to send further communications to the NSWPF to ensure investigations were commenced.

Four investigations conducted as a result of a s 99(3) requirement to investigate resulted in at least one sustained finding being made against at least one subject officer, whilst others have not been finalised at the time of reporting.

CASE STUDY 2:

Multiple individuals made complaints to the NSWPF regarding the conduct of police in the arrest of Mr Danny Lim at Barangaroo on 11 January 2019. The arrest was partially captured by bystanders and posted to social media.

⁴ Section 99(3) of the Act

On 17 January 2019, following further complaints made directly to the Commission, the LECC requested all footage (including body worn video) held in relation to Mr Lim's arrest in order to make a determination as to how the Commission would deal with these complaints. The Commission also asked if the NSWPF had received any complaints about the incident as none had been registered onto their database at that point in time.

On 6 February 2019, the NSWPF created a matter on IAPro for the complaints received related to the arrest of Mr Lim. This included uploading the triage document dated 5 February 2019, in which the NSWPF had assessed and declined to investigate the alleged misconduct.

On 28 February 2019, the Commission had still not been provided with the footage requested on 17 January, and sent a subsequent request for the material. The Commission received this material on 1 March 2019⁵.

On 12 March 2019, the Commission sent a letter pursuant to s 99(3) of the LECC Act requiring the NSWPF to investigate the complaints relating to the arrest of Mr Lim. The letter also identified a number of issues that the Commission recommended should be considered in the investigation of the complaint.

The Commission commenced formally monitoring the requested investigation of this matter, pursuant to s 101 of the LECC Act, and continues to monitor this ongoing investigation.

CASE STUDY 3:

A regional district assessed a complaint about an inmate who was being transferred from police into Corrective Services custody, and was strip searched by a police officer on camera within the police station. The specific complaint allegation assessed by the command was the search being captured on camera. The triaging officer found that there was no recording device operating at the time and on this basis declined to conduct any further investigation.

The triaging officer also later indicated that there was no "wrongdoing" by the searching female police officer because the prisoner had already been transferred into the custody of Corrective Services, and due to them not having a female officer at the time, the police officer conducted that strip search as a "favour" for Corrective Services.

The Commission wrote to the NSWPF and indicated that police did not have authority to conduct the strip search under LEPPRA, and that it was believed that police did not have authority to conduct strip searches under the *Crimes (Administration of Sentences) Regulations 2014*.

The Commission further indicated that considering the alleged misconduct, as well as the views of the triaging officer, who was an Inspector of Police, there may be a more systemic issue that needs consideration.

The relevant police station has since received instructions from an education officer that police do not have powers under the *Crimes (Administration of Sentences) Regulations 2014* to assist Corrective Services officers with a strip search. Further presentations have been provided to staff at the police station since the implementation of the recently released NSWPF search manual.

⁵ The Commission has previously requested access to a NSWPF system that would allow the Commission to view videos such as BWV attached to COPS Events; however, the NSWPF has refused to provide access to that system.

4.

INVESTIGATING
SERIOUS
POLICE
MISCONDUCT

4.1 INVESTIGATING SERIOUS POLICE MISCONDUCT

A principal function of the Commission is to detect and investigate allegations of serious misconduct by NSW Police Force (NSWPF) and NSW Crime Commission (NSWCC) officers. This chapter provides an overview of the Commission's Integrity Division which is responsible for these investigations. A profile of significant Integrity investigations can be found at the end of this chapter.

4.2 STRUCTURE OF THE INVESTIGATIONS TEAM WITHIN THE INTEGRITY DIVISION

The Investigations team of the Integrity Division consists of two multi-disciplinary capabilities, Investigations and Intelligence. Investigations operates under the supervision of a manager and consists of senior investigators, a senior financial investigator, investigators and investigations officers. The Intelligence capability operates under the supervision of a team leader and consists of intelligence analysts and intelligence support officers. The manager and team leader report to the Director Investigations.

Investigations and intelligence functions within the Integrity Division operate with, and are supported by, other teams within the Division and from other sections of the Commission, including Legal Services, Assessment, Prevention and Education, Electronic Collection, and Covert Services.

4.3 PROCESS

Upon receipt, complaints are assessed by the Assessments team (see chapter 3) and matters deemed suitable of integrity investigation are put to the Complaint Action Panel (CAP) for consideration. Following the CAP, a complaint may be determined appropriate for investigation by the Integrity Division.

The Commission may choose to initiate an investigation or a preliminary investigation or to make some further enquiries before any decision is made. This may include contacting the complainant (if one is identified), another person or other agency in order to seek further information and clarification.

4.4 COMMISSION HEARINGS

The Commission may hold hearings (examinations) as part of its investigation process. The decision to hold a hearing in private or public must have regard to the relevant considerations under the *Law Enforcement Conduct Commission Act 2016* (LECC Act), particularly those factors set out in s 63(5). The Commission can summon persons to appear at hearings and compel witnesses to produce documents or answer questions.

During 2018-19 the Commission conducted 78 private examinations.

4.5 PROFILE OF ACTIVE INVESTIGATIONS DURING 2018-19

During 2018-19 the Commission worked on 207 investigations, comprising 85 preliminary enquiries, 73 preliminary investigations and 49 full investigations. Of these, 104 matters were completed and 103 were ongoing at 30 June 2019. The average time taken to complete a misconduct matter investigation varies widely given the wide variety of issues and circumstances that affect each case. For example, if an investigation results in a criminal prosecution, the Commission will not close its file until the conclusion of the proceedings, which may take a number of years.

A description of the types of allegations investigated during the reporting year is presented in the following table.

Profile of 2018-19 investigations, preliminary investigations and preliminary enquiries

ALLEGATION	INV.	PI	PE
Adverse mention by the court	2	2	1
Attempting to pervert the course of justice	2		1
Breach of Code of Conduct (not specified elsewhere)	2		
Bribery	3	3	5
Choke/headlock/pressure point technique		1	
Collusion between police witnesses	1		
Covering up inappropriate conduct	4	1	3
Cultivation or manufacture		1	
Dealing or supply	4	2	4
Delay in investigation		1	1
Discrimination	5	3	1
Explicit threats involving use of authority			2
Fabrication of evidence (other than perjury or verballing)	1		1
Fail to check brief/inadequate preparation of brief	1		
Fail to comply with legislation/code of practice	1	1	
Fail to comply with operational procedures, standing orders or Commissioner's directives (not specified elsewhere)	3	2	1
Fail to declare a conflict of interest	4	7	9
Fail to provide adequate/appropriate victim support		1	
Fail to provide medical treatment	1		
Fail to report offence	2		1
Fail to report suspected/alleged misconduct	4		1
Failure or delay in returning property and exhibits			1
Failure to interview witnesses		1	
Failure to investigate		5	3
Failure to report loss of property and exhibits			1
False complaint			1
Falsely claiming for duties not performed		1	
Falsely reporting an offence	1		2
Falsifying official records	4	3	3
Firearm discharged			1

ALLEGATION	INV.	PI	PE
Firearm displayed	1		
Giving favours/bias with no or little perceived personal benefit	1	3	4
Harassment	3	11	4
Homicide			1
Illicit drug use	4	1	2
Improper/unauthorised search	8	13	4
Improper association	7	16	16
Improper disposal procedures		1	
Improper interference in an investigation by another police officer		1	2
Improper use of discretion	1	2	1
Improper use of handcuffs	1		
Inadequacies in informal resolution (or other internal procedure)		2	2
Inadequate investigation/lack of impartiality	1	6	4
Inadequate security of weapon			1
Inappropriate conditions	5	3	1
Inappropriate prosecution/misuse of prosecution power		4	
Inappropriate transport or conditions of transport	1		
Incivility/rudeness/verbal abuse (oral complaints of rudeness are a local management issue)	1		2
Inconsiderate/insensitive/uncooperative behaviour			3
Intimidating, aggressive or unwelcome behaviour and unfair treatment, either in the workplace or during service delivery	3	4	5
Lied during proceedings/in statement/on affidavit	2	1	1
Loss of property and exhibits			1
Lying to investigator/supervisor conducting inquiries	1		
Make false statement (verballing)	1		1
Mislead the court		1	1
Misuse authority for personal benefit or the benefit of an associate (including obtaining sexual favours)	7	8	4
Misuse of official vehicle	1		
Neglect of duty/duty of care	2		
No allegations	1		
Theft/misappropriation of official property			1
Theft/misappropriation of seized property			1

ALLEGATION	INV.	PI	PE
Offence punishable upon conviction by a max sentence of 5 years or more	7		
Offence punishable upon conviction by a max sentence of not less than 3 years and not more than 5 years	2	2	
Other summary offences	3		7
Perjury	3		
Possession (not misappropriation of seized drugs)	1	1	1
Protection of person(s) involved in drugs	2	8	9
Provide incorrect or misleading information	1	1	1
Pushed/shoved/jostled/grabbed/manhandled/wrestled etc (soft empty hand)	7	9	5
Pushed to ground/slammed against a wall/punched/kicked/kneed/head butted/struck (hard empty hand)	4	1	4
Reason not given/warrant not produced		1	
Refusal to charge/prosecute/initiate proceedings		1	
Sexual assault		1	1
Tampering with or destroying property and exhibits		1	
Telecommunications misuse			1
Theft from victim, client or other member of public			1
Trade accesses - accessing information for sale/personal gain			1
Unauthorised/improper disclosure of information	4	5	12
Unauthorised detention	1	4	1
Unauthorised removal/use of property and exhibits			1
Unauthorised secondary employment	3	1	1
Unauthorised use of official vehicle	2		
Unauthorised use of other facilities/equipment			1
Unlawful (insufficient evidence of offence)	2	5	
Unnecessary or improper use of arrest	2	7	
Unreasonable use of force with a defensive spray		1	
Unreasonable use of force with an impact weapon (baton, torch, stick, rope)	1	1	1
Using authority in situation where conflict of interest exists	2		2
Victimisation/bullying	1	4	2
Withholding or suppression of evidence			2
Wrongful seizure of property	1		

4.6 INVESTIGATION OUTCOMES

The following tables report on the Commission's investigation outcomes for all investigations finalised during 2018-19⁶.

Finalised full investigation outcomes

INVESTIGATION OUTCOME	INVESTIGATIONS	% OF 9
Full investigations referred to the ODPP for consideration of prosecution action	2	22
Full investigations that resulted in a dissemination of information to the NSWPF	5	56
Full investigations that resulted in information being disseminated to other law enforcement agencies (LEA)	0	0
No further action	2	22

Preliminary investigation outcomes

PRELIMINARY INVESTIGATION OUTCOME	PRELIMINARY INVESTIGATIONS	% OF 30
Preliminary investigations that progressed to become full investigations	3	10
Preliminary investigations that resulted in a dissemination of information to the NSWPF	6	20
Matter referred to current full investigation	4	13
Preliminary investigations that resulted in information being disseminated to other law enforcement agencies (LEA)	0	0
No further action	17	57

Preliminary enquiry outcomes

PRELIMINARY ENQUIRY OUTCOME	PRELIMINARY ENQUIRIES	% OF 65
Preliminary enquiries that progressed to become full investigations	2	3
Preliminary enquiries that progressed to become preliminary investigations	15	23
Preliminary enquiries that resulted in a dissemination of information to the NSWPF	10	15
Preliminary enquiries that resulted in information being disseminated to other law enforcement agencies (LEA)	0	0
No further action	38	59

⁶ Investigations may have more than one outcome.

The Commission made the following referrals from ongoing investigations during the reporting period.

Referrals from on-going investigations

INVESTIGATION	NO. OF PROPOSED OFFENCES	NO. OF INDIVIDUALS
Operation Tambora	1	1
Operation Snowshoe	1	2

Court Attendance Notices or charges being served

OPERATION	NUMBER OF CANS SERVED	NUMBER OF INDIVIDUALS	CHARGES
Operation Snowshoe	1	1	1

4.7 TIMELINESS

Time interval between the completion of each public examination conducted during the year and the furnishing of a report on the matter

INVESTIGATION	NO OF DAYS
Operation Tambora	175

Actual time taken to investigate any matter in respect of which a report is made

INVESTIGATION	NO OF DAYS
Operation Dalmine	566
Operation Corwen	519
Operation Bindaree	476
Operation Baltra	587
Operation Filbert	300

4.8 SIGNIFICANT COMMISSION INVESTIGATIONS

Operation Tabarca was an investigation conducted by the Commission relating to allegations of workplace bullying, harassment and discrimination by a senior officer in a metropolitan police command. A number of private examinations were conducted by the Commission and a report to Parliament is being prepared.

Operation Dukono was an investigation conducted by the Commission into allegations that officers in a regional police district conducted unreasonable searches of visitors to a country NSW correctional centre. A number of private examinations were conducted by the Commission and a report will be presented in the next reporting period.

Operation Mindo was an investigation that commenced after information was received from a Commonwealth agency which alleged a senior constable attached to a specialist command

was falsifying residency and/or student visa permits through an education and migration agency that the officer had an association with. It was alleged the officer was involved in facilitating persons to illegally work in Australia. The Commission investigated the matter deploying specialist resources. A number of examinations were conducted by the Commission. No serious police misconduct was identified. A report will be presented to Parliament in October 2019.

Operation Sandbridge was an investigation that commenced following a successful civil claim against NSW Police. The claimant stated that he had been unlawfully detained, arrested, strip searched and charged with hindering police. The claimant was awarded over \$100,000 by the District Court. Private examinations were conducted by the Commission and deficiencies were identified relating to NSW Police training, procedures and custody management protocols. The investigation is continuing.

Operation Grasmoor was an investigation commenced after the Commission received a number of complaints from persons in a regional NSW location. The complaints concerned the alleged misuse of stop, search and detain provisions and strip searches by NSWPF officers. Subject officers were identified by the Commission and private examinations were held both at the regional location and also at the Commission. A report is being prepared in which a number of findings will be made.

Operation Karuka was an investigation commenced after the Commission received a direct complaint alleging that a sexual assault had occurred during a strip search at a Sydney metropolitan police station. Following an investigation, five subject officers were identified and private examinations were undertaken. No evidence of a sexual assault was identified. Numerous breaches of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) were indicated including the use of force to effect a strip search. The investigation is ongoing.

Operation Brugge is an investigation arising from a direct complaint from a solicitor acting on behalf of a young person. The complaint related to a strip search at a music festival in regional NSW. The matter was the subject of public examinations in October 2019. The issues being examined include the strip search of the young person taking place without an appropriate support person being present. The investigation is ongoing.

Operation Mainz was an investigation commenced after the Commission received a complaint from a legal service on behalf of a young person in a regional location who had been stopped by NSWPF officers and suspected of being in possession of a prohibited drug. The young person was strip searched in a public area prior to being transported to a local police station where a further search was conducted. The Commission conducted a number of examinations, both in the regional location and at the Commission. A final report is in preparation.

Operation Serengeti is a Commission investigation regarding allegations of money laundering by a senior NSW Police officer and his financial association with a criminal entity. A final report is in preparation.

Operation Cusco is a Commission investigation arising from concerns that NSWPF officers have been conducting excessive and invasive bail compliance checks, including late at night and multiple times in a night. A number of public examinations were held in September 2019 and more are scheduled.

Operation Trieste was an investigation regarding allegations that two officers from a specialist command had engaged in serious misconduct when they were involved in the vehicle stop of a car driven by a female in south west Sydney. Private examinations of the two officers were held by the Commission and admissions by the officers were made. A report will be presented to Parliament in October 2019.

Operation Filbert was an investigation conducted by the Commission regarding allegations of serious misconduct by officers in a metropolitan police command following injury to a male while he was being detained by police. The Commission, amongst other things, reviewed body-worn footage of the incident and concluded that the evidence did not support a finding of serious misconduct.

Operation Dalmaine was an investigation conducted by the Commission regarding allegations of serious misconduct by officers in a regional command, namely that police used excessive force on a male while in police custody. It was further alleged that police deleted files from the mobile telephone of the male while he was being detained. Investigations failed to identify any evidence to substantiate the allegation.

Operation Errigal was an investigation conducted by the Commission into allegations of serious police misconduct by a senior officer in a regional command including complaints about the officer's personal relationships with female staff, the creation of official records which did not disclose all the material facts, failure to declare a conflict of interest and failure to follow NSWPF standard operating procedures. A number of private examinations were conducted. A report to Parliament in July 2019 made a number of recommendations, including that the Director of Public Prosecutions consider whether any criminal offences had been committed by the senior officer. A dissemination by the Commission of related material was also provided to the NSWPF for management action of involved officers.

Operation Algarve is an investigation conducted by the Commission regarding allegations of serious misconduct by a senior officer, including the release of confidential police information. This investigation is ongoing.

4.9 RESPONSES TO RECOMMENDATIONS MADE BY THE COMMISSION

4.9.1 OPERATION TAMBORA

In September 2018, the Commission published a report to Parliament in which it recommended that a senior constable be considered for prosecution for the offence of Assault Occasioning Actual Bodily Harm. In September 2019, the Commission received advice from the DPP that there is sufficient evidence to charge one offence of Common Assault. The officer has been charged and the matter is listed for mention in Byron Bay Local Court on 2 December 2019.

4.9.2 OPERATION BALTRA

In September 2018, the Commission presented a report to Parliament in which it recommended that consideration be given to taking dismissal action against Officer A. The Commission also expressed concern about the practice of police officers sharing police information with each other through social media sites such as Snapchat. The Commission received advice from the Professional Standards Command that it had been working on a number of training and workplace engagement strategies aimed at addressing the misconduct risks associated with social media use.

On 11 July 2019, the Commissioner of Police issued a Warning Notice to Officer A stating that taking into account various factors, he had not lost confidence in him as a police officer and would not seek his removal from the NSWPF but that alternative management action would be considered by the senior constable's commander.

5. OVERSIGHT AND CRITICAL INCIDENT MONITORING

5.1 OVERSIGHT OVERVIEW

The Oversight Investigation team undertakes many of the functions previously carried out by the Police and Compliance Branch of the NSW Ombudsman's Office, including the review and monitoring of NSW Police Force (NSWPF) investigations of notifiable misconduct matters.

The Oversight Investigations team primarily undertakes reviews of misconduct matter investigations conducted by the NSWPF pursuant to Part 8A of the *Police Act 1990* in order to determine whether those investigations were conducted reasonably and satisfactorily, and whether the outcomes were appropriate. If a misconduct matter investigation is considered to be deficient and a further investigation into the matter is conducted by the NSWPF, the Oversight Investigations team may monitor that further investigation, pursuant to s 101 of the *Law Enforcement Conduct Commission Act 2016* (LECC Act).

The team also supports the Commission's objective of identifying opportunities to address systemic issues in complaint handling by the NSWPF and in the exercise of police powers.

During the reporting period, the Oversight Investigations team received 1051 NSWPF misconduct matter investigations for oversight, and reviewed 1221 misconduct matter investigations.

The Commission undertakes varying levels of oversight of NSWPF misconduct investigations. In order to determine the level of oversight required, the Oversight Investigations team conducts a preliminary review of all matters to assess their level of risk and priority. The team then finalises the review or conducts a further targeted or detailed review of the investigation.

5.2 TRANSITION OF OVERSIGHT FUNCTION FROM THE NSW OMBUDSMAN'S OFFICE

The Oversight Division continues to work within the former Police Integrity Commission's (PIC) legacy case management system. As this system was not designed for the Oversight Investigations function, it has limited functionality to support the team, in particular the capturing of data to identify systemic issues and emerging trends. The Oversight Division continues to work with the developers of the Commission's new case management system in order to implement an improved system designed to more efficiently manage the work of the division, as well as assist in the identification of potential systemic issues.

5.3 NSWPF MISCONDUCT INVESTIGATIONS, NSWCC MISCONDUCT INVESTIGATIONS AND CRITICAL INCIDENT INVESTIGATIONS SUBJECT TO OVERSIGHT

	2018-19
NSWPF misconduct matter investigations overseen	1221
NSWCC misconduct matter investigations overseen	1
NSWPF critical incident investigations overseen	32
Total	1254⁷

⁷ This includes misconduct matter investigations and critical incident investigations that were received by the Commission and which oversight was not finalised as of 30 June 2018

	2018-19
NSWPF misconduct matter investigations received	1051
NSWPF misconduct matter investigations where oversight was finalised prior to 30 June 2019	1221
NSWPF critical incident investigations where monitoring finalised prior to 30 June 2019	3

5.4 CORRESPONDENCE PURSUANT TO SS 104 AND 105 OF THE LECC ACT

The Commission has responsibility for reviewing misconduct matter investigations undertaken by the NSWPF and NSWCC in order to ensure that they have been undertaken in an appropriate manner with well-reasoned outcomes and findings.

Where the Commission considers that a misconduct matter has not been properly investigated, it can request the NSWPF or the NSWCC (as appropriate), pursuant to s 104 of the LECC Act, to conduct a further investigation. If the Commission is not satisfied with the NSWPF or NSWCC decision concerning action to be taken as a result of a misconduct investigation, it may request a review of that decision, pursuant to s 105 of the LECC Act.

During the reporting period, in a number of instances the Commission has written to the NSWPF in accordance with ss 104 and 105 of the LECC Act in order for the NSWPF to undertake further investigations or review the outcomes and findings.

CASE STUDY 4:

A metropolitan police command investigated an allegation that related to a failure of officers to comply with the Personal Use of Social Media Policy and Guidelines. An officer circulated a screenshot of a charge photograph from a Command Intelligence Bulletin to a Facebook Messenger group consisting of officers from the command, making a joke of the similarities between that photograph and one of the officers in the Facebook Messenger group.

The commander made not sustained findings on the basis that the conduct was not inconsistent with current NSWPF policies or procedures, noting that it is not uncommon for police intelligence to be disseminated through similar forums. The matter was also found to be not sustained on the basis the command did not believe that Facebook Messenger was a social media platform in accordance with the definition in the NSWPF social media policy.

The Commission disagreed with the investigation and requested a further investigation of the alleged misconduct, indicating the matters it considered deficient in the earlier investigation. These deficiencies included that the Commission believed Facebook Messenger was covered by the NSWPF policy, and that the material disseminated likely also breached the *Privacy and Personal Information Protection Act*. The NSWPF commenced a further investigation of the misconduct matter, and in August 2019 made a sustained finding against the subject officer for failing to comply with the Personal use of Social Media Policy and Guidelines.

As well as requesting a further investigation of this specific allegation, the Commission found the misconduct matter was indicative of two broader issues and sent a further letter to the NSWPF requesting consideration of: (i) whether the NSWPF social media policies have

limited scope and application in cases where personal social media accounts are used by sworn and unsworn NSWPF employees for law enforcement purposes; and (ii) that the NSWPF appears to endorse its employees' use of Facebook Messenger as an information communication platform for law enforcement purposes given it was not contrary to current policies. The Commission further highlighted that such practices of circulating information via social media platforms presented significant information security risks and was contrary to the 'NSW Information Security Manual' (which was developed in accordance with the AS/NZS ISO/IEC standards 27002:2013 and 27001:2013). Police acknowledged the corporate issues raised by the Commission and forwarded the feedback to the relevant policy holders within the NSWPF to review the current policies and consider any changes or amendments which may be required.

CASE STUDY 5:

The NSWPF complaint investigation pertained to allegations of unreasonable use of force exercised by four officers who attended the complainant's home in response to a 000 call in which it was alleged the complainant was suicidal. The commander made not sustained findings in relation to an alleged unreasonable use of force. The Commission issued a s 104 notice to police requesting they re-investigate the misconduct matter and further consideration be given to whether (i) the officers continued to use force where it was no longer necessary; (ii) failed to de-escalate the situation; (iii) had insufficient regard for the complainant's safety and welfare; (iv) conducted themselves unprofessionally when speaking to the complainant; and (v) provided misleading information during the course of the incident. Police declined to conduct a further investigation.

The Commission remained concerned as the involved officers were not made aware of the Commission's issues with their conduct and had not attended the available Mental Health Intervention training. As such, the Commission was concerned that if the officers were faced with a similar situation, they would not be sufficiently equipped to better deal with the situation. As such, the Commission again requested police further investigate the complaint and that as a minimum, the involved officers be expedited to attend the four day Mental Health Intervention training program and undergo mentoring with a mental health contact officer. While police once again declined to further investigate the complaint matter, they did schedule the involved officers for the four day training program and agreed to assign them a mental health contact officer to help them reflect on how the incident could have been handled differently.

CASE STUDY 6:

During the monitoring of a critical incident, the Commission became aware that two individuals who witnessed the critical incident and had been transported, as witnesses, to the nearest police station, were immediately taken into the cells and strip searched. This was despite one of the individuals questioning police as to why they were being searched when they were a witness.

While the Commission was cognisant of the traumatic nature of the critical incident and the effect of this for police responding to it, the strip searching did not appear to be justifiable. As a result, the Commission notified the NSWPF that there did not appear to be grounds to strip search the individuals and that the matter should be dealt with under Part 8A of the *Police Act 1990*.

The NSWPF conducted an investigation into the strip searching of the witnesses, and made not sustained findings. The Commission conducted oversight of the NSWPF investigation, independently from the investigators monitoring the critical incident, and wrote to the NSWPF indicating the deficiencies in the original investigation, requesting a further

investigation be undertaken. The police region has now taken over the complaint and a further investigation is being undertaken.

CASE STUDY 7:

The Commission reviewed a NSWPF misconduct investigation, in which the complainant alleged an officer of the NSWPF failed to adequately investigate her being sexual assaulted. The commander of the relevant district made findings that the allegations were not sustained, contrary to the recommendations of the NSWPF misconduct investigator. While the Commission acknowledged the commander was the Police Commissioner's delegate, concerns remained that one of the findings, that the investigation of the sexual assault had been adequate, did not appear to be supported by the evidence available. It was of concern to the Commission that once the sexual assault investigation had been undertaken by a different officer of the NSWPF, the accused had been charged with the sexual assault in question, whereas, the subject officer had not charged the offender.

The Commission issued a Notice to the NSWPF requesting the outcome of this matter be re-considered. The district commander explained that they could not make a finding that the investigation had been inadequate because neither the version of the subject officer nor the version of the complainant were corroborative, and he could not find that one version was more credible than the other. He also explained that there was insufficient independent evidence to corroborate either of those versions. The commander did, however, make a finding that the subject officer failed to create proper records in respect of this investigation, and made a sustained finding against the subject officer on this issue.

CASE STUDY 8:

The Commission requested the further investigation of a misconduct matter that involved the alleged unlawful detention of an Aboriginal male who was arrested and detained on two occasions after his previous bail reporting and curfew conditions had been removed.

The first arrest occurred on the evening of those conditions being removed and he attempted to inform arresting officers of the variation of his conditions, who then checked available records.

The NSWPF conducted a further investigation which identified issues around data being disseminated between the court and NSWPF COPS database.

As well as the identified system issues, the investigator noted the *"procedures for breach of bail are not easily known or accessible, with a majority of police spoken to unaware of them"*. This included constables and sergeants.

In response to these findings the police district took steps to ensure:

- the procedures for disputed breach of bail, and a 24-hour phone number for the Operational Support Team (Criminal Records Section), were printed and displayed in each charge room; and,
- all staff completed a Six Minute Intensive Training document (SMIT) relating specifically to Procedures for Disputed Breach of Bail Conditions.

CASE STUDY 9:

The NSWPF Professional Standards Command (PSC) investigated a number of allegations relating to the sending of intimate images of a civilian by one police officer to another. These intimate images were voluntarily provided to the original officer by the civilian.

The NSWPF conducted a criminal investigation, however it was determined that there were no applicable offences in place at the time of the incident. On this basis, no sustained findings

were made at a departmental level either which meant that the conduct was not dealt with at a criminal or disciplinary level. The new criminal offence of distributing intimate images without consent⁸ did not come into force until very shortly after this alleged incident.

The Commission notified the NSWPF that despite the criminal offence not being applicable at the time of the alleged misconduct, the nature of the alleged misconduct meant that it should have led to sustained findings for a breach of the NSWPF Code of Conduct and Ethics.

Despite the Commission demonstrating that the evidence was capable of establishing, on the balance of probabilities, the conduct occurred, the PSC ultimately declined to register new complaint issues or make findings into breaching the Code of Conduct and Ethics.

5.4.1 RECOMMENDATIONS FOR MATTERS TO BE CHANGED TO NOT SUSTAINED

When the NSWPF conducts a misconduct investigation, they will either find that an allegation is 'sustained' or 'not sustained' against the officer(s) under investigation.

The Commission does not limit the issuance of correspondence pursuant to ss 104 and 105 to cases where the NSWPF has made 'not sustained' findings. There have been instances where allegations were sustained against subject officers and the Commission has considered that these findings were not supported by the evidence.

During the reporting period, the Commission's recommendations resulted in sustained findings against nine officers being changed to 'not sustained'.

For instance, as a result of overseeing a NSWPF investigation that resulted in numerous officers having 'sustained' findings made against them, the Commission wrote to the NSWPF pursuant to s 105 of the LECC Act to indicate that the Commission did not believe that a number of the findings were justified. The NSWPF reviewed those investigation findings and changed the findings to 'not sustained' for all eight officers, as recommended by the Commission.

5.5 MONITORING

The Commission may choose to monitor the carrying out of a misconduct investigation being conducted by the NSWPF or the NSWCC if it is of the opinion that it is in the public interest to do so, pursuant to s 101 of the LECC Act.

At the time of writing, the Commission is actively monitoring thirteen NSWPF misconduct matter investigations in accordance with s 101 of the LECC Act. Monitoring active misconduct investigations allows the Commission to oversee these investigations in real-time including attendance at interviews, conferring with investigators about the investigation and requesting progress updates.

MONITORING	NUMBER
On hand monitoring matters as of 1 July 2018	7
New monitoring matters commenced since 1 July 2018	10
Total monitored by the Commission during reporting year	17
Finalised monitoring matters during the reporting year	2
On hand monitoring matters as of 30 June 2019	15

⁸ Section 91Q of the *Crimes Act 1900* (Cth)

CASE STUDY 10:

In October 2017, the Commission commenced monitoring an investigation being conducted by the NSWPF PSC. This investigation commenced as a result of a private WhatsApp group chat between numerous police officers from a metropolitan command being disclosed to management. This group chat contained numerous inappropriate comments which could be taken as the potential bullying and harassment of other police officers, as well as some constituting possible criminal conduct. Generally, the NSWPF investigation of this matter has been comprehensive with a number of officers being recommended for removal or other disciplinary action.

The WhatsApp group chat contained certain disclosures about an incident that had led to the arrest and charging of a civilian. These disclosures put into question the credibility of the evidence of the police case officer. The Commission remains concerned around one discrete aspect of this investigation, relating to the failure to disclose relevant information from the WhatsApp chat to the defence prior to a criminal matter proceeding to hearing. The information was directly relevant to the charges being contested at court and could have affected the credibility of the case officer in that matter. Instead, the hearing was allowed to proceed and the individual convicted.

The Commission made representations to the NSWPF that they should take steps to bring the matter before the court so as to quash the convictions. The police prosecutions command declined to take this course of action, but did provide the relevant WhatsApp material to the defence, which took steps to overturn the convictions by way of appeal proceedings to the District Court. Leave to appeal the convictions was required as the appeal period of 28 days had expired. Such leave to appeal was granted. On the appeal, the DPP offered no evidence with respect to two of the charges and the convictions were quashed with respect to those matters. Of the remaining charges, they were remitted to the Local Court for re-hearing. In those Local Court proceedings, all those prosecution charges were withdrawn and no convictions were recorded against the accused.

The PSC has recommended not sustained findings against the detective inspector and the police prosecutor in relation to the allegation that they failed to disclose the material. The Commission has not at this stage finalised its oversight of the matter.

CASE STUDY 11:

In February 2018, the Commission commenced monitoring the investigation of a misconduct matter that included allegations of unlawful strip searching of two individuals brought into custody after their arrest for either breaching the peace and/or obstructing traffic during a nearby protest.

In monitoring this investigation, the Commission met with the investigator and commander as well as attending interviews with subject officers. At various stages throughout the misconduct investigation, the Commission raised a number of concerns, including that the scope of the investigation should include whether there were systemic issues concerning strip searching at the relevant police station. The NSWPF made not sustained findings for all issues.

In July 2018, the Commission notified the NSWPF that it did not agree with those findings, setting out various deficiencies in the investigation, and requested a further investigation of the misconduct matter. This request was accepted by the NSWPF and a further investigation commenced, with the NSWPF region taking over responsibility for the investigation.

In May 2019, the second NSWPF misconduct investigator recommended sustained findings against:

- (i) the arresting police officer for failing to comply with LEPRA - arrest

- (ii) a sergeant for failing to comply with LEPR – strip search
- (iii) the two searching officers for failing to comply with LEPR – strip search

The region's Professional Standards Manager, in their quality review of the investigation, recommended that the findings against the two searching officers be not sustained. They considered the strip searching of the two people in custody was not a misconduct issue, but a performance issue.

In June 2019, the Commission notified the NSWPF that it did not agree with the not sustained findings against the two searching officers, and indicated reasons why the conduct should be considered a misconduct issue. On 20 September 2019, the region commander notified the Commission that sustained findings had now been made against the two searching officers.

Civil litigation was commenced on behalf of the two protestors, with both litigations having been finalised.

CASE STUDY 12:

In November 2018, the Commission was notified of a new complaint that included issues around the arrest of an individual for breach of bail, after reporting approximately 20 minutes late to a metropolitan police station. The individual, who identifies as transgender, was subsequently strip searched and during that strip search allegedly assaulted (common assault) by one of the police officers.

The Commission indicated its intention to investigate this complaint; however, after representations by the PSC, the Commission decided that the investigation should remain with the NSWPF.

The NSWPF indicated that the lawfulness of the strip search and reasonableness of the arrest were aspects of the matter to be investigated.

After later reviewing material relating to the ongoing NSWPF investigation, the Commission had concerns around the investigation into the arrest and strip search. There were no concerns with the investigation of the alleged assault.

The Commission commenced formally monitoring the investigation in accordance with s 101 of the LECC Act, and notified the NSWPF of that monitoring in late January 2019. In February, the police officer was charged with common assault by the NSWPF.

In April, the investigation was finalised by PSC and forwarded to the relevant command with only the issues of common assault and perjury being covered by the investigation report. Despite the PSC being aware of the Commission's monitoring of this investigation, the Commission was not informed of the finalisation of the report, nor upon the file being sent to the command.

After reviewing the finalised investigation report, the Commission notified the NSWPF that the investigation did not, amongst other things, make any references to the questions around the lawfulness of the strip search. The Commission requested explanation, comment or information from the PSC on their view as to whether the strip search was lawful. In response, the PSC recalled the investigation from the command and created three new complaint issues. The investigation of these issues has been suspended until the outcome of the hearing into the charge of common assault.

During the course of the NSWPF investigation, they obtained an internal legal advice around the use of force by officers in conducting the strip search. This use of force is not directly related to the common assault. The Commission requested the legal advice and associated instructions, and despite it being directly relevant to the issues being investigated, the NSWPF refused to provide the legal advising. The Commission notified the NSWPF that it did

not accept the refusal to provide the legal advising and further requested its provision. The legal advising and instructions were subsequently provided to the Commission.

During the Local Court hearing into the common assault, police witnesses from the relevant command gave evidence which indicated that, generally, all people brought into custody at the relevant police station, and that were to be transferred to Corrective Services custody, were strip searched by police. The police officer was acquitted of the common assault charge, and the departmental investigation is yet to be complete.

Separate to this oversight matter, analysis of custody records for a four day period that included the date that this arrest and search took place, identified that of 26 people in custody at that police station, approximately 58% were strip searched, rising to 65% if results excluded people in custody for breath analysis or voluntary forensic procedures.

5.6 REFERRALS TO THE INTEGRITY DIVISION

Having one agency with responsibility for overseeing NSWPF misconduct investigations and undertaking investigations into serious misconduct has provided a number of opportunities for the internal referral of matters to the Integrity Division. These referrals have included officers with concerning complaint histories, as well as the takeover of finalised NSWPF misconduct investigations where the Commission had serious concerns about the outcomes, and considered there was a public interest for further investigation.

Commission investigations Operation Carlow and Operation Rozzano, published by the Commission in January and June 2019, were both commenced as investigations following referrals from the Commission's Oversight Division. These arose as a result of serious concerns with the alleged misconduct, as well as the finalised investigations into that misconduct by the NSWPF.

5.7 WITNESS PROTECTION

The NSWPF administers the Witness Protection program, which is governed by the *Witness Protection Act 1995* (the Act). The aim of the program is to protect the safety and welfare of significant crown witnesses and others who give information about criminal activities.

The Commission has three primary areas of responsibility under the Act. These responsibilities relate to appeals by the witness protection applicant or participant against a decision of the Commissioner of Police relating to -

- (i) non-inclusion onto the witness protection program;
- (ii) suspension from the witness protection program; and
- (iii) termination from the witness protection program.

The Commission determined one appeal pursuant to the Act during the reporting period.

In November 2018, the NSWPF suspended a participant from the witness protection program. In accordance with the Act the participant appealed against that decision to the NSWPF and they determined to uphold the decision on 20 December 2018.

Upon confirmation by the NSWPF of the decision to uphold the suspension, the applicant has three days to appeal that decision to the Commission, which they did. Upon receiving the appeal, the Commission has seven days to make a determination on the appeal.

Having received the appeal on 20 December 2018, the Thursday prior to Christmas, the Commission successfully obtained and reviewed the relevant material within a tight timeframe. On 24 December 2018, the Commission upheld the appeal and overturned the suspension of the participant from the program.

5.8 AUDIT

The Commission is responsible for keeping under scrutiny the systems for dealing with NSWPF and NSWCC complaints.

The audit function has allowed the Commission to gain valuable insights into how the NSWPF and NSWCC manage misconduct matters.

5.8.1 NUMBER OF AUDITS COMPLETED AND OUTCOMES

The Commission conducted one on-site audit of the NSWCC, in accordance with s 32 of the LECC Act, in June 2019. Further information about this audit is in chapter 6 of this report.

The Commission conducted three on-site audits of the NSWPF: two commands and one region. In addition to this the NSWPF conducted a number of desktop audits relating to the NSWPF complaint handling system.

The Commission has engaged with the relevant areas of the NSWPF and NSWCC regarding the outcomes of those inspections including areas for improvement. The Commission has not produced any reports in accordance with s 32(5) of the LECC Act.

One of the desktop audits was the implementation of the requirements around the s 14 Guidelines in IAPro, in particular the NSWPF's notification of notifiable matters to the Commission. This audit was undertaken around six months after IAPro implementation and highlighted a number of concerns with the notification to the Commission of notifiable matters. These concerns were raised with the NSWPF, and since this time, there has been a significant improvement in the required notifications to the Commission.

5.9 CRITICAL INCIDENTS

The Commission has the power to independently oversight and monitor the investigation of critical incidents by the NSWPF if it decides that it is in the public interest to do so. The Commission's role is to ensure that the NSWPF investigates critical incidents in a competent, thorough and objective manner.

In the reporting period, the NSWPF declared 32 critical incidents. This was two less than the previous program year. The Commission commenced monitoring all 32 critical incident investigations from the time the Commission was notified of the declarations. The NSWPF ceased four critical incident investigations soon after declaration as the injuries were either less serious than first considered or preliminary investigations indicated that there was no relationship between the injury to the person and the actions of police. The Commission continues to monitor the remaining 28 critical incident investigations in addition to the 31 critical incident investigations still on foot from the previous reporting period (1 July 2017 to 30 June 2018).

In February 2018 the Commission entered into formal arrangements with the NSWPF regarding the monitoring of critical incident investigations. In October 2018 the Commission also finalised a Memorandum of Understanding with the NSW State Coroner in relation to monitoring of critical incident investigations which are also subject to the coronial jurisdiction. These agreements will be refined over time and the Commission will continue to work cooperatively with the NSWPF, the NSW Coroner and the Crown Solicitor's office in relation to our critical incident monitoring function.

5.9.1 WHAT IS A CRITICAL INCIDENT?

A critical incident is an incident involving a police officer or NSWPF employee that results in death or serious injury to a person. It must also be declared to be a critical incident by the

Commissioner of Police or his delegate. The LECC Act provides guidance about the features of a critical incident.⁹ These include incidents where death or serious injury arises:

- from the discharge of a firearm by a police officer;
- from the use of force or defensive equipment by a police officer;
- from the use of a police vehicle by a police officer;
- while in police custody or while attempting to escape police custody; or
- during any police operation where the injury or death is likely to have resulted from the police operation.¹⁰

There is, however, no requirement for the Commissioner of Police or his delegate to declare an incident that contains these features, to be a critical incident. The Commission has no jurisdiction to monitor a police investigation of a critical incident unless, or until, a declaration is made.

5.9.2 NOTIFICATION TO COMMISSION

The NSWPF is required to notify the Commission immediately after the declaration of a critical incident. Originally the notification of a new critical incident to the Commission occurred around the same time as, or even prior to, the notification to the NSWPF review officer, currently an officer from the PSC. In 2018 the NSWPF changed the manner in which the Commission is notified of a new critical incident and that notification is now, generally, conducted by the review officer.

The average time between the declaration of a critical incident being made and the Commission being notified of the critical incident was around 53 minutes during the reporting year, which is nearly 30 minutes slower than the last reporting year.

5.9.3 CRITICAL INCIDENT INVESTIGATIONS

Critical incident investigations are lengthy and often complex investigations. Since July 2017, three critical incident investigations have been finalised by the NSWPF. Once declared, critical incidents are investigated by the homicide squad or a criminal investigation team from a police area command or district that is independent from the command in which the incident occurred. In addition, every critical incident investigation is reviewed by the NSWPF PSC.

A critical incident investigation is broader in scope than a standard criminal investigation. The senior critical incident investigator in a critical incident investigation is required to consider the actions of police officers leading up to the incident as well as at the time of the incident. Investigating police must also consider the need for any changes to policies, practices, or procedures that arise in the course of the critical incident investigation, in order to mitigate future risks of a similar incident occurring in the future.

The NSWPF keeps critical incident investigations open until all related coronial and criminal proceedings have been finalised. Nearly all critical incident investigations have either related coronial or criminal proceedings, or both, attached. Some of these criminal proceedings involve the most serious of criminal charges such as murder and are expected to take a number of years to be finalised by the courts.

⁹ Section 110 LECC Act.

¹⁰ Police operation is defined in s 108 of the LECC Act and means any activity engaged by a police officer while exercising police functions apart from search and rescue operations.

5.9.4 MONITORING CRITICAL INCIDENT INVESTIGATIONS

The Act provides that Commission investigators may be present as observers at interviews conducted in relation to the critical incident, attend the location of critical incidents, and be provided access to all documents (including interview recordings and transcripts) obtained during the course of the investigation when monitoring critical incidents.¹¹

Commission investigators have monitored the investigation of all critical incidents declared in 2018-19, have attended the majority of critical incident locations and generally have been provided access to all documents within a reasonable timeframe. However, unlike monitoring functions outlined within Part 7 of the Act (oversight of misconduct matter investigations), consent must be provided by the person being interviewed and, the senior critical incident investigator, to allow Commission investigators to be present as an observer during an interview, either in person or by audio visual link.¹²

In every critical incident investigation to date, involved police officers have refused to consent for the Commission investigator to be present or to remotely observe their interviews. This appears to be a consistent and state-wide position taken by police officers involved in critical incidents. The power to observe interviews of involved officers in critical incident investigations, as it currently stands in the LECC Act, appears to be an illusory power. As the Act does not require that a reason be provided for refusal, the reasons that involved police officers choose to refuse are unclear.

5.9.5 CHANGE TO CONFLICT OF INTEREST PROCEDURES

In May 2019, the NSWPF implemented a change to the investigation management system, which now requires all NSWPF investigators assisting in the investigation of a critical incident to complete a conflict of interest declaration prior to being given electronic access to the investigation. The Commission considers that this addition is an improvement in process. It addresses recommendations made by the former Police Integrity Commission's Project Harlequin as well as a follow-up report of the Commission, Review of 29 NSW Police Force Critical Incident Reports. This report is available on the Commission's website.

5.9.6 CRITICAL INCIDENTS DECLARED DURING 2018-19

A similar number of critical incidents were declared by the NSWPF this year compared to last year. In the majority of critical incidents, Commission investigators met with investigating police at or near the location of the incident soon after receiving notification. The Commission did not attend the location of an incident in circumstances when there was little utility in doing so. This was due to a variety of factors including, but not limited to, the time required to travel to the location and whether there was a critical incident scene.

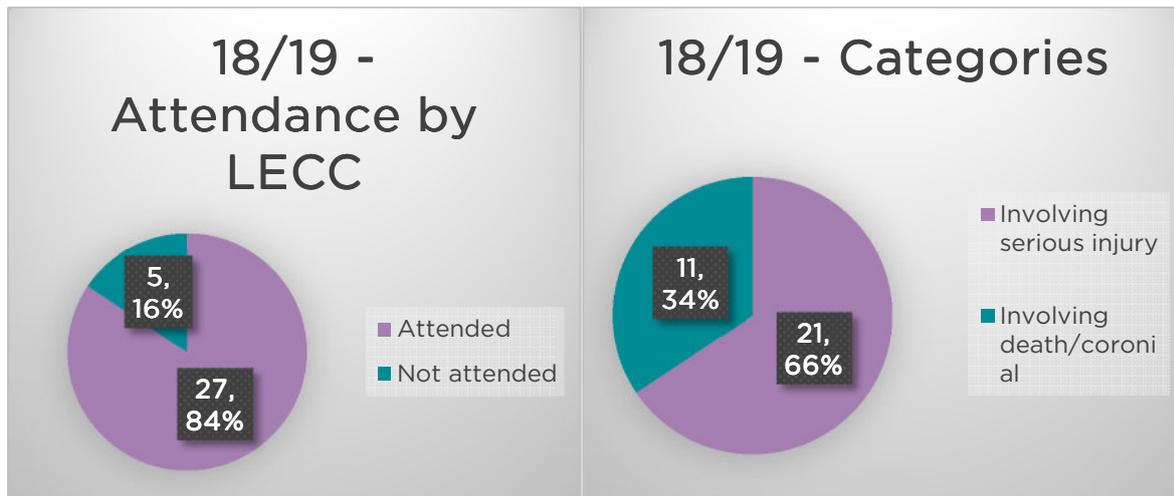
CRITICAL INCIDENTS	2017-2018	2018-2019
Declared by NSWPF	34	32
Monitoring commenced by the Commission	34	32
Attended location	19	27
Ceased being classified as critical incident by the NSWPF	3	4

¹¹ Section 114 of the *Law Enforcement Conduct Commission Act 2016*

¹² Section 114(3)(c) of the *Law Enforcement Conduct Commission Act 2016*

Ceased being monitored by the Commission following NSWPF decision to cease	3	4
Finalised investigation by the NSWPF	0	3
Finalised by the Commission	0	0

Source: NSWPF E@gle.i database holdings 1 July 2017 to 30 June 2019.



5.9.7 FEATURES OF CRITICAL INCIDENTS

There has been a significant reduction in the number of critical incidents in which people died between 2017-18 and 2018-19. The small sample size prohibits the drawing of reliable conclusions from this change.

CRITICAL INCIDENT FEATURES	2017-18	2018-19
Death	22	11
Serious Injury	8	21
TOTAL	30*	32

*2017-18 included an incident where no one was killed or seriously injured. The incident was declared under s111(b) of the Act as the Commissioner of Police had other grounds for considering it was in the public interest to do so.

Source: NSWPF E@gle.i database holdings 1 July 2017 to 30 June 2019.

5.9.8 CATEGORIES OF CRITICAL INCIDENTS

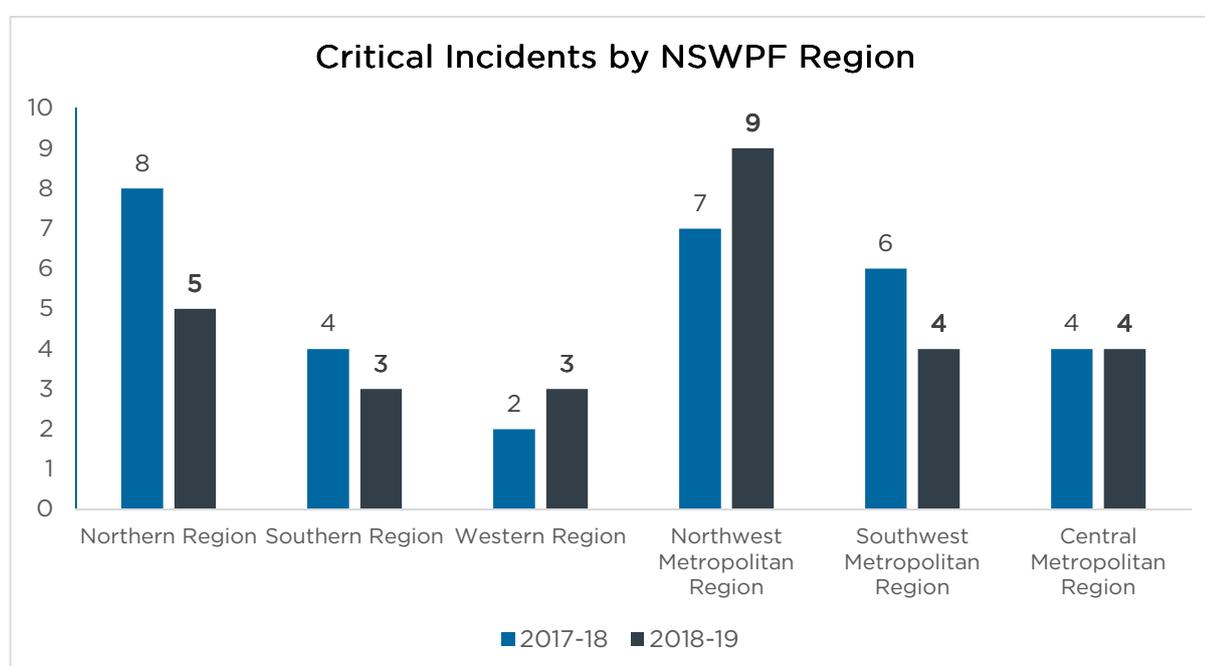
CATEGORIES OF CRITICAL INCIDENTS*	2017-18	2018-19
Death or serious injury arises from a discharge of a firearm	6	7
Death or serious injury arises from the use of defensive equipment	1	0
Death or serious injury arises from the application of physical force	1	1

Death or serious injury arises from the use of a police vehicle	5	3
Death or serious injury arises while the person is in custody or while escaping or attempting to escape from custody	5	1
Death or serious injury appears likely to have resulted from any police operation	12	16
Declared under s111(b) of the LECC Act – <i>the Commissioner of Police has other grounds for considering it is in the public interest to do so</i>	1	0
TOTAL	31[#]	28[#]

*These categories are drawn from ss 110 and 111 of the LECC Act 2016.

Critical incident investigations ceased by the NSWPF are excluded.

Source: NSWPF [E@gle.i](#) database 2017-2019.



Source: NSWPF [E@gle.i](#) database 2017- 2019.

5.9.9 CHARACTERISTICS OF CRITICAL INCIDENTS IN 2018-19

In circumstances where a critical incident results in the death of a person, the Coroner is required to hold an inquest into the manner and cause of death. In contrast, critical incidents which result in serious injury to a person are subject to the Coroner’s jurisdiction but most often are linked to criminal proceedings.

In the 2018-19 period, the Commission expects a coronial inquest will be held in 11 out of the 28 (39%) critical incidents. There are ongoing criminal proceedings in relation to 17 of the 28 (61%) critical incidents declared during 2018-19.

In 13 of 28 (46%) critical incidents in the 2018-19 period, evidence arising in the course of the critical incident investigation suggested that mental health was a factor in the critical incident. In 10 of the 13 (77%) incidents, the deceased or seriously injured person appeared to

be attempting to self-harm or to end their life at the time of their interaction with police. In the remaining three incidents, the evidence suggests that the person appeared to be experiencing a mental health episode.

In the 2018-19 period, critical incidents involving motor vehicle collisions that occurred during or soon after police officers followed or pursued a person in a police vehicle comprised seven of the 28 (25%) incidents. Two of these involved the death of the person being followed or pursued on the road. A further two resulted in serious injuries to members of the public who were completely unrelated to the police operation. In instances where criminal proceedings were subsequently commenced out of information arising from the critical incident the Commission has followed the proceedings.

The Commission has commenced identifying and analysing trends, emerging issues and risks in critical incident investigations and will continue to raise concerns with the NSWPF as appropriate.

5.9.10 SECTION 116 NOTIFICATION

During the reporting period, the Commission identified in one of the matters it was monitoring that there appeared to be sufficient evidence for charges to be laid against a NSWPF officer relating to their actions which led to the critical incident.

On 5 July 2019, the Commission recommended to the NSWPF under s 116 of the Act that the NSWPF seek urgent advice from the Office of the Director of Public Prosecutions (ODPP) regarding sufficiency of evidence for the laying of those charges. These offences were nearing their statute of limitations, and the previous position of the NSWPF had been that there was insufficient evidence to prosecute the police officer.

The NSWPF acted expeditiously upon the Commission's request and referred the brief to the ODPP. The ODPP advised there was sufficient evidence to charge the officer, and at the time of writing the officer has been served a court attendance notice in relation to two offences.

5.9.11 MISCONDUCT PERIPHERAL TO A CRITICAL INCIDENT INVESTIGATION

Throughout the course of a number of critical incident investigations, the monitoring team has identified a number of issues not directly related to the critical incident being investigated which could be considered to amount to officer misconduct. Where these issues have been raised with the NSWPF, they have generally been dealt with by the NSWPF as separate misconduct matter investigations under Part 8A of the *Police Act 1990*. One such matter has been reported as a case study in the Oversight Investigations section of this report.

6. CRIME COMMISISON

6.1 OVERVIEW

The Commission is required to separately report on NSW Crime Commission (NSWCC) matters in its annual report. The purpose of this section is to report on work undertaken by the Commission during 2018-19.

In November 2017, the Commission entered into an agreement and guidelines with the NSWCC in accordance with s 14 of the *Law Enforcement Conduct Commission Act 2016* (LECC Act). These guidelines outline the categories of misconduct matters that are required to be notified to the Commission, and upon which the Commission primarily focusses its oversight functions.

Between 1 July 2018 and 30 June 2019, the Commission assessed eight misconduct matters involving serving members of the NSWCC. The allegation types included:

- Bribery
- Fabrication of evidence
- Attempting to pervert the course of justice
- Improper association
- Protection of person(s) involved in drugs
- Unauthorised/improper disclosure of information
- Fail to declare a conflict of interest
- Misuse of authority for personal benefit

6.1.1 INVESTIGATIONS

There were two full investigations, one preliminary enquiry and no preliminary investigations for 2018-19. These remain ongoing.

6.1.2 NUMBER OF NSWCC MISCONDUCT INVESTIGATIONS THAT WERE SUBJECT TO OVERSIGHT BY THE COMMISSION UNDER PART 7 OF THE LECC ACT

The Commission oversaw one completed misconduct matter investigation undertaken by the NSWCC. No issues were identified by the Commission in respect to that investigation.

6.1.3 AUDITS OF THE NSWCC

The Commission conducted one on-site audit of the NSWCC, in accordance with s 32 of the LECC Act in June 2019. The outcomes of that audit were discussed with the NSWCC, and the Commission continues to work with the NSWCC to improve the systems in place between the two agencies for the reporting, investigation and oversight of misconduct matters.

7.

PREVENTION AND EDUCATION

7.1 OVERVIEW

The Commission's Prevention and Education team conducts research and investigations that focus on systemic misconduct or maladministration in the NSW Police Force (NSWPF) and NSW Crime Commission (NSWCC), such as actions or practices which might be unlawful or unreasonable.

The team's key projects typically examine the agency's relevant practices and processes, and consider compliance with legislation and policies. The projects usually culminate in a report which makes recommendations aimed at improving the way the agency can identify and prevent misconduct, unlawful actions and unreasonable practices. The recommendations may address the clarity of agency policies and instructions to officers, the level of supervision officers receive and officer training and education.

7.2 KEY PROJECTS

7.2.1 ANALYSIS OF CRITICAL INCIDENT INVESTIGATIONS OPEN AT 1 JULY 2017

While the Commission's critical incident investigations monitoring team monitors critical incident investigations as they unfold, the Prevention and Education team looked back at critical incident investigations which were open at the time the Commission commenced operations. This allowed the Commission to compare the way the NSWPF conducted those investigations before the LECC's monitoring role commenced.

In June 2019, the Commission published its review of 29 NSWPF critical incident investigations. The primary purpose of this review was to measure compliance by the NSWPF with its critical incident guidelines and to establish if there were unreasonable delays in finalising investigations.

The Commission found low levels of compliance with the procedural requirement to conduct mandatory alcohol testing within the desired timeframe of two hours. The Commission also identified inadequacies with the conflict of interest form that was being used to identify and keep account of the way that conflicts of interest are managed in critical incident investigations. The Commission identified what appeared to be unreasonable delays by the NSWPF in finalising a number of critical incident investigations.

The Commission made three recommendations, all of which have been accepted by the NSWPF. Two recommendations related to improving the way the NSWPF manages conflicts of interest of officers involved in investigating a critical incident. The Commission also recommended the NSWPF record reasons when any mandatory alcohol testing incident occurred outside the desired timeframe.

7.2.1 OPERATION TEPITO: APPLICATION OF THE SUSPECT TARGET MANAGEMENT PLAN TO YOUNG PEOPLE

The Suspect Target Management Plan (STMP) is a proactive policing policy applied to adults and young people, adopted by the NSWPF in January 2000. It seeks to reduce serious crime in the community by targeting repeat offenders known to local police.

The Commission commenced an investigation into the use of the STMP on children and young people in late June 2018, which was significantly progressed in 2018-19. The Prevention and Education team analysed how the NSWPF applies the STMP to a state-wide cohort of children and young people under 18 years of age. Working with the NSWPF, the Commission reviewed a range of information about how STMP targets are selected and assessed; the types of policing actions that targets are subjected to when they are placed on the STMP; and

the types of young people who are selected for targeting. An interim report containing the Commission's provisional findings and recommendations will be provided to the NSWPF in the second half of 2019, and a public report will follow.

The NSWPF has made some changes to the way it applies the STMP to children and young people since the Commission's investigation commenced. All children under 14 years who are made STMP targets must now be endorsed by the NSWPF Assistant Commissioner, Capability, Performance and Youth Command; STMP operational guidelines have been introduced; and most recently, a total STMP re-design has been initiated by the NSWPF.

7.2.1 OPERATION TUSKET: THE NSW POLICE FORCE'S ADMINISTRATION OF THE CHILD PROTECTION REGISTER

In 2018-19, the Prevention and Education Team continued its work on Operation Tuskett, an investigation into the NSWPF's administration of the Child Protection Register. The *Child Protection (Offenders Registration) Act 2000* (NSW) (CPOR Act) requires that a register be maintained containing the personal details of individuals who have been convicted of certain sexual or violent offences involving children, or offences relating to child abuse material. The CPOR Act requires these 'registrable persons' to report their personal information to the NSWPF. Since Operation Tuskett commenced in September 2017, the NSWPF has worked collaboratively with the Commission to identify and address issues. In August 2018, the Commission provided the NSWPF with a confidential interim report, which included preliminary views and provisional recommendations. In October 2018, the NSWPF responded, indicating that two of the Commission's recommendations, relating to securing access to electronic databases for officers responsible for maintaining the Register, had been implemented.

In the first half of 2019, the Commission worked towards the final report on Operation Tuskett. The draft final report was provided to the NSW Commissioner of Police on 7 August 2019. After the NSWPF responds, the report will be finalised and presented to Parliament for tabling and public release later in 2019.

7.2.1 OPERATION SHOREWOOD: HOW THE NSW POLICE FORCE DEALS WITH WORKPLACE EQUITY MATTERS

In the NSWPF, all forms of bullying, discrimination, harassment (including sexual harassment), vilification and victimisation are collectively known as 'workplace equity matters'. All potential workplace equity matters should be reported to the Workplace Relations Equity Unit (WREU). The role of the WREU is to provide consistent advice about workplace equity matters across the NSWPF, and implement programs and strategies to strengthen respectful workplace behaviour in the NSWPF.

The Commission is working in collaboration with the NSWPF to improve the way the NSWPF investigates workplace equity complaints. Workplace equity complaints can be challenging, complex and protracted. Many staff may be impacted by the effects of workplace equity matters, even while a complaint is being investigated or resolved.

The Prevention and Education team reviewed the way the NSWPF dealt with workplace equity complaints made between 1 July 2017 and 31 December 2018, along with NSWPF policies and procedures. The Commission is working with the NSWPF to develop and implement strategies to detect and prevent this type of behaviour before it becomes a complaint, and hopes to:

- assess the NSWPF's compliance with its policies for managing and investigating workplace equity matters; and

- make recommendations to improve compliance with policies and improve the way the NSWPF deals with workplace equity matters.

It is anticipated that the results of Operation Shorewood will be finalised and published in 2019-20.

7.2.1 INQUIRY INTO THE PRACTICES OF THE NSW POLICE FORCE IN CONDUCTING STRIP SEARCHES

During 2018-19, the Prevention and Education team assisted in the Commission's inquiry into the practices of the NSWPF in conducting strip searches. The Commission's focus has been on assisting in the identification of systemic issues, particularly in relation to training and education of police, strip searches of young people and the conduct of strip searches in police stations.

The Commission analysed the standard operating procedures (SOPs) for conducting strip searches in police stations. The SOPs were managed by various police area commands and districts, and as a result, over a hundred different local procedures were in operation. In early July 2019, the Commission reported the results of its analysis to the NSWPF. The report identified deficiencies in the accuracy and level of detail contained in the SOPs, including references to outdated policies and incorrect or incomplete references to legislation. It also identified a need to clarify the roles of various police officers involved in bringing a person into custody and managing them while in custody. Additionally, a number of common practices, some that are not explicitly addressed in the legislation governing strip searches by police, were not explained in the policy.

The Commission recommended that the NSWPF create one consistent SOP for conducting strip searches in custody, which includes a current and comprehensive account of police obligations when conducting strip searches, and removes all incorrect and outdated references to legislation and NSWPF policy. The Commission also recommended the policy guide police about how to form a suspicion on reasonable grounds that a strip search is necessary for the purposes of the search, and clarify the role of the custody manager in deciding whether a general or strip search is necessary in the circumstances. The Commission also recommended that the policy include consistent guidance to police about a range of common issues in conducting strip searches. These include whether (and if so, how) a search should be filmed by CCTV or other recording equipment; whether police can ask a person to squat and cough, bend over, lift their genitalia or remove all clothing at once; when it is appropriate to use force during a strip search and requirements for police to record the reasons for the search. The report is due to be published in late 2019.

In response, the NSWPF developed a single, consolidated Charge Room and Custody Management SOP, and created a new Person Search Manual. The new procedures should improve the consistency of search procedures, however some important issues are not sufficiently clear in these new procedures, including:

- how to carry out searches with the consent of the person searched;
- asking people to move their body to facilitate a strip search;
- the use of force when conducting a strip search; and
- the use of a support person to represent the interests of young or vulnerable people during a strip search.

While the legislation does not provide all the answers about these practices, it is nevertheless important that the NSWPF explains to officers how they are expected to conduct themselves. The Commission will continue to work with the NSWPF to ensure that officers are provided clear guidance about these issues.

7.3 REVIEW OF AMENDMENTS TO CONSORTING POWERS

On 28 February 2019, the Commission was given responsibility for reviewing the operation of amendments to consorting laws under Part 3A Division 7 of the *Crimes Act 1900*. The consorting laws make it a criminal offence for a person to continue to associate or communicate with people who have previously been convicted of an indictable offence after receiving an official police warning. The amendments to the consorting powers do the following:

- extend the definition of indictable offence to include offences committed in other jurisdictions if they would be indictable if committed in NSW;
- exclude young people under 14 years from the offence of consorting;
- clarify what an official police warning must say, and limits the duration the warning remains in effect (six months for warnings given to people under 18 years, two years for warnings given to adults);
- extend the defence of reasonable consorting to situations where a person is complying with parole orders or accommodation recommendations made by Corrective Services NSW;
- clarify the definition of family member with regard to Aboriginal and Torres Strait Islander people to allow the defence of reasonable consorting to apply to extended family and kinship systems; and
- include definitions to clarify the defences of consorting that occurs in the course of the provision of a health or welfare service, and consorting that occurs in the course of complying with an order granted by the Parole Authority.

The Commission will review the operation of the amended powers over three years.

7.4 REPORT UNDER S870 OF THE LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) ACT 2002

The Commission is required to keep under scrutiny the exercise of powers conferred on police under Part 6A of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA).

Part 6A allows police to authorise the use of special powers to prevent or control large-scale public disorder. The special powers were created as a response to the Cronulla riots in 2005. They include powers to establish a cordon around a specified target area, or a road block in a specified target road. Part 6A also gives police special powers to do things in the target area that would ordinarily require a warrant or the formation of reasonable suspicion of criminal activity. For example, police may stop and search vehicles and people, seize and detain things and disperse groups.

In 2018-19, the NSWPF did not use the powers under Part 6A LEPRA. The powers have not been used since March 2011.

8. LEGAL MATTERS

8.1 OVERVIEW

This chapter contains information about important statutory provisions and legal developments of significance in 2018-19.

8.1.1 LEGISLATION

8.1.1.1 LAW ENFORCEMENT CONDUCT COMMISSION ACT 2016

Under the *Administrative Arrangements (Administration of Acts – General) Order (No 2) 2019* issued on 1 May 2019, the administration of the *Law Enforcement Conduct Commission Act 2016* (LECC Act) was allocated to the Premier jointly with the Special Minister of State. Prior to 1 May 2019, the administration of the LECC Act was allocated to the Minister for Police and Emergency Services.

8.1.2 RESPONSE TO SUBPOENAS

From time to time, the Commission is served with subpoenas requiring the production (in court) of documents, or information acquired during the exercise of its functions.

Officers of the Commission cannot be required to produce documents or divulge information which has been obtained in the exercise of functions under the LECC Act. This is subject to certain limited exceptions. These exceptions are for the purposes of a prosecution, disciplinary proceedings, or proceedings under Division 1A or 1C of Part 9 of the *Police Act 1990* arising out of an investigation conducted by the Commission in the -exercise of its functions.

Where the Commission is served with a subpoena falling outside these limited exceptions, the issuing party is invited instead to make an application to the Commission to exercise discretion to release information pursuant to s 180(5)(d) of the LECC Act. Under that section, the Commission has broad discretion to authorise the release of documents or information held by the Commission, if satisfied that it is necessary to do so in the public interest.

8.1.3 SECTION 180(5) DISSEMINATIONS

The LECC Act imposes strict obligations of secrecy upon officers of the Commission in relation to information acquired in the exercise of their functions under the Act.

Generally, the disclosure of information other than for the purposes of the LECC Act, purposes connected with prosecution or disciplinary proceedings arising from a Commission investigation, or law enforcement and investigative purposes is dealt with under s 180(5)(d) of the LECC Act.

The Commission can direct that confidential information held by the Commission be released, but only if it is considered necessary in the public interest to do so.

During 2018-19, the Commission disseminated information on two (2) occasions under s 180(5)(d) of the LECC Act.

9. GOVERNANCE AND ACCOUNTABILITY

9.1 GOVERNANCE AND ACCOUNTABILITY

The Commission is accountable to a Parliamentary Joint Committee and the Inspector of the Law Enforcement Conduct Commission. It also maintains a number of internal governance committees to operate effectively.

9.1.1 THE INSPECTOR OF THE LAW ENFORCEMENT CONDUCT COMMISSION

The Inspector is an independent statutory officer whose function is to provide oversight of the Commission and its officers.

The Hon Terry Buddin SC was appointed as the Inspector of the Law Enforcement Conduct Commission on 1 July 2017.

The principal functions of the Inspector are to:

- undertake audits of the operations of the Commission;
- deal with (by reports and recommendations) complaints made to the Inspector about maladministration and/or misconduct on the part of the Commission and/or its officers, including former officers;
- assess the effectiveness and appropriateness of the Commission's policies and procedures.

9.1.2 THE PARLIAMENTARY JOINT COMMITTEE

The functions of the Parliamentary Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (the Committee), as they relate to the Commission, are set out in s 131 of the *Law Enforcement Conduct Commission Act*.

The Committee reviews the Commission's performance, examines its annual and other reports, and reports to Parliament on matters relating to the Commission's functions.

The Committee can examine trends and changes concerning police or Crime Commission officer misconduct, and practices and methods relating to such conduct, and report on changes needed to the Commission and the Commission Inspector's functions, structures and procedures.

At the time of writing, members that serve on the Committee include:

- Mr Dugald Saunders, MP (Chair)
- The Hon Niall Blair, MLC (Deputy Chair)
- The Hon Lou Amato, MLC
- Mr Mark Coure, MP
- Mr Paul Lynch, MP
- Dr Hugh McDermott, MP
- The Hon Adam Searle, MLC

9.1.3 INTERNAL GOVERNANCE

The Commission has a number of internal governance committees to monitor its day-to-day functions. The internal governance committees include:

9.1.3.1 EXECUTIVE COMMITTEE

The Executive Committee meets weekly to discuss matters concerning the management and functioning of the Commission.

Members of the Committee include:

- Chief Commissioner
- Commissioner for Integrity
- Commissioner for Oversight
- CEO and General Counsel
- Director, Investigations (Integrity)
- Director, Investigations (Oversight)
- Director, Electronic Collections
- Director, Covert Services
- Director, Corporate Services
- Manager, HR
- Manager, Finance

9.1.3.2 STRATEGIC OPERATIONS COMMITTEE

The Strategic Operations Committee (SOC) meets monthly to ensure the effective administration of operational resources, provides strategic direction to investigations, and acts as a consultative forum for investigative research and prevention reports, as well as auditing proposals.

9.1.3.3 AUDIT AND RISK COMMITTEE

As required by NSW Treasury policy 09-05 *Internal Audit and Risk Management Policy for the NSW Public Sector*, and with the independence and governance requirements of Treasury Circular 09/08, the Commission's Audit and Risk Committee provides independent assistance to the CEO by monitoring, reviewing and advising on the Commission's governance processes, risk management and control frameworks, and its external accountability obligations. The Audit and Risk Committee meet quarterly.

9.1.4 STAFF VETTING

Commission staff occupy positions of trust and work with sensitive and confidential material. The Commission's Security and Vetting Policy ensures staff are aware of their responsibilities regarding the integrity of Commission information and systems.

All staff employed by the LECC are required to comply with the Commission's Employment Suitability Check and Australian Government Security Vetting Agency (AGSVA) security clearance process as part of the employment application process. The Commission has a policy of not employing current or former NSWPF or NSWCC officers.

10. COMMUNITY ENGAGEMENT

10.1 COMMUNITY ENGAGEMENT

The Commission recognises the strong need for targeted community engagement and works directly with community organisations to increase awareness of the role of the Commission, its purpose, accessibility to it and trust. This work is critical to facilitate communication with community members who may wish to report law enforcement misconduct or maladministration but do not feel confident to do so.

The Community Engagement team works with community legal centres, Legal Aid, the Aboriginal Legal Service and other organisations to raise awareness of the Commission.

In 2018-19, the Community Engagement team along with the LECC Commissioners participated in a number of community events and conferences, including:

- Law Society CPD sessions;
- Community Legal Centres quarterly conference;
- Youth Justice Coalition;
- Legal Aid's Cooperative Legal Service Delivery program;
- Police Aboriginal Strategic Advisory Committee;
- Rural, Remote and Regional Community Legal Centres conference; and
- Joint community forum with ICAC and the NSW Ombudsman

The Community Engagement team also visited a number of regional and remote communities around NSW to meet with legal representatives, members of the community and elders. Areas visited include Port Macquarie, Dubbo, Kempsey, Nowra and Taree, amongst others.

10.1.1 SENIOR OFFICER ENGAGEMENT

The LECC's Commissioners are actively involved in the Commission's outreach and engagement activities. The Commissioners attended and presented at a number of external events this year, including:

- Office of the Legal Services Commissioner staff meeting;
- A number of Law Society events in the Sydney CBD, Bankstown and District, Tamworth and Cronulla;
- A joint forum with ICAC and the NSW Ombudsman in Armidale;
- Rural, Remote and Regional Community Legal Centres conference in Dubbo;
- International Society for the Reform of Criminal Law conference; and
- Hong Kong Independent Police Complaints Council

10.1.2 COLLABORATION WITH THE NSW POLICE FORCE

The Commission places an emphasis on collaboration with the agencies it oversees. In 2018-19, the LECC Commissioners and other senior staff participated in a number of meetings, forums and training conducted by the NSWPF, including but not limited to:

- Workshops held by NSWPF Forensics to demonstrate ballistics and fingerprinting;
- Senior Critical Incident Investigator Training;
- NSWPF Internal Review Panel and Commissioner's Advisory Panel; and
- Police Aboriginal Strategic Advisory Committee

10.1.3 WORKING WITH ABORIGINAL COMMUNITIES

The Commission recognises the overrepresentation of Aboriginal people in the criminal justice system and is committed to working with Aboriginal communities to ensure the Commission is accessible.

During 2018-19, Commission staff undertook training in Working with Aboriginal Communities with the NSWPF.

Commission staff meet regularly with the Aboriginal Legal Service to identify communities that may benefit from LECC outreach, and to discuss potential systemic issues which may form the basis of Commission research reports. The Commission's Community Engagement team also regularly meets with teams within Legal Aid to identify hard-to-reach communities that may respond to outreach work by the LECC.

10.1.4 LECC YOUTH OUTREACH STRATEGY

Through the outreach conducted by the Community Engagement team in 2018, it was identified that younger members of some NSW communities were having frequent interactions with law enforcement that resulted in negative relationships between police and the young people being policed. The Community Engagement team developed a youth outreach program of work to ensure young people:

- are aware of the LECC's role;
- feel confident to report allegations of serious misconduct and serious maladministration to the LECC;
- have greater confidence in the transparency of the NSWPF;
- feel informed about their reporting obligations and what constitutes misconduct and maladministration; and
- are confident to report to us as a confidential and robust law enforcement oversight organisation.

The Community Engagement Team intends to meet with an array of youth services and agencies, not only ensuring youth are made more aware, but also those caring for and/or representing them. The youth outreach strategy also places an emphasis on respectful relationships between young people and law enforcement.

Key priorities in the youth outreach strategy include:

- partaking in youth interagency groups such as the Youth Justice Coalition;
- connecting with youth specific agencies such as the KOCH centre and/or Red Cross Young Parents Group to provide information about the LECC and where its services may be of use to youth in these communities;
- attending schools where students have had or continue to have frequent interactions with police; and
- creating youth-specific materials for use when visiting youth based organisations and forums.

10.1.5 LECC DIVERSITY ACTION PLAN 2019-2021

The Commission has an obligation under current legislation to provide the people of NSW a fair approach in work opportunities, accessibility and services. Such legislation includes the *Disability Inclusion Act 2014* (NSW).

The LECC Diversity Action Plan for 2019-2021 details the strategy which the Commission will implement in order to address the Focus Areas and Outcomes outlined in the Multicultural Policies and Services Program (MPSP) framework, directly aligning with the aforementioned legislation.

Whilst the Commission is governed by legislative requirements, it recognises the importance of being committed to enhancing the accessibility of its services to all communities of NSW, specifically hard to reach communities.

The Commission understands the need to build strong relationships with its stakeholders to deliver better outcomes for the community. A strong relationship with Aboriginal and Torres Strait Islander communities strengthens the Commission's organisational culture by celebrating cultural diversity and promoting inclusion.

Outcomes of this diversity plan will be presented to the Executive of the Commission on an annual basis.

This LECC Diversity Action plan was created in consultation with the Office of the NSW Ombudsman, Aboriginal Legal Service, Department of Justice, Legal Aid NSW and the NSW Independent Commission Against Corruption.

In addition to the above, the Community Engagement team created Easy English and CALD specific LECC brochures in five languages, Dinka/Juba, Farsi, Dari, Vietnamese and Arabic. The development process included consultation with the Department of Justice who similarly interact with culturally diverse communities.

1. APPENDIX 1

1.1 APPENDIX 1

1.1.1 Industrial relations

The terms and conditions of employment for non-executive officers of the Commission are governed by the *Crown Employees (Law Enforcement Conduct Commission) Award 2018* and the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*. Senior Executive Officers of the LECC are employed under the provisions of the *Government Sector Employment Act 2013*.

1.1.1.1 ORGANISATION RESTRUCTURE

On 4 July 2018, the Public Service Association (PSA) advised the Commission that, after consultation with its members, they consented to an organisation restructure that was proposed in the previous reporting period. The organisation restructure was implemented in the first half of this reporting period. The implemented organisation restructure resulted in:

- one staff member accepting the offer of a voluntary redundancy;
- a total of nine roles deleted from the original organisation structure;
- a total of eight new roles created in the new organisation structure; and
- a total of nine roles transferred to a higher grade in the new organisation structure.

1.1.1.2 LECC AWARD

The *Crown Employees (Law Enforcement Conduct Commission) Award 2017* (the LECC Award) came into effect on 1st July 2017 and was to remain in force until 30th June 2018. After a period of communication and consultation with the PSA agreement was reached on a series of proposed changes to the LECC Award. These changes were ratified in the NSW Industrial Relations Commission on 19th September 2018 leading to the creation of the *Crown Employees (Law Enforcement Conduct Commission) Award 2018* which remains in place to date.

Number of officers and employees by category & comparison to the prior year

	2017	2018	2019
Statutory appointments	3	3	3
Male Executive appointments	3	5	5
Female Executive appointments	1	2	2
Operational staff	7	45	52
Support staff	18.9	45.65	46.6
Total	31.9	100.65	108.60

Senior Executives–Remuneration Band determination, number of officers and gender breakdown comparison

Band	2018-19	
	Female	Male
Band 4 (Secretary)	0	0
Band 3 (Deputy Secretary)	0	0

Band 2 (Executive Director)	2	0
Band 1 (Director)	0	5

Senior Executives-Remuneration range comparison

2018-19	REMUNERATION RANGE	AVERAGE REMUNERATION
Band 4 (Secretary)	\$475,151pa to \$548,950pa	n/a
Band 3 (Deputy Secretary)	\$337,101pa to \$475,150pa	n/a
Band 2 (Executive Director)	\$268,001pa to \$337,100pa	\$322,319pa
Band 1 (Director)	\$187,900pa to \$268,000pa	\$238,533pa

Staff movement 2018-19

NUMBER OF STAFF WHO COMMENCED EMPLOYMENT	NUMBER OF STAFF WHO CEASED EMPLOYMENT
31	13

1.1.1.3 EXECUTIVE REMUNERATION

The Chief Commissioner and two Commissioners for the Law Enforcement Conduct Commission are appointed by the Governor pursuant to s 18 of the *Law Enforcement Conduct Commission Act 2016*, and, pursuant to clause 9 of Schedule 1 of the Act, are not subject to the *Government Sector Employment Act 2013*.

The Hon M F Adams QC was appointed as Chief Commissioner effective from 13th February 2017. His remuneration is set annually by the Statutory and Other Officers Remuneration Tribunal. For this reporting period the Chief Commissioner's salary was \$499,045pa.

The Hon Lea Drake was appointed as Commissioner for Integrity effective from 14th April 2017. Her remuneration is set annually by the Statutory and Other Officers Remuneration Tribunal. For this reporting period the Commissioner's salary was \$374,285pa.

Patrick J Saidi was appointed as Commissioner for Oversight effective from 7th June 2017. His remuneration is set annually by the Statutory and Other Officers Remuneration Tribunal. For this reporting period the Commissioner's salary was \$374,285pa.

As holders of independent public offices, the Chief Commissioner, the Commissioner for Integrity and the Commissioner for Oversight are not subject to an annual performance review, and are responsible to Parliament in the performance of the functions of their respective offices.

Throughout the reporting year two people were employed by the Commission in Public Sector Senior Executive Service roles within Executive Band 2, and five persons were employed within Executive Band 1, of the *Government Sector Employment Act 2013*. All members occupying Public Service Senior Executive Service roles at the Commission are employed under individual Public Sector Senior Executive employment contracts, the terms of which provide for regular performance assessment.

1.1.1.4 PERSONNEL POLICIES

Throughout the latest reporting period the Commission continued to build on its suite of personnel (HR) related procedures and policies to ensure clarity and transparency within the

employment environment. The following policies and procedures were implemented in the 2018-19 reporting period:

- Discrimination, Harassment & Bullying policy
- Grievance Management policy
- Disciplinary Action policy
- Managing Unsatisfactory Behaviour procedure
- Managing Unsatisfactory Conduct procedure

A number of existing personnel (HR) policies were also reviewed and updated throughout the reporting period. These included:

- Work, Health & Safety policy
- Consultative Arrangements policy
- Identity Card Badges and Designations policy and procedure

1.1.1.5 TRAINING AND DEVELOPMENT

The Commission continued to provide a broad range of Training and Development opportunities to staff throughout the 2018-19 reporting period. Training covered specialist areas including:

- Corruption Prevention Network Forum
- National Investigations Symposium
- Investigating Misconduct in the Public Sector
- Understanding and Responding to Vicarious Trauma
- Thought Leadership Seminar
- Defence, Police, Emergency Services Women's Leadership Summit
- Taxation & Payroll Training

Generic training opportunities provided to staff throughout 2018-19 included:

- Frontline Complaint Handling Training
- Conflict Resolution Training
- Office Ergonomics Training
- First Aid & CPR Training

The implementation of the Commission's Study Assistance policy in this reporting period also resulted in leave and monetary support being provided to staff members undertaking tertiary level studies in a number of specialist areas including:

- Masters in Investigations
- Public Sector Management Program
- Certificate IV in Government
- Advanced Diploma in Investigations

1.1.1.6 WORKPLACE HEALTH AND SAFETY

Throughout the reporting period, there were a total of five workplace incidents reported. Of these, one resulted in significant time loss from work as a result of injuries suffered in a serious motor vehicle accident whilst on operation duties. A total of 169 work days were lost as a result of the injuries suffered in this incident. The Commission employee is making good progress in her recovery.

The Commission has effective procedures in place to ensure adherence to the requirements of workplace health and safety (WHS) legislation. The Commission's WHS policy was

reviewed and updated in the reporting period. The Commission Executive are informed of all relevant workplace health and safety matters through the receipt of a detailed report every six months. Management continues to work closely with the WHS Committee to ensure the health and safety of all staff and visitors in the workplace. There were no workplace health and safety related prosecutions under the *Work Health and Safety Act 2011* during this reporting period.

1.1.1.7 DIVERSITY ACTION PLAN

A Diversity Action Plan for the Commission was developed in this reporting period. It is currently subject to feedback from Commission management and staff after having gone through a comprehensive consultation and feedback process involving external agencies including the Department of Justice, the Aboriginal Legal Service and Legal Aid NSW. The LECC's Diversity Action Plan covers the period from 2019-2021 and will be formally adopted by the Commission Executive in the second half of the 2019 year. The key strategy outcomes of the Diversity Action Plan are focussed on:

- Service Delivery – Mainstream services delivered for everyone
- Planning – Strong Plans to deliver services
- Leadership – Demonstrated leadership in culturally inclusive practices
- Engagement – Collaboration with diverse communities

The Diversity Action Plan aims to ensure that the needs of people from cultural and linguistically diverse backgrounds, people with disabilities and those from vulnerable communities have access to the Commission and all of its functions.

1.1.1.8 ACTION PLAN FOR WOMEN

Table 17: Action Plan for Women 2018-19

OBJECTIVE	RESULTS/PLANS
<p>An equitable and balanced workplace responsive to all aspects of women's lives</p>	<p>A total of 23.19% of the Commission's female employees were employed on approved part-time and other special working arrangements as a means of balancing work and home life responsibilities throughout the reporting period. 8.70% of the Commission's female employees were granted extended periods of leave including leave without pay throughout the reporting period for various reasons relating to their personal circumstances.</p> <p>Policies and procedures are in place at the Commission to ensure that women who are seeking a better work/life balance are given the opportunity to do so by accessing a variety of flexible work practices. This applies to women returning from maternity related leave as well as those with other personal responsibilities and obligations.</p>
<p>Equitable access for women to educational and training development opportunities</p>	<p>16 of a total of 28 higher duties, staff development opportunities across the organisation were filled by women during this reporting period. 5 of a total of 10 study</p>

OBJECTIVE	RESULTS/PLANS
Promote the position of women	<p>assistance approvals for tertiary level studies were for applications made by female staff members at the Commission throughout the reporting period.</p> <p>Women made up a total of 56.10% of the Commission's workforce throughout the reporting period. A total of 47.37% of the Commission's management level positions are held by women and 79.71% of the Commission's female staff are remunerated above the equivalent of NSW Public Sector Administrative & Clerical Officers Grade 5.</p>

1.1.2 INFORMATION AND COMMUNICATIONS TECHNOLOGY MANAGEMENT

The Commission IT department achieved a significant Cyber Security milestone in the 2018-19 reporting period, progressed on a major business system replacement project and provided stable and reliable operations.

The Commission achieved ISO 27001 (“Information technology - Security techniques - Information security management systems - Requirements”) certification in June 2019, for the first time. This contributes to the Commission's compliance with the NSW Government Cyber Security Policy.

The Commission's core business system (complaints and investigations case management system) replacement project has significantly progressed throughout the year and will be completed in the coming year.

Further works were undertaken throughout the year to ensure the Commission maintained effective and efficient technology support for its operations. Some examples are: upgrades to the audio-visual capability in the Commission's hearing room, a video conferencing capability, redesign of the intranet and continued evolution of the public facing internet site, Windows 10 end user computing upgrades, and a full refresh of IT policy documentation.

1.1.3 DIGITAL INFORMATION SECURITY POLICY

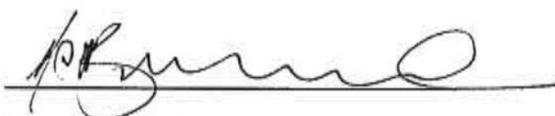
The Commission is required to annually attest to the adequacy of its digital information and information systems security. The attestation statement can be found below.

Digital Information Security Annual Attestation Statement for the 2018-2019 Financial Year for Law Enforcement Conduct Commission

I, Michelle O'Brien, am of the opinion that Law Enforcement Conduct Commission (LECC) had an Information Security Management System in place during the 2018-2019 financial year that is consistent with the Core Requirements set out in the NSW Government Cyber Security Policy. Furthermore, the LECC achieved compliance with ISO 27001 "*Information technology - Security techniques - Information security management systems – Requirements*" as independently assessed and reviewed by SAI Global during the 2018-19 financial year.

The controls in place to mitigate identified risks to the digital information and digital information systems of Law Enforcement Conduct Commission are adequate.

There is no agency under the control of Law Enforcement Conduct Commission which is required to develop an independent ISMS in accordance with the NSW Government Cyber Security Policy.



26/08/19

Michelle O'Brien
CEO & General Counsel, Law Enforcement Conduct Commission

1.1.4 DELIVERY OF ELECTRONIC SERVICES

During 2018-19 the Commission's new public website attracted 19,427 visitors, at an average of 53 visitors per day.

1.1.5 MAJOR WORKS

The Commission is currently in the process of implementing a new case management system. The initial phase of work including consulting and scoping requirements commenced in early 2018 with an expected completion and go live date of October 2019. The total capital investment as at 30 June 2019 is \$683,014 of this \$522,657 was expensed during the reporting period.

1.1.6 AUDITS

The Audit Office of NSW was engaged to carry out an audit of the 2018-19 Financial Statements of the Law Enforcement Conduct Commission. A copy of the Independent Audit Report appears with the Financial Statements in appendix 7.

The Financial Statements for 2018-19 were prepared and submitted to the Audit Office of NSW within the required timeframe.

1.1.7 INSURANCE

Major insurance risks for the Commission are the security of its employees, property and equipment and the risk of work-related injuries, which may result in workers' compensation insurance claims. The Commission's insurance coverage is provided by the NSW Treasury

Managed Fund, through icare self-insurance. Coverage including property, public liability and motor vehicle is administered by Gallagher Bassett Pty Ltd, workers compensation insurance is administered by QBE.

Insurance premiums are determined based on a combination of benchmarks and actual claims made by the Commission in previous years. For the reporting period the general insurance premium decreased by 11%, while the workers compensation premium increased by 45% reflecting movement in staff numbers during the implementation of the Commission. The Commission was required to pay an additional \$91,610 for workers compensation as a result of the 2013-14 hindsight adjustment, the adjustment was based on a claim relating to the Police Integrity Commission.

1.1.8 RISK MANAGEMENT AND INTERNAL CONTROL

The Internal Audit Committee is responsible for the management of risk and for auditing internal controls. For further information please refer to the 'Internal Audit Committee' section in chapter 10, Governance and Accountability.

Internal Audit and Risk Management Attestation Statement for the 2018-19 Financial Year for the Law Enforcement Conduct Commission

I, Michelle O'Brien, am of the opinion that the Commission has internal audit and risk management processes in operation that are compliant with the eight core requirements set out in the *Internal and Audit Risk Management Policy for the NSW Public Sector*, specifically:

Core Requirement	Compliant, non-compliant or in transition
Risk Management Framework	
1.1 The agency head is ultimately responsible and accountable for risk management in the agency.	Compliant
1.2 A risk management framework that is appropriate to the agency has been established and maintained and the framework is consistent with AS/NZS ISO 31000:2009.	Compliant
Internal Audit Function	
2.1 An internal audit function has been established and maintained.	Compliant
2.2 The operation of the internal audit function is consistent with the International Standards for the Professional Practice of Internal Auditing.	Compliant
2.3 The agency has an Internal Audit Charter that is consistent with the content of the 'model charter'.	Compliant
Audit and Risk Committee	
3.1 An independent audit and risk committee with appropriate expertise has been established.	Compliant
3.2 The audit and risk committee is an advisory committee providing assistance to the agency head on the agency's governance processes, risk management and control frameworks, and its external accountability obligations.	Compliant
3.3 The audit and risk committee has a Charter that is consistent with the content of the 'model charter'.	Compliant

Membership

The Chair and members of the Audit and Risk Committee are:

- Independent Chair - Ms Carolyn Walsh, appointed 1 July 2017, for a 5 year term ending 30 June 2022.
- Independent Member - Mr Peter Scarlett, appointed 1 July 2017, for a 5 year term ending 30 June 2022.
- Independent Member - Ms Marcia Doheny, appointed 1 April 2018, for a 5 year term ending 31 March 2023.



M M O'Brien
Chief Executive Officer

Date 15/08/19

1.1.9 ACCOUNTS PAYABLE POLICY

The Commission has set a benchmark for paying 95% of all accounts received within creditors' trading terms. This benchmark was achieved in all quarters. The majority of delays in paying invoices outside our creditors' payment terms are as a result of invoicing for goods not yet delivered, or for incorrect goods in which case the Commission withholds payment until it is satisfied that the goods and/or services have been received as contracted.

The Commission was not required to pay interest to creditors due to late payment of accounts during the 2018-19 financial year.

Aged analysis at the end of each quarter 2018-2019

QTR.	CURRENT (IE WITHIN DUE DATE) \$'000	LESS THAN 30 DAYS OVERDUE \$'000	BETWEEN 30 AND 60 DAYS OVERDUE \$'000	BETWEEN 61 AND 90 DAYS OVERDUE \$'000	MORE THAN 90 DAYS OVERDUE \$'000
All suppliers					
Sept	1,559	5	0	0	0
Dec	1,890	1	0	0	0
March	1,324	10	0	0	0
June	1,901	1	0	0	0
Small business suppliers					
Sept	188	0	0	0	0
Dec	82	0	0	0	0
March	49	0	0	0	0
June	74	0	0	0	0

Accounts due or paid within each quarter 2018-2019

MEASURE	SEPT	DEC	MAR	JUN
All suppliers				
Number of accounts due for payment	323	339	357	437
Number of accounts paid on time	320	335	348	432
Actual percentage of accounts paid on time (based on number of accounts)	99.1%	98.8%	97.5%	98.5%
Dollar amount of accounts due for payment	\$1,563,552	\$1,890,557	\$1,334,285	\$1,903,198
Dollar amount of accounts paid on time	\$1,558,786	\$1,889,876	\$1,323,984	\$1,901,612
Actual percentage of accounts paid on time (based on \$)	99.7%	99.9%	99.2%	99.9%

MEASURE	SEPT	DEC	MAR	JUN
Number of payments for interest on overdue accounts	Nil	Nil	Nil	Nil
Interest paid on overdue accounts	Nil	Nil	Nil	Nil

MEASURE	SEPT	DEC	MAR	JUN
Small business suppliers				
Number of accounts due for payment to small businesses	34	34	26	46
Number of accounts due to small businesses paid on time	34	34	26	46
Actual percentage of small business accounts paid on time (based on number of accounts)	100%	100%	100%	100%
Dollar amount of accounts due for payment to small businesses	\$188,242	\$81,730	\$49,059	\$73,738
Dollar amount of accounts due to small businesses paid on time	\$188,242	\$81,730	\$49,059	\$73,738
Actual percentage of small business accounts paid on time (based on \$)	100%	100%	100%	100%
Number of payments to small business for interest on overdue accounts	Nil	Nil	Nil	Nil
Interest paid to small business on overdue accounts	Nil	Nil	Nil	Nil

1.1.10 LAND DISPOSAL

The Commission does not hold any real property.

1.1.11 CONSULTANTS

During the reporting period the Commission did not engage consultants where the total engagement fee was more than \$50,000. Consultants were engaged to provide expert advice and assistance in the following categories where engagement fees totalled less than \$50,000.

CATEGORY	NATURE OF SERVICE	COST
Corporate	Legislative compliance and management	18,418.00
Finance	System technical review	1,760.00

1.1.12 DISCLOSURE OF CONTROLLED ENTITIES

The Commission, as a reporting entity, comprises itself and the Office of the Law Enforcement Conduct Commission (the Office). The Office is a special purpose entity; its only function is to provide personnel services to the Commission.

1.1.13 CREDIT CARD CERTIFICATION

To ensure operational requirements are met in an efficient manner eligible staff are issued with corporate credit cards allowing for minor purchases and emergency travel as needed. The Commission monitors the use of all cards issued. Staff are required to adhere to the Commission's policy which meets NSW Treasury guidelines, Premier's Memoranda and Treasurer's Directions. Card holders must supply documented evidence of all expenditure approved by a delegated officer.

It is certified that credit card usage by Commission officers has been in accordance with the appropriate government policies, Premier's Memoranda and Treasurer's Directions, and meets best practice guidelines. There were no known instances of misuse of credit cards during the year.

1.1.14 ENERGY MANAGEMENT PLAN

The Commission is committed to sustainable energy management principles. The Commission regularly reviews energy, water consumption and purchasing practices to minimise the impact of its operations on the environment.

This year the Commission upgraded a 2nd cooling tower pump, replaced 4 air-conditioning package units as part of a program to replace all old units running on R22 refrigerant with more energy efficient units and completed the lighting upgrade resulting in all lights now being LED and timed sensors installed in meeting and low traffic areas. Tangible savings in energy usage are now being achieved.

Consistent with NSW Government requirements and procurement policies, the Commission has an ongoing contract with its energy supplier to provide a minimum of 6% green power.

The Commission promotes initiatives to reduce overall energy consumption including:

- Carrying out regular maintenance.
- Enabling energy saving features on office equipment, placing a high emphasis on energy ratings when purchasing new office and ICT equipment and staff education.
- Incorporating lighting within the Building Management System to allow time management of use.
- Continual monitoring of energy usage.

1.1.15 WASTE MANAGEMENT

In accordance with the government's resource efficiency policy the Commission continues to implement measures which enable increased use of recycled material and better management of waste reduction.

Measures currently in place include:

- All purchased white copy paper contains 100% recycled content.
- All corporate printed paper products sourced using recycled content.
- Reducing the number of public reports printed by making these available online.
- Staff are encouraged to minimise printing, print double sided and use online forms/templates where available.
- Recycle bins have been placed on all floors allowing staff to recycle all recyclable products including paper, plastic, glass as well as toner cartridge, mobile phones and batteries.
- Redundant office furniture and equipment together with computer equipment is donated or recycled by an endorsed recycling centre.

1.1.16 MAJOR ASSETS

During the reporting period the Commission spent a total of \$727,909 on specialized IT infrastructure and equipment including the CMS project, servers and hardware, upgrades to the Commissions forensic capability, and replacing monitors, laptops and printers.

Building works undertaken during the year included upgrading bathrooms, work-stations and management office space for a total cost of \$216,184.

The Commission has a policy of purchasing operational vehicles as this allows greater flexibility in the management of the fleet. Three operational vehicles were replaced at a cost of \$98,351. Purchases of other plant and equipment totalled \$244,504 and included a video conferencing capability, upgrade of air-conditioning units other specialised operational equipment.

1.1.17 OVERSEAS VISITS

The following Commission staff undertook overseas travel on official business during 2018-19.

Overseas visits

OFFICER	DESTINATION	PURPOSE	COST
Director Covert Services	United Kingdom	Attendance at ISG conference	\$8,377

2. APPENDIX 2

2.1 APPENDIX 2: LAW ENFORCEMENT CONDUCT COMMISSION ACT 2016 STATUTORY REPORTING COMPLIANCE CHECKLIST

RELEVANT SECTION OF THE LAW ENFORCEMENT CONDUCT COMMISSION ACT2016	SECTION OF 2018-19 ANNUAL REPORT
Section 139 (2) (a) description of the types of matters that were referred to the Commission	Chapter 3 - Assessing complaints Appendix 3 - Types of allegations assessed
Section 139 (2) (b) a description of the types of matters investigated by the Commission	Chapter 4 - Investigating serious police misconduct
Section 139 (2) (c) the total number of matters dealt with by the Commission during the year	Chapter 3 - Assessing complaints Chapter 4 - Investigating serious police misconduct
Section 139 (2) (d) the number of police investigations, Crime Commission investigations and critical incident investigations that were the subject of oversight by the Commission under Parts 7 and 8 during the year	Chapter 5 - Oversight and critical incidents
Section 139 (2) (e) the number of matters that were investigated by the Commission under Part 6 during the year	Chapter 4 - Investigating serious police misconduct
Section 139 (2) (f) (i) the time interval between the receipt of each misconduct matter by the Commission and the Commission deciding to investigate the misconduct matter	Chapter 3 - Assessing complaints Chapter 4 - Investigating serious police misconduct
Section 139 (2) (f) (ii) the number of misconduct matters commenced to be investigated but not finally dealt with during the year	Chapter 4 - Investigating serious police misconduct
Section 139 (2) (f) (iii) the average time taken to deal with misconduct matters and the actual time taken to investigate any matter in respect of which a report is made	Chapter 4 - Investigating serious police misconduct
Section 139 (2) (f) (iv) the total number of examinations and private and public examinations conducted during the year	Chapter 4 - Investigating serious police misconduct
Section 139 (2) (f) (v) the number of days spent during the year in conducting public examinations	Chapter 4 - Investigating serious police misconduct NB: no public examinations were held in 2018-19
Section 139 (2) (f) (vi) the time interval between the completion of each public examination conducted during the year and the furnishing of a report on the matter	Chapter 4 - Investigating serious police misconduct
Section 139 (2) (g) an evaluation of the response of the Commissioner of Police, relevant members of the Police Senior Executive Service and other relevant authorities to the findings and recommendations of the Commission	Chapter 4 - Investigating serious police misconduct
Section 139 (2) (h) an evaluation of the response of the Crime Commissioner, relevant members of the Crime Commission Senior Executive Service and other relevant authorities to the opinions and recommendations of the Commission	Chapter 7 - Crime Commission
Section 139 (2) (i) any recommendations for changes in the laws of the State, or for administrative action, that the Commission considers should be made as a result of the exercise of its functions	Chapter 9 - Legal matters
Section 139 (2) (j) the general nature and extent of any information furnished under this Act by the Commission during the year to a law enforcement agency	Chapter 4 - Investigating serious police misconduct
Section 139 (2) (k) the extent to which its investigations have resulted in prosecutions or disciplinary action in that year	Appendix 5 - Prosecutions conducted
Section 139 (2) (l) the number of search warrants issued by authorised justices and the Commissioner respectively under this Act in that year	Appendix 4 - Statistical data on exercise of Commission powers

RELEVANT SECTION OF THE LAW ENFORCEMENT
CONDUCT COMMISSION ACT2016

SECTION OF 2018-19 ANNUAL REPORT

Section 139 (2) (m) a description of its activities during that year in relation to the exercise of its functions under ss 27 and 32

Chapter 5 - Oversight and critical incidents
Chapter8 - Prevention and Education

Section 139 (3) any such information that relates to investigations or other matters involving Crime Commission officers must be kept separate from other matters in the report

Chapter 7 - NSW Crime Commission

Section 139 (5) The financial report for the year to which the annual report relates is to set out the separate cost of the operations of the Commission under each of Parts 6, 7 and 8.

Appendix 7 - Financial statements

3. APPENDIX 3

3.1 APPENDIX 3: ALLEGATIONS ASSESSED

ALLEGATION ¹³	2018-19
Improper use of force	6.75%
Failure to investigate	6.50%
Inadequate investigation/lack of impartiality	5.25%
Inconsiderate/insensitive/uncooperative behaviour	4.25%
Incivility/rudeness/verbal abuse (oral complaints of rudeness are a local management issue)	4.00%
Intimidating, aggressive or unwelcome behaviour and unfair treatment, either in the workplace or during service delivery	3.75%
Harassment	3.50%
Improper use of discretion	2.75%
Improper/unauthorised search	2.75%
Neglect of duty/duty of care	2.75%
Misuse authority for personal benefit or the benefit of an associate (including obtaining sexual favours)	2.50%
Discrimination	2.25%
Breach of Code of Conduct (not specified elsewhere)	2.25%
Fail to comply with operational procedures, standing orders or Commissioner's directives (not specified elsewhere)	2.00%
Unlawful (insufficient evidence of offence)	2.00%
Inappropriate prosecution/misuse of prosecution power	1.75%
Victimisation/bullying	1.50%
Unauthorised/improper disclosure of information	1.50%
Threats/intimidation (not assault, excessive force)	1.50%

¹³ Complaints assessed often include multiple allegations within the one complaint

4. APPENDIX 4

4.1 APPENDIX 4: STATISTICAL DATA ON EXERCISE OF COMMISSION POWERS

The following table indicates the frequency with which the Commission exercised its various powers in 2018-19.

Exercise of Commission's powers

FUNCTIONS	2018-19
Under the <i>Law Enforcement Conduct Commission Act 2016</i>	
S 24 - Establishment of task forces within the State	NIL
S 54 - Requiring public authority or public official to produce a statement of information	16
S 55 - Requiring a person to attend before an officer of the Commission and produce a specified document or other thing	95
S 58 - Commission may authorise an officer of the Commission to enter and inspect premises etc	NIL
S 63 - hearing days: <ul style="list-style-type: none"> • Public • Private 	NIL 78
S 69 - Commissioner may summon a person to appear before the Commission and give evidence or produce documents or other things	80
S 79 (1) - Authorised justice may issue search warrant	NIL
S 79 (2) - Commissioner may issue a search warrant	NIL
S 84 - Number of warrants obtained under <i>Surveillance Devices Act 2007</i>	7
Under <i>Law Enforcement (Controlled Operations) Act 1997</i>	
Applications granted by Commission for authority to conduct controlled operations	2
Under <i>Law Enforcement and National Security (Assumed Identities) Act 2010</i>	
Approval granted by Commissioner for acquisition and use of an assumed identity	16
Applications granted for variation of assumed identity	24
Applications granted for cancellations of assumed identify	1
Under <i>Telecommunications (Interception & Access) Act 1979</i>	
Warrants issued for the interception of communications	18
Warrants issued for access to stored communications	5

5. APPENDIX 5

5.1 APPENDIX 5: PROSECUTIONS CONDUCTED BY THE DPP IN 2018-19 ARISING FROM COMMISSION INVESTIGATIONS

NAME	OPERATION	CHARGE(S)	STATUS/RESULT
Darren AZZOPARDI	Operation Montecristo	49 x s192E(1)(b) <i>Crimes Act 1900</i> (NSW) - Fraud	<p>1/11/17: CAN served. First mention in DCLC on 7/12/17.</p> <p>7/12/17: Mention in DCLC. Orders made for the brief to be served by 15/02/18 and listed for reply on 29/03/18.</p> <p>29/03/18: Mention in DCLC. OGC sought an adjournment for the brief to be served by 24/05/18. The Registrar adjourned the matter with the brief to be served by 24/05/18 and listed for reply on 7/06/18.</p> <p>7/06/18: Mention in DCLC. Adjourned to 19/07/18 due to the passing of Mr Cockburn, legal representative for Anthony Williams. All defendants excused on the next occasion if legally represented.</p> <p>19/07/18: Mention in DCLC. Adjourned to 16/08/18 with balance of brief (any assistance from SMITH) to be served by 2/08/18.</p> <p>16/08/18: Mention in DCLC. All matters adjourned to 13/09/18 for pleas or waiver of committal.</p> <p>13/09/18: Mention in DCLC. AZZOPARDI waived committal and was committed to the NSW District Court. The matter was listed for 28/09/18.</p> <p>28/09/18: First mention in Downing Centre District Court before Chief Judge Price. The matter was adjourned to 19/10/18.</p> <p>19/10/18: The matter is listed for trial on 2/12/19 in the District Court with an estimated duration of 10 days.</p>
Grant BELL	Operation Asinara	2 x s 253(b)(iii) <i>Crimes Act 1900</i> (NSW) – Forgery –make false document	<p>25/01/18: CAN served. First mention in Narrabri Local Court at 9.30am on 8/3/18.</p> <p>20/02/18: New CAN served. First mention re-listed in Gunnedah Local Court at 9:30am on 06/03/18.</p> <p>6/03/18: Mention in Gunnedah Local Court. Brief to be served by 17/04/18. Reply listed for 8/05/18.</p> <p>8/05/18: Mention in Gunnedah Local Court. Hearing set down for two days 5/09/18-6/09/18.</p> <p>5/09/18: Hearing commenced in Gunnedah Local Court. On 6/09/18 the matter was adjourned part-heard to 12/10/18 in Tamworth Local Court.</p> <p>12/10/18: At the conclusion of the Crown case, the defence handed up no case submissions. The matter was adjourned to 14/12/18 for the Crown to respond and the defence to make any submissions in reply.</p>

NAME	OPERATION	CHARGE(S)	STATUS/RESULT
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14/12/18: The matter resumed in Tamworth Local Court. Decision handed down setting out reasons for finding a prima facie case. The matter was adjourned to 13/02/19 to allow both parties to make submissions on closing.

13/02/19: Judgment delivered in Tamworth Local Court. Both charges against BELL were dismissed. An application for costs was refused.

Hue Tran DANG	Operation Binda	1 x s 11.5 <i>Criminal Code</i> and s 234(1)(b) <i>Migration Act 1958</i> (Cth) – Conspiracy to cause to be presented false or misleading statement to immigration official related to visa	28/08/14: Application for arrest warrant made. 4/09/14: Arrest warrant issued.
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Nigel DAVEY	Operation Aracari	1 x s 61 <i>Crimes Act 1900</i> (NSW) - Common Assault 1 x s 327(1) <i>Crimes Act 1900</i> (NSW) – Perjury	4/10/16: CAN served. First mention listed for 14/11/16 at Nowra Local Court. 24/01/17: DAVEY appeared at Nowra Local Court. The matter was listed for mention on 7/03/17 and the venue changed to Queanbeyan Local Court. 29/03/17: The matter has been set for summary hearing on 1/09/17 at Queanbeyan Local Court. 1/09/17: Defended hearing at Queanbeyan Local Court. Decision reserved. 12/12/17: DAVEY found guilty of Common Assault and Perjury. Adjourned to 2/02/18 for sentence. 2/02/18: Application made by DAVEY for an adjournment to have the matter dealt with under s 32 of the Mental Health (Forensic Provisions) Act 1990. The hearing of the application was adjourned to 3/4/18. 3/04/18: Magistrate declined to grant the defendant's application for the matter to be dealt with under s 32. DAVEY was sentenced as follows: - 1 x Perjury as per s327(1) Crimes Act 1900 NSW: sentenced to a term of imprisonment of 12 months, commencing 3/04/18 with a non-parole period of 7 months, making him eligible for release on parole on 2/11/18. - 1 x Common Assault as per s61 Crimes Act 1900 NSW: Bond pursuant to s 9 of the Crimes (Sentencing Procedure) Act 1999 for a period of 14 months. DAVEY lodged an appeal against conviction which is listed for bail application on 10/04/18. 10/04/18: DAVEY granted conditional bail. Appeal against conviction listed for first mention on 23/07/18. 30/07/18: Appeal against conviction listed for mention on 5/11/18.
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NAME	OPERATION	CHARGE(S)	STATUS/RESULT
			13/11/18: Hearing at Queanbeyan District Court. Appeal against conviction was upheld. Convictions were quashed and no other orders were made.
Stephen FLETCHER	Operation Montecristo	78 x s 192E(1)(b) <i>Crimes Act 1900</i> (NSW) – Fraud	<p>1/11/17: CAN served. First mention in DCLC on 7/12/17.</p> <p>7/12/17: Mention in DCLC. Orders made for the brief to be served by 15/02/18 and listed for reply on 29/03/18.</p> <p>29/03/18: Mention in DCLC. OGC sought an adjournment for the brief to be served by 24/05/18. The Registrar adjourned the matter with the brief to be served by 24/05/18 and listed for reply on 7/06/18.</p> <p>7/06/18: Mention in DCLC. Adjourned to 19/07/18 due to the passing of Mr Cockburn, legal representative for Anthony Williams. All defendants excused on the next occasion if legally represented.</p> <p>19/07/18: Mention in DCLC. Adjourned to 16/08/18 with balance of brief to be served by 2/08/18.</p> <p>16/08/18: Mention in DCLC. All matters adjourned to 13/09/18 for pleas or waiver of committal.</p> <p>13/09/18: Mention in DCLC. FLETCHER waived committal and was committed to the NSW District Court. The matter was listed for 28/09/18.</p> <p>28/09/18: First mention in Downing Centre District Court before Chief Judge Price. The matter was adjourned to 19/10/18.</p> <p>19/10/18: The matter is listed for trial on 30/09/19 in the District Court with an estimated duration of 6 weeks.</p> <p>09/08/19: Readiness hearing in District Court before Justice Price. Matter adjourned for s 140 conference to be held before 05/09/19 prior to a further readiness hearing on 20/09/19. Justice Price directed that the defence serve expert evidence by 19/08/19.</p> <p>1/10/19: Trial commenced in District Court before Judge Beckett.</p> <p>22/10/19: Judge Beckett directed the jury, on the application of the defence, to return verdicts of not guilty to all 78 charges on the indictment in the <i>R v Fletcher</i> trial. Accordingly the jury did so, and the accused was discharged.</p> <p>An appeal against the decision is being considered.</p>
Marc SMITH	Operation Montecristo	116 x s 192E(1)(b) <i>Crimes Act 1900</i> (NSW) – Fraud	2/11/17: CAN served. First mention in DCLC on 7/12/17.

NAME	OPERATION	CHARGE(S)	STATUS/RESULT
			<p>7/12/17: Mention in DCLC. Orders made for the brief to be served by 15/02/18 and listed for reply on 29/03/18.</p> <p>29/03/18: Mention in DCLC. OGC sought an adjournment for the brief to be served by 24/05/18. The Registrar adjourned the matter with the brief to be served by 24/05/18 and listed for reply on 7/06/18.</p> <p>7/06/18: Mention in DCLC. Adjourned to 19/07/18 due to the passing of Mr Cockburn, legal representative for Anthony Williams. All defendants excused on the next occasion if legally represented.</p> <p>19/07/18: Mention in DCLC. Adjourned to 16/08/18 with balance of brief to be served by 2/08/18.</p> <p>16/08/18: Mention in DCLC. All matters adjourned to 13/09/18 for pleas or waiver of committal.</p> <p>13/09/18: Mention in DCLC. SMITH waived committal and was committed to the NSW District Court. The matter was listed for 28/09/18.</p> <p>28/09/18: First mention in Downing Centre District Court before Chief Judge Price. The matter was adjourned to 19/10/18.</p> <p>19/10/18: Mention in DCDC. Adjourned for mention on 2/11/18.</p> <p>2/11/18: Mention in DCDC. Trial set down for 6/01/20 for four weeks with a readiness hearing listed for 7/06/19.</p> <p>7/06/19: Hearing date of 6/01/20 was vacated and re-listed to 20/04/20 for four weeks. A readiness hearing is listed for 31/01/2020.</p>
Robert WARE	Operation Snowshoe	1 x s 107 Police Integrity Commission Act 1996 (NSW) - Give false evidence before the Police Integrity Commission	<p>7/05/19: CAN served. First mention in Downing Centre Local Court on 25/06/19.</p> <p>25/06/19: Mention in DCLC. WARE entered a plea of not guilty. Next mention 15/08/19.</p> <p>15/08/19: Mention in DCLC. Hearing set down for 24/10/19 and 25/10/19.</p>
Anthony WILLIAMS	Operation Montecristo	12 x s192E(1)(b) Crimes Act 1900 (NSW) - Fraud	<p>1/11/17: CAN served. First mention in DCLC on 7/12/17.</p> <p>7/12/17: Mention in DCLC. Orders made for the brief to be served by 15/02/18 and listed for reply on 29/03/18.</p> <p>29/03/18: Mention in DCLC. OGC sought an adjournment for the brief to be served by 24/05/18. The Registrar adjourned the matter with the brief to be served by 24/05/18 and listed for reply on 7/06/18.</p>

NAME	OPERATION	CHARGE(S)	STATUS/RESULT
			<p>7/06/18: Mention in DCLC. Adjourned to 19/07/18 due to the passing of Mr Cockburn, legal representative for Anthony Williams. All defendants excused on the next occasion if legally represented.</p> <p>19/07/18: Mention in DCLC. Adjourned to 16/08/18 with balance of brief to be served by 2/08/18.</p> <p>16/08/18: Mention in DCLC. All matters adjourned to 13/09/18 for pleas or waiver of committal.</p> <p>13/09/18: Mention in DCLC. Williams sought an adjournment which was granted. The matter was adjourned to 24/09/18 in DCLC.</p> <p>21/09/18: Mention in DCLC. WILLIAMS waived committal and was committed to the District Court. The matter was listed for 28/09/18.</p> <p>28/09/18: First mention in Downing Centre District Court before Chief Judge Price. The matter was adjourned to 19/10/18.</p> <p>19/10/18: The matter is listed for trial on 18/11/19 in the District Court with an estimated duration of 10 days.</p>

6. APPENDIX 6

6.1 APPENDIX 6: ANNUAL REPORT UNDER THE *GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009*

6.1.1 THE *GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009*

Under the *Government Information (Public Access) Act 2009* (GIPA Act) there are four ways that the Commission made information available to the public:

- the mandatory release of ‘Open Access Information’
- the proactive release of information for which there is no overriding public interest against disclosure
- the informal release of information in response to an informal request where there is no overriding public interest against the disclosure of that information; and
- the formal release of information in response to an access application where there is no overriding public interest against disclosure.

Schedule 2 of the GIPA Act provides that information which relates to the Commission’s “*corruption prevention, handling of misconduct matters, investigative and reporting functions*” is “*excluded information*” of the Commission and cannot be made the subject of an access application.

It is also conclusively presumed by Schedule 1 of the GIPA Act that there is an overriding public interest against disclosing information, the disclosure of which would be prohibited by the *Law Enforcement Conduct Commission Act 2016* (LECC Act). Section 180(2) of the LECC Act provides that a person who is or was an officer of the Commission must not, except in connection with the person’s functions under the Act, make a record of or divulge any information acquired in the exercise of the person’s functions under the Act. Section 180(5)(d) provides that such information may be divulged if the Commissioner or Inspector certifies that it is necessary to do so in the public interest.

Information which falls within the above two categories was not publicly disclosed by the Commission except under limited circumstances.

The impact on the Commission of fulfilling its requirements under the GIPA Act during 2018-19 was negligible. No major issues arose during 2018-19 in connection with the Commission’s compliance with GIPA requirements.

6.1.2 PROACTIVE RELEASE PROGRAM

Under s 7 of the GIPA Act, the Commission was authorised to proactively release any Government information that it holds, so long as there is no overriding public interest against disclosure of that information. Under s 7(3) of the GIPA Act the Commission must review its program for the release of Government information to identify the kinds of information that can be made publicly available under section 7. This review must be undertaken at least once every 12 months.

The Commission’s proactive release program involves the identification for release of information for which:

- there exists a public interest in being made publicly available (noting the general public interest in favour of the disclosure of Government information established by s 12 of the GIPA Act); and
- there is no overriding public interest against disclosure (by virtue of the operation of Schedules 1 and/or 2 of the GIPA Act or otherwise.)

The following are some of the ways in which, under its proactive release program, the Commission has identified information which could be proactively released:

- the Right to Information officer consulted with managers of business units of the Commission to ascertain whether those units held information which could be proactively released;
- the Right to Information officer monitored the creation of new documents within the Commission of a kind which may be proactively released;
- the Right to Information officer liaised with staff employed in areas of the Commission which dealt with information of a kind which may be proactively released are aware of the Commission's proactive release program; and
- the Right to Information officer monitored both informal and formal requests for information received by the Commission under the GIPA Act to identify any trends in the types of information sought and considered whether the Commission held information relevant to those trends which could be proactively released.

6.1.3 ACCESS APPLICATIONS RECEIVED BY THE COMMISSION IN THE REPORTING PERIOD

During the reporting period, the Commission received four access applications.

One access application was refused wholly or in part because the information requested was information referred to in Schedule 1 of the GIPA Act.

There were no internal reviews and no reviews by the Information Commissioner.

6.1.4 OBTAINING ACCESS TO AND SEEKING AMENDMENT OF THE COMMISSION'S RECORDS

In the first instance the contact person for obtaining access to documents is as follows:

Right to Information Officer
Law Enforcement Conduct Commission
GPO Box 3880
SYDNEY NSW 2001
Facsimile: (02) 9321 6799

Telephone inquiries may be made between 8.30am and 4:30pm on (02) 9321 6700.

Further information is also able to be obtained from the LECC website www.lecc.nsw.gov.au under the 'Access to Information' link.

NUMBER OF APPLICATIONS BY TYPE OF APPLICANT AND OUTCOME

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Media	-	-	-	-	1	-	-	-
Members of Parliament	-	-	-	-	-	-	-	-
Private sector business	-	-	-	-	-	-	-	-
Not for profit organisations or community groups	-	-	-	-	-	-	-	-
Members of the public (application by legal representative)	-	-	-	-	-	-	-	-
Members of the public (other)	1	-	1	-	1	-	-	-

NUMBER OF APPLICATIONS BY TYPE OF APPLICATION AND OUTCOME

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Personal information applications	1	-	1	-	-	-	-	-
Access applications (other than personal information applications)	-	-	-	-	2	-	-	-
Access applications that are partly personal information applications and partly other	-	-	-	-	-	-	-	-

INVALID APPLICATIONS

Reason for invalidity	No of applications
Application does not comply with formal requirements (s 41 of the Act)	-
Application is for excluded information of the agency (s 43 of the Act)	1
Application contravenes restraint order (s 110 of the Act)	-
Total number of invalid applications received	1
Invalid applications that subsequently became valid applications	-

CONCLUSIVE PRESUMPTION OF OVERRIDING PUBLIC INTEREST AGAINST DISCLOSURE: MATTERS LISTED IN SCHEDULE 1 OF ACT

	Number of times consideration used
Overriding secrecy laws	-
Cabinet information	-
Executive Council information	-
Contempt	-
Legal professional privilege	-
Excluded information	1
Documents affecting law enforcement and public safety	-
Transport safety	-
Adoption	-
Care and protection of children	-
Ministerial code of conduct	-
Aboriginal and environmental heritage	-

OTHER PUBLIC INTEREST CONSIDERATIONS AGAINST DISCLOSURE: MATTERS LISTED IN TABLE TO SECTION 14 OF ACT

	Number of occasions when application not successful
Responsible and effective government	-
Law enforcement and security	-
Individual rights, judicial processes and natural justice	-
Business interests of agencies and other persons	-
Environment, culture, economy and general matters	-
Secrecy provisions	1
Exempt documents under interstate Freedom of Information legislation	-

TIMELINESS

	Number of applications
Decided within the statutory timeframe (20 days plus any extensions)	4
Decided after 35 days (by agreement with applicant)	-
Not decided within time (deemed refusal)	-
Total	-

APPLICATIONS FOR REVIEW UNDER PART 5 OF THE ACT (BY TYPE OF APPLICANT)

	Number of applications for review
Applications by access applicants	-
Applications by persons to whom information the subject of access application relates (see s 54 of the Act)	-

APPLICATIONS TRANSFERRED TO OTHER AGENCIES UNDER DIVISION 2 OF PART 4 OF THE ACT (BY TYPE OF TRANSFER)

	Number of applications transferred
Agency-initiated transfers	-
Applicant-initiated transfers	-

6.2 PUBLIC INTEREST DISCLOSURES

A Public Interest Disclosure (PID) is a report, complaint, or other information from a person working in or for the NSW public service. The disclosure must be about other public officials engaging in certain types of conduct.

The requirements for a Public Interest Disclosure are set out in the *Public Interest Disclosures Act 1994* (NSW) (PID Act). The PID Act provides legal protection to public officials who make a disclosure that meets these requirements.

Public sector employees can report certain types of PIDs to the LECC, as we are one of the investigating authorities under the PID Act¹⁴.

Under the *Public Interest Disclosures Act 1994* (PID Act), the LECC is required to collect and report on information about Public Interest Disclosures (PIDs). The following table outlines the information the LECC is required to report on under the Act.

PUBLIC INTEREST DISCLOSURES RECEIVED			
	Made by public officials performing day to day functions	Under a statutory or other legal obligation	All other PIDs
Number of public officials who made PIDs directly	-	-	-
Number of PIDs received	-	-	-
Number of PIDs received, primarily about:			
Corrupt conduct	-	-	-
Maladministration	-	-	-
Corrupt conduct AND maladministration	-	-	-
Government information contravention	-	-	-
Local government pecuniary interest contravention	-	-	-
Total	0	0	0

¹⁴ *Public Interest Disclosures Act 1994* (NSW) s 4.

7. APPENDIX 7

7.1 Appendix 7: Financial Statements



INDEPENDENT AUDITOR'S REPORT Law Enforcement Conduct Commission

To Members of the New South Wales Parliament

Opinion

I have audited the accompanying financial statements of the Law Enforcement Conduct Commission (the Commission), which comprise the Statements of Comprehensive Income for the year ended 30 June 2019, the Statements of Financial Position as at 30 June 2019, the Statements of Changes in Equity and the Statements of Cash Flows for the year then ended, notes comprising a Statement of Significant Accounting Policies and other explanatory information of the Commission and the consolidated entity. The consolidated entity comprises the Commission and the entities it controlled at the year's end or from time to time during the financial year.

In my opinion, the financial statements:

- give a true and fair view of the financial position of the Commission and the consolidated entity as at 30 June 2019, and of their financial performance and cash flows for the year then ended in accordance with Australian Accounting Standards
- are in accordance with section 45E of *Public Finance and Audit Act 1983* (PF&A Act) and the Public Finance and Audit Regulation 2015.

My opinion should be read in conjunction with the rest of this report.

Basis for Opinion

I conducted my audit in accordance with Australian Auditing Standards. My responsibilities under the standards are described in the 'Auditor's Responsibilities for the Audit of the Financial Statements' section of my report.

I am independent of the Commission and the consolidated entity in accordance with the requirements of the:

- Australian Auditing Standards
- Accounting Professional and Ethical Standards Board's APES 110 'Code of Ethics for Professional Accountants' (APES 110).

I have fulfilled my other ethical responsibilities in accordance with APES 110.

Parliament promotes independence by ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their roles by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General
- mandating the Auditor-General as auditor of public sector agencies
- precluding the Auditor-General from providing non-audit services.

I believe the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Other Information

The Commission's annual report for the year ended 30 June 2019 includes other information in addition to the financial statements and my Independent Auditor's Report thereon. The Chief Commissioner is responsible for the other information. At the date of this Independent Auditor's Report, the other information I have received comprise the Statement by Chief Commissioner.

My opinion on the financial statements does not cover the other information. Accordingly, I do not express any form of assurance conclusion on the other information.

In connection with my audit of the financial statements, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or my knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work I have performed, I conclude there is a material misstatement of the other information, I must report that fact.

I have nothing to report in this regard.

The Chief Commissioner's Responsibilities for the Financial Statements

The Chief Commissioner is responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards and the PF&A Act and for such internal control as the Chief Commissioner determines is necessary to enable the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Chief Commissioner is responsible for assessing the ability of the Commission and the consolidated entity to continue as a going concern, disclosing as applicable, matters related to going concern and using the going concern basis of accounting except where operations will cease as a result of an administrative restructure.

Auditor's Responsibilities for the Audit of the Financial Statements

My objectives are to:

- obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error
- issue an Independent Auditor's Report including my opinion.

Reasonable assurance is a high level of assurance, but does not guarantee an audit conducted in accordance with Australian Auditing Standards will always detect material misstatements. Misstatements can arise from fraud or error. Misstatements are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions users take based on the financial statements.

A description of my responsibilities for the audit of the financial statements is located at the Auditing and Assurance Standards Board website at: www.auasb.gov.au/auditors_responsibilities/ar3.pdf. The description forms part of my auditor's report.

My opinion does not provide assurance:

- that the Commission or the consolidated entity carried out their activities effectively, efficiently and economically
- about the assumptions used in formulating the budget figures disclosed in the financial statements
- about the security and controls over the electronic publication of the audited financial statements on any website where they may be presented
- about any other information which may have been hyperlinked to/from the financial statements.



Chris Harper
Director, Financial Audit Services

Delegate of the Auditor-General for New South Wales

23 September 2019
SYDNEY

LAW ENFORCEMENT CONDUCT COMMISSION
Financial Statements 2018-19

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Law Enforcement Conduct Commission

Statement by Chief Commissioner

Pursuant to Section 45F of the *Public Finance and Audit Act 1983*, I have formed the opinion that:

- (a) the accompanying financial statements in respect of the year ended 30 June 2019 have been prepared in accordance with applicable Australian Accounting Standards (which include Australian Accounting Interpretations), the requirements of the *Public Finance and Audit Act 1983* (the Act) and *Public Finance and Audit Regulation 2015*, and the Treasurer's Directions issued under the Act
- (b) the financial statements exhibit a true and fair view of the financial position as at 30 June 2019 and financial performance for the year then ended of the Commission, and
- (c) there are no circumstances that would render any particulars included in the consolidated financial statements to be misleading or inaccurate.



The Hon. M F Adams QC
Chief Commissioner

Law Enforcement Conduct Commission

Statement of Comprehensive Income for the year ended

30 June 2019

	Notes	Parent Entity (Law Enforcement Conduct Commission)		Economic Entity (Consolidated)		
		Actual 2019 \$'000	Actual 2018 \$'000	Budget 2019 \$'000	Actual 2019 \$'000	Actual 2018 \$'000
Expenses excluding losses						
Employee related expenses	2(a)	1,307	1,363	18,842	17,494	14,780
Operating expenses	2(b)	4,756	4,432	5,346	4,756	4,433
Personnel services	2(c)	16,171	13,401	--	--	--
Depreciation and amortisation	2(d)	990	1,525	1,146	990	1,525
Total expenses excluding losses		23,224	20,721	25,334	23,240	20,738
Revenue						
Appropriation	3(a)	20,800	20,200	23,554	20,800	20,200
Sale of goods and services	3(b)	74	109	100	74	109
Grants and other contributions	3(c)	--	63	--	--	63
Acceptance by the Crown Entity of employee benefits and other liabilities	3(d)	1,039	521	911	1,042	524
Other income	3(e)	31	8	--	44	22
Total revenue		21,944	20,901	24,565	21,960	20,918
Operating result		(1,280)	180	(769)	(1,280)	180
Gain/(loss) on disposal	4	40	(2)	15	40	(2)
Net result	16	(1,240)	178	(754)	(1,240)	178
Other comprehensive income						
<i>Items that will not be reclassified to net result in subsequent periods</i>						
		--	--	--	--	--
Total other comprehensive income		--	--	--	--	--
TOTAL COMPREHENSIVE INCOME		(1,240)	178	(754)	(1,240)	178

The accompanying notes form part of these financial statements

Law Enforcement Conduct Commission

Statement of Financial Position as at 30 June 2019

	Notes	Parent Entity (Law Enforcement Conduct Commission)		Economic Entity (Consolidated)		
		Actual 2019 \$'000	Actual 2018 \$'000	Budget 2019 \$'000	Actual 2019 \$'000	Actual 2018 \$'000
ASSETS						
Current Assets						
Cash and cash equivalents	6	364	965	581	374	1,030
Receivables	7	717	1,045	611	755	1,084
Total Current Assets		1,081	2,010	1,192	1,129	2,114
Non-Current Assets						
Plant and equipment	8	2,998	3,225	2,143	2,998	3,225
Intangible assets	9	799	282	1,314	799	282
Total Non-Current Assets		3,797	3,507	3,457	3,797	3,507
Total Assets		4,878	5,517	4,649	4,926	5,621
LIABILITIES						
Current Liabilities						
Payables	10	232	153	193	232	153
Provisions	11	1,701	1,275	941	1,705	1,345
Total Current Liabilities		1,933	1,428	1,134	1,937	1,498
Non-Current Liabilities						
Provisions	11	601	505	532	645	539
Total Non-Current Liabilities		601	505	532	645	539
Total Liabilities		2,534	1,933	1,666	2,582	2,037
Net Assets		2,344	3,584	2,983	2,344	3,584
EQUITY						
Accumulated funds		2,344	3,584	2,983	2,344	3,584
Total Equity		2,344	3,584	2,983	2,344	3,584

The accompanying notes form part of these financial statements

Law Enforcement Conduct Commission

Statement of Changes in Equity for the year ended 30 June 2019

	Parent Entity (Law Enforcement Conduct Commission)	Economic Entity (Consolidated)
Notes	Accumulated Funds \$'000	Accumulated Funds \$'000
Balance at 1 July 2018	3,584	3,584
Net result for the year	(1,240)	(1,240)
Other comprehensive income:		
Total other comprehensive income	--	--
Total comprehensive income for the year	(1,240)	(1,240)
Transactions with owners in their capacity as owners		
Balance at 30 June 2019	2,344	2,344
Balance at 1 July 2017	--	--
Net result for the year	178	178
Other comprehensive income:		
Total other comprehensive income	--	--
Total comprehensive income for the year	178	178
Transactions with owners in their capacity as owners		
Increase in net assets from administrative restructure	3,406	3,406
Balance at 30 June 2018	3,584	3,584

The accompanying notes form part of these financial statements

Law Enforcement Conduct Commission

Statement of Cash Flows for the year ended 30 June 2019

	Parent Entity (Law Enforcement Conduct Commission)		Economic Entity (Consolidated)			
	Notes	Actual 2019 S'000	Actual 2018 S'000	Budget 2019 S'000	Actual 2019 S'000	Actual 2018 S'000
CASH FLOWS FROM OPERATING ACTIVITIES						
Payments						
Employee related		(1,307)	(1,363)	(17,931)	(16,075)	(13,792)
Other		(4,990)	(5,603)	(5,271)	(4,990)	(5,603)
Personnel services		(14,699)	(12,465)	--	--	--
Total Payments		(20,996)	(19,431)	(23,202)	(21,065)	(19,395)
Receipts						
Appropriation		20,800	20,200	23,554	20,800	20,200
Other		835	686	100	849	668
Total Receipts		21,635	20,886	23,654	21,649	20,868
NET CASH FLOWS FROM OPERATING ACTIVITIES	16	639	1,455	452	584	1,473
CASH FLOWS FROM INVESTING ACTIVITIES						
Proceeds from sale plant & equipment		47	8	15	47	8
Purchases of plant & equipment		(723)	(1,471)	(500)	(723)	(1,471)
Purchases of intangible assets		(564)	(209)	(700)	(564)	(209)
NET CASH FLOWS FROM INVESTING ACTIVITIES		(1,240)	(1,672)	(1,185)	(1,240)	(1,672)
NET INCREASE / (DECREASE) IN CASH AND CASH EQUIVALENTS		(601)	(217)	(733)	(656)	(199)
Opening cash and cash equivalents		965	--	1,514	1,030	--
Cash transferred in as a result of administrative restructure		--	1,182	--	--	1,229
CLOSING CASH AND CASH EQUIVALENTS	6	364	965	581	374	1,030

The accompanying notes form part of these financial statements

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

1. STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

(a) *Reporting entity*

The Law Enforcement Conduct Commission (the Commission) is a statutory corporation established under the *Law Enforcement Conduct Commission Act 2016*.

The Commission is a NSW government entity and is controlled by the State of New South Wales, which is the ultimate parent. The Commission is a not-for-profit entity (as profit is not its principal objective) and it has no cash generating units. The Commission, as a reporting entity, comprises all of the entities under its control, namely: Office of the Law Enforcement Conduct Commission (the Office). The Office provides the Commission with personnel services.

In the process of preparing the consolidated financial statements for the economic entity, consisting of the controlling and controlled entity, all inter-entity transactions and balances have been eliminated, and like transactions and other events are accounted for using uniform accounting policies.

These financial statements for the year ended 30 June 2019 have been authorised for issue by the Chief Commissioner for the Law Enforcement Conduct Commission on 19 September, 2019.

(b) *Basis of preparation*

The Commission's financial statements are general purpose financial statements which have been prepared on an accruals basis and in accordance with:

- applicable Australian Accounting Standards (AAS), which include Australian Accounting Interpretations
- the requirements of the Public Finance and Audit Act 1983 and Public Finance and Audit Regulation 2015 and
- Treasurer's Directions issued under this Act.

Other than property, plant and equipment which is measured at fair value, the financial statements have been prepared in accordance with the historical cost convention.

Judgements, key assumptions and estimations management has made are disclosed in the relevant notes to the financial statements.

All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency, which is the entity's presentation and functional currency.

The Commission has only one program being Investigations, Research and Complaint Management and as such a program group statement is not included as figures would be the same as those disclosed in the Statements of Comprehensive Income and Financial Position.

(c) *Statement of Compliance*

The financial statements and notes comply with Australian Accounting Standards, which include Australian Accounting Interpretations.

(d) *Accounting for the Goods and Services Tax (GST)*

Income, expenses and assets are recognised net of the amount of GST, except that:

- the amount of GST incurred by the Commission as a purchaser that is not recoverable from the Australian Taxation Office is recognised as part of an asset's cost of acquisition or as part of an item of expense and
- receivables and payables are stated with the amount of GST included.

Cash flows are included in the Statement of Cash Flows on a gross basis. However, the GST components of cash flows arising from investing and financing activities which are recoverable from, or payable to, the Australian Taxation Office are classified as operating cash flows.

(e) *Comparative information*

Except when an AAS permits or requires otherwise, comparative information is presented in respect of the previous period for all amounts reported in the financial statements.

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

(f) Changes in accounting policy, including new or revised Australian Accounting Standards

(i) Effective for the first time in 2018-19

The Commission has adopted AASB 9 *Financial Instruments* (AASB 9), which resulted in changes in accounting policies in respect of recognition, classification and measurement of financial assets and financial liabilities; derecognition of financial instruments; impairment of financial assets and hedge accounting. AASB 9 also significantly amends other standards dealing with financial instruments such as the revised AASB 7 *Financial Instruments: Disclosures* (AASB 7R).

The Commission applied AASB 9 retrospectively but has not restated the comparative information which is reported under AASB 139 *Financial Instruments: Recognition and Measurement* (AASB 139). The impact of AASB 9 on the Commission has been immaterial.

a) Classification and measurement of financial instruments

On 1 July 2018 (the date of initial application of AASB 9), management has assessed which business models apply to the financial assets held by the Commission and has classified its financial instruments into the appropriate AASB 9 categories.

Under AASB 9, subsequent measurement of debt financial assets is based on assessing the contractual cash flow characteristics of the debt instrument and the Commission's business model for managing the instrument.

The assessment of the Commission's business model was made as of the date of initial application, 1 July 2018. The assessment of whether contractual cash flows on debt instruments are solely comprised of principal and interest was made based on the facts and circumstances as at the initial recognition of the assets.

The classification and measurement requirements of AASB 9 did not have a significant impact on the Commission. The Commission continued measuring at fair value, all financial assets previously held at fair value under AASB 139.

The following are the changes in classification of the Commission's financial assets:

- Trade receivables classified as 'Loans and receivables' under AASB 139 as at 30 June 2018 are held to collect contractual cash flows representing solely payments of principal and interest. At 1 July 2018 these are classified and measured as debt instruments at amortised cost.
- The Commission has not designated any financial liabilities at fair value through profit or loss. There are no changes in the classification and measurement for the Commission's financial liabilities.

b) Impairment

The adoption of AASB 9 has changed the Commission's accounting for impairment losses for financial assets by replacing AASB 139's incurred loss approach with a forward-looking expected credit loss (ECL) approach. AASB 9 requires the Commission to recognise an allowance for ECLs for all debt instruments not held at fair value through profit or loss. There is no material impact to the Commission on adopting the new impairment model.

(ii) Issued but not yet effective

NSW public sector entities are not permitted to early adopt new Australian Accounting Standards, unless Treasury determines otherwise. The Commission is of the opinion that the possible impact of these Standards in the period of initial application would be immaterial.

- AASB 15, AASB 2014-5, 2015-8, & 2016-3 -- Regarding revenue from contracts with customers
- AASB 1058 -- Regarding income for Not-for-profit entities
- AASB 2016-8 -- Regarding amendments to Australian Accounting Standards - Australian Implementation Guidance for Not-for-Profit Entities
- AASB 2018-3 -- Regarding amendments to Australian Accounting Standards - Reduced Disclosure Requirements
- AASB 2018-7 -- Regarding amendments to Australian Accounting Standards - Definition of Material
- AASB 2018-8 -- Regarding amendments to Australian Accounting Standards - Right-of-Use Assets of Not-for-Profit Entities

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

Certain new accounting standards and interpretations have been published that are not mandatory for 30 June 2019 reporting periods.

- AASB 15 *Revenue from Contracts with Customers*, AASB 2014-5 *Amendments to Australian Accounting Standards* arising from AASB 15 and AASB 1058 *Income of Not-for-Profits*
 - AASB 15 *Revenue from Contracts with Customers* (AASB 15) is effective for reporting periods commencing on or after 1 January 2019. AASB 15 establishes a five-step model to account for revenue arising from contracts with customers. Revenue is recognised when control of goods or services is transferred to the customer at amounts that reflect the consideration to which the Commission expects to be entitled in exchange for transferring the goods or services to the customer. Under AASB 118 *Revenue* (AASB 118), revenue recognition is currently based on when risks and rewards are transferred.
 - AASB 1058 *Income of Not-for-Profits* (AASB 1058) is effective for reporting periods commencing on or after 1 January 2019 and will replace most of the existing requirements in AASB 1004 *Contributions* (AASB 1004). The scope of AASB 1004 is now limited mainly to parliamentary appropriations, administrative arrangements and contributions by owners. Under AASB 1058 the Commission will need to determine whether a transaction is consideration received below fair value principally to enable the Commission to further its objectives (accounted for under AASB 1058) or a revenue contract with a customer (accounted for under AASB 15).
 - The standards will result in the identification of separate performance obligations that may change the timing of recognition for some revenues, including revenues relating to sales of goods and services and specific purpose grants and subsidies. The Commission does not expect these standards to have a material impact as all sources of funding are spent in the year received.
 - The Commission will adopt AASB 15 and AASB 1058 on 1 July 2019 through application of the full retrospective transition approach. Recognition and measurement principles of the new standards will be applied for the current year and comparative year as though AASB 15 and AASB 1058 had always applied.
- AASB 16 -- *Leases* applies to financial reporting periods beginning on or after January 2019. When adopted, AASB 16 will require the Commission to recognise all leases with a term of more than 12 months on the Statement of Financial Position, unless the underlying asset is of low value. The Commission's Statement of Financial Position will include a right of use asset representing its right to use the underlying leased asset and a leased liability representing its obligation to make lease payments. It will also increase depreciation and interest expenses and reduce operating lease rental expenses on the Statement of Comprehensive Income. Expenses recognised in the earlier years of the lease term will be higher as the interest charges will be calculated on a larger lease liability balance.
 - The Commission will adopt AASB 16 on 1 July 2019 through application of the partial retrospective approach, where only the current year is adjusted as though AASB 16 had always applied. Comparative information will not be restated. The Commission will also adopt the practical expedient whereby the fair value of the right-of-use asset will be the same as the lease liability at 1 July 2019.
 - Based on the impact assessment undertaken on currently available information, the Commission estimates additional lease liabilities of \$6.09 million and right of use assets of \$6.09 million will be recognised as at 1 July 2019 for leases in which the Commission is a lessee. Most operating lease expenses will be replaced by depreciation of the right of use asset and interest on the lease liability. The impact on the Statement of Comprehensive Income for the 2019-20 year is expected to be \$126,000.

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

2. EXPENSES EXCLUDING LOSSES	Law Enforcement Conduct Commission		Consolidated	
	2019 \$'000	2018 \$'000	2019 \$'000	2018 \$'000
(a) Employee related expenses				
Salaries and wages (including annual leave)*	1,163	1,219	13,830	12,277
Redundancies	--	--	235	29
Superannuation-defined benefit plans	--	--	56	55
Superannuation-defined contribution plans	65	61	1,216	1,051
Long service leave	--	--	984	467
Workers' compensation insurance	--	--	221	87
Payroll tax and fringe benefits tax	66	69	937	797
Other employee expenses	13	14	15	17
	<u>1,307</u>	<u>1,363</u>	<u>17,494</u>	<u>14,780</u>
* Salaries and wages shown under the Law Enforcement Conduct Commission relate to the statutory appointment of the Chief Commissioner, the Commissioner Integrity and Commissioner Oversight. The increase in long service leave expense is predominately due to the decrease in the bond rate.				
(b) Other operating expenses include the following:				
Administration charges	38	52	38	53
Books and periodicals	82	56	82	56
Auditor's remuneration-audit of the financial statements	50	49	50	49
Consultancies	20	49	20	49
Contractors	329	446	329	446
External legal counsel	96	61	96	61
Minor computer expenses	254	251	254	251
Maintenance *	909	662	909	662
Make good unwinding discount	97	--	97	--
Insurance	18	17	18	17
Rent and outgoing	1,939	1,754	1,939	1,754
Minor equipment	122	136	122	136
Motor vehicle costs (including leasing charges)	105	118	105	118
Advertising	3	4	3	4
Printing and stationery	40	74	40	74
Staff development	144	204	144	204
Travelling expenses	183	167	183	167
Telephones	47	42	47	42
Fees and searches	37	28	37	28
Other	243	262	243	262
	<u>4,756</u>	<u>4,432</u>	<u>4,756</u>	<u>4,433</u>
* Reconciliation - Total maintenance				
Maintenance expense - contracted labour and other (non-employee related), as above	909	662	909	662
Total maintenance expenses included in Note 2(b)	<u>909</u>	<u>662</u>	<u>909</u>	<u>662</u>

RECOGNITION AND MEASUREMENT

Maintenance expense

Day-to-day servicing costs or maintenance are charged as expenses as incurred, except where they relate to the replacement or an enhancement of a part or component of an asset, in which case the costs are capitalised and depreciated.

Insurance

The Commission's insurance activities are conducted through the NSW Treasury Managed Fund Scheme of self-insurance for Government entities. The expense (premium) is determined by the Fund Manager based on past claims experience.

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

Operating leases

An operating lease is a lease other than a finance lease. Operating lease payments are recognised as an operating expense in the Statement of Comprehensive Income on a straight-line basis over the lease term. The Commission's motor vehicle fleet and rental property are the only assets subject to an operating lease.

	Law Enforcement Conduct Commission		Consolidated	
	2019 \$'000	2018 \$'000	2019 \$'000	2018 \$'000
(c) Personnel Services expenses Office of the Law Enforcement Conduct Commission	16,171	13,401	--	--
(d) Depreciation and amortisation expense				
Depreciation				
Computer Equipment	460	457	460	457
Plant and Equipment	253	226	253	226
Amortisation				
Leasehold Improvements	230	801	230	801
Intangibles	47	41	47	41
	<u>990</u>	<u>1,525</u>	<u>990</u>	<u>1,525</u>

Refer Note 8 and 9 for recognition and measurement policies on depreciation and amortisation.

3. REVENUE

RECOGNITION AND MEASUREMENT

Income is measured at the fair value of the consideration or contribution received or receivable. Comments regarding the accounting policies for the recognition of income are discussed below.

(a) Appropriations	2019 \$'000		2018 \$'000	
	Appropriation	Expenditure	Appropriation	Expenditure
Summary of Compliance				
Original Budget per Appropriation Act				
Other Appropriations/Expenditure				
Section 24 PFAA – transfers of functions between entities	23,554	20,800	24,895	20,200
Total Appropriations /Expenditure / Net Claim on Consolidated Fund	23,554	20,800	24,895	20,200
Appropriation drawn down		20,800		20,200
Comprising:				
Appropriations (per Statement of Comprehensive Income)		20,800		20,200
Appropriations		20,800		20,200
Recurrent	19,513		18,583	
Capital	1,287		1,617	
	<u>20,800</u>		<u>20,200</u>	

The Summary of Compliance is presented for the consolidated accounts and is based on the assumption that Consolidated Fund monies are spent first (except where otherwise identified or prescribed).

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

Recurrent Appropriation

The Commission's recurrent appropriation of \$23.554 million was not fully drawn down primarily due to the ongoing delay in recruitment. Treasury approved a reallocation of \$100,000 of recurrent appropriation be reclassified as capital.

Capital Appropriation

The Commission expended \$1.287 million of the approved \$1.3 million. Major capital expenses included progress of the new case management system to meet the requirements of both investigations and oversight, building works and upgrades to the Commission's IT and technical equipment.

RECOGNITION AND MEASUREMENT

Parliamentary Appropriations and Contributions

Except as specified below, parliamentary appropriations and contributions from other bodies (including grants and donations) are recognised as income when the Commission obtains control over the assets comprising the appropriations/contributions. Control over appropriations and contributions is normally obtained upon the receipt of cash.

Appropriations are not recognised as income in the following circumstances:

- Unspent appropriations are recognised as liabilities rather than income, as the authority to spend the money lapses and the unspent amount must be repaid to the Consolidated Fund.
- The liability if any is disclosed as part of 'Current liabilities-Other'. The amount will be repaid and the liability will be extinguished next financial year.

	Law Enforcement Conduct Commission		Consolidated	
	2019 \$'000	2018 \$'000	2019 \$'000	2018 \$'000
(b) Sale of goods and services				
Rendering of service	74	109	74	109
	<u>74</u>	<u>109</u>	<u>74</u>	<u>109</u>

RECOGNITION AND MEASUREMENT

Sale of goods

Revenue from sale of goods is recognised as revenue when the entity transfers the significant risks and rewards of ownership of the goods, usually on delivery of the goods.

Rendering of services

Revenue from rendering of services is recognised when the service is provided or by reference to the stage of completion (based on labour hours incurred to date).

(c) Grants and other contributions				
Commonwealth Government - capital contribution	--	63	--	63
	<u>--</u>	<u>63</u>	<u>--</u>	<u>63</u>

RECOGNITION AND MEASUREMENT

Income from grants (other than contributions by owners) is recognised when the entity obtains control over the contribution. The entity is deemed to have assumed control when the grant is received or receivable.

Contributions are recognised at their fair value. Contributions of services are recognised when and only when a fair value of those services can be reliably determined and the services would be purchased if not donated.

(d) Acceptance by the Crown Entity of employee benefits and other liabilities				
The following liabilities and/or expenses have been assumed by the Crown Entity:				
Superannuation - defined benefit	55	54	55	54
Long service leave provision	984	467	984	467
Payroll tax	--	--	3	3
	<u>1,039</u>	<u>521</u>	<u>1,042</u>	<u>524</u>

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

	Law Enforcement Conduct Commission		Consolidated	
	2019 \$'000	2018 \$'000	2019 \$'000	2018 \$'000
(e) Other Income				
Insurance claim receipts/hindsight adjustment refund	31	8	44	22
	<u>31</u>	<u>8</u>	<u>44</u>	<u>22</u>

4. GAIN/(LOSS) ON DISPOSAL

Proceeds from disposal	47	8	47	8
Written down value of assets disposed	(7)	(10)	(7)	(10)
Gain / (loss) on disposal	<u>40</u>	<u>(2)</u>	<u>40</u>	<u>(2)</u>

5. PROGRAM GROUP OF THE COMMISSION

The Commission comprises a single program group encompassing the transferred functions of the Police Integrity Commission and the Police and Compliance Branch of the NSW Ombudsman covering the detection, investigation and exposure of misconduct and maladministration in the NSW Police Force and NSW Crime Commission.

The Commission also oversees the independent monitoring and review of investigation by the NSW Police Force and NSW Crime Commission of complaints about the conduct of their Officers, and real time monitoring of NSW Police Force critical incidents.

6. CURRENT ASSETS—CASH AND CASH EQUIVALENTS

Cash at bank	352	953	362	1,018
Cash on hand	12	12	12	12
	<u>364</u>	<u>965</u>	<u>374</u>	<u>1,030</u>

For the purposes of the Statement of Cash Flows, cash and cash equivalents include cash on hand and cash at bank.

Cash and cash equivalents (per Statement of Financial Position)	<u>364</u>	<u>965</u>	<u>374</u>	<u>1,030</u>
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Refer Note 17 for details regarding credit risk, liquidity risk and market risk arising from financial instruments.

7. CURRENT ASSETS—RECEIVABLES

Prepayments	650	834	650	834
Other debtors	67	211	105	250
	<u>717</u>	<u>1,045</u>	<u>755</u>	<u>1,084</u>

Refer Note 17 for details regarding credit risk of trade receivables that are neither past due nor impaired.

RECOGNITION AND MEASUREMENT

All 'regular way' purchases or sales of financial assets are recognised and derecognised on a trade date basis. Regular way purchases or sales are purchases or sales of financial assets that require delivery of assets within the time frame established by regulation or convention in the marketplace.

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

Receivables are initially recognised at fair value plus any directly attributable transaction costs. Trade receivables that do not contain a significant financing component are measured at the transaction price.

Subsequent measurement under AASB 9 (from 1 July 2018)

The Commission holds receivables with the objective to collect the contractual cash flows and therefore measures them as amortised cost using the effective interest method, less any impairment. Changes are recognised in the net result for the year when impaired, derecognised or through the amortisation process.

Subsequent measurement under AASB 139 (for comparative period ended 30 June 2018)

Subsequent measurement is at amortised cost using the effective interest method, less any impairment. Changes are recognised in the net result for the year when impaired, derecognised or through the amortisation process.

Impairment under AASB 9 (from 1 July 2018)

An allowance for the expected credit losses (ECLs) is recognised for all debt financial assets not held at fair value through profit or loss. ECLs are based on the difference between the contractual cash flows and the cash flows that the entity expects to receive, discounted at the original effective interest rate.

The Commission does not recognise an allowance for ECL's as all trade receivables held by the Commission are other government agencies (either State or Commonwealth), the dollar value is low, and as such are considered to be recoverable in full.

Impairment under AASB 139 (for comparative period ended 30 June 2018)

Receivables are subject to an annual review for impairment. Financial assets are considered to be impaired when there is objective evidence that, as a result of one or more events that occurred after the initial recognition of the financial asset, the estimated future cash flows have been affected.

The Commission first assesses whether impairment exists individually for receivables that are individually significant, or collectively for those that are not individually significant. Further, receivables are assessed for impairment on a collective basis if they were assessed not to be impaired individually.

The Commission does not recognise any impairment for receivable balances as all trade receivables held by the Commission are other government agencies (either State or Commonwealth), the dollar value is low, and as such are considered to be recoverable in full.

8. NON-CURRENT ASSETS—PLANT AND EQUIPMENT

Law Enforcement Conduct Commission and consolidated figures are shown together as the Office of the Law Enforcement Conduct Commission does not hold assets.

	Leasehold improvements \$'000	Plant & Equipment \$'000s	Computer Equipment \$'000	Total \$'000
At 1 July 2018 – fair value				
Gross carrying amount	2,142	3,065	4,060	9,267
Accumulated depreciation and impairment	(1,063)	(2,351)	(2,628)	(6,042)
Net carrying amount	<u>1,079</u>	<u>714</u>	<u>1,432</u>	<u>3,225</u>
At 30 June 2019 – fair value				
Gross carrying amount	2,358	2,706	3,972	9,036
Accumulated depreciation and impairment	(1,293)	(1,909)	(2,836)	(6,038)
Net carrying amount	<u>1,065</u>	<u>797</u>	<u>1,136</u>	<u>2,998</u>

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

Reconciliation

A reconciliation of the carrying amount of each class of plant and equipment at the beginning and end of the current reporting period is set out below.

Year ended 30 June 2019	Leasehold Improvements \$'000	Plant & Equipment \$'000s	Computer Equipment \$'000	Total \$'000
Net carrying amount at 1 July 2018	1,079	714	1,432	3,225
Additions	216	343	164	723
Disposals	--	(7)	--	(7)
Depreciation expense	(230)	(253)	(460)	(943)
Net carrying amount at end of year	<u>1,065</u>	<u>797</u>	<u>1,136</u>	<u>2,998</u>

At 1 July 2018 - fair value	Leasehold improvements \$'000	Plant & Equipment \$'000s	Computer Equipment \$'000	Total \$'000
Gross carrying amount	2,142	3,065	4,060	9,267
Accumulated depreciation and impairment	(1,063)	(2,351)	(2,628)	(6,042)
Net carrying amount	<u>1,079</u>	<u>714</u>	<u>1,432</u>	<u>3,225</u>

Reconciliation

A reconciliation of the carrying amount of each class of plant and equipment at the beginning and end of the current reporting period is set out below.

Year ended 30 June 2018	Leasehold improvements \$'000	Plant & Equipment \$'000s	Computer Equipment \$'000	Total \$'000
Net carrying amount at 1 July 2017	--	--	--	--
Acquisitions through administrative restructure (Note 15)	1,630	522	1,096	3,248
Additions	250	427	794	1,471
Disposals	--	(9)	(1)	(10)
Depreciation expense	(801)	(226)	(457)	(1,484)
Net carrying amount at end of year	<u>1,079</u>	<u>714</u>	<u>1,432</u>	<u>3,225</u>

RECOGNITION AND MEASUREMENT

Acquisition of plant and equipment

Plant and equipment are initially recognised at cost. Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or construction or, where applicable, the amount attributed to that asset when initially recognised in accordance with the requirements of other Australian Accounting Standards.

Fair value is the price that would be received to sell an asset in an orderly transaction between market participants at measurement date.

Where payment for an asset is deferred beyond normal credit terms, its cost is the cash price equivalent, i.e. deferred payment is effectively discounted over the period of credit.

Assets acquired at no cost, or for nominal consideration, are initially recognised at their fair value at the date of acquisition.

Capitalisation thresholds

Plant and equipment and intangible assets costing \$5,000 and above individually, or forming part of a network costing more than \$5,000, are capitalised.

Restoration Costs

The present value of the expected cost for the restoration or cost of dismantling of an asset after its use is included in the cost of the respective asset if the recognition criteria for a provision are met.

Assets not able to be reliably measured

The Commission does not hold any assets that have not been recognised in the Statement of Financial Position.

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

Depreciation of plant and equipment

Depreciation is provided for on a straight-line basis for all depreciable assets so as to write off the depreciable amount of each asset as it is consumed over its useful life to the Commission.

All material identifiable components of assets are depreciated separately over their useful lives.

The Commission has adopted the following depreciation rates for the reporting period:

Computer equipment	3 & 4 years
Intangible computer software	3 & 4 years
Plant and equipment	3, 4 & 7 years
Leasehold improvements	the initial period of the lease

Revaluation of plant and equipment

Physical non-current assets are valued in accordance with the 'Valuation of Physical Non-Current Assets at Fair Value' Policy and Guidelines Paper (TPP 14-01). This policy adopts fair value in accordance with AASB 13 *Fair Value Measurement* and AASB 116 *Property, Plant and Equipment*.

The majority of Commission assets are non-specialised assets with short useful lives and are therefore measured at depreciated historical cost, as an approximation of fair value. The Commission has assessed that any difference between fair value and depreciated historical cost is unlikely to be material.

The residual values, useful lives and methods of depreciation of property, plant and equipment are reviewed at each financial year end.

Impairment of plant and equipment

As a not-for-profit entity with no cash generating units, impairment under AASB 136 *Impairment of Assets* is unlikely to arise. As plant and equipment is carried at fair value or an amount that approximates fair value, impairment can only arise in the rare circumstances such as where the costs of disposal are material. Specifically, impairment is unlikely for not-for-profit entities given that AASB 136 modifies the recoverable amount test for non-cash generating assets of not for profit entities to the higher of fair value less costs of disposal and depreciated replacement cost, where depreciated replacement cost is also fair value.

The Commission assesses, at each reporting date, whether there is an indication that an asset may be impaired. If any indication exists, or when annual impairment testing for an asset is required, the Commission estimates the asset's recoverable amount. When the carrying amount of an asset exceeds its recoverable amount, the asset is considered impaired and is written down to its recoverable amount.

As a not-for-profit entity, an impairment loss is recognised in the net result to the extent the impairment loss exceeds the amount in the revaluation surplus for the class of asset.

All of the Commission's non-current assets are considered to be non-specialised assets with short useful lives measured using the depreciated historical cost as an approximation of fair value and as such do not require fair value hierarchy disclosures under AASB 13.

9. NON-CURRENT INTANGIBLE ASSETS - SOFTWARE

Law Enforcement Conduct Commission and consolidated figures are shown together as the Office of the Law Enforcement Conduct Commission does not hold assets.

	Consolidated \$'000
At 1 July 2018	
Cost (gross carrying amount)	3,563
Accumulated amortisation and impairment	(3,281)
Net carrying amount	<u>282</u>
At 30 June 2019	
Cost (gross carrying amount)	4,037
Accumulated amortisation and impairment	(3,238)
Net carrying amount	<u>799</u>

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

	Consolidated \$'000
Year ended 30 June 2019	
Net carrying amount at 1 July, 2018	282
Additions	41
WIP - additions	523
Amortisation (recognised in "depreciation and amortisation")	(47)
Net carrying amount at end of year	<u>799</u>
At 30 June 2018	
Cost (gross carrying amount)	3,563
Accumulated amortisation and impairment	(3,281)
Net carrying amount	<u>282</u>
Year ended 30 June 2018	
Net carrying amount at 1 July, 2017	--
Acquisitions through administrative restructure (Note 12)	114
Additions	209
Amortisation (recognised in "depreciation and amortisation")	(41)
Net carrying amount at end of year	<u>282</u>

RECOGNITION AND MEASUREMENT

The Commission recognises intangible assets only if it is probable that future economic benefits will flow to the Commission and the cost of the asset can be measured reliably. Intangible assets are measured initially at cost. Where an asset is acquired at no or nominal cost, the cost is its fair value as at the date of acquisition. Intangible assets are subsequently measured at fair value only if there is an active market. As there is no active market for the Commission's intangible assets, the assets are carried at cost less any accumulated amortisation and impairment losses.

All research costs are expensed. Development costs are only capitalised when certain criteria are met.

The useful lives of intangible assets are assessed to be finite.

The Commission's intangible assets are amortised using the straight-line method over a period of 4 years.

The amortisation period and the amortisation method for an intangible asset with a finite useful life are reviewed at least at the end of each reporting period.

Intangible assets are tested for impairment where an indicator of impairment exists. If the recoverable amount is less than its carrying amount, the carrying amount is reduced to recoverable amount and the reduction is recognised as an impairment loss.

10. CURRENT LIABILITIES—PAYABLES

	Law Enforcement Conduct Commission		Consolidated	
	2019 \$'000	2018 \$'000	2019 \$'000	2018 \$'000
Accrued salaries, wages and on-costs	--	--	61	53
Personnel services payable	61	53	--	--
Creditors	171	100	171	100
	<u>232</u>	<u>153</u>	<u>232</u>	<u>153</u>

Refer Note 17 for details regarding liquidity risk, including a maturity analysis of the above payables.

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

RECOGNITION AND MEASUREMENT

Payables represent liabilities for goods and services provided to the Commission and other amounts. Short-term payables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

Payables are financial liabilities at amortised cost, initially measured at fair value, net of directly attributable transaction costs. These are subsequently measured at amortised cost using the effective interest method. Gains and losses are recognised in the net result when the liabilities are derecognised as well as through the amortisation process.

11. CURRENT / NON-CURRENT LIABILITIES—PROVISIONS

	Law Enforcement Conduct Commission		Consolidated	
	2019 \$'000	2018 \$'000	2019 \$'000	2018 \$'000
Employee benefits and related on-costs				
Annual leave including on-costs	111	80	1,177	936
Long service leave on-costs	--	--	550	407
Payroll tax and FBT provision	--	--	22	36
Provision for personnel services	1,590	1,195	--	--
	<u>1,701</u>	<u>1,275</u>	<u>1,749</u>	<u>1,379</u>

The liability is based on leave entitlements at 30 June 2019 using remuneration rates payable post 30 June 2019. The value of leave and associated on-costs (including long service leave on-costs) expected to be taken within the next 12 months is \$1,467,950 and \$259,050 after 12 months (2018: \$1,223,000 and \$122,000 after 12 months).

	2019 \$'000	2018 \$'000	2019 \$'000	2018 \$'000
Other Provisions				
Restoration costs	601	505	601	505
Total Provisions	<u>601</u>	<u>505</u>	<u>601</u>	<u>505</u>

Aggregate employee benefits and related on-costs

Provisions - current	1,705	1,345
Provisions - non-current	44	34
Accrued salaries, wages and on-costs (Note 10)	61	53
	<u>1,810</u>	<u>1,432</u>

Restoration costs - the Commission is required to reinstate the leased premises to the condition they were in as at the date the premises were first leased.

	Consolidated	
	2019 \$'000	2018 \$'000
Movements in provisions (other than employee benefits)		
Restoration costs		
Carrying amount at 1 July	505	--
Additional provision - new lease	96	--
Increase due to administrative restructure	--	505
Carrying amount at 30 June	<u>601</u>	<u>505</u>

RECOGNITION AND MEASUREMENT

Employee benefits and related on-costs

Salaries and wages, annual leave and sick leave

Salaries and wages (including non-monetary benefits) and paid sick leave that are expected to be settled wholly within 12 months after the end of the period in which the employees render the service are recognised and measured at the undiscounted amounts of the benefits.

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

Annual leave is not expected to be settled wholly before twelve months after the end of the annual reporting period in which the employees render the related service. As such, it is required to be measured at present value in accordance with AASB 119 *Employee Benefits*.

Actuarial advice obtained by Treasury has confirmed that the use of a nominal approach plus the annual leave on annual leave liability (using 7.9% of the nominal value of annual leave) can be used to approximate the present value of the annual leave liability. The Commission has assessed the actuarial advice based on the Commission's circumstances and has determined that the effect of discounting is immaterial to annual leave. All annual leave is classified as a current liability even where the Commission does not expect to settle the liability within 12 months as the Commission does not have an unconditional right to defer settlement.

Unused non-vesting sick leave does not give rise to a liability as it is not considered probable that sick leave taken in the future will be greater than the benefits accrued in the future.

Long Service Leave and Superannuation

The Commission's liabilities for long service leave and defined benefit superannuation are assumed by the Crown Entity. The Commission accounts for the liability as having been extinguished, resulting in the amount assumed being shown as part of the non-monetary revenue item described as 'Acceptance by the Crown Entity of employee benefits and other liabilities.'

Long service leave is measured at present value of expected future payments to be made in respect of services provided up to the reporting date. Consideration is given to certain factors based on actuarial review, including expected future wage and salary levels, experience of employee departures, and periods of service. Expected future payments are discounted using Commonwealth government bond rate at the reporting date.

The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for certain superannuation schemes (i.e. Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For other superannuation schemes (i.e. State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.

Consequential on-costs

Consequential costs to employment are recognised as liabilities and expenses where the employee benefits to which they relate have been recognised. This includes outstanding amounts of payroll tax, workers' compensation insurance premiums and fringe benefits tax.

Other Provisions

Provisions are recognised when the Commission has a present legal or constructive obligation as a result of a past event; it is probable that an outflow of resources will be required to settle the obligation; and a reliable estimate can be made of the amount of the obligation. When it is expected that some or all of a provision will be reimbursed, for example, under an insurance contract, the reimbursement is recognised as a separate asset, but only when the reimbursement is virtually certain. The expense relating to a provision is presented net of any reimbursement in the Statement of Comprehensive Income.

Any provisions for restructuring are recognised only when the Commission has a detailed formal plan and the Commission has raised a valid expectation in those affected by the restructuring that it will carry out the restructuring by starting to implement the plan or announcing its main features to those affected.

The Commission recognises a make good provision for the anticipated costs of future restoration of leased premises as required under the terms of agreement. The provision includes future cost estimates associated with dismantling and reinstatement of the leased premises to original condition. The calculation is based on a square metre rate of \$185.00 as per the lease agreement (\$150.00 lease ended 3 July 19).

12. EQUITY

RECOGNITION AND MEASUREMENT

Accumulated Funds

The category 'Accumulated Funds' includes all current and prior period retained funds.

Reserves

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

Separate reserve accounts are recognised in the financial statements only if such accounts are required by specific legislation or Australian Accounting Standards (e.g. asset revaluation surplus and foreign currency translation reserve).

Equity Transfers – Recognition and Measurement

The transfer of net assets between entities as a result of an administrative restructure and transfers of programs / functions and parts thereof between NSW public sector entities are designated or required by Australian Accounting Standards to be treated as contributions by owners and recognised as an adjustment to 'Accumulated Funds'. This treatment is consistent with AASB 1004 *Contributions* and Australian Interpretation 1038 *Contributions by Owners Made to Wholly-Owned Public Sector Entities*.

Transfers arising from an administrative restructure involving not-for-profit and for-profit government entities are recognised at the amount at which the assets and liabilities were recognised by the transferor immediately prior to the restructure. Subject to below, in most instances this will approximate fair value.

All other equity transfers are recognised at fair value, except for intangibles. Where an intangible has been recognised at (amortised) cost by the transferor because there is no active market, the entity recognises the asset at the transferor's carrying amount. Where the transferor is prohibited from recognising internally generated intangibles, the entity does not recognise that asset.

13. COMMITMENTS

(a) Capital Commitments

Aggregate capital expenditure for the acquisition of computer software and hardware, office equipment and leasehold improvements, contracted for at balance date and not provided for:

	Law Enforcement Conduct Commission		Consolidated	
	2019 \$'000	2018 \$'000	2019 \$'000	2018 \$'000
Within one year	64	374	64	374
Total (including GST)	64	374	64	374

(b) Operating Lease Commitments

Future minimum rentals payable under non-cancellable operating lease as at 30 June are, as follows:

	2019	2018	2019	2018
Within one year	2,083	1,791	2,083	1,791
Later than one year and not later than five years	4,291	157	4,291	157
Later than five years	--	--	--	--
Total (including GST)	6,374	1,948	6,374	1,948

These operating lease commitments relate to the Commission's rental of property and motor vehicle fleet, and are not recognised in the financial statements as liabilities. The total commitments for 2019 include input tax credits of \$579,429 (2018: \$211,090) that are expected to be recoverable from the Australian Taxation Office.

14. CONTINGENT LIABILITIES AND CONTINGENT ASSETS

As at the reporting date, the Commission is not aware of any contingent liabilities or assets that will materially affect its financial position.

15. BUDGET REVIEW

Budgeted amounts are drawn from the original budgeted financial statements presented to Parliament in respect of the reporting period. Subsequent amendments to the original budget (e.g. adjustment for transfer of functions between entities as a result of Administrative Arrangements Orders) are not reflected in the budgeted amounts. Major variances between the original budgeted amounts and the actual amounts disclosed in the financial statements are explained below.

Net result

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

The actual net result compared to budget is a deficit of \$1.2 million, primarily due to: Recurrent appropriation revenue is below budget due to the Commission not requiring the full approved appropriation together with changes to the Treasury cash management policy requiring agencies to use surplus cash held at 30 June 2018 prior to drawing down appropriations. Capital funding is close to budget. The actuarial assessment and present value calculations for LSL accepted by the Crown resulted in an increase to the liability and off-setting revenue items.

Employee related expenditure is below budget due to delays with recruitment following a review of the organisational structure which resulted in a number of changes. The review conducted in May/June 2018 had an effective start date of 1 July 2018. The Commission is working towards finalising recruitment action by the end of 2019. Other operating expenses are below budget across a number of line items most notably in witness expenses, legal fees and other.

Revenue from services rendered is close to budget, other revenue includes receipts from an insurance claim following the write off of a motor vehicle.

Assets and liabilities

Total assets are slightly above budget. Current liabilities are higher than budget due to an increase in provisions following the acceptance of leave balances for new staff transferring from other government entities and the impact of present value calculations. Non-current provisions have increased due to the movement in the make-good provision following an increase in the square metre rate charged as per the lease effective 4 July 2019.

Cash flows

Both payments and receipts are lower than budget reflecting lower expenses and funding levels required to meet expenses.

16. RECONCILIATION OF CASH FLOWS FROM OPERATING ACTIVITIES TO NET RESULT

	Law Enforcement Conduct Commission		Consolidated	
	2019 \$'000	2018 \$'000	2019 \$'000	2018 \$'000
Net cash used on operating activities	639	1,455	584	1,473
Depreciation and amortisation	(990)	(1,525)	(990)	(1,525)
Decrease/(increase) in provisions	(522)	(362)	(466)	(411)
Increase/(decrease) in prepayments and other assets	(328)	578	(329)	609
Decrease/(increase) in creditors	(79)	34	(79)	34
Net gain/(loss) on assets disposed	40	(2)	40	(2)
Net result	(1,240)	178	(1,240)	178

17. FINANCIAL INSTRUMENTS

The Commission's principal financial instruments are outlined below. These financial instruments arise directly from the Commission's operations or are required to finance the Commission's operations. The Commission does not enter into or trade financial instruments, including derivative financial instruments, for speculative purposes.

The Commission's main risks arising from financial instruments are outlined below, together with the Commission's objectives, policies and processes for measuring and managing risk. Further quantitative and qualitative disclosures are included throughout these financial statements.

The Chief Commissioner has overall responsibility for the establishment and oversight of risk management and reviews and agrees policies for managing each of these risks. Risk management policies are established to identify and analyse the risks faced by the Commission, to set risk limits and controls and to monitor risk. Compliance with policies is reviewed by the Commission on a continuous basis.

a) Financial instrument categories

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

As at 30 June 2019 under AASB 9

Parent			
Financial Assets	Note	Category	Carrying Amount
Class:			2019 \$'000
Cash and cash equivalents	6	N/A	364
Receivables ¹	7	Amortised cost	--
Financial Liabilities			
Class:	Note	Category	Carrying Amount
Class:			2019 \$'000
Payables ²	10	Financial liabilities measured at amortised cost	232
Consolidated			
Financial Assets	Note	Category	Carrying Amount
Class:			2019 \$'000
Cash and cash equivalents	6	N/A	374
Receivables ¹	7	Amortised cost	38
Financial Liabilities			
Class:	Note	Category	Carrying Amount
Class:			2019 \$'000
Payables ²	10	Financial liabilities measured at amortised cost	229

¹ Excludes statutory receivables and prepayments (i.e. not within scope of AASB 7)

² Excludes statutory payables and unearned revenue (i.e. not within scope of AASB 7)

As at 30 June 2018 under AASB 139 (comparative period)

Parent			
Financial Assets	Note	Category	Carrying Amount
Class:			2018 \$'000
Cash and cash equivalents	6	N/A	965
Receivables ¹	7	Loans and receivables (at amortised cost)	37
Financial Liabilities			
Class:	Note	Category	Carrying Amount
Class:			2018 \$'000
Payables ²	10	Financial liabilities measured at amortised cost	153
Consolidated			
Financial Assets	Note	Category	Carrying Amount
Class:			2018 \$'000
Cash and cash equivalents	6	N/A	1,030
Receivables ¹	7	Loans and receivables (at amortised cost)	67
Financial Liabilities			
Class:	Note	Category	Carrying Amount
Class:			2018 \$'000
Payables ²	10	Financial liabilities measured at amortised cost	150

¹ Excludes statutory receivables and prepayments (i.e. not within scope of AASB 7)

² Excludes statutory payables and unearned revenue (i.e. not within scope of AASB 7)

The Commission determines the classification of its financial assets and liabilities after initial recognition and, when allowed and appropriate, re-evaluates this at each financial year end.

b) Derecognition of financial assets and financial liabilities

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

A financial asset is derecognised when the contractual rights to the cash flows from the financial assets expire; or if the Commission transfers its right to receive cash flows from the asset or has assumed an obligation to pay the received cash flows in full without material delay to a third party under a pass-through arrangement; and either:

- where substantially all the risks and rewards have been transferred or
- where the Commission has neither transferred nor retained substantially all the risks and rewards of the asset, but has transferred control.

When the Commission has transferred its rights to receive cash flows from an asset or has entered into a pass-through arrangement, it evaluates if, and to what extent, it has retained the risks and rewards of ownership. Where the Commission has neither transferred nor retained substantially all the risks and rewards or transferred control, the asset is recognised to the extent of the Commission's continuing involvement in the asset. In that case, the Commission also recognises an associated liability. The transferred asset and the associated liability are measured on a basis that reflects the rights and obligations that the Commission has retained.

Continuing involvement that takes the form of a guarantee over the transferred asset is measured at the lower of the original carrying amount of the asset and the maximum amount of consideration that the Commission could be required to repay.

A financial liability is derecognised when the obligation specified in the contract is discharged or cancelled or expires. When an existing financial liability is replaced by another from the same lender on substantially different terms, or the terms of an existing liability are substantially modified, such an exchange or modification is treated as the derecognition of the original liability and the recognition of a new liability. The difference in the respective carrying amounts is recognised in the net result.

c) Offsetting financial instruments

Financial assets and financial liabilities are offset and the net amount is reported in the Statement of Financial Position if there is a currently enforceable legal right to offset the recognised amounts and there is an intention to settle on a net basis, or to realise the assets and settle the liabilities simultaneously.

d) Financial risks

(i) CREDIT RISK

Credit risk arises when there is a possibility of the Commission's debtors defaulting on their contractual obligations, resulting in a financial loss to the Commission. The maximum exposure to credit risk is generally represented by the carrying amount of the financial assets (net of any allowance for credit losses or allowance for impairment).

Credit risk arises from the financial assets of the Commission, including cash and receivables. No collateral is held by the Commission. The Commission has not granted any financial guarantees.

Credit risk associated with the Commission's financial assets, other than receivables is managed through the selection of counterparties and establishment of minimum credit rating standards. Authority deposits held with NSW TCorp are guaranteed by the State.

Cash and cash equivalents

Cash comprises cash on hand and bank balances within the NSW Treasury Banking System.

Accounting policy for impairment of trade debtors and other financial assets under AASB 9 Receivables – trade debtors

Collectability of trade debtors is reviewed on an ongoing basis. Procedures as established in the Treasurer's Directions are followed to recover outstanding amounts, including letters of demand.

The Commission applies the AASB 9 simplified approach to measuring expected credit losses which uses a lifetime expected loss allowance for all trade debtors. To measure the expected credit losses, trade receivables have been grouped based on shared credit risk characteristics and the days past due.

Trade debtors are written off when there is no reasonable expectation of recovery. Indicators that there is no reasonable expectation of recovery include, amongst others a failure to make contractual payments for a period of greater than 90 days past due date.

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

The Commission is not materially exposed to concentrations of credit risk to a single trade debtor or group of debtors. The Commission's debtors are all other government entities either Commonwealth or State. No allowance for credit loss has been made as all amounts are considered to be collectable.

Accounting policy for impairment of trade debtors and other financial assets under AASB 139 (for comparative period ended 30 June 2018)

Collectability of trade debtors is reviewed on an ongoing basis. Procedures as established in the Treasurer's Directions are followed to recover outstanding amounts, including letters of demand. Debtors which are known to be uncollectible are written off. An allowance for impairment is raised when there is objective evidence that the entity will not be able to collect all amounts due. This evidence includes past experience, and current and expected changes in economic conditions and debtor credit ratings. No interest is earned on trade debtors. The Commission is not materially exposed to concentrations of credit risk to a single trade debtor or group of debtors. No provision for doubtful debts has been made as all amounts are considered to be collectable.

As at 30 June, the ageing analysis of trade debtors is as follows:

Consolidated	2019 \$'000	2018 \$'000
Neither past due nor impaired	38	31
Past due but not impaired		
< 3 months overdue	--	--
3-6 months overdue	--	--
> 6 months overdue	--	--
Total receivables	38	31

The ageing analysis excludes statutory receivables, as these are not within the scope of AASB 7. Therefore the total will not reconcile to the receivables total in Note 7.

(ii) LIQUIDITY RISK

Liquidity risk is the risk that the Commission will be unable to meet its payment obligations when they fall due. The Commission continuously manages risk through monitoring future cash flows and planning to ensure adequate holdings of liquid assets. The Commission does not have a bank overdraft facility.

During the current year, there were no defaults of loans payable. No assets have been pledged as collateral. The Commission's exposure to liquidity risk is deemed insignificant based on prior periods' data and current assessment of risk.

The liabilities are recognised for amounts due to be paid in the future for goods or services received, whether or not invoiced. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in NSW TC 11/12. For small business suppliers, where terms are not specified, payment is made not later than 30 days from date of receipt of a correctly rendered invoice. For other suppliers, if trade terms are not specified, payment is made no later than the end of the month following the month in which an invoice or statement is received. For small business suppliers, where payment is not made within the specified time period, simple interest must be paid automatically unless an existing contract specifies otherwise. For payments to other suppliers, the Commissioner (or person appointed by the Commissioner) may automatically pay the supplier simple interest. No interest was applied during the year.

The table below summarises the maturity profile of the Commission's financial liabilities, together with the interest rate exposure.

Maturity analysis and interest rate exposure of financial liabilities

	\$'000 Interest Rate Exposure	Maturity Dates
--	----------------------------------	----------------

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

	Weighted average effective int. rate	Nominal amount	Fixed interest rate	Variable interest rate	Non- interest bearing	<1 year	1 - 5 years	> 5 years
Parent								
2019								
Personnel services payable		61			61	61		
Creditors		171			171	171		
		<u>232</u>			<u>232</u>	<u>232</u>		
2018								
Personnel services payable		53			53	53		
Creditors		100			100	100		
		<u>153</u>			<u>153</u>	<u>153</u>		

	Weighted average effective int. rate	\$'000 Interest Rate Exposure			Maturity Dates			
		Nominal amount	Fixed interest rate	Variable interest rate	Non- interest bearing	<1 year	1 - 5 years	> 5 years
Consolidated								
2019								
Accrued salaries and wages and on-costs		61			61	61		
Creditors		171			171	171		
		<u>232</u>			<u>232</u>	<u>232</u>		
2018								
Accrued salaries and wages and on-costs		50			50	50		
Creditors		100			100	100		
		<u>150</u>			<u>150</u>	<u>150</u>		

The amounts disclosed are the contractual undiscounted cash flows of each class of financial liabilities, therefore the amounts disclosed above may not reconcile to the Statement of Financial Position.

(iii) MARKET RISK

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. The Commission's exposure to market risk is primarily through interest rate risk. The Commission has no exposure to foreign currency risk and does not enter into commodity contracts.

The effect on profit and equity due to a reasonably possible change in risk variable is outlined in the information below for interest rate risk. A reasonably possible change in risk variable has been determined after taking into account the economic environment in which the Commission operates and the time frame for the assessment (i.e. until the end of the next annual reporting period). The sensitivity analysis is based on risk exposures in existence at the Statement of Financial Position date. The analysis assumes that all other variables remain constant.

Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. Exposure to interest rate risk would primarily arise through interest bearing liabilities. The Commission does not account for any fixed rate financial instruments at fair value through profit or loss or as available-for-sale. Therefore, for these financial instruments, a change in interest rates would not affect profit or loss or equity.

The Commission does not have interest bearing liabilities and does not receive interest on cash assets held as such there is no exposure to interest rate risk.

e) Fair value measurement

(i) FAIR VALUE COMPARED TO CARRYING AMOUNT

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value

Law Enforcement Conduct Commission

Notes to and forming part of the Financial Statements for the year ended 30 June 2019

measurement is based on the presumption that the transaction to sell the asset or transfer the liability takes place either in the principal market for the asset or liability or in the absence of a principal market, in the most advantageous market for the asset or liability.

(ii) FAIR VALUE RECOGNISED IN THE STATEMENT OF FINANCIAL POSITION

When measuring fair value, the valuation technique used maximises the use of relevant observable inputs and minimises the use of unobservable inputs. Under AASB 13, the Commission categorises, for disclosure purposes, the valuation techniques based on the inputs used in the valuation techniques as follows:

- Level 1 - quoted (unadjusted) prices in active markets for identical assets/liabilities that the Commission can access at the measurement date.
- Level 2 - inputs other than quoted prices included within level 1 that are observable, either directly or indirectly.
- Level 3 - inputs that are not based on observable market data (unobservable inputs).

The amortised cost of financial instruments recognised in the Statement of Financial Position approximates the fair value, because of the short-term nature of many of the financial instruments.

18. RELATED PARTY DISCLOSURES

The Commission's key management personnel compensation are as follows:

	Consolidated	
	2019 \$'000	2018 \$'000
Short term employee benefits:		
Salaries	1,626	1,478
Non-monetary benefits	--	--
Total remuneration	1,626	1,478

Key management personnel and their compensation disclosures are limited to the key decision makers who have authority and responsibility for planning, directing and controlling the activities of the Commission. During the year, the Commission did not enter into transactions with key management personnel, their close family members and the members of its controlled entities.

During the year, the Commission entered into transactions with other entities that are controlled/jointly controlled/significantly influenced by the NSW Government. These transactions in aggregate are a significant portion of the Commission's rendering of services and receiving of services.

These transactions include:

- Long Service Leave and Defined Benefit Superannuation assumed by the Crown
- Appropriations (and subsequent adjustments in appropriations)
- Transactions relating to the Treasury Banking System
- Employer contributions paid to the Defined Benefit Superannuation funds
- Payments into the Treasury Managed Fund for workers compensation insurance and other insurances
- Payments to Property NSW for office accommodation rental.

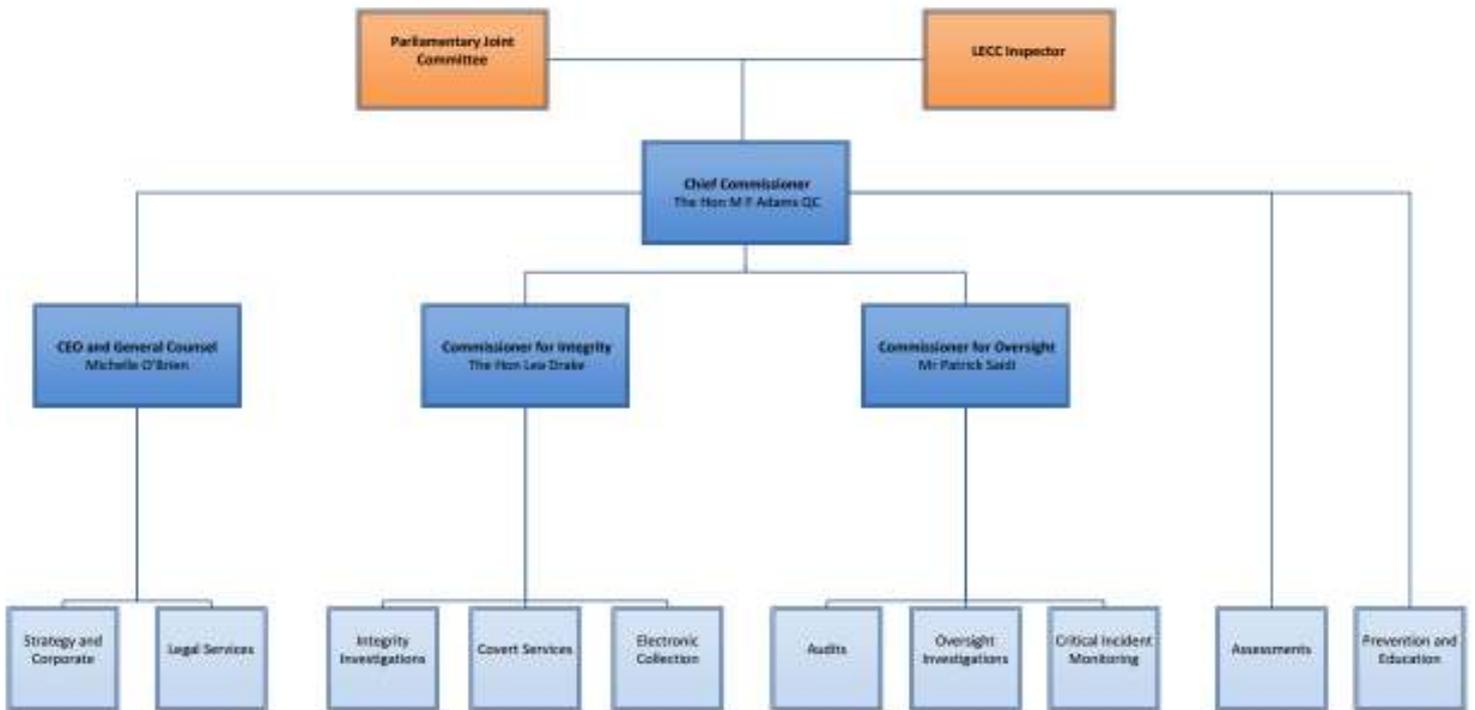
19. EVENTS AFTER THE REPORTING DATE

As at 1 July 2019 the Commission moved from the Justice Cluster to the Premier and Cabinet Cluster, the move has no impact on the Commission's budget or financial reporting requirements. No other events have occurred between the financial reporting date and the date of these financial statements that require adjustment to, or disclosure in these financial statements.

End of audited financial statements

8. APPENDIX 8

8.1 APPENDIX 8: ORGANISATION STRUCTURE



9. APPENDIX 9

9.1 APPENDIX 9: LAW ENFORCEMENT CONDUCT COMMISSION PUBLICATIONS

The Commission's publications fall into the following categories:

- Reports to Parliament following an investigation in relation to any matter that has been or is the subject of investigation under Part 6 (s 132 of the *Law Enforcement Conduct Commission Act 2016*)
- Special reports to Parliament (s 138)
- Annual Reports
- Research and Issues Papers
- Brochures concerning the making of a complaint in regard to serious police misconduct.

All LECC publicly available reports are available on OpenGov NSW at www.opengov.nsw.gov.au and on the Commission website at www.lecc.nsw.gov.au

The following publications were released by the Commission during 2018-19:

PUBLICATION NAME	PUBLICATION DATE
Operation Tambora: An investigation into whether any NSWPF officer engaged in criminal conduct or serious misconduct in the apprehension of a 16 year old male in Byron Bay on 11 January 2018	20 September 2018
Operation Baltra: An investigation into whether a NSWPF officer engaged in serious misconduct in his treatment of a female prisoner at a metropolitan police station on 15 September 2017	20 September 2018
Operation Corwen: An investigation by the Commission into whether any police officers were involved in serious misconduct in relation to the arrest of Ms A on 9 April 2016 and the subsequent prosecution of Ms A	20 September 2018
LECC Annual Report 2017-18	31 October 2018
Operation Ramberg: An investigation into whether a NSWPF officer in regional NSW engaged in serious misconduct in relation to a range of incidents	16 January 2019
Operation Carlow: An investigation into whether a NSWPF engaged in serious misconduct: arising from the purchase, possession, use or distribution of illegal drugs; or arising from the arrest of Civilian 2 in the ACT on 28 April 2017 and his subsequent prosecution in the ACT Magistrates Court.	16 January 2019
Review of 29 NSWPF critical incident investigations	18 June 2019

PUBLICATION NAME	PUBLICATION DATE
Operation Chivero: An investigation into whether NSWPF officer(s) engaged in serious misconduct by using excessive force in the arrest of a civilian and recklessness in investigating the civilian's complaint	26 June 2019
Operation Rozzano: An investigation into the conduct of a NSWPF investigation into a complaint made by a civilian regarding the NSWPF Highway Patrol Unit	26 June 2019
Operation Kariba: An investigation into whether two NSWPF officers engaged in serious misconduct when they detained an intoxicated civilian in Burwood and later abandoned him on the side of the road in Chullora	26 June 2019
Operation Errigal: An investigation into whether a NSWPF Commander and associated NSWPF officers engaged in serious misconduct as a result of their personal relationships	26 June 2019

10.

APPENDIX 10

10.1 APPENDIX 10: DIRECTORY, DEFINITIONS AND PRINTING REQUIREMENTS

10.1.1 DIRECTORY

Address	Postal Address	Website
Level 3, 111 Elizabeth Street SYDNEY NSW 2000 Office hours: 8.30am-4.30pm (excluding weekends and public holidays)	GPO Box 3880 SYDNEY NSW 2000 Telephone: (61 2) 9321 6700 Freecall: 1800 657 079 Facsimile: (61 2) 9321 6799	www.lecc.nsw.gov.au

10.1.2 DEFINITIONS

Acronym	Definition
CALD	Culturally and linguistically diverse
GSE Act	<i>Government Sector Employment Act 2013</i>
LECC	Law Enforcement Conduct Commission
LECC Act	<i>Law Enforcement Conduct Commission Act 2016</i>
NSWPF	New South Wales Police Force
NSWCC	New South Wales Crime Commission
OICC	Office of the Inspector of the Crime Commission
PANSW	Police Association of NSW
PCB	Police and Compliance Branch of the Ombudsman's Office
PIC	Police Integrity Commission
SOC	Strategic Operations Committee
WHS	Work Health and Safety

10.1.3 ANNUAL REPORT COSTS

Total External Costs: \$0 (including design and printing costs)

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Hours of operation
08:30am to 4:30pm Monday to Friday (excluding weekends and public holidays)

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