

NSW Police response to recommendations made in LECC FINAL REPORT *Five Years of Independent Monitoring of NSWPF Critical Incident Investigations*

Recommendation	Agree/Agree in principle/Agree in part/Do not Agree	Comments
<p><u>Recommendation 1:</u></p> <p>The NSWPF implement a procedure to provide a copy of all ‘Critical Incident Declaration/Non-Declaration by Region Commander’ forms P1179 to the Commission in a timely manner.</p>	<p>Agree in Part</p>	<ul style="list-style-type: none"> • NSW Police <i>supports</i> the LECC recommendation that the P1179 form be provided to the Commission following the <i>declaration</i> of a critical incident in a timely manner • S112 of the <i>Law Enforcement Conduct Commission Act 2016</i> (LECC Act) requires the Commissioner of Police to notify the LECC immediately following the declaration of a critical incident. The completed P1179 declaration by the region commander is to be forwarded to the professional standards manager (PSM) and to the senior critical incident Investigator (SCII) to upload to the e@glei at the initiation of the strike force where the Commission will have full access to the document. It is at this point that the LECC’s oversight role is enlivened. • NSW Police <i>does not support</i> the LECC recommendation that the P1179 form be provided to the Commission following a <i>non-declaration</i> of a critical incident • S111 of the LECC Act states that the Commissioner of Police (delegated to the Region Commanders) may declare a critical incident. In establishing the legislation Parliament provided the Commissioner with absolute discretion as to whether a critical incident will be declared. • There are no provisions in the legislation for the Commission to pass a determination on matters that are not declared critical incidents and form any opinion on recommendations as to the validity of the decision of the Commissioner or the delegate where a matter is not declared a critical incident. • Additionally, Part 8A of the <i>Police Act 1990</i> places obligations on all police to report misconduct. If a determination is made that an incident should not be declared a critical incident, and there is evidence of police misconduct the Region Commander has an obligation to register the incident as a misconduct matter. LECC will then have visibility of how that matter was being managed through the misconduct matters management system.

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<p><u>Recommendation 2:</u></p> <p>The NSWPF amend the NSWPF Critical Incident Guidelines and the Misconduct Matters Framework to provide that the Region PSM responsible for ensuring that all appropriate and relevant information from the critical incident investigation is provided to the assigned misconduct matter investigator in a timely manner.</p>	<p>Agree in Part</p>	<ul style="list-style-type: none"> • The Region Commander has the delegated responsibility for the declaration, documentation, management investigation, and review of all critical incidents that have occurred within their region. • Unless there are issues arising from a conflict of interest or lack of resourcing, the misconduct of an officer is investigated by his/her commander. Additionally, while, the region commander may have in some instances taken interim risk management action as soon as the CI was declared, this action would normally rest with the officer's commander. • Under the SCII check list the region PSM is consulted on the scope of the CI investigation. It would be more appropriate for the misconduct matter to be investigated by the commander who owns the officer with the PSM ensuring they have access to all appropriate and relevant information from the CI investigation.
<p><u>Recommendation 3</u></p> <p>The NSWPF amend the NSWPF Critical Incident Guidelines, to specify that Critical Incident Investigation Reports (including SCII Report, Review Officer Report and Region Report) should be finalised by police, within 3 months of the end of court proceedings, or within 6 months of the incident being declared, if there are no court proceedings. In circumstances where it is not possible for a Critical Incident Investigation Report to be finalised within set timeframes, the reasons for the delay should be recorded on the e@gle.i</p>	<p>Agree in Principle</p>	<p>NSW Police <i>agrees with the intent</i> of this recommendation</p> <ul style="list-style-type: none"> • It is reasonable to expect that timeframes and timeliness are requisite requirements for CI investigations, however there is a need for these timeframes to have some flexibility as the SCII will often have competing priorities and deadlines and sometimes experience delays when seeking expert advice. • The CI guidelines will be amended to reflect these time frames <i>but will be presented as a suggested guideline only</i> as each matter will need to be dealt with on a case-by-case basis factoring in other time constraints and conflicting priorities, other investigations and leave requirements. • Delays to the timeframes will be documented on e@gle.i

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case and assessed and managed by the Region Commander responsible for the critical incident investigation Commander responsible for the critical incident investigation.		
<p><u>Recommendation 4:</u></p> <p>The NSWPF Critical Incident Guidelines instruct officers to complete an interim Critical Incident Investigation Report with recommendations prior to criminal or coronial proceedings, for the consideration of the NSWPF Executive.</p>	Do Not Agree	<p>NSW Police <i>does not</i> support this recommendation</p> <ul style="list-style-type: none"> • The current CI Guidelines (s5.6) already provide for the prompt identification and notification to the Region Commander of risks and areas for improvement during the course of the investigation and prior to its conclusion if required. • An 'Interim Critical Incident Investigation Report' infers it will be a report outlining interim findings and recommendations. • This presents an organisational risk and a risk to the SCII as they would be obliged to prepare a report before all facts are fully known and considered in either the criminal or coronial jurisdiction. NSWPF are not in a position to make pre-emptive findings in coronial matters which could then be subject to subpoena and/or disclosure and used to criticise investigators and involved officers. • Ongoing information regarding the progress of the investigation would be available to the Commission through SITREPS and progress reports • Transparency is currently already achieved through the Commission's access to the e@glei investigation • Identification of risk is addressed in the SCII Checklist (Page 1) which states: 'At all times the SCII should notify the Region Commander and PAC/PD of any risks identified.'
<p><u>Recommendation 5:</u></p> <p>The NSWPF Critical Incident Guidelines instruct critical incident investigators to provide the Commission with information on the 'risks and</p>	Do Not Agree	<p>For reasons cited in the response to Recommendation 4, NSW Police <i>does not</i> support this recommendation</p> <ul style="list-style-type: none"> • Any risk areas for improvement are reported to the Region Commander as required in s5.6 of the CI Guidelines

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areas for improvement' identified in the course of the critical incident investigation prior to criminal or coronial proceedings.		<ul style="list-style-type: none"> • Providing information and/or reports prior to criminal or coronial proceedings presents an organisational risk and a risk to the SCII as they would be obliged to prepare a report before all facts are fully known and considered in either the criminal or coronial jurisdiction. NSWPF are not in a position to make pre-emptive findings in coronial matters which could then be subject to subpoena and/or disclosure and used to criticise investigators and involved officers.
<p><u>Recommendation 6:</u></p> <p>The NSWPF amend the NSWPF Critical Incident Guidelines to include robust procedures to notify the Commission within seven days of ratification that a critical incident investigation has been finalised and provide a copy of the Critical Incident Investigation Report to the Commission. The procedures should indicate the person responsible for instructing the SCII to upload the Report and state that the Report should be uploaded as a product, so the document is visible to the Commission.</p>	Agree	<ul style="list-style-type: none"> • NSW Police <u>supports</u> this recommendation • Following the current practice whereby the SCII, PSC Review, and Region Report are completed these are forwarded to the Commissioners Executive Team for endorsement • It is proposed that once endorsed, the SCII should be instructed to upload the signed-off version to e@glei and notify the Commission re completion of the investigation.
<p><u>Recommendation 7:</u></p> <p>The NSWPF amend the NSWPF Critical Incident Guidelines to require the Region Report to include a response to any recommendations made in the Critical Incident Investigation Report.</p>	Agree	<ul style="list-style-type: none"> • NSW Police <u>supports</u> this recommendation where the recommendations relate to a specific region only. • It is noted that if recommendations relate to the entire organisation, it becomes a matter for the NSWPF Executive, not for the specific Region Commander. This will significantly slow the finalisation of critical incidents as the investigation cannot be finalised until recommendations are addressed by the NSWPF Executive. • NSW Police proposes an amendment to the Region Report to address recommendations made in the critical incident final report

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		<ul style="list-style-type: none"> This is partly addressed in the P1187 Region Commander Checklist (Step 9) however could be more clearly articulated i.e. The report should highlight and comment on any recommendations raised by the SCII, conduct issues identified and broader lessons to be learned from the incident
<p><u>Additional feedback re material in body of report</u></p> <p><i><u>Mental Health Training at paragraph 4.3.1</u></i></p> <p><i><u>Safe Driving Policy at paragraph 4.3.2</u></i></p> <p><i><u>Police use of S.T.O.P.A.R – paragraph 4.3.3.</u></i></p>		<p><i><u>Mental Health Training at paragraph 4.3.1</u></i></p> <p>LECC raise concerns regarding training for officers interacting with members of the public suffering from mental health issues. Two areas of concern being highlighted: 1) resourcing of the MHIT and 2) the adequacy of such training.</p> <p>The Mental Health Intervention Team is a small team attached to the Crime Prevention Command. The team consists of two sworn officers and a Clinical Nurse Consultant, all permanent full-time positions.</p> <p>Historically the team was delivering 4-day face to face programs to police via a formal program which was scaled to a 2 day program prior to COVID impacting all training. This approach provided highly specialised training, but given the length of course and time to deliver, was not practical to ensure the appropriate training of all NSW Police Officers.</p> <p>Since that time the Crime Prevention Command has engaged with NSW Health and Ambulance Service NSW and is preparing a holistic training package for all NSW Police officers which will see a combination of face to face, experiential learning, online delivery, Commissioners Directives, defensive tactics / scenario based training and developmental learning delivered to all NSW Police Officers via at least one of these means based on their experience and position within the NSWPF.</p>

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		<p>S.T.O.P.A.R will continue to form part of NSWPF Mental Health training as part of the overall suite of learning that will be delivered to NSW Police Officers.</p> <p>NSW Police is concerned that by adopting any changes, NSW Police Officers rather than trained medical professionals will be relied upon as subject experts as responders to persons suffering a mental health crisis.</p> <p>NSW Police are currently in the very early stages of exploring an alternative to the current PACER program. QLD Police have successfully appointed Mental Health Liaison Officers owned by QLD Health who work collaboratively with QLD Police. <u>However, it must be noted that the PACER program or alternative models are not owned or administered by NSW Police and their success will always rely on adequate ongoing funding and ongoing commitment from NSW Health to function.</u></p> <p>Realistically this issue will only be addressed with the responsibility for the appropriate management of those with mental health issues being returned to NSW Health Services.</p> <p><u><i>Safe Driving Policy at paragraph 4.3.2</i></u></p> <p>The LECC raises concerns regarding the current Safe Driving Policy (SDP) being 'extremely difficult to comply with' and that it places a lot of responsibility on officers to take into account numerous risk factors. Concerns are also raised in the LECC report in relation to the previous practice of not addressing safe driving concerns through a Safe Driving Panel until after a critical incident is resolved.</p> <p>A comprehensive review of the current Safe Driving Policy (SDP) is in its final draft stages prior to being submitted to the Commissioners Executive Team for subsequent approval. The</p>

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		<p>current SDP has been broken down into a public document and a protected operational guideline.</p> <p>The purpose of the review is to simplify the current policy and provide clear command and control expectations whilst removing the challenging language which makes it difficult for police to comply with. The draft operational guideline provides clear instructions, flexibility, and definitions of activities such as what constitutes a pursuit and other functions which have been raised in previous LECC matters.</p> <p>The public document aims to provide an overview of police scope, aims and accountabilities when driving motor vehicles. The operational guidelines have been simplified to provide police with direction relating to driving activities including urgent duty, traffic stops, pursuits, and enduring operations.</p> <p>Regarding critical incidents the draft operational guideline addresses the timeliness/panel issues and escalates the responsibility to the relevant Region Assistant Commissioner and Safe Driving Panel which will look at any interim risk management related to the actions of police. Management actions are decertification, retraining or any other managerial action deemed necessary including referring the conduct to the Complaint Management Team under Part 8A.</p> <p>No final action will be taken until the outcome of the Critical Incident or coronial inquest is made.</p> <p>Four proposed safeguards have been factored into the draft guideline aiming to improve compliance and operational outcomes which include:</p> <ol style="list-style-type: none"> 1. Debriefing by the SCII

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		<p>2. Requirement for the Region Safe Driving Panel chaired by the Assistant Commissioner to consider police actions and consider Interim Risk Management</p> <p>3. Review by the State Pursuit Management Committee who can provide advice to the Commander – Traffic and Highway Patrol</p> <p>4. Referral to the Traffic and Highway Patrol Professional Standards Manager who reports to the Commander.</p> <p><u>Police use of S.T.O.P.A.R – paragraph 4.3.3.</u></p> <p>The issues identified in the report are also linked to training.</p> <p>Causing an officer to reflect on their actions is a pivotal part of the role-play scenarios during the annual defensive tactics training day, with an assessment of S.T.O.P.A.R being part of that training. However, relying on one day of training to establish proficiency is improbable.</p> <p>Police will, through exposure to challenging scenarios whilst on duty, develop a systematic approach to problems but may not be able to articulate them specifically in the S.T.O.P.A.R format. Not following a specific acronym does not necessarily mean that police officers do not know what to do.</p>