

**Agreement between the
Law Enforcement Conduct Commission
and
the Commissioner of Police
Pursuant to s 14 of the
Law Enforcement Conduct Commission Act 2016**

1. Parties

This Agreement is made between:

The Commissioner of Police for and on behalf of the New South Wales Police Force of 1 Charles Street, Parramatta, NSW 2150 ('the NSWPF')

and

The Chief Commissioner of the Law Enforcement Conduct Commission for and on behalf of the Law Enforcement Conduct Commission of Level 3, 111 Elizabeth Street, Sydney NSW 2000 ('the Commission').

2. Background

The responsibilities of the NSWPF under the *Police Act 1990* ('the Police Act') include the investigation of allegations of police misconduct.

The responsibilities of the Commission under the *Law Enforcement Conduct Commission Act 2016* ('the Act') include the investigation of allegations of police misconduct and oversight of police misconduct investigations.

3. Agreement

Pursuant to s 14 of the Act the Parties agree that guidelines will be issued reflecting agreements entered into concerning the following:

- (a) the kinds of misconduct matters that should be investigated by the Commission,
- (b) the kinds of misconduct matters that should not be investigated by the Commission,
- (c) the kinds of misconduct matters required to be notified to the Commission ('notifiable misconduct matters'),
- (d) the kinds of misconduct matters that are ordinarily to be investigated by the Commissioner of Police,
- (e) the kinds of misconduct matters that are ordinarily to be investigated by the Commission,
- (f) the kinds of misconduct matters that should be the subject of oversight by the Commission under Part 7 and the form of such oversight,

- (g) the kinds of misconduct matters that should not be the subject of oversight by the Commission and the manner of dealing with such matters,
- (h) the level of detail required in notifying or referring a misconduct matter to the Commission or the Commissioner of Police,
- (i) the giving of notice with respect to misconduct matters to the Commission, the Commissioner of Police, the officer the subject of the misconduct matter, complainants and referring authorities,
- (j) arrangements with respect to the monitoring by the Commission under s 101 of police investigations of misconduct matters,
- (k) the kind of misconduct information that is required to be registered in the NSWPF misconduct matters information system.

The guidelines to be issued pursuant to this Agreement are to be signed on behalf of the parties by their nominated delegates.

4. Definitions

In this Agreement and all guidelines issued pursuant thereto, except where a contrary intention appears:

- (1) **Agency maladministration** means any conduct, by way of action or inaction, of the NSW Police Force other than excluded conduct:
 - (a) that constitutes an offence or is corrupt conduct or is otherwise unlawful, or
 - (b) that, although it is not unlawful:
 - (i) is one that no decision maker, acting reasonably, would make,
 - (ii) is unjust, oppressive or improperly discriminatory in its effect,
 - (iii) arises, wholly or in part, from improper motives,
 - (iv) arises, wholly or in part, from a decision that has taken irrelevant matters into consideration,
 - (v) arises, wholly or in part, from a mistake of law or fact,
 - (vi) is conduct of a kind for which reasons should have, but have not, been given, or

- (c) that is engaged in in accordance with a law or established practice, being a law or practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect.

NOTE: Such conduct may be the conduct of an individual officer of the NSWPF which might be adopted as a course of conduct by other NSW police officers, a course of conduct by a number of officers of the NSWPF or an operational policy of the NSWPF. Maladministration would arise if the conduct or policy may produce an effect that is unreasonable, unjust, oppressive or improperly discriminatory.

(2) **Complaint** means an allegation that any conduct:

- (a) of a police officer (whether or not named or identified) is, or could be, conduct that falls within the description of police misconduct or officer maladministration (a 'police complaint'), or
- (b) of an administrative employee (whether or not named or identified) is (or could be) conduct that falls within the description of administrative employee misconduct or officer maladministration (an 'administrative employee complaint'), or
- (c) of the NSW Police Force is (or could be) conduct that falls within the description of agency maladministration (an 'agency complaint').

(3) **Disciplinary infringement** includes any misconduct, irregularity, neglect of duty, breach of discipline or substantial breach of a code of conduct or other matter that constitutes or may constitute grounds for disciplinary action under any law.

(4) **Maladministration** relates to a matter of administration involving an exercise of a public function, and should be read in conjunction with s 11 of the LECC Act.

(5) **Misconduct information** means a mandatory or other report or other information contained in any other document that the Commission or Commissioner of Police becomes aware of, otherwise than through a complaint, that indicates or suggests conduct is (or could be) officer misconduct or officer maladministration or agency maladministration and includes:

- (a) letters of demand, statements of claim or other pleadings or particulars where the State of New South Wales, the Commissioner of Police, the NSWPF or a police officer is named as defendants or proposed defendants, which alleges, expressly or impliedly, an act or omission capable of constituting serious misconduct, or

- (b) Any judgement ordering the informant to pay a defendant's costs where the reason for the order includes criticism of the truth or reliability of a police officer's evidence or the inadequacy or competence of a police investigation.
- (6) **Misconduct matter** means:
- (a) a complaint, or
 - (b) misconduct information.
- (7) **Misconduct matters information system** is the system required to be kept under s 128 of the *Police Act 1990*.
- (8) **Officer maladministration** means any conduct (by way of action or inaction) of a police officer or administrative employee that, although it is not unlawful in that it does not constitute an offence or corrupt conduct:
- (a) is unreasonable, unjust, oppressive or improperly discriminatory in its effect,
 - (b) arises, wholly or in part, from improper motives,
 - (c) arises wholly or in part, from a decision that has taken irrelevant matters into consideration,
 - (d) arises, wholly or in part, from a mistake of law or fact, or
 - (e) is conduct of a kind for which reasons should have (but have not) been given.
- (9) **Serious misconduct** means any one of the following:
- (a) conduct of a police officer or administrative employee that could result in prosecution of the officer or employee for a serious offence or serious disciplinary action against the officer or employee for a disciplinary infringement,
 - (b) a pattern of officer misconduct, officer maladministration or agency maladministration carried out on more than one occasion, or that involves more than one participant, that is indicative of systemic issues that could adversely reflect on the integrity and good repute of the NSW Police Force or the Crime Commission,

- (c) corrupt conduct of a police officer, administrative employee or Crime Commission officer.
- (10) **Serious disciplinary action** against an officer or employee means terminating the employment, demoting or reducing the rank, classification or grade of the officer or position held by the officer or employee or reducing the remuneration payable to the officer or employee.
- (11) **Serious offence** means a serious indictable offence. A serious indictable offence is an indictable offence that is punishable by imprisonment for life or for a term of five years or more. A serious offence includes an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be a serious indictable offence.
- (12) **Serious maladministration** means:
 - (a) in the case of an agency – if the conduct involved is unlawful (that is, constitutes an offence or is corrupt conduct or is otherwise unlawful), or
 - (b) in the case of an agency or officer – if the conduct involved is of a serious nature and, although it is not unlawful:
 - (i) is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
 - (ii) arises, wholly or in part, from improper motives.

Execution

This Agreement is executed on:

**Signed by Karen Webb APM
the Commissioner of the New South
Wales Police Force:**



Signature of Commissioner of Police

**Signed by the Hon. Peter Johnson SC,
the Chief Commissioner of the Law
Enforcement Conduct Commission:**



Signature of Chief Commissioner of LECC