

OFFICIAL

Complaints Handling Policy and Procedures

Version 8.0

19 October 2023

New South Wales
Crime Commission



OFFICIAL

Contents

- POLICY 4**
- 1 Purpose..... 4**
- 2 Scope/Application..... 4**
- 3 Definitions..... 4**
- 4 Policy Statements 5**
 - 4.1 General Principles 5
 - 4.2 Oversight Bodies 5
 - 4.3 Responsibilities..... 6
 - 4.3.1 Commissioner..... 6
 - 4.3.2 Complaints Assessment Officer 6
 - 4.3.3 Chief Operating Officer and People & Culture Manager..... 6
 - 4.3.4 Internal Investigator 7
 - 4.3.5 Governance Audit & Risk Manager 7
 - 4.3.6 Commission Officers..... 7
- 5 Related Legislation and Documents..... 7**
- 6 Feedback 7**
- PROCEDURES..... 7**
- 1 Lodging a Complaint..... 7**
- 2 Initial Processing..... 8**
- 3 Assessment..... 8**
 - 3.1 Triage of complaints..... 8
 - 3.1.1 Non-assessable complaints 9
 - 3.1.2 Assessable complaints..... 9
 - 3.1.3 Considerations for formulating recommendations 10
 - 3.1.4 Considerations for responding to complainants 11
- 4. Acting on the Initial Assessment 11**
 - 4.1 Deciding and initiating action..... 11
 - 4.2 Recording the decision..... 12
- 5. Investigating Complaints 12**
 - 5.1 Investigations conducted by the NSWCC 12
 - 5.2 Matters notified to the LECC..... 13
 - 5.3 Investigations referred to other oversight bodies..... 14
- 6. Sanctions Resulting from Investigations..... 14**
- 7. Special Types of Complaints..... 14**
 - 7.1 Complaints originating as HR matters..... 14

7.2 Complaints connected to litigation 15

7.3 Complaints about the Commissioner or an Assistant Commissioner (Legal)..... 15

8. Record Keeping 15

8.2 Reporting using the Complaints Register 17

8.3 LECC Access for Audits..... 17

Version Control17

Publication Information 18

POLICY

1 Purpose

The purpose of the *Complaints Handling Policy and Procedures* is to provide staff guidance on dealing with complaints received by the NSW Crime Commission (the Commission), and to ensure that the Commission deals with each complaint it receives effectively, efficiently, fairly and in compliance with relevant legislation.

2 Scope/Application

This policy and procedures document applies to every officer of the Commission (Commission officer), defined in the *Crime Commission Act 2012* (NSW).

3 Definitions

The following terms are defined in relation to this document.

Approving Officer: The Commissioner, Chief Operating Officer (COO) or Governance Audit & Risk Manager who approves complaint handling recommendations made by the Complaints Assessment Officer.

Complaint: The *Law Enforcement Conduct Commission Act 2016* (NSW) (*LECC Act*) defines a complaint that relates to the NSW Crime Commission as an allegation of any conduct that could constitute:

misconduct or officer maladministration;
agency maladministration.

Note: The following terms have legislative definitions that are relevant to complaints.

Term	Reference
Crime Commission Officer Misconduct	s 9 <i>LECC Act</i>
Serious Misconduct	s 10 <i>LECC Act</i>
Agency Maladministration	s 11(1) <i>LECC Act</i>
Officer Maladministration	s 11(2) <i>LECC Act</i>
Serious Maladministration	s 11(3) <i>LECC Act</i>
Notifiable Misconduct Matter	The guidelines under s14 <i>LECC Act</i>
Corrupt Conduct	Part 3 <i>ICAC Act</i> *
Misconduct matter	Section 4 <i>LECC Act</i>
Misconduct Information	Section 13 <i>LECC Act</i>
Mandatory report	Section 13 <i>LECC Act</i>

**ICAC Act* = *Independent Commission Against Corruption Act 1988* (NSW)

Complaints Assessment Officer: A nominated Commission staff member who triages complaints as they are received and completes the *Complaint Assessment Form*. The Assessment Officer role may be carried out by the Policy & Governance Officer, Governance Audit & Risk Manager, Senior Lawyer OCOM, or the People & Culture Manager

Complaint Assessment Form: The form that is completed each time an assessable complaint is received by the Complaints Assessment Officer.

4 Policy Statements

4.1 General Principles

The Commission will maintain the following principles in relation to complaint management:

- The Commission will make readily available an effective means for making complaints about Commission officers, functions or actions whether such complaints are made by members of the public, members of other LEAs, members of the legal profession, or officers of the Commission.
- All complaints related to Commission officers, functions or actions will be receipted, assessed, investigated (where appropriate) and finalised in a timely manner in accordance with the procedures in this document.
- The Commission will endeavour to complete the complaint assessment process within a 21-day timeframe. This will include the CAO initiating a Complaint Assessment Form, recommending a course of action, and the approving officing making a decision.
- Every Commission officer who receives a complaint about a Commission officer, function, or action is required to bring it to the attention of the Commission.
- The Commission will investigate each complaint made against a Commission officer on its own merits in accordance with the principles of procedural fairness. Where complaints relate to misconduct, they will be handled in accordance with the Commission's *Misconduct and Unsatisfactory Performance Policy and Procedures*. Complaints will be dealt with confidentially and the complainant's identity will be kept confidential wherever possible, unless the complainant agrees otherwise.
- Where considered practicable, the Commission will notify the complainant of the outcome of their complaint about Commission officers, functions or actions in a timely fashion.
- The Commissioner retains overall responsibility for the investigation of complaints made in relation to Commission officers, functions and actions.

4.2 Oversight Bodies

The Commission recognises the role of the Law Enforcement Conduct Commission (the LECC) as the primary oversight body in relation to complaints and in overseeing the Commission's investigation of notifiable misconduct matters. The LECC may receive complaints about Commission officers, functions or actions directly from complainants or indirectly via the Commission itself. The LECC may also:

- detect and investigate conduct that could be serious misconduct or serious maladministration;
- refer to the Commission for investigation any conduct that potentially constitutes Crime Commission officer misconduct, officer maladministration, or agency maladministration;

- refer misconduct matters for investigation or action by other appropriate authorities
- oversee the investigation or handling of misconduct matters referred by it to the NSW Crime Commissioner or other appropriate authorities.

The Independent Commission Against Corruption may investigate allegations of corrupt conduct against Commission officers where such conduct also involves a public official from another agency.

The NSW Ombudsman has general functions with respect to New South Wales public sector maladministration and can conduct special investigations accordingly.

4.3 Responsibilities

4.3.1 Commissioner

The Commissioner is the decision maker in relation to the handling of complaints, including whether or not a complaint is reported and/or notified to the LECC and whether the LECC is asked to investigate a complaint. The Commissioner has delegated the authority regarding notification to the LECC about complaints received by the Commission about the NSW Police Force to the COO and the Governance Audit & Risk Manager.

4.3.2 Complaints Assessment Officer

The Complaints Assessment Officer (the Assessment Officer) is responsible for the receipting of a complaint and the initial assessment. This role is usually performed by the Policy and Governance Officer however, in some circumstances, the role may also be performed by those officers listed under “Definitions”.

The Assessment Officer’s responsibilities include (depending on the circumstances):

- screening out complaints that do not relate to government officials, functions or actions;
- redirecting complaints that relate to another agency or oversight body; or liaising with another agency regarding complaint referrals and the complaint handling process;
- communicating with the complainant (where appropriate);
- maintaining and updating the Complaints Register;
- completing and documenting the assessment for each complaint, using the appropriate Complaint Assessment Form;
- making recommendations to the Commissioner for the handling, investigation (where required), and resolution of complaints, including whether to recommend that the LECC manages the investigation of a complaint;
- liaising with the COO when formulating recommendations as to how any Crime Commission officer misconduct matters are to be handled, investigated and resolved; and
- periodically reporting the status of complaints to the LECC.

4.3.3 Chief Operating Officer and People & Culture Manager

The People & Culture Manager will initiate the assessment of any Human Resources (HR) Matter that has the potential to be considered a complaint. The COO will perform the role of Assessment Officer in relation to such matters.

4.3.4 Internal Investigator

The Internal Investigator is whichever Commission officer the Commissioner assigns responsibility for investigating a specific complaint. The Internal Investigator is responsible for investigating the complaint, keeping adequate records of the investigation, and keeping relevant parties informed of an investigation's progress. The Internal Investigator will keep relevant records in relation to their investigation and will provide these to either the Assessment Officer or Chief Operating Officer, as appropriate, for retention as official records.

4.3.5 Governance Audit & Risk Manager

The Governance Risk & Audit Manager is responsible for reviewing the quarterly status report for completeness before it is submitted to the LECC. The role may also take on Assessment Officer responsibilities under certain circumstances. For circumstances in which the Governance Audit & Risk Manager performs the role of Assessment Officer, the COO will act as decision maker and final approver on the Complaint Assessment Form.

4.3.6 Commission Officers

Commission officers are responsible for forwarding any complaints received from internal or external sources to the Assessment Officer and/or Chief Operating Officer in a timely manner.

5 Related Legislation and Documents

The Commission has developed a number of related policies that deal with specific types of workplace and procurement complaints and grievances, investigating misconduct, and whistle-blower protections, including:

- *Misconduct and Unsatisfactory Performance Policy*
- *Public Interest Disclosure Policy*
- *Work Related Grievance Handling Policy and Procedures*
- *Workplace Bullying and Unreasonable Behaviour Policy and Procedures*

Each complaint will be addressed in accordance with the requirements of the *Complaint Handling Policy and Procedures* and/or these related policies and procedures as they apply to the circumstances of the individual complaint.

6 Feedback

Any feedback regarding this policy can be sent to the Governance, Audit & Risk Team.

PROCEDURES

1 Lodging a Complaint

The Commission provides on its website directions for lodging a *complaint* about the Commission or its officers via either an online enquiry form, which sends an email to the complaints inbox, or by post. The Commission website also provides a link to the LECC website for those complainants who would prefer to make such complaints to the LECC directly.

The complaints email inbox is monitored on a daily basis by the Assessment Officer. Any complaint received by means other than the complaints email inbox is also to be referred to the Complaint Assessment Officer for initial processing.

Complaints will not be considered for assessment unless they are in written form. Complainants attempting to make verbal complaints should be advised of this. Anonymous written complaints will be assessed where there is sufficient information provided to do so.

Complainants should be encouraged to include in any complaint all relevant details where known, such as dates and times of relevant events, and the names of individuals involved, including potential witnesses.

For staff wishing to make a complaint, refer to the *Internal Reporting Policy and Procedures* for further information. Staff may also choose to send their complaint via the complaints inbox or contact the Complaints Assessment Officer for further guidance on the process of lodging a complaint. Refer to *section 7 Procedures* for special considerations regarding complaints that originate as HR matters, are connected to litigation, or are made about the Commissioner.

2 Initial Processing

As soon as they are received, all complaints (other than complaints that do not relate to an Australian and/or NSW government agency) must be recorded by the Complaint Assessment Officer on the Complaints Register maintained by the Commission and allocated a unique complaint reference number.

If the complainant threatens violence, the Assessment Officer should inform NSW Police immediately in order to manage that threat.

If deemed appropriate, the Complaint Assessment Officer should acknowledge receipt of the complaint, provide a timeframe for resolution and proposed action, and seek any further information required from the complainant. Depending on the subject of the complaint, the Assessment Officer must complete either the ‘*Complaint Assessment Form for NSWCC Complaints*’ or ‘*Complaint Assessment Form for NSWPF and External Agency Complaints*’.

3 Assessment

3.1 Triage of complaints

The Assessment Officer will triage complaints to determine whether the complaint is “non-assessable” or “assessable”, as follows:

Non-assessable complaints are:	Assessable complaints are:
Complaints that do not relate to an Australian and/or NSW government agency	Complaints about Commission officers, functions or actions
Complaints that relate entirely to another government agency (other than the NSW Police Force or the Commission)	Complaints about NSW Police Force officers, functions or actions

3.1.1 Non-assessable complaints

Non-government complaints

The Commission will not respond to or investigate complaints received that do not relate to an Australian or NSW government agency.

The Assessment Officer will file any non-government complaints in a subfolder in the **Complaints – Non-assessable** folder.

In these circumstances, a Complaints Assessment Form is not required to be completed; however, details of the complaint should be recorded on the Register.

Other agency complaints

The Commission will not investigate complaints made about another government agency. However, the Commission may, depending on the nature of the complaint, respond to the complainant and/or redirect them to the appropriate body or bodies to which such a complaint might be made. Where possible, the Commission will refer the complaint directly to the relevant government agency.

The Assessment Officer will file any government complaint (relating to an agency other than the NSW Police Force or the Commission) received and any return correspondence in a subfolder in the **Complaints – Non-assessable** folder. The Assessment Officer will also complete the “*Complaint Assessment Form for NSWPF and External Agency Complaints*” and file this in the same folder.

3.1.2 Assessable complaints

Commission complaints

Where a complaint relates to a Commission officer, function, or action, the Assessment Officer will:

- a) create a new Complaint File within the **Complaints – Assessable** folder, using the unique complaint reference number and save a copy of the complaint into it;
- b) undertake an assessment of the complaint, and in doing so, make a recommendation as to whether the complaint is required to be notified to the LECC pursuant to the s 14 guidelines issued by the LECC (annexed to this document, marked Annexure “**A**”);
- c) complete the relevant fields of the ‘*Complaint Assessment Form for NSWCC Complaints*’ (refer Annexure “**C**”);
- d) record their name, the date of the assessment, and sign the form;
- e) provide the Commissioner with the Complaint File for final determination;
- f) If the complaint is a “notifiable misconduct matter” under s 14, notify the LECC via written letter signed by the Commissioner and save the correspondence in the related complaint folder.

NSW Police Force complaints

Where a complaint relates to a NSW Police Force officer, function, or action, the Assessment Officer will:

- a) create a new Complaint File within the **Complaints – Assessable** folder using the unique complaint reference number and save a copy of the complaint into it;

¹ Undated.

- b) undertake an assessment of the complaint, and in doing so, make a recommendation as to whether the duty to report the complaint to the LECC arises pursuant to the s 33(5) guidelines issued by the LECC (annexed to this document, marked Annexure “B”²);
- c) complete the relevant fields of the ‘*Complaint Assessment Form for NWSPF and External Agency Complaints*’ (refer Annexure “D”);
- d) record their name, the date of the assessment, and sign the form;
- e) refer the complaint to NSW Police Professional Standards Command and save the correspondence in the related complaint folder.
- f) If there is a duty to notify the LECC under s 33(5), refer the complaint to NSW Police Professional Standards Command and copy in the LECC. Save the correspondence in the related complaint folder. As the Commissioner has delegated the authority regarding complaints received about the NSW Police Force to the Governance Risk & Audit Manager and the COO, the Complaints Assessment Officer is also to advise the Commissioner when his/her delegation is exercised to this effect by outlining in an email to the Commissioner the general nature of the complaint, the NSW Police Officer involved and his/her rank (if known).

3.1.3 Considerations for formulating recommendations

- a) When formulating a recommendation, the Commission must consider:
 - In relation to a complaint made against a Commission officer and/or the Commission, whether it is required to notify the LECC of the complaint as ‘a Notifiable Misconduct Matter’ under the s 14 Guidelines issued by the LECC (see Annexure “A”).
 - In relation to a complaint made against a NSW Police Force officer and/or the NSW Police Force, whether a duty to report the matter to the LECC arises under the s33(5) Guidelines issued by the LECC (see Annexure “B”).
- b) The Commission will investigate all complaints that it has the capacity to perform with reasonable efficiency and effectiveness.

Note: If the Assessment Officer recommends that the Commission handles a complaint investigation, they should also nominate an appropriate Internal Investigator. Considerations for selecting an Investigator include:

- Whether the Investigator is sufficiently independent from the persons or actions being investigated to avoid significant potential conflicts of interest
- The sensitivity and likely complexity of the investigation
- The training and experience of the Investigator
- Whether the intended Investigator has sufficient workload capacity to expeditiously complete the investigation
- The security clearance level of the intended Investigator

In circumstances where an Internal Investigator cannot be appointed, the Commission may appoint an External Investigator to manage the investigation.

- c) Where the Commission appoints an Investigator to manage the investigation, a letter of appointment outlining the terms of reference must be issued to the Investigator.

² Undated.

3.1.4 Considerations for responding to complainants

The Commission may respond to a complainant at its discretion, noting that responses to fixated or disturbed complainants can invite a veritable flood of irrelevant correspondence. All Commission correspondence with complainants should be saved into the relevant complaint file as an official record.

- The following guidance on responding to complainants is provided:
- The complaint is to be acknowledged and the complainant advised of the action that is proposed to be taken in response to the complaint and an estimate timeframe for resolution (if possible). The Commission may also use the acknowledgement correspondence as an opportunity to request further information from the complainant.
- Complaints received through the Commission's website will receive an automatic reply acknowledging receipt, and those sent via post will receive an acknowledgement of receipt and a response to their complaint as soon as possible.
- If the complaint relates to another agency, the complainant will be advised that the complaint has been referred to the relevant agency (if applicable).
- Complaints will not be responded to if they are clearly outlandish, frivolous, vexatious, or not made in good faith.
- Do not respond to repeat complaints where a response has been sent previously and the repeat complaint offers no significant additional information.

4. Acting on the Initial Assessment

4.1 Deciding and initiating action

Upon receiving the complaint file from the Assessment Officer, the Commissioner or the Commissioner's delegate will:

- a) Review:
 - the complaint
 - the relevant Complaint Assessment Form
 - where applicable, any draft correspondence prepared to the LECC, relevant agency and/or the complainant
- b) Complete Part D of the '*Complaint Assessment Form for NSWCC Complaints*':
 - recording whether he/she agrees with the recommendations of the Assessment Officer
 - adding any comments or additional instructions
 - signing and dating the form
- c) (Where applicable) review and sign any draft correspondence prepared for the LECC, relevant agency and/or the complainant. If the complaint relates to the NSW Police Force or a NSW Police Force officer and is referred to the LECC under s 33(5), the Assessment Officer will email the Commissioner or the Commissioner's delegate outlining the nature of the complaint and the Officer involved, including rank (if known)
- d) Advise the Assessment Officer of the actions directed

- e) (Where applicable) together with the COO, instruct the Internal Investigator about the complaint and the nature of the investigation to be undertaken
- f) (Where applicable) send the completed Complaint Assessment Form and any signed correspondence to the Complaint Assessment Officer for processing, except for HR matters where all documentation is returned to the People & Culture Manager (refer procedure 7.1).

All complaint forms will be signed the Approving Officer, which must either be the Commissioner, COO or Governance Audit & Risk Manager. In circumstances where the Approving Officer requests the Complaints Assessment Officer uses his/her electronic signature on the assessment form, the Complaints Assessments Officer will seek written approval first and file this in the complaint folder. This policy will also apply to other correspondence documentation where the Approving Officer's electronic signature is used. The Complaints Assessment Officer will adopt the "per procuracionem" (pp) when signing on behalf of the Commissioner, COO or Governance Audit & Risk Manager.

The COO with the Governance Audit & Risk Manager will conduct quarterly checks of complaint assessment forms for oversight of the administration process. To ensure the 21-day timeframe of assessing a complaint is followed, the Complaints Assessment Officer will escalate to the COO for follow up as necessary.

4.2 Recording the decision

On receipt of the completed Complaint Assessment Form and any associated correspondence from the Commissioner, the Complaints Assessment Officer will:

- a) scan the documents and save them to the Complaint File
- b) send any correspondence to the addressee
- c) update the Complaints Register in relation to the complaint.

5. Investigating Complaints

5.1 Investigations conducted by the NSWCC

The Commissioner liaises with the COO to ensure that an appropriately skilled internal investigator who does not have a material conflict of interest is appointed to investigate the complaint. Where such an investigator cannot be sourced from Commission staff, a contractor may be used where the Commission's security vetting requirements can be met.

Investigators should be appointed in writing and the terms of the investigation should be set out in the appointment letter.

Misconduct investigations are to be conducted in accordance with the Commission's *Misconduct and unsatisfactory performance policy and procedures*.

The Investigator is required to:

- Conduct the investigation in a timely manner
- Arrange to conduct such interviews and inspections of records as he or she sees fit in the circumstances
- Keep records of conversations and documentation pertinent to the investigation
- Regularly apprise the Complaints Assessment Officer of the status of the complaint
- Provide the Commissioner with a formal memorandum or report of findings

- Make recommendations to the Commissioner on how the complaint should be resolved
- Participate in the resolution of the complaint
- Provide such information to the complainant as is deemed appropriate, which may include information such as the actions taken to investigate, the outcome of the investigation, and any remedial action taken or proposed
- Upon completion of the investigation and/or resolution of the complaint, provide all records and correspondence relating to the investigation to the Assessment Officer (or in the case of HR matters, the COO) for inclusion in the relevant file (complaint and HR file).

Note that the LECC has the right to oversight the Commission's handling of any complaint investigation. The Investigator should cooperate with the LECC in relation to any such oversight activity.

5.2 Matters notified to the LECC³

The Commissioner may, under s 11A of the *Crime Commission Act 2012* (NSW), refer a misconduct matter to the LECC for consideration of the LECC's investigation of the matter. The Commissioner may also elect to investigate or otherwise deal with the matter (which may include taking no further action).

The guidelines struck between the Commission and the LECC under s 14 of the LECC Act (Annexure "A") provide guidance on the following:

- matters which the LECC will not investigate or oversight, and
- notifiable misconduct matters, which are required to be formally notified to the LECC.

Where a matter is a notifiable misconduct matter, the Commissioner in notifying the LECC of the matter, should make a recommendation as to whether the Commission or the LECC should investigate the matter.

The LECC may choose to investigate a complaint about the Commission if it relates to potential serious *misconduct*, *serious officer maladministration* or *serious agency maladministration* or, in the case of the Commissioner or Assistant Commissioner (Legal), *officer misconduct* or *officer maladministration*.

Where the Commissioner determines that a complaint should be referred to the LECC for investigation pursuant to s 14, the Commissioner writes a letter to the Chief Commissioner of the LECC, attaching relevant documentation and requesting that the LECC considers investigation of the complaint.

The Assessment Officer sends the letter and attachments to the LECC. Where such material is deemed too sensitive to transmit via email, the Assessment Officer contacts the LECC's Director Oversight Investigations and arranges for the documentation to be transmitted by an agreed secure method. The LECC should acknowledge all referrals and advise the Commission as to whether it intends to investigate the complaint.

Where the LECC advises that it does not intend to investigate a complaint, the Commissioner decides what steps are required to resolve the matter internally and issues appropriate instructions.

Where the LECC advises that it intends to investigate a complaint or to oversight a Commission complaint investigation, the Commission should provide all reasonable assistance to the LECC in

³ Section 33 of the LECC Act imposes an overarching duty on the Commissioner to report to the LECC any matter that the Commissioner suspects on reasonable grounds concerns or may concern NSWPF and/or NSWCC officer misconduct or serious maladministration. This duty arises irrespective of whether a formal written complaint is received and/or made.

support of these activities. Where the LECC investigates a complaint, the Commission does not conduct a concurrent investigation, but awaits the completion of LECC's investigation.

5.3 Investigations referred to other oversight bodies

In appropriate circumstances, the Commissioner may choose, or be required, to refer a complaint about a Commission officer, function or action to an Ombudsman or the ICAC. Such referrals will be handled as similarly as possible to the handling of the LECC referrals (refer 5.2 above).

6. Sanctions Resulting from Investigations

Refer to the *Misconduct and Unsatisfactory Performance Policy and Procedures* for guidance in relation to potential sanctions resulting from the investigation of complaints.

7. Special Types of Complaints

7.1 Complaints originating as HR matters

Intervention in a Human Resources (HR) matter, such as a conflict between co-workers, may sometimes reveal potential officer misconduct or maladministration. Where this occurs, the HR matter is to be treated as a complaint but internal responsibility for handling such complaints will remain with HR.

The following complaints handling procedure is prescribed to deal with such HR matters.

- The People & Culture Manager:
 - completes Part A of the '*Complaint Assessment Form for NSWCC Complaints*', which is then stored in a HR Complaint file (located in the Human Resources file plan) together with any other documentation relating to the complaint.
 - emails to the COO the electronic reference to the relevant HR Complaint File.
- The COO takes on the role of Complaints Assessment Officer by reviewing the complaint, completing Part B of the Complaint Assessment Form, drafting relevant correspondence, and sending all to the Commissioner for review and decision (Part D).
- As per procedure 4.1 above, the Commissioner reviews the materials forwarded, records his/her decision and comments on the Complaint Assessment Form, advises the COO of the decision, instructs the Internal Investigator (where applicable) and returns all documentation to the People & Culture Manager.
- The People & Culture Manager issues any correspondence to LECC and forwards the completed Complaint Assessment Form to the Assessment Officer.
- The Assessment Officer records the details of the Complaint Assessment Form in the Complaints Register.
- At the conclusion of the investigation, the People & Culture Manager is to brief the Assessment Officer on the results of the investigation so that these results can be recorded in the Complaints Register.
- All paperwork relating to a HR matter, including any investigation report and associated work papers, is to be retained in the complaint file maintained by HR.

7.2 Complaints connected to litigation

Complaints about Commission officers, functions or actions may also be made to a Court or other parties in relation to litigation in which the Commission is involved. Where a Commission officer becomes aware of such a complaint they should report it to the Assessment Officer as soon as practicable in order to initiate an assessment of the complaint.

The Commission's handling of a complaint that is made in the course of litigation before a court or quasi-judicial tribunal will vary depending on the nature of the complaint. Factors that should be taken into account include the following:

- **Has the complaint been made to the Commission or to a court?** If the complaint is addressed to the Commission, it will normally be investigated as per this *Complaints Handling Policy and Procedures*. If the complaint is made to a court, the Commission may respond to the complaint and await the court's ruling.
- **How likely is it that the court will make a ruling on the complaint?**
- **When is the court likely to make a ruling on the complaint?** Some complaints may need to be investigated or resolved more quickly than the judicial system can resolve them.
- **How likely is it that the court will have all information relevant to the complaint?** If all the material relevant to resolving a complaint will be before the court it may be prudent to await the court's ruling.
- **Could an investigation by the Commission prejudice proceedings in a court?** The Commission should avoid such prejudice to the extent reasonably possible.
- **Is the Commission's source of information about the court proceedings independent of anyone who has an interest in the outcome of the complaint?** If not, it may be prudent to await the court's ruling.

7.3 Complaints about the Commissioner or an Assistant Commissioner (Legal)

Special arrangements apply to the management of complaints against the Commissioner or an Assistant Commissioner (Legal).

Section 11A(5) of the *Crime Commission Act 2012* (NSW) requires the Commissioner to refer to the LECC all misconduct matters about the Commissioner or an Assistant Commissioner (Legal).

Complaints alleging misconduct on the part of the Commissioner may be made to an Assistant Commissioner (Legal), who is authorised to immediately refer the complaint to the LECC and keep the complaint confidential from the Commissioner. Any such referral should be made immediately in writing.

Where the LECC refers a misconduct matter about the Commissioner back to the Commission for investigation, the Assistant Commissioner (Legal) should, in that investigation, assume the role that would normally be undertaken by the Commissioner. The complaint should otherwise be dealt with in accordance with this policy and procedure.

Apart from the mandatory referral to LECC, all misconduct matters made about an Assistant Commissioner (Legal) will be dealt with in accordance with this policy and procedures.

8. Record Keeping

All notifiable misconduct matters pertaining to a Commission officer, function or action are required to be notified to the LECC, in accordance with the s14 guidelines. All matters pertaining to a NSW

Police Force officer, function or action, where a duty to report arises, must be reported to the LECC in accordance with the s33(5) guidelines.

Complaint files for complaints that relate to a Commission and/or NSW Police Force officer, function or action are stored in the **Complaints – Assessable** folder (with the exception of HR Matters that become complaints - these are stored in **HR Complaints** files within the HR file plan.)

Every complaint that does not relate to a Commission and/or NSW Police Force officer, function or action is filed within the **Complaints – Non-Assessable** folder.

The Complaints Assessment Officer will file in a timely manner all related correspondence and documentation in individual complaint folders and use the following file plan for organisation:

- Assessment
- Complaint outcome
- Complaint received & supporting documentation
- Correspondence with complainant
- Correspondence with external agencies

8.1 The Complaints Register

The Commission maintains the status of current complaints via a Complaints Register. The Complaints Register is maintained by the Complaints Assessment Officer.

The Assessment Officer is responsible for maintaining the Complaints Register for each complaint and is required to update the information in the Complaints Register contemporaneously until each complaint is finalised. The COO with the Governance Audit & Risk Manager will monitor the Complaints Register from time to time to ensure compliance with assessment timeframes and maintenance of proper record keeping.

Note: Although non-assessable complaints are not included in the quarterly reporting to the LECC, all associated records are to be retained and made available to the LECC inspectors on request.

The Complaints Register includes the following information for each assessable complaint:

- Complaint reference number
- Receipt date
- Name of the complainant
- Originating source of the complaint
- Medium by which complaint received
- Complaint subject
- Complainant threatening violence (Y/N)
- Related to the Commission (Y/N)
- Related to other government agency (Y/N)
- Related to non-government agency (Y/N)
- Date acknowledging receipt to complainant
- Assessment Officer
- Date of Assessment
- Assessment Decision

- Date complainant notified of decision
- Action taken in response to Assessment Decision
- Complainant notified of decision (Y/N)
- Reportable under s 33 LECC Act (Y/N)
- Notifiable/referable under s 14 guidelines (Y/N)
- Investigating agency (NSWCC/LECC/NSWPF/Other)
- NSWCC Investigating Officer (if applicable)
- NSWCC Investigating Officer – Conflict of Interest (if applicable)
- Investigation findings
- Actions taken in response to investigation findings
- Response received from LECC
- Investigation completed (Y/N)
- Current status

8.2 Reporting using the Complaints Register

The Complaints Register is used to provide quarterly status reports to the LECC. A copy of the Register is to be provided to the LECC in its entirety when requested for auditing purposes.

The Governance Audit, & Risk Manager reviews the quarterly register for completeness before it is submitted to the LECC. This review will also involve a check of the complaints mailbox and complaint files in order to provide assurance that all complaints received are included in register.

8.3 LECC Access for Audits

The Commission will provide a bespoke electronic workspace at LECC’s request if live management of complaint handling is required, on five days’ notice. For audits periods and at any time during the reporting year, the Commission will provide a workstation on the Commission premises to LECC staff with live access to the file system.

Version Control

Version	Effective Date	Update Comments	Author
1.0	Nov 2010	Initial version	NSWCC
2.0	30 Jun 2012	Update	NSWCC
3.0	18 Mar 2014	Update	NSWCC
4.0	5 Apr 2016	Document fully revised	NSWCC
4.1	3 Jun 2016	Addition of remarks about s 75C of the PIC Act	NSWCC

Version	Effective Date	Update Comments	Author
5.0	6 Apr 2018	Revised to reflect new processes, roles and the LECC requirements	NSWCC
6.0	11 Jan 2019	Fully revised to reflect additional advice received from LECC and the discontinued use of the electronic Complaint File and associated Catalogue	NSWCC
7.0	23 August 2019	Simplified process and wording to reflect changes in the complaints handling processes, revised s 14 guidelines and new s 33(5) guidelines and to ensure clarity	NSWCC
7.1	1 July 2020	Minor revisions made to reflect recommendations made by the LECC	NSWCC
7.2	26 March 2021	Addition of Complaints Assessment Form as Appendix "E"	NSWCC
7.3	1 April 2022	Addition of process of referring complaints to NSWPF Professional Standards and the LECC Complaints Assessment Form re-designed into two separate forms and change reflected in the policy	NSWCC
8.0	18 October 2023	Revision made according to LECC audit recommendations	NSWCC

Publication Information

Key Information	Details
Title	Complaints Handling Policy and Procedures
Policy Type	Policy and Procedure
Policy Number	COM2019/1
Policy Developer	Audit, Risk & People
Policy Contact	Policy & Governance Officer
Approver	Commissioner
Approval Date	19 October 2023

Key Information	Details
Effective Date	19 October 2023
Review Date	1 July 2024
Supersedes	7.3

Annexure “A”

**Guidelines between the
Law Enforcement Conduct Commission
and
the New South Wales Crime Commission
Pursuant to s14 of the
*Law Enforcement Conduct Commission Act 2016***

1. Guidelines

Notifiable misconduct matters

Pursuant to s14(1)(b) of the LECC Act, the following are the kinds of misconduct matters required to be notified to the LECC ('notifiable misconduct matters') by the NSWCC:

- a) criminal conduct,
- b) corrupt conduct⁴,
- c) detrimental action or reprisal (including any possible payback complaint) against a Crime Commission officer or other person making a protected disclosure or allegation about an officer,
- d) allegations of improper association,
- e) unauthorised release of Crime Commission information or improper disclosure of information,
- f) any allegations of unreasonable use of the Crime Commission's powers under the *Crime Commission Act 2012*,
- g) any failure to comply with policies and procedures in regards to declarable associations, conflicts of interest or secondary employment,
- h) any significant failure to comply with policies and procedures,
- i) conduct which is or might be serious maladministration by an officer or the NSWCC,
- j) Letters of demand, Statements of Claim, originating process or other pleadings or particulars where the State of New South Wales, Crime Commissioner, or a Crime Commission officer is named as a defendant or proposed defendant within the body of the document, and that alleges, expressly or impliedly, an act or omission capable of constituting serious misconduct on the part of any Crime Commission officer.

The circumstances and the facts surrounding a notifiable matter will determine whether the matter will be investigated or oversighted by the LECC or referred back to the NSWCC for appropriate action.

Matters which the LECC will not investigate or oversight

Pursuant to s14(1)(a) and (d) of the LECC Act, the LECC and the NSWCC may enter in to Agreements concerning NSWCC matters that the LECC will not investigate or oversight.

To that end, the LECC will not investigate or oversight matters that involve conduct or behaviour that is inconsistent with or prohibited by the terms of an officer's employment, including the Crime Commissioner's instructions or constitutes a breach of discipline or unworthy conduct that might reasonably be regarded as embarrassing the reputation of the NSWCC but which does not involve serious dishonesty or serious incompetence. Such conduct or behaviour includes but is not limited to:

- a) allegations that a Crime Commission officer was not ill while claiming sick leave,
- b) allegations of minor misuse of NSWCC assets,
- c) traffic offences, unless the offence raises other notifiable issues concerning a lack of integrity,

⁴ As defined in s 7 of the *Independent Commission Against Corruption Act 1988*

- d) allegations of minor misuse of email, such as forwarding emails with non-work related content and documents that take advantage of a Crime Commission officer's membership of the NSWCC but does not otherwise amount to misconduct,
- e) complaints about Crime Commission officer incompetence that are otherwise not notifiable,
- f) performance management matters that have not resulted in a notifiable misconduct matter, for example, lack of punctuality, unsatisfactory completion of a performance agreement or poor work output, or
- g) any allegations of a trivial nature.

Although the matters described above are not *notifiable misconduct matters*, such complaints must be recorded by the NSWCC in the appropriate records management system and made available to the LECC on request.

Annexure “B”

Guidelines for the
the New South Wales Crime Commission
Pursuant to s33(5) of the
Law Enforcement Conduct Commission Act 2016
(NSW)

1. Guidelines

Duty to notify officer misconduct and serious maladministration.

Pursuant to s 33 of the *Law Enforcement Conduct Commission Act 2016* (NSW), the Crime Commissioner has a duty to report any matter or conduct the Crime Commissioner suspects on reasonable grounds concerns or may concern officer misconduct or serious maladministration. Guidelines may be issued by the LECC as to what matters need or not need be reported.

The duty to report covers conduct by a Crime Commission officer, police officer, and administrative employee as well as agency maladministration by the NSW Police Force and the Crime Commission.

These guidelines, issued pursuant to s 33(5) of the *Law Enforcement Conduct Commission Act 2016* set out the kinds of matters, involving allegations against employees of the NSW Police Force, which are required to be reported to the LECC.

Conduct or allegations of a serious nature that include:

- a) criminal conduct,
- b) corrupt conduct¹,
- c) unlawful conduct,
- d) allegations of improper association,
- e) conduct of a serious nature that is:
 - (i) unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
 - (ii) arises, wholly or in part, from improper motives
- f) officer or agency misconduct or maladministration carried out on more than one occasion, or that involves more than one participant, that is indicative of systemic issues that could reflect on the integrity and good repute of the NSW Police Force.

All other allegations against a police officer are not required to be reported to the LECC, unless the Crime Commissioner considers it necessary or to be in the public interest.

The circumstances and the facts surrounding a reportable matter will determine whether the matter will be investigated or oversighted by the LECC or referred to the NSW Police for appropriate action.

Guidelines issued pursuant to s 14 of the LECC Act already provide guidance as to which matters relating to alleged misconduct by a Crime Commission employee, need or need not to be reported to the LECC.

¹ As defined in s 7 of the *Independent Commission Against Corruption Act 1988*

Annexure “C”

Complaint Assessment Form (use ONLY for complaints related to the NSWCC)

(This form is to be completed by the Complaints Assessment Officer and the NSWCC Commissioner. For complaints related to the NSWPF and/or its officers or other external agencies, complete the 'Complaint Assessment Form for NSWPF or External Agency Complaints'. Refer to the 'Complaints Handling Policy and Procedures' for more detail).

Part A: Complaint details <i>(To be completed by the Complaints Assessment Officer)</i>	
Date complaint received	
Complaint ref:	
Name of complainant (including if the complaint is made about another person)	
Complainant's contact details	
Originating source of the complaint	(Delete all not applicable) Intelligence report, Commission officer, partner agency, LECC, legal practitioner, member of public, HR matter, other
Medium by which complaint received	(Delete all not applicable) Commission Website, email, land mail, facsimile, hand, app, telephone, face-to-face
Brief summary of the complaint	
Does the complainant threaten violence? <input type="checkbox"/> Y <input type="checkbox"/> N	If yes, refer to NSWPF ASAP.

Part B: Assessment of the Complaint <i>(To be completed by the Complaints Assessment Officer)</i>	
<p>1. As the complaint relates to the function of the NSWCC or a NSWCC officer, the duty for the Commissioner to report the complaint to the LECC will generally arise (s 33(2) LECC Act). Proceed to <u>section 2</u>.</p>	
<p>2. With reference to 1 above, guidelines issued by the LECC also provide guidance as to whether the complaint is a 'notifiable misconduct matter' and should be notified to the LECC.</p> <p>Is the complaint a 'notifiable misconduct matter'? (refer to s 14 guidelines issued by the LECC).</p>	<p><input type="checkbox"/> Yes:</p> <ul style="list-style-type: none"> ✓ The Commissioner must notify the LECC as soon as practicable that this is a notifiable misconduct matter. The notification should contain a recommendation that either the LECC or NSWCC should manage the complaint (s 44 LECC Act). ✓ Proceed to <u>Part C</u>. <p><input type="checkbox"/> No:</p> <ul style="list-style-type: none"> ✓ Confirm that the complaint is a type that will not be investigated or oversights by the LECC under the guidelines (refer to s 14 guidelines issued by the LECC). ✓ Not a notifiable misconduct matter to the LECC. ✓ NSWCC to manage the complaint.

	✓ Proceed to <u>Part C.</u>
--	-----------------------------

Part C: Recommendation for Action (check all that apply) *(To be completed by the Complaints Assessment Officer)*

<input type="checkbox"/> Notify the LECC of the complaint as a 'notifiable misconduct matter' under s 14 guidelines and recommend that the LECC should manage the complaint <input type="checkbox"/> Notify the LECC of the complaint as a 'notifiable misconduct matter' under s 14 guidelines and recommend that the NSWCC should manage the complaint <input type="checkbox"/> Not a 'notifiable misconduct matter' to the LECC under s 14 guidelines. NSWCC to manage the complaint. If to be investigated internally, the recommended investigator is _____	Reasons for recommendation:
Complaints Assessment Officer: _____ Date: _____ Signature: _____	

Part D: Decision on Recommendation for Action *(To be completed by the Commissioner)*

Agree with recommendation/s?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Comments and/or additional instructions	
I, Michael Barnes, Commissioner of the New South Wales Crime Commission, have read the information in this form and have considered all supporting material relating to this complaint. Signature: _____ Date: _____	

Annexure “D”

Complaint Assessment Form (Use ONLY for complaints related to the NSWPF or External Agencies)

(This form is to be completed by the Complaints Assessment Officer, and the Chief Audit, Risk & People Officer or Chief Operating Officer. For complaints related to the NSWCC and/or its officers, complete the 'Complaint Assessment Form for NSWCC Complaints'. Refer to the 'Complaints Handling Policy and Procedures' for more detail).

Part A: Complaint details	
Date complaint received	Complaint ref:
Name of complainant (including if the complaint is made about another person)	
Complainant's contact details	
Originating source of the complaint	(Delete all not applicable) Intelligence report, Commission officer, partner agency, LECC, legal practitioner, member of public, HR matter, other
Medium by which complaint received	(Delete all not applicable) Commission Website, email, land mail, facsimile, hand, app, telephone, face-to-face
Brief summary of the complaint	
Does the complainant threaten violence? <input type="checkbox"/> Y <input type="checkbox"/> N	If yes, refer to an appropriate NSWPF ASAP.

Part B: Assessment of the Complaint	
B1. Does the complaint relate to the conduct of an officer and/or the function of the NSWPF or another government agency?⁵	
<input type="checkbox"/> NSWPF <input type="checkbox"/> Other government agency	
If government agency: Refer complaint to the appropriate agency and take no further action. Proceed to <u>Part C</u> .	If NSWPF: Proceed to <u>B2</u> .

B2. If the complaint relates to the conduct of a NSWPF officer and/or the function of the NSWPF, answer sections 1 and 2 below.	
<p>1. As the complaint relates to the NSWPF or a NSWPF officer, the approver must consider whether the duty to report the complaint to the LECC arises (s 33 LECC Act and s 33(5) guidelines issued by the LECC).</p> <p>Does the complaint relate to any matter on which the Complaints Assessment Officer suspects on reasonable grounds concerns or may concern NSWPF officer conduct or allegations of a serious nature that includes:</p> <ul style="list-style-type: none"> - conduct that is criminal, corrupt and/or unlawful 	<p><input type="checkbox"/> Yes:</p> <ul style="list-style-type: none"> ✓ Duty to report complaint to the LECC arises under s 33 LECC Act. ✓ Proceed to <u>Part C</u>. <p><input type="checkbox"/> No:</p> <ul style="list-style-type: none"> ✓ Proceed to <u>section 2</u>.

⁵ If the complaint does not relate to any other government (Cth or State) agency, the NSWCC should not respond or investigate the complaint further.

<ul style="list-style-type: none"> - allegations of improper association - conduct of a serious nature that is unreasonable, unjust, oppressive or improperly discriminatory or arises from improper motives - office or agency misconduct or maladministration carried out on more one occasion or involves more than participant, that is indicative of systematic issues that could reflect on the integrity and good repute of the NSWPF? 	
--	--

<p>2. Does the complaint otherwise contain allegations relating to the NSWPF that the Complaints Assessment Officer would consider necessary or in the public interest to report to the LECC?</p>	<p><input type="checkbox"/> Yes:</p> <ul style="list-style-type: none"> ✓ Duty to report complaint to the LECC arises. ✓ Proceed to <u>Part C</u>. <p><input type="checkbox"/> No:</p> <ul style="list-style-type: none"> ✓ Duty to report complaint to the LECC does not arise. ✓ Complaint should be referred to NSWPF. ✓ Proceed to <u>Part C</u>.
--	--

<p>Part C: Recommendation for Action (check all that apply)</p>	
<p><input type="checkbox"/> Refer complaint to appropriate government agency (and no further action)</p> <p><input type="checkbox"/> Refer complaint to NSWPF (and no further action)</p> <p><input type="checkbox"/> Report NSWPF complaint to the LECC under s 33 LECC Act (and no further action)</p> <p><input type="checkbox"/> Report NSWPF complaint to the LECC (does not meet s 33 threshold but should be referred for information only and take no further action)</p>	<p>Reasons for recommendation:</p>
<p>Complaints Assessment Officer: _____</p>	
<p>Signature: _____ Date: _____</p>	
<p>Chief Audit, Risk & People Officer / Chief Operating Officer: _____</p>	
<p>Signature: _____ Date: _____</p>	
<p><i>Note: On completion of this form, if the complaint is to be referred to the LECC under s 33 of the LECC Act, an email MUST be sent to the Commissioner outlining the general nature of the allegations involved and the subject officer and his/her rank (if known).</i></p>	

OFFICIAL

New South Wales
Crime Commission



OFFICIAL