



Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission

4/56 – August 2018

2018 Review of the Annual Reports of oversight bodies



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Membership

Chair	Mr Lee Evans MP
Deputy Chair	Mr Stephen Bromhead MP
Members	Mr Paul Lynch MP Dr Hugh McDermott MP The Hon Trevor Khan MLC The Hon Wes Fang MLC The Hon Adam Searle MLC
Contact details	Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission Parliament of New South Wales Macquarie Street Sydney NSW 2000
Telephone	02 9230 3054
E-mail	ombolecc@parliament.nsw.gov.au
Website	www.parliament.nsw.gov.au/ombudsmanlecc

Chair's foreword and summary

This Committee's core function is to monitor how a number of important agencies perform their roles. In particular, we oversight the following agencies:

- the NSW Ombudsman and the Child Death Review Team,
- the Law Enforcement Conduct Commission (the LECC) and its Inspector,
- the NSW Crime Commission,
- the Inspector of Custodial Services, and
- the Information and Privacy Commissioners.

Each year the Committee reviews these agencies' operations before producing a report. Although the Committee carefully scrutinises all its oversighted agencies, this report only focuses on matters that we wish to bring to the attention of Parliament.

This year the Committee has made several recommendations and findings in relation to the LECC as well as discussing a number of significant changes to the structure and focus of the Ombudsman and the Crime Commission.

New model for oversight of law enforcement

The LECC embodies the single police oversight model envisioned by Mr Andrew Tink AM in his landmark review of police oversight in NSW. It replaces the Police Integrity Commission, the Police and Compliance Branch of the Ombudsman, and the Inspector of the Crime Commission.

Like its predecessors, the LECC performs a critical role. Ensuring that police are accountable for their actions helps maintain public confidence in police. This is particularly true in relation to critical incidents, which involve the serious injury or death of a member of the public or a police officer. The LECC needs adequate funding to do this important job properly.

In response to concerns raised by the LECC, and in light of the Tink Review, the Committee has recommended that:

- additional funding be provided for the new positions of the Commissioner for Integrity, Commissioner for Oversight, and Chief Executive Officer.
- the LECC receive funding to increase the number of staff in its critical incident team.

We have also recommended that the LECC's Commissioner for Oversight be given the power to undertake private examinations. We see merit in the LECC's request that it be able to conduct joint investigations with police, but because of the potential risks involved we have recommended that the Minister for Police first consult with relevant stakeholders.

Reviews of agencies' structure and functions

The Committee is particularly interested in proposed changes to the leadership structure of the Crime Commission. The proposal is that the agency be led by a Chief Executive Officer with

investigative and management experience, rather than a Commissioner with substantial legal experience. Our view is that a modern law enforcement organisation with the significant powers of the Crime Commission needs senior leadership with an appropriate level of legal, management and investigative expertise.

The Ombudsman is also in an era of change, having lost some of its jurisdiction due to the establishment of the National Disability Insurance Scheme and the LECC. These changes have prompted the Ombudsman to review its structure and processes to ensure that it can continue to perform its functions effectively.

I would like to thank all of our oversight agencies for participating in this review and, more broadly, for their work over the 2016-17 reporting year. I also thank my fellow Committee members for their assistance in this review and their ongoing efforts as part of this Committee.

Lee Evans MP
Chair

Findings and recommendations

Recommendation 1 _____ 1

That the NSW Government provides additional funding to the Law Enforcement Conduct Commission for the remuneration of the new positions of Commissioner for Integrity, Commissioner for Oversight and Chief Executive Officer.

Finding 1 _____ 4

The Law Enforcement Conduct Commission's critical incident team may not have enough staff to properly perform its critical incident function.

Recommendation 2 _____ 4

That the NSW Government provides additional funding to the Law Enforcement Conduct Commission to increase the number of staff in its critical incident team.

Recommendation 3 _____ 6

That the *Law Enforcement Conduct Commission Act 2016* be amended to enable the Commissioner for Oversight to conduct private examinations.

Recommendation 4 _____ 8

That the Minister for Police consults with relevant stakeholders regarding the appropriateness of enabling the Law Enforcement Conduct Commission to undertake joint investigations with the NSW Police Force.

Finding 2 _____ 9

Delays in the coronial jurisdiction can prolong NSW Police Force critical incident investigations and the Law Enforcement Conduct Commission's monitoring of these investigations.

Chapter One – Changes to oversight of law enforcement

Addressing the challenges of a new agency

- 1.1 On 1 July 2017, the Law Enforcement Conduct Commission (LECC) and the Inspector of the LECC (LECC Inspector) began operating.
- 1.2 The LECC was established following the Tink Review¹ which recommended a single agency model for the oversight of law enforcement in NSW. It replaced the Police Integrity Commission (PIC), the Police and Compliance Branch of the Ombudsman (PCB) and the Inspector of the Crime Commission. The LECC Inspector replaced the Inspector of the PIC.
- 1.3 Like most new agencies, the LECC and the LECC Inspector both encountered challenges. A key challenge for the LECC Inspector was setting up the office and its procedures with limited administrative support, while the office was expected to be operational. The lack of a transition period also meant that there was limited opportunity for a formal handover from the PIC Inspector.²
- 1.4 The other difficulty faced by the LECC Inspector related to his statutory responsibility to inspect and report on covert warrants. The Secure Monitoring Unit (SMU), which formed part of the PCB, previously undertook these inspections under delegation from the Ombudsman. However, the LECC Inspector had no similar power of delegation. He therefore sought an amendment to the *Law Enforcement Conduct Commission Act 2016* (LECC Act) so that this function could again be delegated to the SMU. The amendment came into effect from late September 2017.³
- 1.5 The key challenge for the LECC was adequately performing its functions while facing staffing and budget constraints.

Ensuring that the LECC has adequate funding

Recommendation 1

That the NSW Government provides additional funding to the Law Enforcement Conduct Commission for the remuneration of the new positions of Commissioner for Integrity, Commissioner for Oversight and Chief Executive Officer.

- 1.6 The primary concern of the LECC was that it is not adequately resourced to perform its functions in an effective and sustainable way. The Hon Michael

¹ Andrew Tink AM, [Review of Police Oversight](#), 31 August 2015 (Tink Review)

² The Hon Terry Buddin SC, Inspector of the LECC, Transcript of evidence, 12 March 2018, p12

³ Mr Buddin, Transcript of evidence, 12 March 2018, pp12 - 13. See section 128A of the [LECC Act](#).

Adams QC, Chief Commissioner of the LECC, raised the LECC's budget in correspondence to the Committee, before voicing his concerns at the hearing:

The commission was established supposedly on a budget-neutral basis, incorporating the approved budgets and funding levels, including all efficiency dividends of the Police Integrity Commission, and the Police and Compliance Branch of the Ombudsman's office, and a small amount of funding relating to the Inspector of the Crime Commission. However, it is plain that this has not been done and we cannot continue as we are if the budget remains as is ... We have taken on a great deal of work but now we have reached the stage at which we have to very carefully examine whether we can take on more or significantly more work without undue delays and other problems of, I think, placing inappropriate pressure on staff.⁴

- 1.7 At the time of the hearing, the LECC had 115 roles, most of which were filled. In contrast, the PIC and the PCB had a combined total of 135 staff.⁵
- 1.8 For example, the Oversight Division, which monitors and reviews complaint investigations, had eight staff rather than the 15 PCB staff that previously performed this role. Similarly, the Integrity Division, which detects, investigates and exposes serious misconduct, had 19 full time staff, compared to the 24 PIC staff who undertook this work. The LECC's assessment team had six full time staff, whereas the assessment teams in the PCB and PIC had a combined total of 10.6 full-time staff.⁶
- 1.9 Fewer staff has meant that the LECC could not investigate some matters that may have required investigation. For instance, in the first 7 months of operation, the LECC said it did not have enough staff to investigate 51 matters that it thought warranted investigation.⁷
- 1.10 The Committee agrees that the apparent resourcing shortfall is made more significant because the LECC now has a Chief Executive Officer and three Commissioners, as well as a new critical incident function.
- 1.11 The Committee received evidence that no additional funding was provided for the extra Commissioners and CEO. The cost of the salaries of the two additional Commissioners, CEO and relevant support staff is approximately \$1.76 million.⁸
- 1.12 The LECC also expressed concern that the full budget of the PCB may not have been transferred to the LECC.⁹
- 1.13 In recommending a single agency oversight model, the Tink Review emphasised that the model would not result in immediate or short-term cost savings. In fact he recommended that some additional funding be given to the new oversight body for its new critical incident function and other transition costs. He also

⁴ The Hon Michael Adams QC, Chief Commissioner, LECC, Transcript of evidence, 12 March 2018, pp16-17 and correspondence from Chief Commissioner of the LECC to the Chair of the Committee on the Ombudsman, LECC and Crime Commission, 9 March 2018 ([Correspondence from LECC](#))

⁵ Ms Amber Williams, CEO, LECC, Transcript of evidence, 12 March 2018, pp17-18

⁶ Correspondence from LECC, 8 March 2018, pp3, 12-13, 18

⁷ Correspondence from LECC, 8 March 2018, p13

⁸ Correspondence from LECC, 8 March 2018, p14; Mr Adams, Transcript of evidence, 12 March 2018, p17

⁹ Correspondence from LECC, 8 March 2018, p21

- indicated that the staffing levels of the PIC and PCB should be maintained as far as possible to preserve the level of police oversight.¹⁰
- 1.14 The LECC suggested that the Government had not implemented the Tink Review's funding recommendation.¹¹
- 1.15 However, the Minister indicated on 1 May 2018 that the LECC's budget reflected the transfer of the budget from the PIC, the PCB and the Department of Justice, in line with recommendation 22 of the Tink Review.¹²
- 1.16 In response to a question as to why additional funding was not provided for two new Commissioners, a CEO, and support staff, the Minister stated that the 'LECC is expected to manage its employees in a manner consistent with its statutory obligations and within its budget.'¹³
- 1.17 At the hearing, the CEO, Ms Amber Williams, advised that the LECC would be making a formal request to Treasury for future additional funding.¹⁴
- 1.18 The Committee notes that the budget papers for 2018-19 suggest that the LECC's estimated total expenses excluding losses will increase from \$21.2 million last financial year to \$25.3 million this financial year.¹⁵ However, in 2017-18 the PIC's total expenses excluding losses were estimated at \$22.1 million, and \$24.4 million in 2016-17.¹⁶ The budget estimates for 2016-17 stated that 'in 2016-17, the Commission [the PIC] will spend \$22 million on detecting and investigating misconduct within the NSW Police Force and Crime Commission.'¹⁷
- 1.19 Based on the evidence, the Committee is unable to determine whether the Tink Review's recommendation relating to the LECC's funding has been implemented. However, it is difficult to reconcile funding of the LECC with past funding of the PIC.
- 1.20 With a budget which appears to be similar to that of the PIC, the LECC has to perform the work of both the PIC and the PCB. In addition, unlike the PIC, the LECC has to fund two additional Commissioners and a CEO, as well as a new critical incident function.
- 1.21 The Committee considers that appropriately resourcing the LECC is essential to the effective operation of the new oversight model. Specifically, the Committee

¹⁰ Tink Review, recommendation 22 and p127

¹¹ The Hon Lea Drake, Commissioner for Integrity, LECC, Transcript of evidence, 12 March 2018, p19

¹² New South Wales, Legislative Assembly, [Questions and answers](#), no 178, 1 May 2018, question 7785 (the Hon Paul Lynch MP)

¹³ Legislative Assembly, [Questions and answers](#), 1 May 2018, question 7784 (the Hon Paul Lynch MP)

¹⁴ Ms Williams, Transcript of evidence, 12 March 2018, p18

¹⁵ NSW Treasury, [Budget Estimates 2018 – 19: Budget Paper No.3](#), p6-46, under 'Total expenses excluding losses', from a revised estimate of approximately \$21.2 million in 2017-18 to a budgeted estimate of approximately \$25.3 million in 2018-19. See also p6-12.

¹⁶ NSW Treasury, [Budget Estimates 2017-18: Budget Paper No.3](#), p7-39, under 'Total expenses excluding losses', referring to the budgeted estimate of \$22.1 million in 2017-18 and a revised estimate of \$24.4 million in 2016-17.

¹⁷ NSW Treasury, [Budget Estimates 2016 – 17, Budget Paper No.3](#), p7-94

agrees with the Tink Review that the level of police oversight under the previous regime should at least be maintained.

- 1.22 The difference in the staffing levels of the LECC and its predecessors, and the similar budgets of the LECC and the PIC, suggest that the LECC's funding is not sufficient.
- 1.23 For these reasons, the Committee has recommended that the Government provide additional funding to the LECC for the remuneration of the new positions of Commissioner for Integrity, Commissioner for Oversight and Chief Executive Officer.
- 1.24 The Tink Review also emphasised that the LECC Inspector was likely to have a heavier workload under the new model.¹⁸ The Committee was therefore pleased to hear that, aside from the desire for an additional part-time lawyer, the LECC Inspector appeared to be mostly satisfied with his office's budget.¹⁹
- 1.25 The Committee will continue to monitor the budget and staffing of the LECC Inspector to ensure that it can continue to perform its role effectively.

Adequately resourcing oversight of critical incident investigations

Finding 1

The Law Enforcement Conduct Commission's critical incident team may not have enough staff to properly perform its critical incident function.

Recommendation 2

That the NSW Government provides additional funding to the Law Enforcement Conduct Commission to increase the number of staff in its critical incident team.

- 1.26 A new function of the LECC is to monitor the NSW Police Force's investigation of critical incidents. These are incidents involving police which result in the death or serious injury of a person.
- 1.27 The Tink Review thought it was 'essential' that the LECC be able to monitor critical incidents. He also observed that this new function would have 'significant resource implications' and recommended that some additional employee-related costs be included in the LECC's budget to ensure that there was sufficient capacity to perform this function.²⁰
- 1.28 However, the Committee received evidence from the LECC that there was no additional funding for the critical incident function. The LECC had to transfer funding allocated to its oversight and integrity roles to staff the critical incident team.²¹

¹⁸ Tink Review, recommendation 27, p135

¹⁹ Mr Buddin, Transcript of evidence, 12 March 2018, p14

²⁰ Tink Review, pp163, 167 and recommendation 22(v)

²¹ Ms Drake, Transcript of evidence, 12 March 2018, p18; correspondence from LECC, p5

- 1.29 Again, the Minister has stated that the LECC's 2017-18 budget reflected the transfer of the budget from the PIC, the PCB and the Department of Justice, as recommended by the Tink Review.²²
- 1.30 The critical incident team is staffed by people who would ordinarily work in other areas of the LECC, including in investigations. Commissioner for Integrity, Ms Lea Drake, suggested that this leads to a failure to investigate as many matters as would be optimum.²³
- 1.31 The Commissioner for Oversight, Mr Patrick Saidi, spoke about the significant and unsustainable demands on his five-member critical incident team:
- ... of the five, one member of the team has been on call approximately 45 per cent of the time ... I do not think there is one member of the team that has been on call less than 25 per cent of the time. We are placing an enormous burden on the five members ... they are required to put up with a great deal of trauma, emotional distress, traumatic experience, dead bodies, horrific situations ... No amount of counselling, debriefing or looking after their welfare in the long term that we can provide can be good enough. We are going to burn them out and we are going to turn them into exhausted human beings if we leave it at five.²⁴
- 1.32 At the time of the Committee's hearing in March 2018, the number of critical incidents in 2017-18 had almost equalled the number of incidents in 2016-17. By 9 April 2018, the LECC was monitoring all 28 critical incident investigations started by police since 1 July 2017. Of the 81 critical incident investigations underway on 1 July 2017, the LECC decided to monitor 29. Only one of those investigations was closed by 9 April 2018.²⁵
- 1.33 Against this backdrop, the LECC indicated that its rate of oversight of critical incident investigations could not be sustained. It has indicated that it requires three more staff in its critical incident team, so that staff are on call no more than 25% of the time.²⁶
- 1.34 The apparent lack of adequate funding and staff to support the LECC's new critical incident function is concerning to the Committee, especially in light of the Tink Review's view of its importance.
- 1.35 The Committee considers that the proper investigation and oversight of critical incidents is in the public interest. The public has an interest in knowing that police powers are used judiciously and within the limits of the law. It is also in the interest of police that their use of force, which may sometimes be quite confronting to the community, is found to be justified in the circumstances.

²² Legislative Assembly, [Questions and answers](#), 1 May 2018, question 7785 (the Hon Paul Lynch MP)

²³ Ms Drake, Transcript of evidence, 12 March 2018, p18

²⁴ Mr Patrick Saidi, Commissioner for Oversight, LECC, Transcript of evidence, 12 March 2018, p18

²⁵ Ms Williams, Transcript of evidence, 12 March 2018, p18; see also correspondence from LECC, p6 and LECC, [answer to question on notice](#), 9 April 2018

²⁶ Mr Adams, Transcript of evidence, 12 March 2018, p18; see also correspondence from the LECC, p6

- 1.36 Although the Tink Review envisaged that the critical incident function would require additional funding, it is difficult for the Committee to ascertain whether such funding has been provided.
- 1.37 In any case, the high rate of on-call time required and the high number of critical incidents this year suggests that the LECC's critical incident team may not have enough staff to properly perform its critical incident role.
- 1.38 In light of this finding, and the importance of the critical incident function, the Committee has recommended that additional funding be provided to the LECC to increase the number of staff in its critical incident team.

Improving the LECC's investigative capacity

- 1.39 At the hearing the LECC identified two ways its investigative capacity could be improved:
- enabling the Commissioner for Oversight to conduct private examinations, sometimes referred to as private hearings;
 - enabling the LECC to undertake joint investigations with the NSW Police Force.²⁷

Power to conduct private examinations

Recommendation 3

That the *Law Enforcement Conduct Commission Act 2016* be amended to enable the Commissioner for Oversight to conduct private examinations.

- 1.40 Unlike the Chief Commissioner and the Commissioner for Integrity, the Commissioner for Oversight has no power to undertake private examinations.²⁸
- 1.41 The Committee heard that this power would be useful when the Commissioner for Oversight decides that the LECC should take over responsibility for a police complaint investigation it is overseeing:
- ... Mr Saidi, who is highly qualified to conduct hearings, cannot do so because the Act prevents the Commissioner for Oversight from conducting hearings ... sometimes, not infrequently we have found, we are overseeing a matter investigated by police and we think for some reason disclosed or perhaps because of some inadequacy or some conflict of interest which has compromised the investigation we should take it over. Now, it makes sense [that] Mr Saidi who is in charge of that oversight should take it over and conduct any examinations that he thinks are appropriate in that context. Instead, myself and Ms Drake [the Commissioner for Integrity], have to take that over ourselves and conduct those matters. Well, that is simply wasting a resource.²⁹
- 1.42 At present, only the Chief Commissioner and Commissioner for Integrity have the power to hold examinations to investigate conduct that the LECC has decided is

²⁷ Mr Adams, Transcript of evidence, 12 March 2018, p20

²⁸ [LECC Act](#) s62

²⁹ Mr Adams, Transcript of evidence, 12 March 2018, p20

(or could be) serious misconduct or serious maladministration, or conduct referred by Parliament.³⁰

- 1.43 Both the Commissioner for Integrity and the Commissioner for Oversight have the same eligibility requirements under the LECC Act and are qualified to conduct examinations. The Committee therefore agrees with the Chief Commissioner that the inability of the Commissioner for Oversight to undertake private examinations amounts to 'wasting a resource'. Given the LECC's resourcing difficulties, having to transfer an investigation to the Commissioner for Integrity so that a private examination can be conducted is likely to result in unnecessary duplication.
- 1.44 The LECC Act does not clearly delineate the responsibilities of the Commissioner for Oversight and the Commissioner for Integrity. However, the Tink Review envisaged that the Commissioner for Oversight would primarily be responsible for overseeing police handling of complaints, which was previously the work of the PCB, while the Commissioner for Integrity would continue the PIC's work in investigating serious misconduct.³¹
- 1.45 The evidence received from the LECC on the Commissioner for Oversight's inability to conduct examinations may raise wider issues about the type of conduct the LECC can investigate. Specifically, the LECC's investigative powers are focused on serious misconduct and may be narrower than those of the PCB.
- 1.46 Under Part 8A of the *Police Act 1900*, the PCB could choose to investigate a complaint and police conduct if it deemed it to be in the public interest to do so, and regardless of whether a complaint had been made.³²
- 1.47 The Tink Review recommended that the LECC be given all the functions and powers of the PCB, including 'the right to monitor certain police investigations and the right to undertake direct investigations into complaints'.³³
- 1.48 The Tink Review suggested that under the new model, the Commissioner for Oversight would undertake investigations (and private examinations) of less serious conduct, while the Commissioner for Integrity would have broader powers to investigate serious misconduct:

... In the PIC context ... its own motion powers are augmented by significant powers to conduct covert operations and public hearings, which are more appropriate for serious misconduct. It would not be appropriate in a combined model for these covert investigation techniques now available to the PIC to be exercised in investigations into complaints being dealt with by the Oversight Division. Public hearings should also not become a tool for investigations of less serious conduct in a

³⁰ Under section 61 of the [LECC Act](#), the LECC also has the power to conduct examinations in relation to matters referred by Parliament for investigation under section 196, being matters concerning officer misconduct or officer maladministration or agency maladministration or any other matter.

³¹ Tink Review, p108

³² Tink Review, p39 and sections 156 and 159 of the Police Act, as at 30 June 2017. Part 8A of the Police Act applied to a wide range of complaints, including complaints about conduct that may have been unlawful or unreasonable, or may have arisen from improper motives or from a mistake of law or fact.

³³ Tink Review, recommendation 3

combined model. In that regard, I note that investigations by the Ombudsman under section 17 of the Ombudsman Act 'shall be made in the absence of the public'.³⁴

- 1.49 In his second reading speech on the LECC Act, the Minister indicated that 'the Government accepted Mr Tink's recommendations, and they form the basis of this reform.' The Minister also stated that the 'Ombudsman's jurisdiction as it relates to police will be transferred'.³⁵
- 1.50 However, it appears that the LECC can only investigate a more limited range of conduct compared to the PCB. The second reading speech stated that the LECC would only be able to investigate 'serious misconduct'.³⁶
- 1.51 Noting the LECC's evidence and the Tink Review's recommendations, the Committee has recommended that the LECC Act be amended so that the Commissioner for Oversight can conduct private examinations.
- 1.52 The Committee will also continue to monitor how effectively the LECC can perform its oversight role under the current legislation.

Ability to undertake joint investigations with the NSW Police Force

Recommendation 4

That the Minister for Police consults with relevant stakeholders regarding the appropriateness of enabling the Law Enforcement Conduct Commission to undertake joint investigations with the NSW Police Force.

- 1.53 The other change requested by the LECC is the ability to undertake joint investigations with police where appropriate. The LECC observed that this would enable it to leverage its investigative resources with the more substantial resources of the NSW Police Force.
- 1.54 The NSW Police Force may also benefit from the LECC's compulsory examination powers because it would speed up and bolster its investigations. Commissioner Drake told the Committee that this could allow the NSW Police Force to take appropriate action without delay:

... There is a different standard for misconduct from when an officer might be convicted of a criminal offence. Those questions can be answered before us in a way that they cannot be answered by a police investigation because of our compulsory powers. That gives the Police Commissioner a tool to deal with the ongoing employment of an officer, without waiting and paying for the 12 to 18 months it

³⁴ Tink Review, p119. See also p109 and recommendation 17 which stated that only the Integrity Division of the new commission may conduct public hearings to ensure they continue to be used for more serious police conduct investigations.

³⁵ Legislative Assembly, [Parliamentary Debates](#), 13 September 2016 (Troy Grant, Minister for Justice and Police)

³⁶ For example, the LECC may only investigate conduct which the LECC has decided is (or could be) serious misconduct, agency maladministration, or officer maladministration that is serious maladministration. Agency maladministration' includes conduct of the NSW Police Force or the Crime Commission that is unlawful or, if not unlawful, is (for example) unreasonable, unjust or discriminatory, or arises from improper motives (among other matters).

takes for the matters ... or years – to be resolved. So there is a very big cost saving ...³⁷

- 1.55 While the PIC did not have the ability to conduct joint investigations with police under the *Police Integrity Commission Act 1996*, the Committee can see the potential advantages of this approach.
- 1.56 However, at this stage, the Committee does not have enough evidence to make a recommendation that the LECC should be able to undertake joint investigations with the NSW Police Force, and in what circumstances this could occur. Moreover, the risks and benefits of such an approach should be carefully considered before it is adopted.
- 1.57 For these reasons, the Committee has recommended that the Minister consult with relevant stakeholders as to the appropriateness of enabling the LECC to conduct joint investigations with the NSW Police Force.

Reducing delays in the oversight of critical incident investigations

Finding 2

Delays in the coronial jurisdiction can prolong NSW Police Force critical incident investigations and the Law Enforcement Conduct Commission's monitoring of these investigations.

- 1.58 The LECC is concerned by delays in finalising coronial inquests relating to fatal critical incidents. These delays can prolong the NSW Police Force's investigations of critical incidents.³⁸ This is significant because the LECC cannot publish its monitoring advice before the police investigation concludes.³⁹
- 1.59 The Committee shares the LECC's view that there are good reasons for critical incident investigations to be finalised quickly, not only because critical incidents often attract considerable community and media interest.
- 1.60 The Committee is also concerned that, as suggested by Commissioner Drake, systemic improvements flowing from a critical incident may not be made until an investigation is finalised.⁴⁰ In addition, even if a police officer's actions are later found to be justified, there is a great deal of uncertainty and angst for the police, families and communities involved while an investigation is on foot.
- 1.61 Just as it is in the public interest that critical incident investigations are finalised quickly, it is also in the public interest that the LECC publishes its advice in relation to a critical incident investigation in a timely way. For instance, it is open to the LECC to advise the Police Commissioner and the Coroner that an investigation was fully and properly conducted. Alternatively, the LECC can also

³⁷ Ms Drake, Transcript of evidence, 12 March 2018, pp20-21

³⁸ Ms Drake and Mr Adams, Transcript of evidence, 12 March 2018, p22; Mr Saidi, Transcript of evidence, 12 March 2018, p23 and correspondence from LECC, pp6-7

³⁹ Mr Saidi, Transcript of evidence, 12 March 2018, p23; Mr Adams, Transcript of evidence, 12 March 2018, p22; see also [LECC Act](#) s117(8).

⁴⁰ Ms Drake, Transcript of evidence, 12 March 2018, p23

advise of any concerns about the investigation and make recommendations for change to the Police Commissioner.⁴¹

- 1.62 The LECC suggested that prioritising critical incidents in the coronial jurisdiction would help resolve delays.⁴²
- 1.63 Commissioner Saidi suggested that increasing funding to the coronial jurisdiction would also assist. The former NSW Coroner, Mr Michael Barnes, who appeared at the hearing in his capacity as NSW Ombudsman and Convenor of the Child Death Review Team, agreed that increasing funding would 'undoubtedly' help reduce delays.⁴³
- 1.64 Mr Barnes also highlighted that last year the NSW Coroner's Court received less funding than its counterparts in Victoria and Queensland.⁴⁴
- 1.65 In particular, he drew the Committee's attention to the Productivity Commission's *Report on Government Services 2017*. That report stated that in 2015-16 approximately \$5.6 million was spent in NSW, compared to about \$12.8 million and \$10.3 million in Victoria and Queensland respectively.⁴⁵ Although the amount spent in NSW increased to \$6.8 million in 2016-17, Victoria and Queensland spent \$13.2 million and \$10.2 million respectively.⁴⁶
- 1.66 The Committee understands that the LECC has discussed ways to address delays in finalising critical incident investigations with the NSW Police Force, the Police Association and the Coroner's Court.⁴⁷
- 1.67 Although the Committee heard some evidence about the underfunding of the coronial jurisdiction in NSW, it does not oversight the Coroner's Court and is not in a position to make considered findings or recommendations about its funding.
- 1.68 However, the Committee is satisfied that delays in the investigation of critical incidents are undesirable, and may undermine the LECC's ability to perform its critical incident function in an effective manner.

Developing key relationships

- 1.69 The LECC and LECC Inspector are in regular contact and have a cooperative working relationship. For instance, the LECC provides the Inspector with relevant policy documents and memorandums of understanding with other agencies, and the Inspector has attended a number of the LECC's internal committee meetings as an observer.⁴⁸

⁴¹ [LECC Act](#) s 117

⁴² Ms Drake, Transcript of evidence, 12 March 2018, p22

⁴³ Mr Saidi, Transcript of evidence, 12 March 2018, p23 and Mr Michael Barnes, NSW Ombudsman, Transcript of evidence, 12 March 2018, p35

⁴⁴ Mr Barnes, Transcript of evidence, 12 March 2018, p35

⁴⁵ Productivity Commission, [Report on Government Services 2017](#), Volume C, Chapter 7: Courts, Table 7.1

⁴⁶ Productivity Commission, [Report on Government Services 2018](#), Volume C, Chapter 7: Courts, Table 7.1

⁴⁷ Mr Saidi, Transcript of evidence, 12 March 2018, p23

⁴⁸ Mr Buddin, Transcript of evidence, 12 March 2018, p13

- 1.70 The LECC Inspector indicated that his office is working to improve the LECC's monthly audit schedule, to include information on the oversight of critical incident investigations and certain decisions of the three Commissioners.⁴⁹
- 1.71 The LECC is also liaising regularly with its oversighted agencies. The Commissioners and CEO regularly attend meetings and seminars of both the NSW Police Force and the Crime Commission, including Professional Standards Command meetings. The LECC is also working with each agency to develop guidelines and memorandums of understanding.⁵⁰
- 1.72 Chief Commissioner Adams suggested that regular communication between the LECC and the NSW Police Force had fostered mutual trust:
- ... That is the advantage, of course, of continuous interaction; you develop mutual trust. Neither of us are in each other's pocket. Of course, sometimes they make a decision we do not like, and we make a decision they do not like. But I think the level of communication, compared to that which operated when PIC was about, is much improved.⁵¹
- 1.73 The LECC has also sought to develop a positive and collaborative relationship with the NSW Police Association, while remaining mindful that their interests may not align. The LECC consults the Association regularly on issues of importance. This includes seeking input on draft memorandums of understanding, and giving notice when the LECC intends to serve a summons on an officer, so that the Association's welfare officers can arrange appropriate support.⁵²
- 1.74 At the hearing, Commissioner Drake said:
- I have found from our meetings, we do not have the view that they are outside of this process. We met them before the Commission started, and every time an issue of importance comes up we talk to them. They will sometimes have a different view, and I have known some of those officers for a very long time in my industrial career. I have the view that, whilst occasionally on behalf of particular members they will take a stand, they have exactly the same view about having a force free of corrupt conduct.⁵³
- 1.75 It is also important that the community is aware of the LECC's role. The LECC has a dedicated community engagement manager, but says it would benefit from another full-time staff member.⁵⁴ This may be relevant to the Committee's earlier discussion of the adequacy of the LECC's resourcing.

⁴⁹ Mr Buddin, Transcript of evidence, 12 March 2018, p13

⁵⁰ LECC, [2016-17 Annual Report](#), p20

⁵¹ Mr Adams, Transcript of evidence, 12 March 2018, p20

⁵² Ms Drake, Transcript of evidence, 12 March 2018, p21

⁵³ Ms Drake, Transcript of evidence, 12 March 2018, p21

⁵⁴ Correspondence from LECC, p 14

Chapter Two – Changes to agencies' structure and functions

Review of the Crime Commission's leadership structure and operational focus

- 2.1 The Crime Commission has experienced significant reforms during recent years, with a 2011 review resulting in changes to the governance, structure, and oversight of the Commission. A five year statutory review of the *Crime Commission Act 2012* is now underway.⁵⁵
- 2.2 In July 2018 a discussion paper was released outlining changes being considered as part of the review. Areas identified for reform include:
- clarifying that the Commission's work to reduce organised and serious crime includes prevention and disruption
 - ensuring that cybercrime and digitally enabled crime are captured in the Act
 - changing the Commission's structure to allow a Commissioner with a wider range of skills and experience, and not requiring special legal qualifications⁵⁶
 - enabling alleged contempt of the Commission to be referred to the Supreme Court
 - simplifying requirements for recording and retaining material obtained under the *Telecommunications (Interception and Access) Act 1987* and shared with partner agencies
 - adding Assistant/Special Commissioners to the Management Committee's membership (if the Commission's leadership structure changes) and enabling some Committee members to delegate attendance in their absence
 - allowing continuous vetting of Commission staff to reduce security risks.⁵⁷
- 2.3 Some amendments to the *Criminal Assets Recovery Act 1990* were also proposed to better support the Commission's work.
- 2.4 The paper noted that 'in light of a changing criminal environment and the need for a strong investigative and preventative focus, there is a greater need for a

⁵⁵ The Minister is required to review the Act within 5 years of its commencement (September 2012); a report on the outcome of the review is to be tabled in Parliament 12 months after the 5 year period: [Crime Commission Act](#), s88

⁵⁶ Currently the Commissioner must be qualified to be appointed as a judge of the Supreme Court in any state or territory, or as a Federal Court or High Court Judge; or be a former judge or justice of any of these courts: [Crime Commission Act](#), s4(2)

⁵⁷ Department of Justice, [Discussion paper: Review of the Crime Commission Act 2012](#), July 2018

Commissioner ... to have high-level investigative, administrative and strategic management experience'.⁵⁸

- 2.5 The following skills and experience were identified as necessary for the Commissioner:
- managing and coordinating operations and investigations
 - developing and maintaining partnerships, especially with agencies involved in cyber security and cybercrime
 - ensuring the Commission's functions are used effectively
 - reviewing the Commission's internal structures and making changes to adapt to emerging criminal enterprise
 - familiarity with technology-enabled crime and technology that terrorists, child sex offenders, cyber criminals and organised crime syndicates use to communicate and commit crimes.⁵⁹
- 2.6 The paper observed that the Commission's current structure means that the Commissioner is occupied with legal work, and may have less time to focus on non-legal matters. The paper stated that there is a 'strong argument' that the Commissioner need not have special legal qualifications if they worked with Assistant or Special Commissioners who had these qualifications.
- 2.7 Specialised legal functions could be devolved to Assistant/Special Commissioners, freeing the Commissioner to focus on managing the Commission. The Assistant/Special Commissioners could ensure that the Commission maintained integrity in using its coercive powers. Assistant/Special Commissioners would be independent of the Commissioner in exercising coercive powers.⁶⁰
- 2.8 This proposal was discussed during the Committee's hearing. The Crime Commissioner, Mr Peter Bodor QC, stated that it would make the Commission 'very vulnerable'. He noted that a Commissioner with legal qualifications can grasp the legal consequences of day to day operational decisions, including in relation to the use of statutory powers:
- ... there are not only statutory powers that we have to look at and we have to be very cognisant of at every step—that is, hearings, notices and the like—but there is also an enormous amount of legislation that we have to confront on a daily basis. One of the things that the Commissioner brings to the Crime Commission is that they can instantly—perhaps with reference to some piece of legislation—understand and factor in any potential vulnerabilities like whether it is a controlled operation or it is dealing with the Law Enforcement Conduct Commission or the Police Integrity Commission or the Ombudsman or whoever. That means the highest-level decisions

⁵⁸ Department of Justice, [Discussion paper](#), July 2018, p8

⁵⁹ Department of Justice, [Discussion paper](#), July 2018, p8

⁶⁰ Department of Justice, [Discussion paper](#), July 2018, p8

that affect the Commission are made by somebody who understands the implications and repercussions.⁶¹

- 2.9 Mr Bodor referred to the 2011 Patten review of the Crime Commission, which had considered a CEO model, similar to that of the Australian Crime Commission. Mr Patten concluded that the NSW Crime Commission was too small to have a Commissioner who did not have legal qualifications, and should be led by a person who could examine witnesses.⁶²
- 2.10 The Committee sought the LECC Chief Commissioner's view on the proposal. Mr Adams was concerned that a CEO without legal qualifications, or limited legal experience, could lead a body with significant coercive powers. He noted that an experienced legal practitioner would have the skill to examine and cross-examine witnesses and knowledge of procedural fairness, while a bureaucrat is unlikely to have such skills:
- ... The proposed title of CEO suggests that the Commission is to be in charge of a manager/bureaucrat. Such an individual is unlikely to be qualified to undertake investigations, let alone exercise highly intrusive compulsory powers. It seems obvious that the management of the Commission, though crucial, is for the purpose of the conduct of effective investigations and therefore is essentially supportive rather than directive.⁶³
- 2.11 The Committee acknowledges concerns about changes to the Crime Commission's leadership structure, proposed as part of the statutory review of the Commission.
- 2.12 Under consideration is an organisational structure that would provide for specialised legal work to be performed by an Assistant or Special Commissioner, who would not be subject to the Commissioner's direction. The Assistant/Special Commissioner would also be a member of the Management Committee, which refers matters to the Commission for investigation and reviews its work. The Commissioner's role would have a broader strategic and management focus.
- 2.13 The Committee notes that the Australian Criminal Intelligence Commission (the ACIC, formerly the Australian Crime Commission) has coercive powers similar to the NSW Crime Commission. The ACIC is led by a CEO who is not required to have legal qualifications. The CEO is responsible for managing and administering the ACIC and managing, coordinating and controlling its operations. The ACIC's compulsory examinations are conducted by examiners who must have been enrolled as legal practitioners for at least 5 years.⁶⁴
- 2.14 The Committee agrees that a leadership structure with legal, investigative and management expertise is appropriate for a modern law enforcement organisation with coercive powers.

⁶¹ Mr Bodor, Transcript of evidence, 12 March 2018, p38

⁶² Mr Bodor, Transcript of evidence, 12 March 2018, p38 and Mr David Patten, [Report of the Special Commission of Inquiry into the NSW Crime Commission](#), November 2011, pp114-15.

⁶³ LECC, [answers to additional questions](#), 5 April 2018

⁶⁴ [Australian Crime Commission Act 2002](#) (Cth), ss37, 46A, 46B

- 2.15 The Committee considers that any changes to the Crime Commission require careful consideration. The Commission's structure, functions and powers should provide it with the capacity to combat organised and serious crime in an ever-changing environment, while ensuring that its significant powers are used appropriately and lawfully.
- 2.16 The proposed reforms are subject to a consultation process, which was underway at the time of this report. Any changes recommended as part of the review of the Crime Commission Act will require legislative amendments. This will enable further scrutiny of changes that are proposed to be made, and debate on the rationale for the changes.

Review of the structure of the Ombudsman's office

- 2.17 The establishment of the LECC meant the end of the Ombudsman's jurisdiction over police, and the loss of around 30 staff. The implementation of the National Disability Insurance Scheme (NDIS) has also had a significant impact on the Ombudsman's functions in relation to people with a disability.
- 2.18 Since the Committee's hearing, a federal agency that oversees disability service providers has begun operating in New South Wales and South Australia. The NDIS Quality and Safeguards Commission took over some of the Ombudsman's disability related work from 1 July 2018.
- 2.19 Functions that have transferred to the NDIS Commission include handling complaints about NDIS service providers, reportable incidents affecting NDIS participants, the deaths of people with disability in connection with services provided under the NDIS, and inquiries and projects relating to the NDIS.⁶⁵
- 2.20 The Ombudsman, Mr Michael Barnes, noted that his office would have jurisdiction over complaints, notifications and death reviews that were received before the end of June 2018.⁶⁶
- 2.21 Responsibility for some of the Ombudsman's other functions has not been resolved, and discussions are underway with the NDIS Commissioner and federal and state agencies to resolve these gaps.⁶⁷
- 2.22 While some of the Ombudsman's work has ended, its role in the reportable conduct scheme will be broader if the recommendations of the Royal Commission into Institutional Responses to Child Sex Abuse (the Royal Commission) are implemented.
- 2.23 The Royal Commission recommended a national reportable conduct scheme, modelled on the New South Wales scheme. This would mean that people who work closely with children - such as early childhood workers, school counsellors

⁶⁵ The Ombudsman will continue to oversee disability reportable incidents and review the deaths of people with disability in residential care if they involve services funded or operated by the Department of Family and Community Services: see NSW Ombudsman, [Changes to safeguarding arrangements in relation to the NDIS in NSW](#), NDIS Fact Sheet 3, June 2018.

⁶⁶ Mr Barnes, Transcript of evidence, 12 March 2018, pp27-28

⁶⁷ Mr Barnes, Transcript of evidence, 12 March 2018, p28

and people in religious ministry - would have to report institutional child sex abuse to an external government body.⁶⁸

- 2.24 The Ombudsman observed that the recommended reportable conduct scheme would have 'significant jurisdictional and resourcing implications' for the office, as it would include religious and other bodies:

... the recommended expansion of our reportable conduct jurisdiction, which will bring in religious and other recreational bodies, will require the development of an expanded stakeholder engagement and capacity-building strategy.⁶⁹

- 2.25 These changes to the Ombudsman's jurisdiction have prompted consideration of the office's structure. Mr Barnes told the Committee that he has begun a review, which will consider how the agency can best perform its role in this changing environment:

... Because of the changes ... and the increases in complaint and other work, I believe that it is timely to evaluate the effectiveness and efficiency of the existing structures and processes to meet the ongoing demands of the office.

I recently finalised a brief to engage a consultant to work with me, my executive and the staff of the office to frame a refreshed statement of corporate purpose to articulate the office's values, to identify our goals and to guide our performance over the next five years. The review will also recommend a structure and distribution of business units and functions best suited to achieve the office's goals and the discharging of our statutory responsibilities.⁷⁰

- 2.26 The Committee agrees that this is an opportune time to review the Ombudsman's structure to ensure that it can continue to perform its functions effectively.

- 2.27 The Committee will take an interest in the outcome of the review and monitor whether the Ombudsman, and other oversighted agencies, have enough resources and the right organisational structure to perform their functions.

⁶⁸ Mr Barnes, Transcript of evidence, 12 March 2018, p27 and [Royal Commission into institutional responses to child sexual abuse, Final Report: Volume 7](#), December 2017, pp9-13

⁶⁹ Mr Barnes, Transcript of evidence, 12 March 2018, p27

⁷⁰ Mr Barnes, Transcript of evidence, 12 March 2018, p29

Appendix One – Committee's functions

The Committee's functions relate to the NSW Ombudsman, Law Enforcement Conduct Commission, NSW Crime Commission (including the Commission's Management Committee), Information Commissioner, Privacy Commissioner, Child Death Review Team, Inspector of the Law Enforcement Conduct Commission, and Inspector of Custodial Services.

The Committee's main functions involve:

- monitoring and reviewing the exercise of each office's functions
- examining each office's annual and other reports
- reporting to NSW Parliament on matters relating to each office's functions and annual and other reports
- inquiring into matters referred to the Committee by NSW Parliament.

The specific functions are set out in section 31B of the Ombudsman Act, section 131 of the Law Enforcement Conduct Commission Act, section 44 of the Government Information (Information Commissioner) Act, section 44A of the Privacy and Personal Information Protection Act, section 71 of the Crime Commission Act and section 17 of the Inspector of Custodial Services Act. Section 34J(1) of the Community Services (Complaints, Reviews and Monitoring) Act is also relevant to the work of the Committee.

Appendix Two – Witnesses

Monday 12 March 2018

Room 814/815, Parliament of NSW

Witness	Organisation
Ms Fiona Rafter Inspector	Office of the Inspector of Custodial Services
Ms Elizabeth Tydd CEO and Information Commissioner	
Ms Sonia Minutillo Director, Investigation and Reporting	Information and Privacy Commission
Mr David Marcus Acting Director, Business Improvement	
The Hon Terry Buddin SC Inspector	
Ms Angela Zekanovic Principal Legal Advisor	Office of the Inspector of the Law Enforcement Conduct Commission
Mr Ian McCallan-Jamieson Senior Investigation and Compliance Officer Secure Monitoring Unit	
The Hon Michael Adams QC Chief Commissioner	
The Hon Lea Drake Commissioner for Integrity	Law Enforcement Conduct Commission
Mr Patrick Saidi Commissioner for Oversight	
Ms Amber Williams Chief Executive Officer	
Mr Michael Barnes NSW Ombudsman	
Mr Chris Wheeler Deputy Ombudsman (Public Administration)	NSW Ombudsman
Mr Danny Lester Deputy Ombudsman (Aboriginal Programs)	
Mr Steve Kinmond Deputy Ombudsman, Human Services and Community and Disability Services	

Witness	Organisation
Mr Michael Barnes Convenor	NSW Child Death Review Team
Ms Monica Wolf Director, Systemic Reviews	
Mr Peter Bodor QC Commissioner	NSW Crime Commission
Mr Michael Wilde Executive Director, Corporate Services	

Thursday 12 April 2018

Room 814/815, Parliament of NSW

Witness	Organisation
Ms Samantha Gavel Privacy Commissioner	Information and Privacy Commission
Ms Sonia Minutillo Director, Investigation and Reporting	
Mr David Marcus Acting Director, Business Improvement	

Appendix Three – Extracts from minutes

MINUTES OF MEETING No 30

1.35pm, Wednesday 14 February 2018

Room 1136

Members present

Mr Evans (Chair), Mr Bromhead, Mr Fang, Dr McDermott

Apologies

Mr Searle, Mr Khan, Mr Lynch

Officers in attendance

Elaine Schofield, Dora Oravec, Derya Sekmen

1. Committee membership

The Chair advised the Committee of the change in membership, as recorded in the Legislative Council Minutes of Thursday 23 November 2017, entry 44, where Mr Wang was appointed to the Committee in place of Mr Martin, who was discharged.

2. Confirmation of minutes

Resolved, on the motion of Mr Bromhead, seconded Dr McDermott: that the minutes of the meeting of 19 October 2017 be confirmed.

3. ***

4. 2018 Review of the Annual Reports of oversight bodies

Resolved, on the motion of Mr Bromhead, seconded Dr McDermott, that the Committee:

- commence its 2018 examination of annual reports
- invite representatives from the following agencies to give evidence at a public hearing on Monday 12 March as part of the examination of annual reports:
 - o Law Enforcement Conduct Commission
 - o Ombudsman and Child Death Review Team
 - o Inspector of the Law Enforcement Conduct Commission
 - o Inspector of Custodial Services
 - o Information and Privacy Commission
 - o Crime Commission.

5. Next meeting

The meeting adjourned at 1.42pm until Monday 12 March 2018.

MINUTES OF MEETING No 31

9.16am, Monday 12 March 2018

Room 814/815

Members present

Mr Evans (Chair), Mr Bromhead, Mr Khan, Mr Fang, Mr Lynch, Dr McDermott, Mr Searle

Officers in attendance

Elaine Schofield, Dora Oravec, Stephanie Mulvey, Christopher Herbert, Derya Sekmen

1. Deliberative meeting

1.1 Confirmation of minutes

Resolved, on the motion of Mr Bromhead: that the minutes of the meeting of 14 February 2018 be confirmed.

1.2 Correspondence

The Committee noted the receipt of the following correspondence:

- ***
- ***
- ***
- ***

The Committee considered a late item of correspondence from the Chief Commissioner of the Law Enforcement Conduct Commission.

Resolved, on the motion of Mr Searle: That the Committee authorise the publication of the amended version of correspondence received from the Chief Commissioner of the Law Enforcement Conduct Commission, and that the correspondence be uploaded on the Committee's website.

1.3 Media orders

Resolved, on the motion of Mr Bromhead: That the Committee authorises the audio-visual recording and photography and broadcasting of the public hearing on 12 March 2018, in accordance with the Legislative Assembly's guidelines for the coverage of proceedings for committees administered by the Legislative Assembly.

1.4 Answers to questions taken on notice

Resolved, on the motion of Mr Bromhead: That witnesses be requested to return answers to questions taken on notice and supplementary questions within 14 days of the date on which the questions are forwarded to witnesses.

2. Public hearing – 2018 Review of the Annual Reports of oversight bodies

Witnesses and the public were admitted. The Chair opened the public hearing at 9.30am and after welcoming the witness made a short opening statement.

Ms Fiona Rafter, Inspector of Custodial Services, was affirmed.

The Inspector made an opening statement.

The Committee commenced questioning the witness. Evidence concluded, the witness withdrew.

Ms Elizabeth Tydd, CEO and Information Commissioner, Information and Privacy Commission, and Ms Sonia Minutillo, Director, Investigation and Reporting, Information and Privacy Commission, were sworn.

Mr David Marcus, Acting Director, Business Improvement, Information and Privacy Commission, was affirmed.

The Information Commissioner made an opening statement.

The Committee commenced questioning the witnesses. Evidence concluded, the witnesses withdrew.

The hearing adjourned at 10.22am and resumed at 10.59am.

The Hon Terry Buddin SC, Inspector, Office of the Inspector of the Law Enforcement Conduct Commission; Ms Angela Zekanovic, Principal Legal Advisor, Office of the Inspector of the Law Enforcement Conduct Commission; and Mr Ian McCallan-Jamieson, Senior Investigation and Compliance Officer, Secure Monitoring Unit, Office of the Inspector of the Law Enforcement Conduct Commission, were sworn.

The Inspector made an opening statement.

The Committee commenced questioning the witnesses. Evidence concluded, the witnesses withdrew.

Mr Bromhead, Deputy Chair, took the Chair at 11.30am.

The Hon Michael Adams QC, Chief Commissioner, Law Enforcement Conduct Commission; and the Hon Lea Drake, Commissioner for Integrity, Law Enforcement Conduct Commission, were affirmed.

Mr Patrick Saidi, Commissioner for Oversight, Law Enforcement Conduct Commission, and Ms Amber Williams, CEO, Law Enforcement Conduct Commission, were sworn.

The Chief Commissioner made an opening statement.

The Committee commenced questioning the witnesses.

The Chief Commissioner requested that evidence on a certain matter be given to the Committee in private session.

The Committee agreed, on a proposal by the Deputy Chair, to take evidence from the witnesses in camera at 12.29pm. The public gallery was cleared.

Evidence concluded, the witnesses withdrew. The in camera hearing concluded at 12.43pm.

The Committee deliberated.

Resolved, on the motion of Mr Khan: That the Committee defers consideration of the in camera evidence until a future meeting.

The Committee adjourned at 12:45 pm

The public hearing resumed at 1.31pm.

Mr Michael Barnes, NSW Ombudsman, and Mr Chris Wheeler, Deputy Ombudsman, Public Administration, NSW Ombudsman, were affirmed.

Mr Steve Kinmond, Deputy Ombudsman, Human Services and Community and Disability Services Commissioner, NSW Ombudsman, and Mr Danny Lester, Deputy Ombudsman, Aboriginal Programs, NSW Ombudsman, were sworn.

The Ombudsman made an opening statement.

The Committee commenced questioning the witnesses. Evidence concluded, witnesses withdrew.

Mr Michael Barnes, Convenor, NSW Child Death Review Team, on former oath.

Ms Monica Wolf, Director, Systemic Review, NSW Child Death Review Team, was affirmed.

The Convenor made an opening statement.

Evidenced concluded, the witnesses withdrew.

The hearing adjourned at 2.20pm and resumed at 2.44pm.

Mr Peter Bodor QC, Commissioner, NSW Crime Commission, and Mr Michael Wilde, Executive Director, Corporate Services, NSW Crime Commission, were affirmed.

The Commissioner made an opening statement.

The Committee commenced questioning the witnesses. Evidence concluded, the witnesses withdrew.

The public hearing concluded at 3.03pm. The public withdrew.

3. Post-hearing deliberative

The Committee commenced a deliberative meeting at 3.05pm.

3.1 Publication orders

Resolved, on the motion of Mr Khan: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

3.2 General business

Resolved, on the motion of Dr McDermott: That the Committee hold a hearing with the Privacy Commissioner on a date to be confirmed.

The meeting concluded at 3.07pm until a date to be determined.

MINUTES OF MEETING No 32

1.31pm, Thursday 12 April 2018
Room 814/815

Members present

Mr Evans (Chair), Mr Bromhead, Mr Khan, Mr Fang, Mr Lynch, Dr McDermott, Mr Searle

Officers in attendance

Elaine Schofield, Dora Oravec, Stephanie Mulvey, Derya Sekmen

1. Deliberative meeting

1.1 Media orders

Resolved, on the motion of Mr Bromhead, seconded Dr McDermott: That the Committee authorise the audio-visual recording, photography and broadcasting of the public hearing on 12 April 2018, in accordance with the Legislative Assembly's guidelines for the coverage of proceedings for committees administered by the Legislative Assembly.

1.2 Questions taken on notice and supplementary questions

Resolved, on the motion of Mr Bromhead: That members provide supplementary questions to Committee staff within two working days after receiving the transcript, and that witnesses be asked to provide answers to questions taken on notice and

supplementary questions within 10 working days after the questions are forwarded to them.

2. Public hearing - 2018 Review of the Annual Reports of oversight bodies

Witnesses were admitted. The Chair opened the public hearing at 1.35pm and made a brief opening statement.

Ms Samantha Gavel, Privacy Commissioner, Information and Privacy Commission, and Ms Sonia Minutillo, Director, Investigation and Reporting, Information and Privacy Commission, were sworn.

Mr David Marcus, Acting Director, Business Improvement, Information and Privacy Commission, was affirmed.

Ms Gavel made an opening statement.

The Committee commenced questioning the witnesses.

Evidenced concluded, the witnesses withdrew.

The public hearing concluded at 1.58pm.

3. Post-hearing deliberative meeting

The Committee commenced a deliberative meeting at 1.59pm.

3.1 Confirmation of minutes

Resolved, on the motion of Mr Bromhead: That the minutes of the meeting of 12 March 2018 be confirmed.

3.2 Publication orders – 12 April hearing

Resolved, on the motion of Mr Lynch, seconded Mr Bromhead: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

3.3 Correspondence received

The Committee noted the following correspondence:

- Information Commissioner and CEO of Information and Privacy Commission, dated 20 March, regarding an investigation under the GIPA Act.
- Chief Commissioner, Law Enforcement Conduct Commission, dated 5 April, responding to additional questions regarding Crime Commission.
- CEO, Law Enforcement Conduct Commission, dated 9 April, responding to question on notice regarding critical incidents.

Resolved, on the motion of Mr Searle, seconded Mr Khan: That the letter from the Information Commissioner and CEO of the Information and Privacy Commission dated 20 March be authorised for publication and uploaded on the Committee's website.

Resolved, on the motion of Mr Lynch, seconded Mr Bromhead: That the LECC's response to additional questions dated 5 April and the response to the question on notice dated 9 April be authorised for publication and uploaded on the Committee's website.

3.4 ***

3.5 ***

3.6 Next meeting

The meeting concluded at 2.11pm until a date to be determined.

UNCONFIRMED MINUTES OF MEETING No 35

1.16pm, Thursday 15 August 2018

Room 1254

Members present

Mr Evans (Chair), Mr Bromhead, Mr Khan, Mr Fang, Mr Lynch, Dr McDermott, Mr Searle

Officers in attendance

Helen Minnican (Clerk of the Legislative Assembly), Elaine Schofield, Dora Oravecz, Stephanie Mulvey, Derya Sekmen

1. Confirmation of minutes

Resolved, on the motion of Mr Khan, seconded Mr Bromhead: That the minutes of the meeting of 7 June 2018 be confirmed.

2. 2018 Review of the annual reports of oversight bodies – consideration of Chair's draft report

Resolved on the motion of Mr Khan, seconded Mr Bromhead:

1. That the draft report be the report of the Committee, and that it be signed by the Chair and presented to the House.
2. That the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.
3. That, once tabled, the report be posted on the Committee's website.

3. ***

4. Next meeting

The meeting adjourned at 1.46pm until a date to be determined.