

THE TINK REVIEW INTO POLICE OVERSIGHT AND THE NSW GOVERNMENT'S RESPONSE

How are NSW Police Officers and NSW Crime Commission employees currently held accountable?

Currently complaints against police can be made directly to the NSW Police Force, the NSW Ombudsman or the Police Integrity Commission (PIC).

The NSW Police Force accepts complaints about police officers under the *Police Act 1990* (NSW). The Police Commissioner has responsibility for all complaint matters relating to police officers. The process includes receiving and assessing complaints, taking appropriate action on complaints in a timely and effective manner, and providing information to complainants, police officers who are the subject of a complaint and the Ombudsman.

The Police Division of the Office of the NSW Ombudsman may consider the adequacy of the police handling of all notifiable complaints, and keep under scrutiny the systems for handling complaints involving police to ensure the maintenance of standards of integrity and fair dealing. The NSW Ombudsman is not subject to an Inspector.

The role of the Police Integrity Commission (PIC) is to detect, investigate and prevent police corruption and other serious officer misconduct. The PIC is overseen by the Inspector of the PIC.

The NSW Crime Commission is overseen by the PIC and the Inspector of the Crime Commission.

Why did the NSW Government commission the review regarding police oversight?

The NSW Government made an election commitment to review police oversight because the current police oversight system is outdated and overly complex. The existing oversight agencies have some overlapping responsibilities resulting in confusion and duplication.

The NSW Government appointed Mr Andrew Tink AM, former NSW Shadow Attorney General, to review the oversight of policing and make recommendations to create a more streamlined police oversight system that maintains the highest standard of ethical conduct and integrity.

What did the Tink review report recommend?

The Tink review report recommended:

- the establishment of a single civilian police oversight commission, which would exercise the functions currently carried out by the Police Integrity

Commission, the Police Division of the Office of the Ombudsman and the Inspector of the Crime Commission;

- the transfer of the functions of the Police Integrity Commission, the Inspector of the Police Integrity Commission, the Police Division of the Office of the Ombudsman and the Inspector of the Crime Commission to the new commission and Inspector.
- that the NSW Police Force retain responsibility for investigating critical incidents, while allowing the new commission to have the authority to monitor these investigations;
- that the NSW Police Force retain the ability to accept and process complaints made directly to the Police Force; and
- the establishment of an Inspector of the new commission to oversee its operations.

What is the Government's response to the Tink review report?

The NSW Government will establish a new single oversight body called the Law Enforcement Conduct Commission (LECC), which will streamline and strengthen oversight of the NSW Police Force and the Crime Commission.

Under the Government's response to Mr Tink's recommendations:

- The new LECC will be headed by a Commissioner who is a serving or retired judge and will have two divisions: Integrity and Oversight. Each division will be headed by a Deputy Commissioner;
- The Deputy Commissioner for Integrity will be responsible for the functions currently exercised by the Police Integrity Commission (PIC) to prevent, detect and investigate serious misconduct or corruption. Covert investigation powers and public hearings will be available to the LECC for serious misconduct and corruption investigations;
- The Deputy Commissioner for Oversight will be responsible for the functions currently exercised by the Police Division of the office of the NSW Ombudsman and investigate complaints received directly about officers, as well as monitor the NSW Police Force's handling of complaints;
- Critical incidents will continue to be investigated by the NSW Police Force which has the full investigative tools to do so, but these investigations will be monitored by the new LECC as part of its oversight functions;
- The NSW Police Force will continue to have primary responsibility for managing complaints about police officers under the *Police Act 1990*;
- The LECC will also have jurisdiction over the NSW Crime Commission, which is currently overseen by the Inspector of the NSW Crime Commission and the Police Integrity Commission;
- The Inspector of the PIC will be replaced by an Inspector of the LECC, who will report to NSW Parliament, to ensure the new LECC is accountable for its operations; and
- The role of Inspector of the NSW Crime Commission will cease to exist.

How will a single agency impact the level of oversight?

There will be an improved level of oversight resulting from a more efficient and streamlined structure in which unnecessary overlaps between agencies are removed. The LECC's Integrity division will exercise the functions currently undertaken by the PIC, and the Oversight division will exercise the functions currently undertaken by the Ombudsman in respect of the NSW Police Force. No division will take precedence over the other. This approach will mean that the

duplication of responsibilities is removed. It will also allow for matters that originally start as a complaints investigation but turn into a serious misconduct or corruption investigation can be transferred seamlessly and addressed.

How and when will this be implemented?

The Government has established an interdepartmental group to assist with the implementation of the recommendations from the Tink Review and the transition to a single civilian oversight commission.

The Government will undertake consultation with stakeholders, particularly affected agencies, throughout the process of transitioning to a single oversight agency.

A Bill will be drafted to establish the LECC, and provide for its functions, powers, structure and governance. This Bill will also amend and repeal various existing Acts. It is expected that the Bill will be passed in the first quarter of 2016.

The Commissioner and Deputy Commissioners of the LECC will be appointed and will work with the Government and the implementation group to finalise establishing the LECC and the logistical aspects of transitioning to a single oversight commission.

It is expected that the LECC will be operational by early 2017.

How will the Government ensure that there is a smooth transition to the single agency?

One of the main priorities is ensuring that current investigations and oversight activities are not disrupted with the move to a single oversight agency. To achieve this, the commencement of the legislative provisions establishing the LECC and amending and repealing existing legislative provisions will be staged. For example, the provisions dealing with the Commissioner and Deputy Commissioners will commence on assent of the Bill by Parliament. This will allow the Government to appoint people to these positions well before the LECC opens its doors. The Commissioner and Deputy Commissioners can then work with the Government to finalise the logistical aspects of establishing the LECC.

Importantly, existing legislative provisions dealing with the investigation of serious misconduct, corruption or complaints relating to law enforcement officers will not be amended or repealed until the LECC is ready to take on these functions.

From an operational perspective, the Government, Commissioners and the implementation group will work with the PIC and the Ombudsman to ensure that ongoing investigations are transferred to the LECC in a way that does not compromise the investigations and facilitates a smooth transition.

Why is the NSW Police Force retaining the ability to investigate complaints against police?

Mr Tink recommended that the NSW Police Force still be able to receive complaints because police must take responsibility for their own conduct and people will always complain directly to police no matter what the complaints process.

He also concluded that the cost of processing such complaints externally would be unjustified.

It is common practice for all government agencies to have an internal complaints investigation function. The NSW Police Force is no different. The NSW Police Force has well-established procedures to deal with complaints independent of the subject of the complaint. The LECC will be overseeing the NSW Police Force's handling of complaints. The LECC will have direct access to the NSW Police Force complaints database. This will allow for effective monitoring. The LECC will also be able to step in at any time and take over an investigation of a complaint.

Will people be able to make a complaint about police or the Crime Commission directly to the LECC?

People will be able to make a complaint about police, or the NSW Crime Commission, directly to the LECC. If this occurs the LECC will assess the complaint and will decide whether to refer it to the NSW Police Force or the NSW Crime Commission for actioning, or whether to investigate the complaint directly. Detailed guidelines on the referral of complaints will be developed by the LECC.

Why is the NSW Police Force retaining responsibility for investigating critical incidents?

The NSW Police Force is the only agency with the specialist investigative skills and resources to undertake this type of investigation. However, the Government has recognised concerns raised about the NSW Police Force conducting investigations into NSW Police Force operations that involve the death or serious injury of someone. The LECC is therefore being given the ability to monitor critical incident investigations in "real time".

When a critical incident investigation commences, the NSW Police Force will be required to notify the LECC. Officers from the LECC will then have the authority to observe the investigation, including attending any crime scenes, receiving reports and observing witness interviews. The LECC will not supervise the investigation, nor will it be able to direct or control investigations in any way.

How will the Government ensure that the LECC operates within the confines of its legislation and does not engage in abuses of power or other misconduct?

To ensure the LECC is subject to external scrutiny, it will be accountable to an Inspector of the LECC. The Inspector will audit the LECC's use of covert powers, as well as actively investigate the conduct of the LECC, including allegations of abuse of power or misconduct. This will ensure the LECC discharges its duties in accordance with the law and in a manner that upholds the public's confidence in the law enforcement oversight system. The Inspector will report directly to NSW Parliament.