

OFFICIAL



NSW Police Force

Directions for Reporting Adverse Judicial Comments

Police Prosecutions Command

OFFICIAL

Summary

The NSWPF Handbook and the Police Prosecutions Command Standard Operating Procedures ('PPC SOPs') outlines roles and responsibilities of police officers in respect of 'Failed Prosecutions' and dismissed summary proceedings. These guidelines for reporting adverse comments made by judicial officers form an annexure to the PPC SOPs to clearly outline the roles and responsibilities of PPC staff where possible officer misconduct or serious maladministration is identified in the course of their duties.

Section 33 of the Law Enforcement Conduct Commission Act 2016 (NSW) ('LECC Act') requires the Police Commissioner to report to the Law Enforcement Conduct Commission ('LECC') Commissioner any officer misconduct and serious maladministration (unless the matter is of a kind which does not need to be reported in accordance with the agreement between the LECC and the NSW Police Force pursuant to s 14 of the LECC Act). This function has been delegated to all Superintendents where the subject officer is under their command, and to the Commander Police Prosecutions Command and the General Counsel (regardless of whether the officer is under their command). This obligation applies retrospectively to all cases a police prosecutor has appeared in since 1 July 2017.

Document Control Sheet

Document Properties

Title	Reporting Adverse Judicial Comments Business Rules
Subject	Rules for prosecutors to report adverse comments made by judicial officers
Command responsible	Police Prosecutions Command
Authorisation	Assistant Commissioner, Police Prosecutions and Licensing Enforcement Command
Security Classification	OFFICIAL
Publication date	January 2024
Current version number	2.0
Review date	January 2027
Document RMS number	D/2024/88111
Linked RMS folder	F/2023/68923 & D/2023/1291603
Copyright statement	© Crown in right of NSW through NSW Police Force 2024
Suitable for Public Disclosure	YES

Modification History

Version #	Version creation date	Author / Position	Summary of changes
1.0	14 Nov 2018	Ch Supt Ian Dickson	Creation of guidelines
1.1	26 Nov 2018	Ch Supt Ian Dickson	Clarification of a prosecutor's obligation in reference to PPC SOPs
1.2	14 May 2021	Supt Kirsty Heyward	Review and amend process
1.3	01 June 2023	Sgt Daryl Cleofe	Review and fixed hyperlinks
2.0	January 2024	Sgt Corey Wolven	Reformat to comply with CET Memo D/2023/1307809 ⁱ

Table of Contents

SUMMARY 2

DOCUMENT CONTROL SHEET 3

1 PURPOSE..... 5

1.1 Scope 5

1.2 Roles & responsibilities 5

2 RESPONSIBILITIES 6

2.1 Responsibilities of a prosecutor 6

2.2 Responsibilities of monthly Failed Prosecution Review Panels 7

2.3 Responsibilities of Commanders / Delegates and CMTs 7

2.4 Responsibilities of the Commander Police Prosecutions Command 7

APPENDIX 1 – DEFINITIONS 8

APPENDIX 2 – LEGISLATION EXTRACTS..... 8

3 ENDNOTE REFERENCES 10

1 Purpose

The procedures for reporting adverse comments made by judicial officers establish the reporting obligations of the PPC Commander in respect of court proceedings conducted by the Police Prosecutions Command. These guidelines outline the roles and responsibilities of PPC officers where the alleged misconduct is connected to a failed prosecution or an award of costs where adverse comments are made by a judicial officer, whether in a judgment or otherwise in court, critical of:

- the conduct of a prosecution.
- the adequacy of an investigation.
- the integrity of police witnesses.

These procedures set out the processes for notifying LECC of misconduct matters that meet the s33 threshold and those matters which are specifically prescribed as requiring notification to LECC because of the Agreement between LECC and the NSWPF pursuant to s14 of the LECC Act.

‘Officer misconduct’ includes not only sworn officers but also administrative employees.

Mistakes that involve conduct or behaviour that is inconsistent with or prohibited by the terms of an officer’s employment, including the Commissioner of Police’s instructions, or constitutes a breach of discipline, but which do not involve serious dishonesty or serious incompetence, and which can be dealt with under Part 9 of the Police Act 1990 (NSW) need not be investigated by the LECC.

This is recognised for example in paragraph 5 of the guidelines to the [s 14 agreement between LECC and the NSW Police Force](#).

1.1 Scope

These procedures are in place for **any NSW Police Force employee conducting a prosecution** in court to ensure compliance with mandatory reporting obligations under the Law Enforcement Conduct Commission Act 2016 (NSW) and Police Act 1990 (NSW).

1.2 Roles & responsibilities

Assistant Commissioner – PPLEC	Document Sponsor
Commander – Police Prosecutions Command	<ul style="list-style-type: none">• Document Owner• Provide monthly report to LECC of all adverse comments
Team Leaders	<ul style="list-style-type: none">• Meet with Commands and conduct a Failed Prosecution Review Meeting each month
Command office – Police Prosecutions Command	<ul style="list-style-type: none">• Manage reviews and updates of this document• Communicate changes to staff• Provide Governance Command with updates
All staff	<ul style="list-style-type: none">• Know and comply with this policy at all times

2 Responsibilities

2.1 Responsibilities of a prosecutor

All prosecutors will remain vigilant in identifying corruption, ethical, professional, and training issues in the management and review of briefs of evidence. Prosecutors will report identified misconduct through the chain of command, as outlined in the Police Prosecutions Command Standard Operating Procedures 3.2 (10).

Police Prosecutors are required to comply with ss 14 and 33 of the LECC Act, which includes an obligation to report conduct that may include officer misconduct identified during criminal proceedings (see appendix 1 for legislation extracts). All police officers are required to comply with s 211F(1) of the Police Act 1990 (NSW) ('Police Act') and report suspected police officer misconduct or serious maladministration to a more senior police officer who is of the rank of sergeant or above.

Adverse comments made by a judicial officer are potential officer misconduct. As such, all adverse comments made by a judicial officer must be reported via manuscript report through the chain of command.

Generally, there are three common ways police prosecutors may become aware of officer misconduct:

2.1.1 Failed prosecutions

The PPC SOPs require the prosecutor to complete a Failed Prosecution Form within the Court Matter File Management System (CMFMS) and outline adverse comments and/or concerns of officer misconduct in that form. This Failed Prosecution Form will be reviewed and assessed by the Failed Prosecution Review Panel, and any adverse comments then referred to the relevant CMT – see cl 2.2.

2.1.2 Costs awarded against police

The PPC SOPS cl 8.2 require the prosecutor to submit Cost Forms on every occasion that costs are awarded against police on adjournment and on dismissal / withdrawal in the Local Court. These forms are submitted via CMFMS and must include any adverse comments by the magistrate about any police officer or administrative employee. Costs Forms are referred in the Records Management System (RMS) by the Commander PPC to the Commander Delegate of the involved officer for assessment within the relevant CMT.

2.1.3 Adverse comments in other circumstances

For adverse comments made by judicial officers in any circumstance other than the above two situations, Police Prosecutors must report these comments by manuscript report through their chain of command to the Commander PPC. The Commander PPC will forward through RMS to the Commander Delegate of the involved officer for assessment within the relevant CMT.

It is expected that any adverse comments that do not fall within the first two categories are dealt with in this way. This would include, for example, unsuccessful costs applications that nonetheless resulted in adverse comments from a Magistrate (as those comments cannot be captured within costs forms that do not exist).

2.2 Responsibilities of monthly Failed Prosecution Review Panels

In accordance with the Failed Prosecution Review policy, prosecutor team leaders are required to meet with each relevant Command monthly to conduct a Failed Prosecution Review Panel. During this panel, any adverse comments are to be processed in accordance with that Policy by referral to the relevant CMT.

2.3 Responsibilities of Commanders / Delegates and CMTs

The Commander (or delegate) of subject officers is responsible for the receipt of any forms or reports regarding adverse comments made by judicial officers. The relevant CMT should assess if the report identifies an obligation to investigate, report, or notify about possible officer misconduct or serious maladministration in accordance with:

- Part 8A of the Police Act
- Section 33 of the LECC Act
- Section 14 of the LECC Act

Where the matter is not required to be reported or notified to LECC, but otherwise contains performance issues, the reasons should be noted in the CMT minutes, and the matter referred for appropriate action.

If deemed necessary, the CMT can request the police prosecutor who appeared in the matter to provide via manuscript report more detailed information on the comments and circumstances.

If in doubt at any point, or if any conflict arises, the policies, guidelines, and procedures issued by the Professional Standards Command should prevail.

2.4 Responsibilities of the Commander Police Prosecutions Command

The Commander PPC is to provide a monthly report to the LECC via spread sheet containing all adverse comments made by judicial officers in accordance with this policy. They should be categorised as per cl 2.1 of this policy.

The Commander PPC should ensure prosecutors adhere to this policy and the processes outlined herein. This policy should be reviewed at a frequency consistent with the current corporate standards.

Appendix 1 – Definitions

Prosecutor

Any reference to ‘prosecutor’ or ‘police prosecutor’ within this policy includes, without limitation:

- Police prosecutors attached to PPC;
- Police prosecutors attached to a Command other than PPC (e.g., OLSC);
- Trainee prosecutors;
- Any NSW Police Force employee conducting the prosecution of a matter on behalf of the NSW Police Force or any other agency in which the NSW Police Force agrees to appear

Appendix 2 – Legislation extracts

Law Enforcement Conduct Commission Act 2016 (NSW)

Section 4 – Definitions

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

officer misconduct means police misconduct, administrative employee misconduct or Crime Commission officer misconduct.

Section 9 – Police misconduct

(4) **Examples** Police misconduct, administrative employee misconduct or Crime Commission officer misconduct can involve (but is not limited to) any of the following conduct by a police officer, administrative employee or Crime Commission officer respectively—

- (a) conduct of the officer or employee that constitutes a criminal offence,
- (b) conduct of the officer or employee that constitutes corrupt conduct,
- (c) conduct of the officer or employee that constitutes unlawful conduct (not being a criminal offence or corrupt conduct),
- (d) conduct of the officer or employee that constitutes a disciplinary infringement.

Section 11 – Maladministration

(3) For the purposes of this Act, agency maladministration or officer maladministration is **serious maladministration**—

- (b) in the case of an agency or officer—if the conduct involved is of a serious nature and, although it is not unlawful—
 - (i) is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
 - (ii) arises, wholly or in part, from improper motives.

Section 14 – Misconduct matters

(1) Without limiting the agreements that may be entered into, the Commission may from time to time enter into written agreements with the Commissioner of Police and the Crime Commissioner concerning all or any of the following—

- (a) the kinds of misconduct matters that should or should not be investigated,

Section 33 – Duty to notify

(2) An officer to whom this section applies is under a duty to report to the Commission any matter that the officer suspects on reasonable grounds concerns or may concern officer misconduct or serious maladministration ...

Guidelines issued pursuant to s 14 LECC Act – notifiable misconduct matters

Full guidelines are [found here](#).

Extract:

- (2) Misconduct matters required to be notified to the Commission (LECC) (notifiable misconduct matters) are—
- (a) criminal conduct except those matters as outlined in paragraph 6,
 - (b) corrupt conduct
 - (c) failure by a police officer or administrative employee to report police officer misconduct in accordance with s 211F of the *Police Act 1990*
 - (h) whether in a judgment or otherwise in court, comments by a judicial officer critical of the conduct of the prosecution, the adequacy of the investigation, or the integrity of a police officer
 - (i) the failure to report comments by a judicial officer critical of the conduct of the prosecution, the adequacy of the investigation, or the integrity of a police officer
 - (k) any unauthorised use, misuse, or failure to comply with safe keeping of police firearms; or any unauthorised use of any other police appointments, namely Tasers, OC Spray, batons or handcuffs,
 - (m) any falsifying of official records including but not limited to COPS, motor vehicle diary and notebook / duty book entries,
 - (n) allegations of failure to investigate, or inadequate investigation of:
 - (i) domestic violence;
 - (ii) sexual offences;
 - (iii) serious indictable crimes
 - (o) allegations of misconduct arising from the exercise of police powers under the *Law Enforcement (Powers and Responsibilities) Act 2002*, including search, arrest and detention powers
 - (q) conduct which is or might be serious maladministration by an officer of the NSWPF

Police Act 1990 (NSW)

Section 211F – Members of NSW Police Force under duty to report misconduct

- (1) A police officer who has reasonable grounds to suspect that another police officer has engaged in police misconduct or serious maladministration is under a duty to report that police misconduct or maladministration or alleged misconduct or maladministration in writing to another police officer who is of the rank of sergeant or above and is more senior in rank than the police officer with a duty to report (a *senior police officer*).
- (2) The senior police officer to whom a report is made must report it in writing promptly to the Commissioner (or a police officer nominated by the Commissioner for the purposes of this section) if the senior police officer has reasonable grounds to suspect that the conduct (or alleged conduct)—
- (a) constitutes (or would constitute) a criminal offence or is (or could be) other police misconduct or serious maladministration, or
 - (b) could provide sufficient grounds—
 - (i) for taking dismissal action against a probationary police officer under section 80 (3), or
 - (ii) for taking reviewable action under section 173 or making an order under section 181D.
- (5) This section does not apply to misconduct or maladministration or alleged misconduct or maladministration—
- (a) that has been the subject of a misconduct matter received by the LECC under the *Law Enforcement Conduct Commission Act 2016* or the Commissioner under Part 8A or of which the LECC or the Commissioner is already aware, or
 - (b) that has been the subject of evidence or other material given, or submissions made, in the course of criminal proceedings, or
 - (c) that has already been reported under this section to a senior police officer, or

3 Endnote References

ⁱ Policy format and name changed to comply with CET Memorandum D/2023/1307809 and addition of definition of 'prosecutor' for clarity.