



NSW Police Force

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Information for officers involved in critical incidents

Professional Standards Command

Information for officers involved in critical incidents

Essential Summary

The purpose of this document is to assist police officers understand their responsibilities when involved in a critical incident and provide information in relation to issues relating to the welfare of the officer.

This document should be read in conjunction with the *Critical Incident Policy Statement* and *Guidelines*.

Document Control Sheet

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1. Commissioner's Message

NSW Police Force acknowledges the actions of officers in the execution of their duties can, in some circumstances, result in the death or serious injury to a person. Incidents of this nature are often subject to a heightened level of public interest and scrutiny.

These incidents are deemed to be Critical Incidents by the NSW Police Force.

I acknowledge that being a police officer directly involved in or witness to a Critical Incident can be very distressing.

NSW Police Force is committed to demonstrating its professionalism by investigating all Critical Incidents in an effective, accountable and transparent manner.

The identification of an incident as a Critical Incident activates an independent investigative process to be conducted by a specialist and independent critical incident investigation team, and a review of that investigation by an independent review officer.

This information pack has been prepared to assist officers who may be involved in these types of incidents. The document contains information about what you could expect in the event that you are involved in a Critical Incident, whether your involvement is limited to that of a witness or you have been directly involved in the incident itself.

This information pack should be read in conjunction with the Critical Incident Guidelines.

Commissioner of Police

2. Scope

The NSW Police Force Critical Incident Policy and Guidelines apply to the investigation of all deaths or serious injuries which have occurred as a result of an interaction with police.

This document is available to all members of the NSW Police Force. The Critical Incident Guidelines detail the key management and investigative requirements for these types of incidents.

This document provides information for officers involved in Critical Incidents and should be read in conjunction with the Critical Incident Guidelines.

A critical incident investigation is not by default an investigation of or an inquiry into alleged misbehaviour or alleged improper conduct by a member of the NSW Police Force. Considering the actions of members of the NSW Police Force in connection with a critical incident does not presume any misconduct occurred.

3. What is a 'Critical Incident'?

A critical incident is an incident that has been declared to be a critical incident under section 111 of the *Law Enforcement Conduct Commission Act 2016*.

A Region Commander has the delegated authority to make this declaration. The declaration may be made if the Region Commander becomes aware of an incident involving a NSW Police Force member that '*results in the death of, or serious injury to, a person (including another police officer)*'¹ and 'the death or serious injury:

- (i) arises from a discharge of a firearm by the member involved, or
- (ii) arises from the use or operation of defensive equipment by the member involved, or
- (iii) arises from the application of physical force by the member involved while exercising any function as a police officer, or
- (iv) arises from the use of a police vehicle by the member involved (including its use as a passenger), or
- (v) arises while the person is in custody or while escaping or attempting to escape from custody, or
- (vi) appears to be likely to have resulted from any police operation.'²

The Region Commander may also make this declaration if they have 'other grounds for considering it is in the public interest to do so'³. This may include where an incident could attract significant attention, interest or criticism and the public interest is best serviced by investigating the incident as a critical incident.

¹ s110(a) *Law Enforcement Conduct Commission Act 2016*

² s110(b) *Law Enforcement Conduct Commission Act 2016*

³ s111(1)(b) *Law Enforcement Conduct Commission Act 2016*

4. Critical Incident Levels

There are two levels of Critical Incidents. The investigative response to the incident will depend upon the level of incident itself.

4.1 Level 1

Critical Incidents that involve the:

- homicide of a police officer;
- death or imminent death resulting from the discharge of a police firearm by a police officer or other member of the NSW Police Force;
- death or imminent death arising from the use of police appointments; or
- death or imminent death as a result of the application of physical force by a police officer,

are known as **Level 1** critical incidents. Level 1 critical incidents are investigated by the Homicide Squad, State Crime Command, unless there are strong reasons against this (for example, potential conflicts).

4.2 Level 2

Critical incidents that are not Level 1 critical incidents are **Level 2** critical incidents.

Level 2 critical incident investigations are led by an experienced investigator from a different Police Area Command / Police District (within the same Region) from that of the directly involved officers and the location of the incident where operationally appropriate.

In some circumstances, a Region Commander may consider it operationally appropriate that the investigation is led by a SCII from:

- the same Police Area Command / Police District; or
- a Police Area Command / Police District in a different Region.

The Region Commander can consider matters including the remoteness of a location, the availability of resources, the need for the preservation of physical evidence, the welfare of directly involved officers and timeliness. The Region Commander must be satisfied that this decision will not compromise the integrity of the investigation.

5. Officers involved in Critical Incidents

Your responsibilities in an investigation into a critical incident may vary depending on whether you are a directly involved officer in the incident or merely a witness to the incident.

The NSW Police Force and the community have an expectation that police officers will provide statements when they are witnesses to criminal offences, the statement can assist in a coronial investigation or during a critical incident investigation.

The Senior Critical Incident Investigator (**SCII**) will determine whether an officer is to be considered a **directly involved officer** or a **police witness**.

5.1 Who is a Directly Involved Officer?

An officer directly involved in a critical incident is any officer, regardless of rank or grade, who by their words, actions or decisions, in the opinion of the SCII, contributed to the incident under investigation.

An officer who is present, and does not involve themselves in activities which have contributed to the incident occurring, is not a directly involved officer. A person's mere presence at the scene is insufficient.

If you are identified as a directly involved officer you will be provided with a signed [P1109](#) – *Critical Incident – Notice to directly involved officer*, prior to any interview being conducted.

As a directly involved officer you may be directed by a senior officer to answer questions or provide a statement in accordance with clause 8(1) of the *Police Regulation 2015*.

If you exercise your right to silence after being directed to respond to a question, you **will not** then be compelled to answer the question in respect of which privilege has been claimed.

If at any time, the investigative officer forms the belief you have committed a criminal offence, you will be administered a criminal caution. Should this occur, you will **not** be directed to answer questions or provide a statement.

If you are to be criminally interviewed it is strongly recommended that you seek legal advice prior to the interview.

As a directly involved officer, in specific circumstances, you may be required to undergo mandatory drug and alcohol testing pursuant to section 211A of the *Police Act 1990*. See *Chapter 6 below for more detail*.

You may also be directed not to interfere with or compromise the integrity of the investigation. This direction will include a direction not to discuss or disclose any information about the investigation to any person that you know, or have reasonable cause to suspect, is a witness to or otherwise involved in the matter without the authority of the investigating officer.

5.2 Who is a Police Witness?

Police Witnesses are officers who are involved in the incident, but not considered to be a directly involved officer.

The SCII will provide witnesses with a signed [P1100](#) – *Critical Incident - Notice to witness officer* prior to any statements or interviews being conducted with that officer.

Providing statements and subsequently giving evidence in court is a key function of being a police officer. If you are asked to provide a statement it should be recorded in a form most likely to be admissible in subsequent prosecutions, coronial inquests or other legal proceedings, whether or not there is any suggestion of police misconduct and whether you were on or off duty at the time of witnessing the incident.

Your statement is to include the witness name, age, jurat and must be signed by you.

If you exercise your right to silence after being directed to respond to a question, you **will not** then be compelled to answer the question in respect of which privilege has been claimed.

You may also be directed not to interfere with or compromise the integrity of the investigation. This direction will include a direction not to discuss or disclose any information about the investigation to any person that you know, or have reasonable cause to suspect, is a witness to or otherwise involved in the matter without the authority of the investigating officer.

6. Mandatory Drug and Alcohol Testing of Police Officers

Officers directly involved in a Critical Incident may be required to undergo mandatory drug and alcohol testing in accordance with S211A of the *Police Act 1990*.

Section 211A(2A) of the *Police Act 1990* states:

*An authorised person **must** require any police officer directly involved in a mandatory testing incident to:*

- a) undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence of alcohol, and*
 - b) provide a sample of their urine or hair (or both) for the purpose of testing for the presence of prohibited drugs,*
- in accordance with the directions of the authorised person and the regulations.*

Further, section 211A(4B) of the *Police Act 1990* states:

If a police officer involved attends or is admitted to a hospital for examination or treatment because of the mandatory testing incident, an authorised person may require the officer to provide a sample of the officer's blood, urine or hair in accordance with the directions of a medical practitioner who attends the officer at the hospital.

Section 211A(7) of the *Police Act* states:

*In this section **mandatory testing incident** means an incident where a person is killed or seriously injured:*

- a) as a result of the discharge of a firearm by a police officer, or*
- b) as a result of the application of physical force by a police officer, or*
- c) while detained by a police officer, or while in police custody, or*
- d) in circumstances involving a police aircraft, motor vehicle or vessel.*

Accordingly, if you are considered to be an **officer directly involved** in such an incident you may be directed to undergo mandatory testing in accordance with the Act.

In accordance with section 81G(4) of the *Police Act 1990*, Special Constables may also be considered as directly involved officers, and may be required to undergo mandatory drug and alcohol testing.

Can you object to such tests?

No. Clause 8 of the *Police Regulation 2015* states:

- (1) *Police officers are to comply strictly with the Act and this Regulation and promptly comply with all lawful orders from those in authority over them.*
- (2) *In particular, a police officer is required:*
 - (a) *to serve wherever the officer is duly directed, and*
 - (b) *to perform such police duty as may be duly directed, whether or not during the officer's rostered hours of duty.*

Section 201 of the *Police Act* states:

A police officer who neglects or refuses to obey any lawful order or carry out any lawful duty as a police officer is guilty of an offence.

In addition, the NSW Police Force *Code of Conduct and Ethics* relevantly states:

An employee of the NSW Police Force must:

3. *Know and comply with all policies, procedures and guidelines that relate to their duties*
5. *Comply with any lawful and reasonable direction given by someone in the NSW Police Force who has authority to give the direction*

7. Mandatory Drug and Alcohol Testing of Constable Education Program (CEP) Students

Where a CEP student is required to undergo mandatory testing, both alcohol and drug testing procedures will be conducted in accordance with the NSW Police Force *Student Drug and Alcohol Policy Statement and Guidelines* as soon as reasonably possible after the incident.

8. Gun Shot Residue Testing

Officers involved in critical incidents where a **firearm has been discharged** may be required to undergo gunshot residue testing in accordance with section 211AB of the Police Act.

Section 211AB of the Police Act, states:

- (1) *A person authorised by the Commissioner⁴ may direct a police officer to submit to testing for gunshot residue if the officer has, or may have:*
 - (a) *discharged a firearm, or*
 - (b) *been present when another police officer has, or may have, discharged a firearm.*
- (2) *A direction under this section (a **relevant direction**) must be given as soon as practicable after the discharge, or suspected discharge, of the firearm.*
- (3) *A police officer given a relevant direction must submit to testing for gunshot residue in accordance with the direction and any regulations made for the purposes of this section.*

Accordingly, if you are an officer involved⁵ in a Critical Incident involving the discharge of a firearm, you may be directed to undergo testing in accordance with the Act.

In accordance with section 81G(4) of the *Police Act 1990*, Special Constables may also be considered as directly involved officers, and may be required to undergo testing.

Can you object to such tests?

No. Clause 8 of the Police Regulation states:

- (1) *Police officers are to comply strictly with the Act and this Regulation and promptly comply with all lawful orders from those in authority over them.*
- (2) *In particular, a police officer is required:*
 - (a) *to serve wherever the officer is duly directed, and*
 - (b) *to perform such police duty as may be duly directed, whether or not during the officer's rostered hours of duty.*

Section 201 of the Police Act states:

A police officer who neglects or refuses to obey any lawful order or carry out any lawful duty as a police officer is guilty of an offence.

⁴ All police officers above the rank of Inspector have the authority of the Commissioner to direct a police officer to submit to testing for GSR.

In addition, the NSW Police Force *Code of Conduct and Ethics* relevantly states:

An employee of the NSW Police Force must:

3. *Know and comply with all policies, procedures and guidelines that relate to their duties*
5. *Comply with any lawful and reasonable direction given by someone in the NSW Police Force who has authority to give the direction*

9. Support services

The NSW Police Force knows that critical incidents can be very distressing, whether they are directly involved officers or witnesses. There are a number of avenues open to members of the NSW Police Force seeking advice and support.

The police area / district commander (or specialist equivalent) will manage the welfare needs of officers involved in or affected by critical incidents. Commanders should consider the use of Peer Support officers in these circumstances particularly if they have had experience in critical incidents or completed additional training.

As part of the mandatory call out, the State Coordinator will contact the Incident Support on call psychologist to instigate an incident response, the Police Association of NSW and the Police Chaplaincy.

9.1 Medical Assistance

If you feel you are having difficulty coping with the aftermath of a critical incident, contact your Medical / General Practitioner or local hospital for assistance.

10. Welfare Support

There are a number of options for members of the NSW Police Force to avail themselves in relation to welfare support.

10.1 Employee Assistance Program (EAP) and Incident Support (IS)

There are two streams of support service available from the external provider. These are the Employee Assistance Program (**EAP**) and Incident Support. EAP is 24/7 phone support, 1300 667 197 and which can provide short counselling for members and their families. Incident Support is freely available to local Commands for any deemed critical or other incident that causes undue distress to the police concerned. Local Commands are able to access this service direct on 1300 667 197 for incident support services.

The NSW Police Force provides a personal counselling service for all members of the NSW Police Force and their immediate families through EAP. EAP employs registered psychologists that are strategically located throughout the state. Our EAP provider also provides our Incident Support (**IS**) service. Both services are accessible through the 1300 667 197 telephone number, however, are separate services with different levels of response times and confidentiality.

Following a Critical Incident, our externally contracted Incident Support service can provide psychologists on site within a time period specified by the police area / district commander and contractual agreement (within 3hrs metropolitan areas, 5hrs regional locations and up to 24 hrs in the far west and remote locations). The content of the session with the psychologist is confidential however dates of contact with officers are recorded in the Incident and Support Database (**ISD**).

As well as offering an emergency on site response in relation to critical incidents, our provider also offers a confidential and private individual counselling service (**EAP**). Members of the NSW Police Force are entitled to up to 3 hours of face to face counselling beyond the initial incident support. This is separate to the services routinely available through the EAP. This counselling service is confidential, that is no details are released without specific consent, unless there are exceptional circumstances, such as a life-threatening situation.

Under current arrangements, members of the NSW Police Force and their family members are each offered six free sessions, through EAP, in a two year period.

If preferred, members of the NSW Police Force who are Aboriginal wanting to avail themselves of the EAP can ask to be referred to the Aboriginal Counselling Service by calling the toll free number and requesting this service.

EAP and incident support (IS) can be contacted 24 hours a day by phoning the toll free number – **1300 667 197**

10.2 Police chaplain

The mission of the Police Chaplaincy is to minister to the spiritual welfare of members of the NSW Police Force, retired police, police widows and widowers and their immediate families. In emergency situations, the primary role of a Police Chaplain is to provide care and welfare to members of the NSW Police Force.

Police Chaplains are available on a 24-hour basis and can be contacted through the State Coordinator on (02) 9265 4408 / EN 54408.

10.3 Peer Support Officer (PSO)

Peer support officers are members of the NSW Police Force who volunteer their time to assist colleagues. The role of the PSO at critical incidents is to provide assistance and support to distressed officers. **Officers who engage this support should be aware that confidentiality is not guaranteed.**

At the scene of the incident the PSO can offer practical support to officers such as:

- providing information regarding the incident

- arranging for the collection of children from school
- contacting family members
- support and information to officers re: critical incident processes
- assessing the need for referral to health professionals and facilitating this, where necessary.

After the initial incident, PSOs can provide support to officers by offering:

- one-on-one ongoing peer support
- assessing the need for referral to health professionals and facilitating this, where necessary
- attendance at court proceedings or other investigative processes in order to support officers involved.

Peer support officers are not counsellors or mental health professionals. Members of the NSW Police Force requiring these services should contact their general practitioner or EAP.

10.4 Critical Incident Support

As part of the mandatory call out, the State Coordinator will arrange support for police officers directly involved or witnesses to the incident as soon as possible following a critical incident. This support will usually be provided by a psychologist from our external provider's Incident Support team. Depending upon the incident, NSW Police Force psychology staff may also attend.

While awaiting the arrival of a psychologist, if an officer is in a highly distressed state and it is deemed the officer would benefit from immediate psychological support, telephone support can be provided by a member of our external provider's Incident Support Team. This can be arranged by calling 1300 667 197 and asking for immediate telephone support in relation to a critical incident.

The psychologist can provide emotional and psychological support to assist the officer in rationalising the event and the development of coping strategies. On-going support is provided the next day, one week and one month after the incident. The counselling support received in relation to critical incidents is completely separate and in addition to an officer's allocation of up to six EAP sessions over a two year period.

Further assistance can be arranged by the Psychology Section if required. The Psychology Section can be contacted on (02) 9285 3899 / EN 53899. The State Coordinator can be contacted on (02) 9264 4408 / EN 54408.

10.5 Injury management program

If a member of the NSW Police Force involved in a critical incident receives an injury as a result of the incident they should lodge a [P902](#) notification of incident. This will commence the injury management process to ensure the member has access to prompt treatment and income support.

The NSW Police Force is committed to supporting the safe, timely and durable return to the workplace of ill and injured members. The injury management program has been implemented to assist members to return to their pre-injury duties through timely intervention, proper planning and management in a safe and timely manner.

More information in relation to the injury management program is available in the *Injury Management Policy*.

11. Support for families

Critical incidents can impact on the families of officers involved. The NSW Police Force can offer support and assistance to family members through a number of avenues.

Advice can be sought through:

- NSW Police Force Psychology Section on (02) 9285 3899
- EAP on 1300 667 197
- The family support co-ordinator who can be contacted through [#FAMILYSUPPORT](#) or EN 53848 during normal business hours.

12. Other support available

Further support would include:

- health and welfare information available on the People & Capability Command intranet, under Workforce Safety
- mental and community health workers
- religious adviser
- friends
- family members.