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CRITICAL INCIDENT GUIDELINES

Professional Standards Command

EXTERNAL VERSION

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NSW Police Force Critical Incident Guiding Principles

Essential Summary

The NSW Police Force is committed to investigating all critical incidents in a competent, thorough, and objective manner. The *Law Enforcement Conduct Commission Act 2016* (the **Act**) governs the declaration and investigation of critical incidents and the powers of the Law Enforcement Conduct Commission (**LECC**) to monitor critical incident investigations.

The purpose of this document is to provide an outline of the guiding principles that are applied in responding to, and investigating, a critical incident.

Document Properties

Title	NSW Police Force Critical Incident Guidelines
Subject	Guidance on the management, investigation, and review of critical incidents
Command responsible	Professional Standards Command
Authorisation	Commissioners Executive Team
Security Classification	OFFICIAL
Publication date	30 March 2026
Current version number	11
Review date	December 2026
Document RMS number	D/2026/355164
Linked RMS folder	D/2026/126644
Copyright statement	© Crown in right of NSW through NSW Police Force 2026
Suitable for Public Disclosure	YES

Modification History

Version #	Version approval date	Author/Position	Summary of changes
6	September 2015	Professional Standards Command	Significant review of document to incorporate changes arising from external agency reports, internal feedback and other matters. Refer to document D/2015/522055 for details of specific amendments.
7	January 2017	Professional Standards Command	Inclusion of PSC as Review Officer for all Critical Incident Investigations.
8	23 December 2019	Professional Standards Command	<ul style="list-style-type: none"> • Amendments to incorporate references to oversight arising from commencement of the <i>Law Enforcement Conduct Commission Act 2016</i>. • Amendment to format and language of Guidelines. • Amendments to responsibilities for identified roles (see D/2019/815424).
9	January 2021	Professional Standards Command	<ul style="list-style-type: none"> • Document updated with new security classification
10	January 2024	Professional Standards Command	<ul style="list-style-type: none"> • Document transferred to new Corporate Template • Definition of NSWPF Members • Amendment to language from employee to NSWPF member; nonsworn to administrative employee
11	February 2026	Professional Standards Command	<ul style="list-style-type: none"> • Insertion of Level 3 Incidents

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1. Purpose

These guidelines provide guidance on the management, investigation, and review of critical incidents.

2. Scope

These guidelines have been designed to provide guidance and direction on the essential requirements of the critical incident process to assist in NSWPF operations, administration, management, and governance.

3. Roles & responsibilities

[Please refer to section 8.2 for clearly defined roles, responsibilities, and processes](#)

4. 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 member of the NSW Police Force¹ that “results in the death of, or serious injury to, a person (including another police officer)” {s110(a)} 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.” {s110(b)}

The Region Commander may also make this declaration if they have “other grounds for considering it is in the public interest to do so” {s111(1)(b)}. 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.

See Annexure A for definitions and explanations of some of the terms used above.

¹ A member of the NSWPF includes police officers and administrative employees (This does NOT include a Recognised Law Enforcement Officer from another jurisdiction)

5. What are the objectives of a critical incident investigation?

Whilst the specific objectives of each critical incident investigation will be determined by the responsible Region Commander, the purpose of a critical incident investigation is to fully and properly investigate “the actions of members of the Police Force involved in a critical incident at the time of, and leading to, the critical incident” {s113(1)}.

During the investigation, the NSW Police Force will consider, with respect to members of the NSW Police Force involved in the critical incident:

- the lawfulness and reasonableness of their actions
- the extent to which they complied with relevant legislation and policies, practices, and procedures of the NSW Police Force
- any complaint about their conduct that has been referred to the senior critical incident investigator; and,
- any evidence of officer misconduct.

While the scope of matters considered by the NSW Police Force may include the above, 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.

In the interest of possible prevention of further incidents, NSW Police Force will also consider:

- any need for changes to relevant policies, practices, and procedures; and
- any systemic, safety or procedural issues arising from the actions of those members. {s113(2)}

6. What is the outside scope of a critical incident investigation?

The scope of the critical incident investigation is determined by the Region Commander. The scope may include the actions of members of the NSW Police Force during, and leading to, the incident.

Any matters that are outside of the scope are referred to the relevant investigators. For example, possible criminal offences committed by a person during the incident are referred for investigation by the Police Area / District Commander or to a specialist investigation unit within the NSW Police Force.

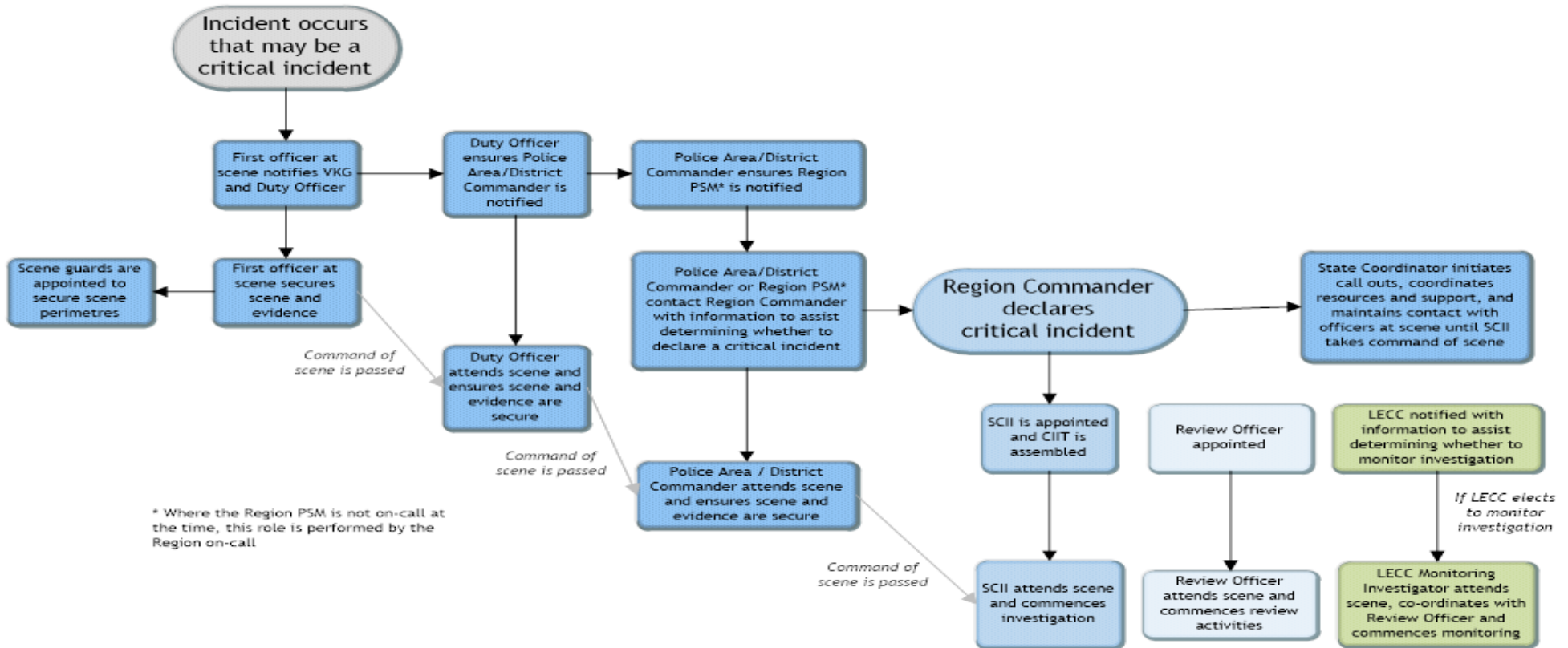
7. When is a critical incident no longer a critical incident?

The Region Commander may revoke the declaration of a critical incident at any time. The Region Commander will notify the Senior Critical Incident Investigator (SCII) and LECC (if LECC are monitoring the investigation) of the revocation in writing. Following this, the critical incident investigation will cease, and the incident will be referred to the Police Area / District Commander for investigation.

8. Key Guiding Principles

8.1 Established process for identifying, declaring, and managing critical incidents

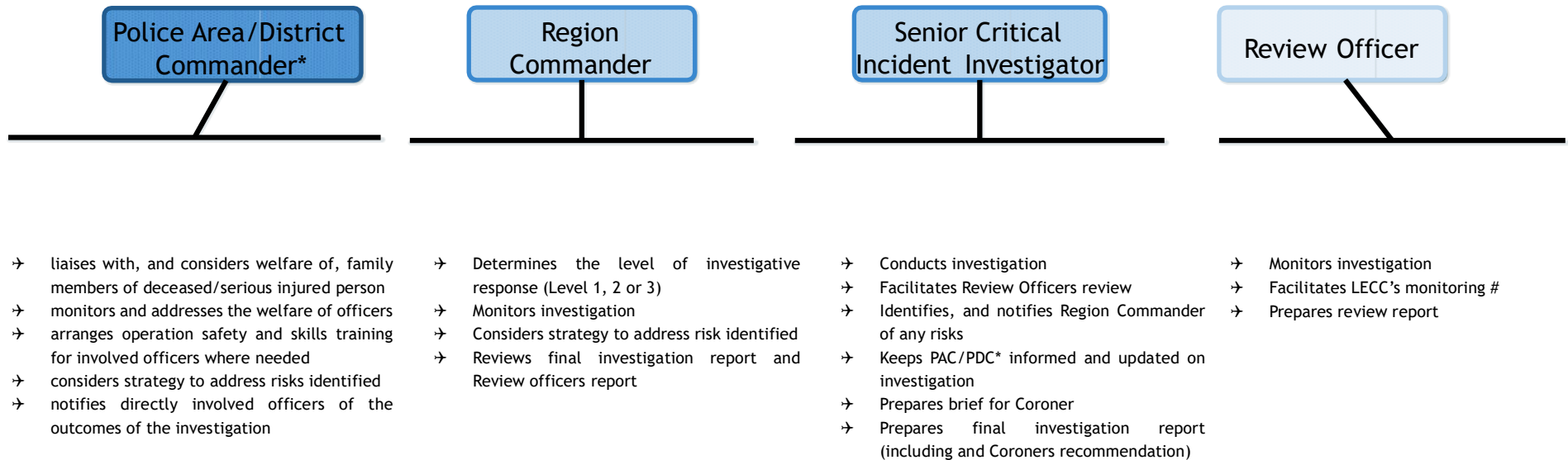
This is an overview of what usually occurs up to the commencement of a critical incident investigation, where operationally appropriate.



8.2 Clearly defined roles, responsibilities, and process

Each officer involved in the investigation of a critical incident or assisting in securing the scene of a potential critical incident has clearly defined responsibilities aligned with their particular role. This ensures that all appropriate actions are taken in a consistent and timely manner.

The key roles and responsibilities in connection with the investigation of a critical incident are:



* Where officers from a specialist command unit are directly involved officers or witness officers the relevant Specialist Commander will have the responsibility to monitor and address the welfare of those officers and arrange any required safety and skills training.

If LECC have indicated that they are monitoring the critical incident investigation.

8.3 Categorising the investigative response

Dependent upon the circumstances of a declared critical incident, the investigative response and allocation of the investigation is categorised under 3 broad levels.

Level 1 Level 1 Critical incidents include matters involving the:

- homicide of a police officer (excluding suicide unless agreed between the relevant Region Commander and the Commander SCC)
- death or imminent death resulting from the discharge of a police firearm by a police officer or other member of the NSW Police Force (including police suicide involving the use of a police firearm)
- 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

Level 2 Level 2 Critical Incidents are incidents that are not Level 1 or Level 3 incidents

Level 3 Level 3 Critical incidents are incidents that involve the suicide (or attempted suicide) of a person, where the action (or inactions) of NSWPF members did not materially impact or contribute to the death of (or serious injury to) a person.

Officers involved in Level 3 critical incidents are not considered to be directly involved officers and will be regarded as witnesses.

If there is any doubt as to the appropriate categorisation, the higher category must be adopted.

Where LECC has concerns with the proposed level of investigative response, in matters where a level 3 investigation is proposed, the Commission will raise those concerns with the nominated contact officer and the Region Commander. The Region Commander is to give due consideration to any concerns raised by the Commission.

A review of Level 3 matters is to be completed within 72 hours of the commencement of the investigation. The SCII will advise the Region Commander if there is information that indicates the involvement of NSWPF had some material impact on the death or serious injury to a person, upon review of available CCTV/ BWV or police records. In these circumstances a Level 3 critical incident may be upgraded to Level 2 investigation by the Region Commander.

8.4 Skilled and experienced investigators

The NSW Police Force is committed to managing and investigating all critical incidents in an effective, transparent and accountable manner. Accountability for the probity and integrity of the investigation is imposed at senior levels of the NSW Police Force. In doing so, the community, members of the NSW Police Force and their families can be assured that all critical incidents are handled professionally and that decisions made and processes used are appropriate and reasonable.

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Care is taken in the selection of the Senior Critical Incident Investigator (SCII) and the members of the Critical Incident Investigation Team (CIIT) to ensure that the investigation is undertaken by independent officers with the required investigative competence and experience to complete an investigation of this kind.

The Homicide Squad, State Crime Command will investigate all Level 1 matters, unless there are strong reasons against this (eg conflicts of interest).

Where operationally achievable the SCII **will be independent** from any officer directly or indirectly involved in the incident and the Police Area Command/Police District where the incident occurred and at a minimum

- hold the rank of designated *Detective Sergeant*; and
- have successfully completed the *Critical Incident Investigators Course*.
- For *Level 1* and *Level 2* critical incident investigations, it is **preferred** that a Detective Inspector be appointed as the lead investigator

In certain circumstances, it may be more prudent for the investigation to be led by an SCII from:

- the same Police Area Command or Police District provided any conflict-of-interest concerns have been mitigated; or
- a Police Area Command or Police District located in a different Region.

When considering such an appointment, the Region Commander **may** take into account factors including:

- the remoteness of the location;
- the availability of investigative resources;
- the need to preserve physical evidence;
- the welfare of officers directly involved; and
- the timeliness of commencing the investigation.

The Region Commander **must be satisfied** that any decision to depart from the standard independence requirements will **not compromise the integrity** of the investigation

An investigator from the Professional Standards Command is also appointed as a review officer for all critical incidents.

8.8 Investigative and Reporting requirements

In line with the requirements of s113 of the *Law Enforcement Commission Conduct Act 2016*, critical incident investigations are to be fully and properly investigated. The investigation must examine and report on the following, where applicable:

- the lawfulness and reasonableness of the actions of the members involved in the incident,
- the extent to which those members complied with relevant legislation and NSW Police Force policies, practices and procedures
- any complaint about the conduct of members has been referred to the SCII
- any evidence of officer misconduct

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- the need for changes to relevant NSWPF policies, practices and procedures (if any)
- any systemic, safety or procedural issues arising from the actions of the members involved.

8.9 Specialist investigation support

All critical incident investigations are supported by specialist teams within the NSW Police Force as needed. This includes:

- Homicide Squad, State Crime Command
- Crash Investigation Unit, Traffic and Highway Patrol Command
- Traffic Policy Section (TPS), Traffic and Highway Patrol Command
- Marine Area Command
- Weapons Tactics and Policy Review Unit (WTPR)

Specialist investigation teams support, but do not replace, the CIIT.

8.10 Facilitation of independent monitoring

LECC is an independent body with powers under the Act to monitor the conduct of critical incident investigations. LECC may exercise these powers where it “decides that it is in the public interest to do so” {LECC Act 2016 s114(1)}

Officers involved in critical incident investigations are provided with guidelines specific to the actions to be taken to facilitate LECC’s monitoring of the investigation. The [Arrangements for the Monitoring of NSW Police Force Critical Incident Investigations](#) are to be followed so far as is practicable, operationally appropriate and does not adversely impact the investigation or other police operations.

8.11 Comprehensive protocols to ensure no conflicts

The probity of the critical incident investigation process is of paramount concern to the NSW Police Force. At the start of a critical incident investigation, and at all times following, steps are taken to ensure that no officer investigates a critical incident with an undisclosed or unresolved conflict of interest.

The SCII is responsible for identifying and managing potential conflicts of interest affecting members of the CIIT. The Review Officer monitors these actions and can make recommendations to the SCII.

8.12 Prompt identification and management of risks

During the investigation, the SCII remains alert to any potential risks or areas of improvement for the NSW Police Force. These matters are promptly notified to the Region Commander to allow strategies to address these potential risks or areas of improvement to be developed and implemented as quickly as possible.

8.13 Concern for welfare of officers

At all times, the welfare of members of the NSW Police Force is considered and addressed by officers involved in responding to or investigating an incident. Particular attention is given to the welfare of officers who are involved in a critical incident – including officers directly involved or witnesses to the incident.

A Police Area/District Commander or specialist commander has primary responsibility for the welfare of their officers. They will actively monitor officers involved in a critical incident and ensure they have access to any required support services.

8.14 Consideration of the welfare and interests of persons affected by critical incidents

Persons affected by critical incidents may include a seriously injured person, the family members of a deceased or seriously injured person, and witnesses to the incident.

The Police Area/District Commander will ensure anyone who is seriously injured, family members and witnesses are notified of the support services available to them.

The SCII, or a senior officer nominated by the SCII, will also communicate with anyone who is seriously injured or family members of deceased or seriously injured person to notify them:

- that a critical incident investigation is underway and provide information regarding how this will be conducted.
- if LECC is monitoring the investigation, and details on how they can contact LECC directly with any concerns; and
- the procedure for making a complaint about a member of the NSW Police Force.

The NSW Police Force understands that, where a person is deceased, family members may wish to view the body of the deceased or may have specific requests regarding the post-mortem examination. Where possible, with the permission of the Coroner, the NSW Police Force will ensure that these requests are accommodated. The family of the deceased will also be provided with information about the coronial process.

8.15 Guidance for identifying potential critical incidents

There is clear and consistent guidance to assist officers to identify any incident that has the potential of being declared a critical incident. This knowledge can ensure that such incidents are brought to the attention of the Region Commander as quickly as possible.

The guidance also includes actions that can be taken to treat an incident as a potential critical incident and apply these guiding principles where appropriate.

Appendix 1 - Definitions

Defensive equipment means equipment (such as a Taser gun, capsicum spray, baton, or handcuffs) issued to a member of the NSW Police Force for the purpose of exercising the functions of a police officer.

Member of the NSW Police Force includes Police officers and administrative employees. A Police Officer is the ordinary meaning as defined in the Police Act 1990. An administrative employee is defined as any member of the New South Wales Police Force other than a police officer.

Person in custody means a person who has been detained by, or is otherwise in the custody of, a police officer, including being placed under arrest or being apprehended or being taken to or from a mental health facility under the Mental Health Act 2007 or to or from a hospital or other medical facility.

Police operation means any activity engaged in by a police officer while exercising the functions of a police officer other than an activity for the purpose of a search and rescue operation.

Police vehicle means a vehicle used or operated for the purpose of police operations.

Senior critical incident investigator means the police officer in charge of the investigation of a critical incident.

Serious injury to a person means an injury that threatens or is likely to threaten the life of the person or that results, or is likely to result, in the person sustaining permanent and significant physical impairment or disfigurement and includes the infliction of a grievous bodily disease on the person or the destruction of the foetus of a pregnant woman.

Vehicle means a motor vehicle, trailer, or other registrable vehicle within the meaning of the *Road Transport Act 2013* and includes an aircraft or vessel.