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NSW Police Force

Critical Incident Guidelines

Professional Standards Command

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NSW POLICE FORCE

CRITICAL INCIDENT GUIDING PRINCIPLES

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.

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 Act.

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)”^{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 served by investigating the incident as a critical incident.

See Annexure 1 for definitions and explanations of some of the terms used above.

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 that any misconduct has 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)}

What is outside the 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 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.

When is a critical incident no longer a critical incident?

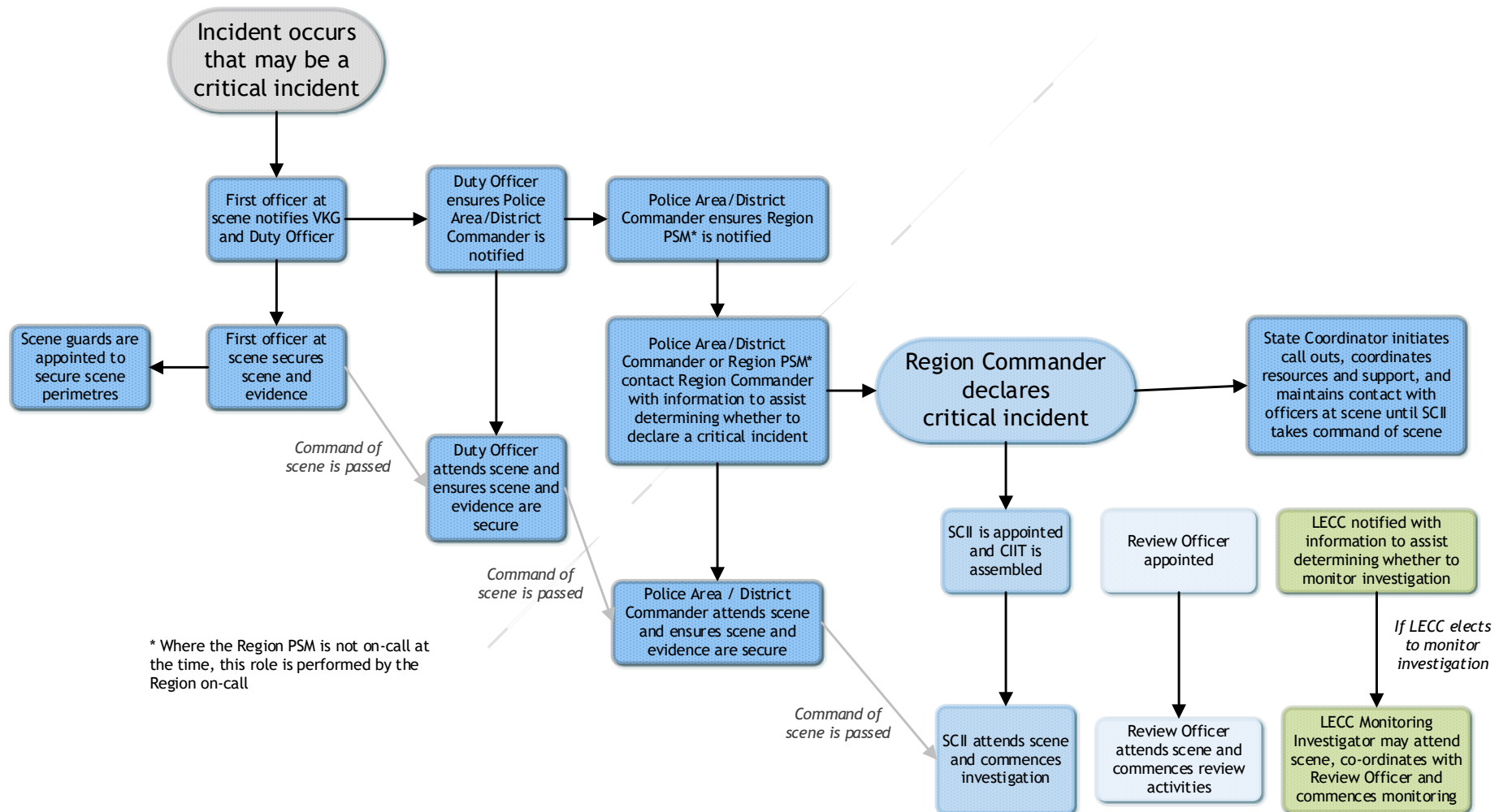
The Region Commander may revoke the declaration of a critical incident at any time.

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.

Key guiding principles

1. Established process for identifying, declaring and managing critical incidents

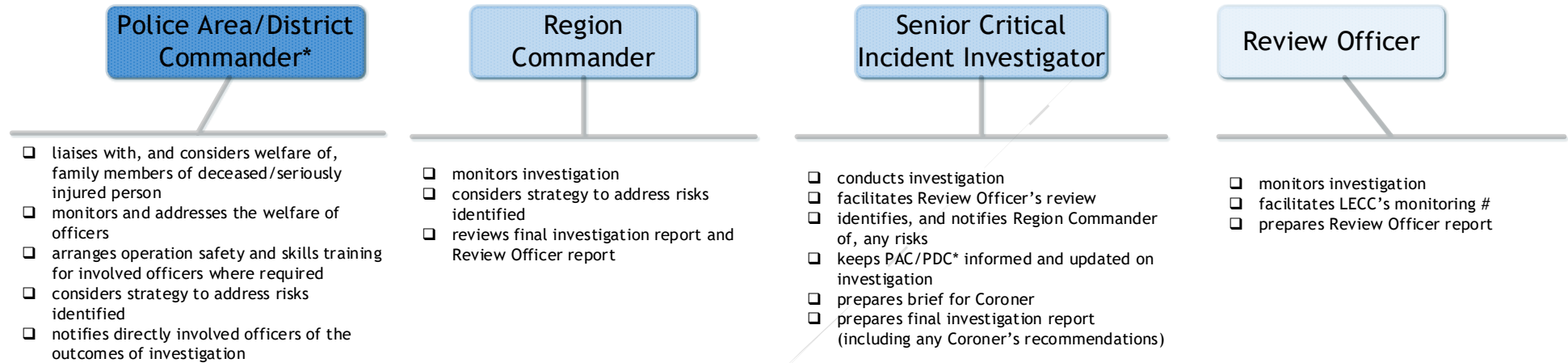
This is an overview of what usually occurs **up to the commencement of a critical incident investigation**, where operationally appropriate. Further explanation and description of the roles and responsibilities is provided under Section 2 below and in Annexure 1.



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 these officers and arrange any required safety and skills training.

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

3. Skilled and experienced investigators

Care is taken in the selection of the SCII and the members of the Critical Incident Investigation Team (CIIT) to ensure that the investigation is undertaken by officers with the required skill and experience.

Critical incidents that involve the:

- homicide of a police officer
- death or imminent death resulting from the discharge of a firearm by a police officer
- 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).

Critical incidents that are not Level 1 critical incidents are **Level 2** critical incidents. Level 2 critical incidents are led by an experienced investigator from a different Police Area/District Command (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/District Command; or,
- a Police Area/District Command 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.

4. 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
- Marine Area Command
- Weapons Tactics and Policy Review Unit
- Traffic Policy Section, Traffic and Highway Patrol Command

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

5. 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)}

6. 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.

7. 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. Concern for the 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.

The SCII and members of the CIIT also consider the welfare of officers when conducting any investigative actions. The welfare of members of the CIIT are also considered.

9. 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.

Annexure 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.

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.